## TABLE OF APPENDICES

Appendix A

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

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No. 22-419

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*Ogbolu v. The Trustees of Columbia Unive*

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SUMMARY ORDER

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Filed: March 21, 2023

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Captioned as:
*Ogbolu v. The Trs. of Columbia Univ. In City of New York,* No. 22-419 (2d Cir. Mar. 21, 2023)

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RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE

(WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

**At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of March two thousand twenty-three.**

**PRESENT:**

**REENA RAGGI,**
**RICHARD C. WESLEY,**
**STEVEN J. MENASHI,**
***Circuit Judges.***

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**Brandon E. Ogbolu,**

***Plaintiff-Appellant,***

**John Doe,** **22-419**

***Plaintiff,***

**v.**

**The Trustees of Columbia University in the City of New York, Lee C. Bollinger, Jane E. Booth, Patricia S. Catapano, Andrew W. Schilling,**

***Defendants-Appellees.***

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**FOR PLAINTIFF-APPELLANT:**

Brandon E. Ogbolu, pro se, Fort Lauderdale, FL.

**FOR DEFENDANTS-APPELLEES:**

Daniel R. Alonso and Brian J. Wegrzyn, Buckley LLP, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Oetken, J).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court of January 31, 2022, is **AFFIRMED**.

Appellant Brandon E. Ogbolu, proceeding *pro se*, filed a complaint against certain employees and trustees of Columbia University (collectively, "Columbia"). While attending Columbia University, Ogbolu accumulated tuition debt that was converted into two private student loans after he graduated, a practice Ogbolu believes was illegal.

In 2019, he entered into a settlement agreement with Columbia for a refund of $35,799.80 and an undisclosed payment. The agreement contained a release of claims: "In consideration of the Settlement Payment and Refund, Mr. Ogbolu releases and discharges Columbia, its affiliates, subsidiaries, successors and assigns and its and their present and former trustees, officers, employees, and counsel (Released Parties) from any and all claims and/or liabilities of any kind whatsoever, whether known or unknown, that he has or may have arising out of or relating in any way to the Covered Claims." App'x 13. The "Covered Claims" included "claims for compensatory and punitive damages, and including

specifically claims for the return of funds, late fees, interest, emotional distress, lost earnings, medical expenses, and attorney's fees, among other things," with respect to "certain repayment agreements" and "certain improper servicing, collection and credit reporting activity" from January 1, 2002, to October 29, 2019. *Id.* at 12.

In February 2021, Ogbolu-believing that the settlement agreement was unenforceable and that Columbia had discriminated against him on the basis of his Asperger's syndrome-brought thirty-three federal and state claims against the defendants. The district court determined that the settlement agreement was enforceable and that any non-precluded claims failed on the merits. It dismissed Ogbolu's third amended complaint with prejudice and denied a parallel motion for an injunction. Ogbolu appealed and now moves in this court for an injunction pending appeal. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review the judgment granting a motion to dismiss under Rule 12(b)(1) and Rule 12(b)(6) *de novo*, accepting all of the factual allegations of the complaint as true and drawing all reasonable inferences in Ogbolu's favor. *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370, 379-80 (2d Cir. 2021). To survive a Rule 12(b)(6) motion, a complaint must contain sufficient facts to state a claim to relief that is plausible on its face. *Green v. Dep't of Educ. of N.Y.C.*, 16 F.4th 1070, 1076-77 (2d Cir. 2021). Because Ogbolu has proceeded *pro*

*se*, we liberally construe his filings both in the district court and on appeal to raise the strongest arguments those filings suggest. *Publicola v. Lomenzo*, 54 F.4th 108, 111 (2d Cir. 2022).

## I

As an initial matter, Ogbolu argues that the district court failed to "define" and "conceptualize" his Asperger's syndrome, which he claims was integral to his lawsuit. Appellant's Br. 20-30. Ogbolu alleged that Columbia took advantage of him throughout the settlement negotiation process and then continued intentionally to exploit him following the settlement. However, the district court did not ignore Ogbolu's Asperger's syndrome. For example, the district court considered whether during the lengthy settlement negotiations Columbia deliberately triggered his condition by using stall tactics. The district court also noted that Ogbolu notified the defendants of his self-diagnosis during settlement discussions in October 2019 and that he was officially diagnosed in January 2021. While the district court may not have included detailed descriptions of Ogbolu's medical information in its public decision, the record indicates that the district court examined Ogbolu's arguments and claims with his diagnosis in mind.

## II

In dismissing Ogbolu's complaint, the district court concluded that a majority of the claims were precluded by the valid settlement agreement between Ogbolu and Columbia.

We "review a district court's factual conclusions related to a settlement agreement, such as whether an agreement exists or whether a party assented to the agreement, under the clearly erroneous standard of review" and review "legal conclusions with respect to its interpretation of the terms of a settlement agreement" *de novo*. *Omega Eng'g, Inc. v. Omega, S.A.*, 432 F.3d 437, 443 (2d Cir. 2005). "A settlement agreement is a contract that is interpreted according to general principles of contract law." *Id.* "Under New York law, a release that is clear and unambiguous on its face and which is knowingly and voluntarily entered into will be enforced." *Pampillonia v. RJR Nabisco, Inc.*, 138 F.3d 459, 463 (2d Cir. 1998).

The district court did not clearly err in determining that the settlement agreement was enforceable.[1] A court may vacate a settlement agreement only when there has been a showing of fraud, collusion, mistake, or duress or when the agreement is unconscionable, contrary to public policy, or ambiguous. *McCoy v. Feinman*, 99 N.Y.2d 295, 302 (2002). Ogbolu's duress and fraud arguments are without merit. Repudiation of an agreement based on duress requires a showing of (1) a wrongful threat that (2) had the effect of precluding the exercise of free will. *United States v. Twenty Miljam-*

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[1] The settlement agreement was "integral" to the complaint and thus properly considered by the district court as part of the motion to dismiss. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002); *see Interpharm, Inc. v. Wells Fargo Bank, Nat. Ass'n*, 655 F.3d 136, 141 (2d Cir. 2011) (reviewing an agreement containing releases as "integral to the complaint").

*350 IED Jammers*, 669 F.3d 78, 88 (2d Cir. 2011) (applying New York law). Ogbolu alleged that Columbia manipulated him during settlement negotiations and took advantage of his Asperger's syndrome by engaging in stall tactics, such as ignoring Ogbolu's emails and sending delayed responses. Even accepting as true Ogbolu's allegations that Columbia ignored or failed to respond promptly to his emails, he does not plead that Columbia prevented him from exercising his free will. As to Ogbolu's claims of fraud, the claims all refer to Columbia's student loan practices. Ogbolu does not identify any fraudulent acts separate from the "subject of the release." *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011).[2] Thus, the district court correctly determined that the settlement agreement and its release of claims were valid.

Many of Ogbolu's claims are premised on Columbia's allegedly illegal conversion of outstanding tuition debt into student loans. As the district court correctly determined, however, Ogbolu released Columbia from these claims through the valid settlement agreement, *see* App'x 12-13, and otherwise lacks standing to bring a criminal action, *see Schlosser v. Kwak*, 16 F.4th 1078, 1083 (2d Cir. 2021). For these reasons, the district court correctly dismissed Counts 1-15 and 28-32 of the third

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[2] Although Ogbolu argues on appeal that the agreement should be voided for public policy concerns, he has not specified any public interest, which generally favors settlement agreements, harmed by the agreement.

amended complaint as precluded by the settlement agreement and Counts 16-22, insofar as the claims relate to conduct covered by the agreement.

## III

With respect to Ogbolu's remaining tort and discrimination claims that arise from Columbia's alleged actions during and after the settlement process, Ogbolu has not pleaded any facially plausible claims. Ogbolu does not plead facts suggesting that Columbia discriminated against him "on the basis of disability," *Krist v. Kolombos Rest., Inc.*, 688 F.3d 89, 94 (2d Cir. 2012) (quoting 42 U.S.C. § 12182(a)), or acted with a "discriminatory motive," *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 110 (2d Cir. 2013). Ogbolu has not plausibly alleged that any of Columbia's reported actions occurred on the basis of his Asperger's syndrome.

Ogbolu also alleges that Columbia is liable for intentional infliction of emotional distress and negligent infliction of emotional distress. The conduct underlying both of these claims is the incorrect tax form that Columbia sent Ogbolu, which was corrected after he notified them about the mistake. Ogbolu has not plausibly alleged the elements of either of these claims. The conduct at issue was not "extreme and outrageous," *Howell v. N.Y. Post Co., Inc.*, 81 N.Y.2d 115, 121 (1993), and Ogbolu's claimed injury does not possess "some guarantee of genuineness," *Taggart v. Costabile*, 131 A.D.3d 243, 256 (2d Dep't 2015)

(quoting *Ferrara v. Galluchio*, 5 N.Y.2d 16, 21 (1958)).[3]

Finally, we detect no "abuse of discretion" in the district court's denial of preliminary injunctive relief. *Green Haven Prison Preparative Meeting of the Religious Soc'y of Friends v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 16 F.4th 67, 78 (2d Cir. 2021). A plaintiff seeking a preliminary injunction must establish (1) irreparable harm; (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of hardships tipping decidedly in favor of the moving party; and (3) that a preliminary injunction is in the public interest. *Id.* As discussed above, the district court correctly concluded that Ogbolu would not succeed on the merits of his claims and that there were no sufficiently serious questions going to the merits of this case. The motion filed in this court for a "Preliminary Injunction Pending the Determination of This Appeal," is denied for the same reasons.

We have considered Ogbolu's remaining arguments, which we conclude are without merit. Accordingly, we affirm the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe,

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[3] Because Ogbolu did not establish that Columbia committed a tort, his negligent supervision or retention claims were also correctly dismissed.

Clerk of Court

s/ Catherine O'Hagan Wolfe
United States Court of Appeals
Second Circuit

Appendix B

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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No. 21-cv-01697-JPO-RWL

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*Ogbolu v. The Trustees of Columbia University in the City of New York et al*

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OPINION AND ORDER

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Filed: January 31, 2022

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Captioned as:
*Ogbolu v. The Trs. of Columbia Univ. in City of New York,* 21-CV-1697 (JPO) (S.D.N.Y. Jan. 31, 2022)

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J. PAUL OETKEN, District Judge:

*Pro se* plaintiff Brandon Ogbolu brings this action against the Trustees of Columbia University in the City of New York, Lee C. Bollinger, Jane E. Booth, Patricia S. Catapano, and Andrew W. Schilling ("Defendants"). Defendants have moved to dismiss Plaintiff's third amended complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (Dkt. No. 79 ("Motion").) Plaintiff has also

moved for a preliminary injunction enjoining Columbia University from administering its tuition debt to loan conversion practice. (Dkt. No. 93.) For the reasons that follow, Defendants' motion to dismiss is granted and Plaintiff's motion for a preliminary injunction is denied.

## I. Factual Background

The following facts are drawn from the complaint and are assumed true for purposes of this motion.

Plaintiff Ogbolu graduated from Columbia College of Columbia University in 2012. (Dkt. No. 69 ("Third Amended Complaint") ¶ 16.) While in attendance, Plaintiff accumulated student debt, which was converted into two private student loans following his graduation. (Third Amended Complaint ¶ 31.) As early as December 2016, Plaintiff sent letters and emails to Defendants regarding the University's tuition policies and their impact on his mental wellbeing. (*See, e.g.*, Third Amended Complaint ¶¶ 27, 31, 33, 37, 42.) Beginning in 2017, Plaintiff began communicating with the University specifically regarding his loans, ultimately alleging that the loans were unlawfully made. (Third Amended Complaint ¶ 42.) These communications spanned almost a year and a half — from May 29, 2017 to November 23, 2018. (Third Amended Complaint ¶ 42.)

In April 2019, Plaintiff and Defendants entered into settlement discussions regarding the Plaintiff's outstanding student loan debt. (Third Amended Complaint ¶ 43.) Plaintiff, who believed that he had Asperger syndrome, notified Defendant Andrew

Schilling of his self-diagnosis during these settlement discussions on October 17, 2019. (Third Amended Complaint ¶ 9.) Plaintiff was officially diagnosed with Asperger syndrome in January 2021. (Third Amended Complaint ¶ 3). The settlement negotiations lasted until October 29, 2019, when Plaintiff and Defendants finalized a settlement agreement. (Third Amended Complaint ¶ 10.) The settlement agreement between Plaintiff and Defendants reads in part:

> In consideration of the Settlement Payment and Refund, Mr. Ogbolu releases and discharges Columbia, its affiliates, subsidiaries, successors and assigns and its and their present and former trustees, officers, employees, and counsel (Released Parties) from any and all claims and/or liabilities of any kind whatsoever, whether known or unknown, that he has or may have arising out of or relating in any way to the Covered Claims.

(Dkt. No. 81-1 ("Settlement") at 2, ¶ 2.) The "Covered Claims" include "claims for compensatory and punitive damages, and including specifically claims for the return of funds, late fees, interest, emotional distress, lost earnings, medical expenses, and attorney's fees, among other things" with respect to "certain repayment agreements" and "certain improper servicing, collection and credit reporting activity" during the period of time from January 1, 2002 to October 29, 2019. (Settlement at 1.) Under the terms of the settlement agreement, Defendants agreed to refund Plaintiff's payments, which totaled $35,779.80, and also give Plaintiff a settlement

payment. (Settlement at 2, ¶ 1.) On February 24, 2020, Plaintiff discovered that the 1099-MISC tax form sent to him by Defendants reported the refund payment as income rather than as a refund. (Third Amended Complaint ¶ 50.) Plaintiff reported this error the same day and received a corrected form about two weeks later. (Third Amended Complaint ¶ 50.)

In his third amended complaint, Plaintiff alleges thirty-three separate federal, state, and local claims against Defendants. Primarily, Plaintiff alleges that Defendants subjected him to unlawful loans; improperly manipulated him into accepting a settlement; breached the settlement; and inflicted emotional distress by erroneously sending a mislabeled form; and that all of this was done while Plaintiff had Asperger syndrome, which Defendants knew or should have known, rendering Defendants' actions unlawful. Plaintiff seeks $175 million in compensatory and punitive damages, fees and costs, and pre-judgment and post-judgment interest. (Third Amended Complaint at 104.) Additionally, Plaintiff filed a motion for a preliminary injunction asking the Court to enjoin Defendants from converting student tuition debt to private student loans. (Dkt. No. 93.)

## II. Legal Standard

In order to survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient factual allegations "to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible "when the plaintiff pleads factual content that allows the

court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court must accept as true all well-pleaded factual allegations in the complaint and "draw[] all inferences in the plaintiff's favor." *Allaire Corp. v. Okumus*, 433 F.3d 248, 249–50 (2d Cir. 2006) (citation omitted).

Moreover, courts must afford a *pro se* plaintiff "special solicitude" before granting motions to dismiss or motions for summary judgment. *Ruotolo v. I.R.S.*, 28 F.3d 6, 8 (2d Cir. 1994). "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however unartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and marks omitted). Indeed, courts interpret a *pro se* plaintiff's pleadings "to raise the strongest arguments they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 475 (2d Cir. 2006) (citation omitted). "Even in a *pro se* case, however, 'although a court must accept as true all of the allegations contained in a complaint, that tenet is inapplicable to legal conclusions, and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (quoting *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009)).

In order to secure a preliminary injunction pending resolution of the case, the party seeking the injunction "must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious

questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction is in the public interest." *N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (citing *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015)). Where the injunction sought is one which would disrupt the status quo pending resolution of the case, the party seeking the injunction "must meet a heightened legal standard by showing a clear or substantial likelihood of success on the merits." *Id.* (internal quotations omitted).

**III. Discussion**

As a preliminary matter, the Court will consider the Settlement when considering these claims because it is integral to the Complaint. "A complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference." *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 230 (2d Cir. 2016) (internal quotations omitted). Where a complaint heavily relies upon a document incorporated by reference such that the document is integral to the complaint, a court may consider the document. *Id.* Here, the Settlement is integral to the complaint because several of the claims in the Complaint are based upon violations of the Settlement, and it is frequently referenced throughout the Complaint. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 n.4 (2d Cir. 2002) (affirming district court's consideration of several contracts on a motion to dismiss because the complaint was "replete with references to the

contracts and requests judicial interpretation of their terms").

**A. Settlement Agreement Voidability**

Plaintiff released Defendants from any liability related to any claim arising from the actions that occurred prior to the signing of the Settlement on October 29, 2019. Plaintiff argues that the Settlement is void and thus he is not bound by its terms. Under New York law, "a valid release constitutes a complete bar to an action on a claim which is the subject of the release." *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011) (quoting *Glob. Mins. & Metals Corp. v. Holme*, 25 A.D.3d 93, 98 (1st Dep't 2006)). "If the language of the release is clear and unambiguous, the signing of a release is a jural act binding on the parties." *Id.* (internal quotations omitted). Once a defendant presents a signed release, the burden shifts to the plaintiff to demonstrate that there is some sufficient reason to void the release. *Id.* The traditional bases for invalidating a release are "duress, illegality, fraud, or mutual mistake." *Id.* (internal quotations omitted). "[A] release may encompass . . . unknown fraud claims"; accordingly, if a party later challenges the release as fraudulently induced, he must "identify a separate fraud from the subject of the release." *Id.* For the reasons explained below, Plaintiff has not demonstrated that the release

is void. Accordingly, those claims which are precluded by the Settlement are dismissed.[1]

### 1. Undue Influence

Plaintiff first asserts that he only agreed to the Settlement under undue influence. To show undue influence in New York, a plaintiff "must prove that it contracted under circumstances indicating that a relationship of control existed" and that the defendant "had exerted influence over the other to destroy the [plaintiff]'s free will and substitute for it the will of the [defendant]." *TufAmerica, Inc. v. Codigo Music LLC*, 162 F. Supp. 3d 295, 327 (S.D.N.Y. 2016) (quoting *Sun Forest Corp. v. Shvili*, 152 F. Supp. 2d 367, 393 (S.D.N.Y.2001)). The burden on the Plaintiff to demonstrate this is a heavy one, and the conduct alleged must be "worse than even pressure, no matter how bad." *Id.* (internal quotations omitted).

Plaintiff's claim is premised on the argument that Defendants knew or should have known of Plaintiff's undiagnosed Asperger syndrome due to the nature of the communications between Plaintiff and Defendants. On this premise, Plaintiff argues that Defendants, both before and during settlement negotiations, deliberately exacerbated his condition by engaging in stalling tactics and evading his communications. Plaintiff also alleges that

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[1] Specifically, Counts 1–15 and 28–32, which solely involve conduct covered by the Settlement, are wholly dismissed, and Counts 16–22, which includes conduct that occurred after the signing of the Settlement, are partially dismissed insofar as they relate to conduct covered by the Settlement.

Defendants took advantage of Plaintiff's lack of an attorney. He flags an email inadvertently sent by Defendant Catapano to Plaintiff's former counsel in which Catapano stated that she would ignore Plaintiff's counsel for several days. (Third Amended Complaint ¶ 44). Plaintiff viewed this as a lack of respect for his attorney, which motivated him to separate from his attorney, contributing to the undue influence exerted on him. The Court considers each alleged source of undue influence in turn.

The argument that lengthy negotiations constituted undue influence is without merit. As alleged, Defendants' conduct would amount only to "mere pressure." *See TufAmerica*, 162 F. Supp. 3d at 328 (concluding that an 84-year-old plaintiff faced only "mere pressure" even though the other side frequently switched terms and even though plaintiff was susceptible to confusion and forgetfulness). Regarding Plaintiff's lack of an attorney, the lack of consultation with an attorney before signing the release does not invalidate or preclude enforcement of the release. *See In re Cheng Ching Wang*, 981 N.Y.S.2d 439, 441 (2d Dep't 2014) (holding that the lack of consultation with an attorney before signing a release does not preclude enforcement of the release). Plaintiff does not allege facts suggesting that his decision to separate from his attorney was anything other than his own choice nor does he demonstrate that such lack of counsel caused him to be unduly influenced into signing the Settlement.

Even if this claim were sufficiently pleaded, Plaintiff ratified the release by waiting seventeen

months before moving to repudiate the contract. Under New York law, a party may ratify a release entered into under duress by, among other things, remaining silent for a period of time after the agreement was made. *See VKK Corp. v. Nat'l Football League*, 244 F.3d 114, 122–23 (2d Cir. 2001) ("If the releasing party does not promptly repudiate the contract or release, he will be deemed to have ratified it."); *see also United States v. Twenty Miljam–350 IED Jammers*, 669 F.3d 78, 91 (2d Cir. 2011) (finding contract ratified after period of four months). Plaintiff first moved to repudiate the Settlement in February 2021 — roughly seventeen months after the signing on October 29, 2019. This long period of time before contesting the Settlement constitutes ratification by Plaintiff.

**2. Fraud**

Plaintiff asserts that the Settlement is void due to fraud, fraudulent inducement, fraudulent concealment, and negligent misrepresentation by Defendants. These claims each rest on assertions that Defendants made misrepresentations with respect to the loans offered to Plaintiff. "A plaintiff may invalidate a release for fraud, however, 'only if it can identify a separate fraud from the subject of the release.'" *Est. of Mautner v. Alvin H. Glick Irrevocable Grantor Tr.*, No. 19 Civ. 2742, 2019 WL 6311520, at *4 (S.D.N.Y. Nov. 25, 2019) (quoting *Centro*, 17 N.Y.3d at 276). "Were this not the case, no party could ever settle a fraud claim with any finality." *Centro*, 17 N.Y.3d at 276.

Plaintiff's claims for fraud and negligent misrepresentation fail because the allegations upon which they are premised do not make out any fraud separate from the subject of the terms of the release. Plaintiff released Defendants from "any and all claims" related to the loan repayment plans extended to Plaintiff between January 1, 2002 and October 29, 2019. (*See* Settlement at 1, 2 ¶ 2.) Plaintiff's allegations of fraud are all centered around the allegedly unlawful loan practices by Defendants — a topic which is wholly covered under the terms of the Settlement. Because Plaintiff does not allege any fraudulent acts separate from the subject of the terms of the Settlement, the Settlement is not void and his claims of fraud fail.

**B. Standing to Bring Criminal Charges**

Plaintiff further alleges that Defendants violated various state and federal criminal statutes. But "[t]he law is well settled that no private citizen has a constitutional right to bring a criminal complaint against another individual." *Silverstein v. Barnes*, No. 85 Civ. 8748, 1986 WL 4545, at *3 (S.D.N.Y. Apr. 10, 1986), *aff'd*, 798 F.2d 467 (2d Cir. 1986) (citing *Leeke v. Timmerman*, 454 U.S. 83 (1981)); *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). In rare situations, a criminal statute does confer a private right of action. *See Chrysler Corp v. Brown*, 441 U.S. 281, 316 (1979). But Plaintiff has not identified any basis for a private right of action in the statutes he has cited. *See* 18 U.S.C. §§ 371, 666, 1341, 1343; N.Y. Exec. Law §§ 105.05, 120.25, 155.35, 190.55, 190.65, 460.20.

Plaintiff also lacks standing to bring a claim under N.Y. Exec. Law § 63(12). *See Williams v. Philips Med. Systems, Inc.*, 58 N.Y.S.3d 839, 841 (4th Dep't 2017) (affirming dismissal of plaintiff's claim under Section 63(12) for lack of standing). This statute permits only the New York State Attorney General to bring actions against persons who "engage[s] in repeated fraudulent or illegal acts or otherwise demonstrate[s] persistent fraud or illegality in the carrying on, conducting or transaction of business." N.Y. Exec. Law § 63(12).

Because Plaintiff lacks standing to bring civil actions under criminal statutes, his claims relating to these statutes must be dismissed as well.[2]

### C. Breach of Contract and Breach of Covenant

"Under New York law, a breach of contract claim requires (1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages." *Balk v. New York Inst. of Tech.*, 683 F. App'x 89, 95 (2d Cir. 2017) (summary order) (marks omitted).

Plaintiff alleges that Defendant Columbia breached the terms of the Settlement by sending him a tax form that mislabeled his tuition refund as income. Although Plaintiff does not explain what text of the Settlement was allegedly violated, the Court understands Plaintiff to allege that Defendant

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[2] Specifically, Counts 3–6 and 9–15 of the Complaint are dismissed.

violated the provision of the Settlement which reads: "Columbia shall refund to Mr. Ogbolu the sum of $35,779.80 (Refund)." (Settlement at 2, ¶ 1.) The text of the Settlement does not specify how Defendants must refund Plaintiff, and Plaintiff acknowledges that a properly labeled form was sent to him roughly two weeks after he notified Defendants. (Third Amended Complaint ¶ 298.) Accordingly, Plaintiff was placed in the position he was entitled to under the terms of the contract — specifically, that Defendant paid him the Settlement Payment and refunded him the $35,779.80 as stipulated in the Settlement. (Settlement at 2, ¶ 1.) Therefore, the Court concludes that Defendant Columbia's erroneous mislabeling of the refund form does not constitute a breach of contract.

Even assuming that Defendants breached the contract by mislabeling the form, Plaintiff's claim would also fail because he does not allege cognizable damages. Plaintiff alleges that the breach and related conduct caused him to suffer various emotional and physical harms as well as "lost employment opportunities, and other economic damages," none of which are further explained. (Third Amended Complaint ¶ 301.) Under New York law, Plaintiff is not entitled to recover for the emotional damages alleged. *See Kruglov v. Copart of Conn., Inc.*, 771 F. App'x 117, 119 (2d Cir. 2019) (summary order). Plaintiff is also not entitled to recovery for consequential damages such as lost employment opportunities or other unspecified economic damages where he fails to provide any

information at all as to those opportunities. *See Tractebel Energy Mktg., Inc. v. AEP Power Mktg., Inc.*, 487 F.3d 89, 111 (2d Cir. 2007) (holding that where a party seeks consequential damages, he must prove the existence of damage and the amount of damage with reasonable certainty). Plaintiff has failed to demonstrate with reasonable certainty what these damages are, and thus has failed to allege cognizable damages.

Plaintiff further alleges that Defendants breached the covenant of good faith and fair dealing implied in the Settlement. This allegation is premised on the exact behavior as the breach of contract claim. "New York law does not treat a breach of the covenant of good faith and fair dealing claim as one that is separate from a breach of contract claim where the claims are based on the same facts." *Giller v. Oracle USA, Inc.*, 512 F. App'x 71, 73 (2d Cir. 2013) (summary order). This claim is dismissed as duplicative. *See Aledia v. HSH Nordbank AG*, No. 8 Civ. 4342, 2009 WL 855951, at *4 (S.D.N.Y. Mar. 25, 2009).

**D. Discrimination**

Plaintiff asserts several claims under local, state, and federal laws that Defendants discriminated against him. Plaintiff's allegations relate to conduct from both before and after the signing of the Settlement. Claims relating to conduct occurring before the signing of the Settlement are precluded by the Settlement. Thus, the Court examines only the conduct occurring after the Settlement in assessing these claims.

### 1. ADA and NYSHRL

Plaintiff's claims raised under Section 504 of the Rehabilitation Act, Title III of the Americans with Disabilities Act ("ADA"), Section 296(4) of the New York State Human Rights Law ("NYSHRL"), and Section 40-C of the New York Civil Rights Law are analyzed under the same legal standards as relevant here.[3] *See Noll v. Int'l Bus. Machines Corp.*, 787 F.3d 89, 94 (2d Cir. 2015) (analyzing ADA and NYSHRL claims under the same standard); *Feltenstein v. City of New Rochelle*, No. 14 Civ. 5434, 2019 WL 3543246, at *2 (S.D.N.Y. Aug. 5, 2019) (analyzing ADA, NYSHRL, and New York Civil Rights Law under the same standard); *Krist v. Beth Israel Med. Ctr.*, No. 17 Civ. 1312, 2021 WL 4442943, at *6 (S.D.N.Y. Sept. 28, 2021) (noting claims brought under ADA and Section 504 are analyzed under the same standard). "In order for a plaintiff to establish a prima facie violation under these Acts, [he] must demonstrate (1) that [he] is a qualified individual with a disability; (2) that the defendants are subject to one of the Acts; and (3) that [he] was denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or was otherwise discriminated against by defendants, by reason of [his] disability." *Powell v. Nat'l Bd. of Med. Exam'rs*, 364 F.3d 79, 85 (2d Cir. 2004) (internal quotation marks and alterations omitted).

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[3] Counts 16, 17, 18, and 20, respectively. Counts 16–18 are asserted solely against Columbia while Count 20 is asserted against all defendants.

Plaintiff alleges that Defendants should have been aware of his obvious psychological conditions and mental distress based on the frequency and nature of his communications. (Third Amended Complaint ¶¶ 216, 226, 235, 256.) Plaintiff further alleges that the mislabeled refund form sent to him by Defendants constituted intentional discrimination because Defendants knew that it would exacerbate his psychological condition. But Plaintiff has not alleged any facts to support that Defendants denied Plaintiff any opportunities, singled Plaintiff out, or treated Plaintiff differently than any others. And Plaintiff's allegation that "Defendant Columbia has treated Plaintiff differently from and less preferably than similarly situated students and alumni" is conclusory. (Third Amended Complaint ¶ 217); *see Harris*, 572 F.3d at 72 ("[A]lthough a court must accept as true all of the allegations contained in a complaint, that tenet is inapplicable to legal conclusions, and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." (internal quotations and alterations omitted)). Without any allegations suggesting that Plaintiff received treatment that differed from that afforded individuals without Asperger syndrome, there is no basis for an inference of discriminatory intent or treatment, and these claims must fail.

**2. NYCHRL**

Plaintiff also alleges that Defendants discriminated against him in violation of Section 8107(4) of the New York City Human Rights Law

("NYCHRL"). A claim under the NYCHRL "must be reviewed 'independently and more liberally than their federal and state counterparts.'" *Livingston v. City of New York*, No. 19 Civ. 5209, 2021 WL 4443126, at *15 (S.D.N.Y. Sept. 28, 2021) (quoting *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 278 (2d Cir. 2009)). A *prima facie* claim under this statute only requires a plaintiff to demonstrate "differential treatment" due to disability. *Id.* The totality of circumstances around the conduct in question must be considered when considering the claim, but where the plaintiff fails to demonstrate a discriminatory motive on the part of the defendant or conduct that does not exceed "petty slights or trivial inconveniences," the claim must fail. *See Id.* at *16.

Plaintiff's claim under the NYCHRL is premised on the same set of behavior as the other claims: that Defendants discriminated against Plaintiff by sending him a mislabeled refund form. No new facts are alleged in this claim, and it therefore fails for the same reasons: Plaintiff provides insufficient allegations to infer discriminatory intent or differential treatment by Defendants.

**3. Aiding and Abetting**

Plaintiff also alleges aiding and abetting claims against Defendants under the NYSHRL and NYCHRL.[4] Because Plaintiff has failed to allege an underlying violation of either statute, these claims must fail. *See, e.g.*, *Livingston*, 2021 WL 4443126, at *32 (granting summary judgment as to a claim of

[4] Counts 119 and 22, respectively.

aiding and abetting discrimination claims under the NYSHRL and NYCHRL where the underlying claims were not established).

### E. Emotional Distress

Plaintiff alleges that Defendants are liable for both negligent infliction of emotional distress ("NIED") and intentional infliction of emotional distress ("IIED") resulting from conduct regarding the Defendants' erroneous labeling of the refund form as income. Plaintiff claims that as a result of this conduct, he suffered emotional and physical distress in addition to numerous other harms. (Third Amended Complaint ¶¶ 318, 328.)

#### 1. Negligent Infliction of Emotional Distress

To make out a claim of NIED in New York, a plaintiff "must show '(1) extreme and outrageous conduct, (2) a causal connection between the conduct and the injury, and (3) severe emotional distress.'" *Truman v. Brown*, 434 F. Supp. 3d 100, 122 (S.D.N.Y. 2020) (quoting *Green v. City of Mount Vernon*, 96 F. Supp. 3d 263, 297 (S.D.N.Y. 2015)). In New York, "extreme and outrageous conduct" is conduct "that is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Id.* (quoting *Goldstein v. Mass. Mut. Life Ins. Co.*, 875 N.Y.S.2d 53, 55 (1st Dep't 2009)). "The standard of outrageous conduct is strict, rigorous and difficult to satisfy." *Scollar v. City of New York*, 74 N.Y.S.3d 173, 178 (1st Dep't 2018) (internal quotations omitted).

Plaintiff's NIED claim fails because he does not allege facts that meet the high standard for "extreme or outrageous conduct." The alleged conduct underlying Plaintiff's claim for NIED is Defendants' reporting of Plaintiff's refund as income and subsequent refusal to respond to his concerns regarding the error once the error had been amended. Plaintiff's argument rests on the proposition that, because Defendants were aware of Plaintiff's self-diagnosis of Asperger syndrome, they should have been aware that such actions would cause Plaintiff severe emotional distress. (*See* Third Amended Complaint ¶ 316.) Even if the mislabeling of the form were intentional, this conduct is well outside the realm of conduct that could be considered "extreme" or "outrageous" under New York's high standard. *See, e.g.*, *Truman*, 434 F. Supp. 3d at ____ (finding a manipulative but consensual sexual relationship not to amount to extreme or outrageous behavior); *Chanko v. Am. Broad. Cos., Inc.*, 27 N.Y.3d 46, 57 (2016) (finding filming of patient's medical treatment and death not to amount to extreme or outrageous conduct).

**2. Intentional Infliction of Emotional Distress**

In New York, a claim for IIED requires a showing of four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress." *Rich v. Fox News Network, LLC*, 939 F.3d 112, 122 (2d Cir. 2019)

(quoting *Howell v. N.Y. Post Co., Inc.*, 81 N.Y.2d 115, 121 (1993)). Plaintiff's IIED claim is premised on the same alleged conduct as the NIED claim, both of which are held to the same standard with respect to "extreme and outrageous conduct." *See Truman*, 434 F. Supp. 3d at 122 (finding claim of NIED based on same conduct as IIED to fail where conduct fails to meet standard). Because Plaintiff fails to allege facts that meet the high standard for extreme and outrageous conduct sufficient to satisfy the first element for a claim of IIED, his claim fails.

**F. Negligent Supervision and Retention**

Plaintiff asserts a claim of negligent supervision and retention against Defendant Columbia. Under New York law, a plaintiff must show "the standard elements of negligence" and additionally: "(1) that the tortfeasor and the defendant were in an employee-employer relationship; (2) that the employer knew or should have known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence; and, (3) that the tort was committed on the employer's premises or with the employer's chattels." *Doe v. Alsaud*, 12 F. Supp. 3d 674, 680 (S.D.N.Y. 2014) (citations and internal quotations omitted).

Here, Plaintiff does not plead any facts that would support a finding that Defendant Columbia knew or should have known of its employee's propensity for the conduct which caused Plaintiff's injuries prior to those injuries' occurrence. Instead, Plaintiff asserts that Columbia "knew, or in the exercise of reasonable care should have known" that their employees were

acting unlawfully "given the sheer scope of fraud, negligence, and discrimination that [Columbia] permitted to occur" over a period of years. (Third Amended Complaint ¶ 372.) This broad conclusory allegation is insufficient to make out a claim, and this claim therefore must be dismissed.

### G. Leave to Replead

In a letter submitted to the Court, Plaintiff requests permission to correct any deficiencies in the complaint in the event that the Court grants the motion to dismiss. (Dkt. No. 90 at 6.) Courts should "freely give leave" to amend a complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2). But "the grant or denial of an opportunity to amend is within the discretion of the District Court." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Where a plaintiff has had previous opportunities to amend a complaint, a court is justified in denying a request to amend. *See id.*; *Metzler Inv. Gmbh v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 147 (2d Cir. 2020). Plaintiff has had several opportunities to amend his complaint and the Court concludes that further amendment would be futile. Accordingly, leave to replead is denied.

## IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss the complaint with prejudice is GRANTED. Plaintiff's motion for a preliminary injunction is DENIED.[5]

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[5] Because Plaintiff's underlying claims have been dismissed, it follows that there is neither a likelihood of success on the merits of his claims nor substantial questions going to the

The Clerk of Court is directed to close the motions at Docket Number 79, 93, and 97 and to close the case.

SO ORDERED.

Dated: January 31, 2022
New York, New York

s/ J. Paul Oetken
J. PAUL OETKEN
United States District Judge

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merits of those claims. The motion for preliminary injunction is therefore denied. *See N. Am. Soccer League*, 883 F.3d at 37.

Appendix C

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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No. 21-cv-01697-JPO-RWL

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*Ogbolu v. The Trustees of Columbia University in the City of New York et al*

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ORDER TO AMEND

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Filed: April 1, 2021

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Captioned as:

*Doe v. Trs. of Columbia Univ. in N.Y.*, 21-CV-1697 (CM) (S.D.N.Y. Apr. 1, 2021)

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COLLEEN McMAHON, Chief United States District Judge:

Plaintiff filed this *pro se* complaint, invoking the Court's federal question and diversity jurisdiction. He alleges that in 2019, the Trustees of Columbia University in the City of New York (hereinafter "Columbia University") agreed to refund $35,799.80 to him but erroneously reported the refund as income on an Internal Revenue Service 1099-MISC form. Two weeks passed before Plaintiff received corrected tax

forms. Plaintiff moves to proceed anonymously in this action.

For the reasons set forth below, the Court denies Plaintiff's request to proceed anonymously and grants Plaintiff leave to amend his complaint.[1]

## STANDARD OF REVIEW

The Court must dismiss an in forma pauperis complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the "special solicitude" in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still

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[1] Plaintiff filed two amended complaints on March 30, 2021, and two more on March 31, 2021. (ECF Nos. 5-8.) The Federal Rules of Civil Procedure do not provide for a plaintiff to file multiple complaints as of right. *See* Fed. R. Civ. P. 15. These complaints are therefore stricken from the record, though Plaintiff has an opportunity to file an amended complaint as set forth herein.

must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. Twombly, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

**BACKGROUND**

Plaintiff attended Columbia University from 2008 to 2012, when he graduated. On an unspecified date, he filed suit against Columbia University for "10 years of financial fraud and negligence carried out by Columbia University." (ECF 1 at 2, ¶ 7.) During settlement negotiations, Plaintiff told Columbia University's attorney, Andrew Schilling, that Plaintiff had Asperger syndrome.

On October 29, 2019, the parties reached a settlement, and Columbia University agreed to

return $35,799.80, that Plaintiff "believed the University fraudulently induced him into paying." (*Id.* at 3, ¶ 9.) Plaintiff "stated his strong preference to receive this amount back as a refund," but "[d]espite the contract stipulation that Columbia would return the $35,799.80 as a refund (nontaxable), [it] erroneously reported this refund as income on Plaintiff's 1099-MISC tax form." (*Id.* at ¶¶ 9-10.) "Columbia was aware that this would exacerbate Plaintiff's health given how he previously handled similar financial practices in the past and their awareness of his propensity to fixate on things he finds unfair (due to his Asperger syndrome)." (*Id.* at ¶ 10.)

In the spring and summer of 2020, Plaintiff sent "a series of emails and tweets to Defendants (including members of the Trustees and their colleagues) . . . ." (*Id.* at 5, ¶ 24.) Columbia University sent Plaintiff's parents a letter on July 21, 2020, noting that Plaintiff "had a health condition that caused him to act in ways that Plaintiff 'cannot fully control'" and that it was "concerned about Plaintiff." (*Id.*) Plaintiff discovered the tax reporting issue on February 24, 2020, and he notified Columbia University the same day. (*Id.* at 6, ¶ 25.) Less than two weeks later, he received a corrected tax form. (*Id.* at 5, ¶ 23.) Plaintiff has "indicated to Defendants Lee C. Bollinger, Jane E. Booth, Patricia S. Catapano, and Andrew W. Schilling that [he] spends hours a day thinking about the situation." (*Id.*) Plaintiff argues that, given Columbia University's awareness of Plaintiff's health condition, it "should have known

that any further instance of fraud or negligence would impose severe mental anguish." (*Id.*)

Plaintiff sues Columbia University, its President, Lee C. Bollinger, and attorneys Andrew Schilling, Jane E. Booth, and Patricia S. Catapano. Plaintiff contends that Defendants violated his rights under the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the New York City Human Rights Law because issuing the incorrect form to him discriminated against him as a person with Asperger syndrome. Plaintiff also asserts state law claims for breach of contract, intentional and negligent infliction of emotional distress, and deceptive practices in violation of New York's General Business Law. Plaintiff alleges that he is domiciled in Florida, and that all Defendants are citizens of New York. Plaintiff seeks $50 million in damages and moves to proceed anonymously in this action.

## DISCUSSION

### A. Request to Proceed Anonymously

Rule 10(a) of the Federal Rules of Civil Procedure provides that the "title of [a] complaint must name all the parties." Fed. R. Civ. P. 10(a). "This requirement . . . serves the vital purpose of facilitating public scrutiny of judicial proceedings and therefore cannot be set aside lightly." *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 188-89 (2d Cir. 2008). A plaintiff's use of a pseudonym in civil litigation "must be balanced against both the public interest in disclosure and any prejudice to the defendant." *Id.* at 189. When determining whether a litigant can

proceed under a pseudonym, courts consider, among other things, the following factors:

> (1) whether the litigation involves matters that are 'highly sensitive and [of a] personal nature,' (2) 'whether identification poses a risk of retaliatory physical or mental harm to the . . . party [seeking to proceed anonymously] or even more critically, to innocent non-parties,' (3) whether identification presents other harms and the likely severity of those harms, including whether 'the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity,' (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure, particularly in light of his [or her] age, (5) whether the suit is challenging the actions of the government or that of private parties, (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously, whether the nature of that prejudice (if any) differs at any particular stage of the litigation, and whether any prejudice can be mitigated by the district court, (7) whether the plaintiff's identity has thus far been kept confidential, (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his [or her] identity, (9) 'whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities,' and (10) whether there are any alternative

> mechanisms for protecting the confidentiality of the plaintiff.

*Id.* at 190 (internal citations omitted, alterations in original). "[T]his factor-driven balancing inquiry requires a district court to exercise its discretion in the course of weighing competing interests." *Id.*

First, this litigation involves Plaintiff's allegations that Defendants issued the wrong tax forms but promptly rectified the problem. Although Plaintiff divulges personal details in his complaint and alleges that publicly litigating this matter is embarrassing, uncomfortable, and likely to damage his employment prospects, courts routinely reject such allegations as insufficient. *See, e.g.*, *Doe v. Delta Airlines, Inc.*, No. 13-CV-6287 (PAE), 2015 WL 5781215 at *2 (S.D.N.Y. Oct. 2, 2015) (plaintiff's argument that she would be harmed in her "reputation and finances" if it was revealed that she was arrested for public intoxication did not outweigh the presumption of access).

Second, Plaintiff does not plead any facts suggesting that disclosing his identity poses a risk of retaliation to himself or others. Third, this is not an action where "the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." Fourth, Plaintiff alleges that he is 31 years old, and the Court therefore concludes that his age does not make him particularly vulnerable to the possible harms of disclosure. Fifth, Plaintiff challenges the actions of private parties – not the government. Sixth, it is unclear whether there is any harm to Defendants in allowing Plaintiff to proceed

anonymously, though the usual presumption of public access would seem to apply. Seventh, although Plaintiff did not submit his motion to proceed anonymously when he filed his initial complaint, it appears that his initial complaint has thus far been kept confidential. Plaintiff does indicate, however, that he has been emailing and tweeting messages to trustees of Columbia University and their colleagues about matters involved in this litigation. Eighth, this appears to be the usual case where the public's interest in the litigation is furthered by requiring Plaintiff to disclose his identity. Ninth, nothing about this action suggests an unusually "weak public interest" in knowing the plaintiff's identity. Tenth, the Court is unaware of alternatives to disclosing Plaintiff's identity that would satisfy the competing interests at issue.

After considering these factors, the Court concludes that Plaintiff's allegations are insufficient to overcome the general presumption that the identity of the parties to a lawsuit is public information. The Court therefore denies Plaintiff's motion to proceed anonymously.

### B. Federal Claims for Disability Discrimination

Plaintiff asserts claims for disability discrimination in violation of the Rehabilitation Act and the ADA.[2] Section 504 of the Rehabilitation Act

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[2] The statute consists of three parts: Title I, 42 U.S.C. § 12111 *et seq.*, which prohibits discrimination in employment; Title II, 42 U.S.C. § 12131 *et seq.*, which prohibits discrimination

provides that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

To state a claim of discrimination under the Rehabilitation Act or the ADA, a plaintiff must allege "(1) that [he] is a qualified individual with a disability; (2) that the defendants are subject to one of the Acts; and (3) that [he] was denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or was otherwise discriminated against by defendants, by reason of [his] disability." *Powell v. Nat'l Bd. of Med. Examiners*, 364 F.3d 79, 85 (2d Cir. 2004) (internal quotation marks and alterations omitted); *accord Shomo v. City of N.Y.*, 579 F.3d 176, 185 (2d Cir. 2009). With respect to the third element, "a plaintiff can base a disability discrimination claim on any of 'three available theories: (1) intentional discrimination (disparate treatment); (2) disparate impact; and (3) failure to make a reasonable accommodation.'" *Brief v. Albert Einstein Coll. of Med.*, 423 Fed. App'x 88, 90 (2d Cir. 2011) (quoting *Fulton v. Goord*, 591 F.3d 37, 43 (2d Cir. 2009)).

In a case with some similarities to this one, the plaintiff asserted claims under the ADA and

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by public entities; and Title III, 42 U.S.C. § 12181 *et seq.*, which prohibits discrimination in access to public accommodations. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001).

Rehabilitation Act against the City of New York, alleging that his Asperger syndrome led to "an extreme obsession ... with trains and buses" that caused him to commit nonviolent crimes. *McCollum v. City of New York*, No. 16-CV-5272 (LDH), 2020 WL 6945928 (E.D.N.Y. Nov. 25, 2020). Plaintiff asserted that he was being punished for criminal conduct directly resulting from his disability. The district court rejected these claims, holding that the plaintiff did not allege that he was treated differently than others who committed criminal conduct. "Rather, he alleges that the existence of his mental health condition required Defendants to operate outside of the normal course. In other words, Plaintiff's true complaint is 'not that he was treated differently, but that he *should have been treated differently*.'" *Id.* at *3 (citing *Sims v. City of New York*, 2018 U.S. Dist. LEXIS 212966 at *8 (S.D.N.Y. Dec. 17, 2018) (emphasis in original)).

Similarly, Plaintiff does not allege that Columbia University, in issuing a particular type of tax form, treated him differently from other individuals without disabilities who received refunds. Rather, he alleges that Defendants improperly issued the tax document despite having been informed of his Asperger syndrome and being aware that this would exacerbate his health issues. (ECF 1 at 3, ¶ 10; *Id.* at ¶ 23 ("Plaintiff was utterly shocked that, after nearly a decade of encountering what he believed was fraudulent and negligent financial practices, the University would subject him to further harmful financial practices that the University knew would

exacerbate his emotional well-being (especially given his self-reported disclosure of Asperger syndrome to the University)."). In other words, Plaintiff's true complaint is "not that he was treated differently, but that he should have been treated differently." *McCollum*, 2020 WL 6945928, at *3 (citation omitted). Allegations that Defendants should not have issued an certain type of tax form because they should have known that this "would exacerbate his emotional well-being" are simply not cognizable as discrimination claims under the ADA or the Rehabilitation Act.

## LEAVE TO AMEND

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts "should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Although it seems unlikely, it is possible that Plaintiff can allege additional facts to state a valid federal claim, and the Court therefore grants Plaintiff 30 days' leave to amend his complaint to detail his federal claims.

If Plaintiff chooses to file an amended complaint, he should plead facts stating a claim under the standards set forth above, including showing that he was treated differently from nondisabled individuals. If Plaintiff does not file an amended complaint, the complaint will proceed as to the state law claims under the Court's diversity jurisdiction.

If Plaintiff chooses to file an amended complaint, in the "Statement of Claim" section of the form, Plaintiff must provide a short and plain statement of the relevant facts supporting each claim against each defendant. If Plaintiff has an address for any named defendant, Plaintiff must provide it. Plaintiff should include all of the information in the amended complaint that Plaintiff wants the Court to consider in deciding whether the amended complaint states a claim for relief. That information should include:

a. the names and titles of all relevant people;

b. a description of all relevant events, including what each defendant did or failed to do, the approximate date and time of each event, and the general location where each event occurred;

c. a description of the injuries Plaintiff suffered; and

d. the relief Plaintiff seeks, such as money damages, injunctive relief, or declaratory relief.

Essentially, Plaintiff's amended complaint should tell the Court: who violated his federally protected rights and how; when and where such violations occurred; and why Plaintiff is entitled to relief.

Because Plaintiff's amended complaint will completely replace, not supplement, the original complaint, any facts or claims that Plaintiff wants to include from the original complaint must be repeated in the amended complaint.

"[A] plaintiff who has privacy concerns has the option of either not commencing or discontinuing the action rather than revealing his or her identity to the world." *Abdel-Razeq v. Alvarez & Marsal, Inc.*, No. 14-CV-5601 (HBP), 2015 WL 7017431, at *2 (S.D.N.Y. Nov. 12, 2015). Because the Court denies Plaintiff's motion to proceed anonymously, if Plaintiff proceeds with this action, either by filing an amended complaint or proceeding with the state law claims in his initial complaint, his true name and unredacted complaint will be available to the public on the docket and on PACER.

## CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court denies Plaintiff's motion to proceed anonymously. (ECF No. 3.) If Plaintiff proceeds with this action, his true name and unredacted pleadings will be available to the public on the docket and on PACER.

The Court dismisses the federal claims in Plaintiff's complaint (ECF No. 1) for failure to state a claim on which relief can be granted. Plaintiff's amended complaints, filed March 30 and 31, 2021 (ECF Nos. 5-8), are stricken.

Plaintiff is granted leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within thirty days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 21-CV-1697 (CM). An Amended Complaint form is attached to this order. No summons will issue at this time. If Plaintiff does not file an amended complaint, the complaint (ECF 1) will proceed as to the state law claims under the Court's diversity jurisdiction.

SO ORDERED.

Dated: April 1, 2021
New York, New York

s/ Colleen McMahon
COLLEEN McMAHON
Chief United States District Judge

Appendix D

## CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

### A. Constitutional Provisions.

#### 1. U.S. Const. art. III, § 1.

[Relevant Statutory Text]:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

#### 2. U.S. Const. art. III, § 2.

[Relevant Statutory Text]:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between

a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

**B. Federal criminal statutes involved.**

**1. Violations of Section 1962(c) of the "RICO Act"; 18 U.S.C. § 1962(c) — Conduct or Participate in an Enterprise Through a Pattern of Racketeering Activity (Federal Felony).**

[Statutory Text]:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

[Analysis]:

"The term 'enterprise' is defined as including 'any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.'" *United States v. Turkette*, 452 U.S. 576, 580 (1981) (quoting 18 U.S.C. § 1961(4)).

"[T]he person and the enterprise referred to must be distinct" and, accordingly, "a corporate entity may not be both the RICO person and the RICO enterprise under section 1962(c)." *E.g., Riverwoods Chappaqua Corp. v. Marine Midland Bank,* 30 F.3d 339, 344 (2d Cir.1994).

"Criminal liability under RICO is premised on the commission of a 'pattern of racketeering activity,' defined by the statute as engaging in two or more related predicate acts of racketeering within a 10-year period." *Alexander v. United States*, 509 U.S. 544, 562 (1993) (quoting 18 U.S.C. § 1961(5)).

"In order to prove a pattern of racketeering activity, a plaintiff or prosecutor must show at least two racketeering predicates that are related and that amount to, or threaten the likelihood of, continued criminal activity. Proof of neither relationship nor continuity requires a showing that the racketeering predicates were committed in furtherance of multiple criminal schemes." *H. J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989).

"'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." *Id.* at 229 (citation omitted).

The individual Respondents engaged in a nearly-decade-long scheme in which they utilized their association with Columbia University to carry out the unlawful loan scheme, and through a pattern of at least two predicate acts (mail and wire fraud). The racketeering predicate acts are related in that they resulted in the individual Respondents' extracting money from victims of the loan scheme.

Because Petitioner suffered business injuries because of Respondents' years-long predicate acts of mail and wire fraud, Petitioner asserted a civil RICO claim. To sufficiently establish a civil RICO claim under 18 U.S.C. § 1964, a Petitioner must allege: "(1) a violation of...18 U.S.C. § 1962-; (2) an injury to business or property; and (3) that the injury was caused by the violation of Section 1962." *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 120 (2d Cir. 2013). The ample distress caused by years-long acts of mail and wire fraud, and the February 2020 tax mislabeling, all directly contributed to immense emotional distress that deprived Petitioner of the necessary focus to sustain his business.

While "[p]ersonal damages, emotional damages, and physical damages" are insufficient to establish cognizable damages under a RICO claim (*See Westchester Cnty. Indep. Party v. Astorino*, 137 F. Supp. 3d 586, 613 (S.D.N.Y. 2015)), the RICO predicate acts directly led to severe emotional distress that resulted in injury to Petitioner's business. Because Petitioner has a psychological condition that causes him to ruminate on certain matters to the exclusion of others, Respondents' predicate acts were

the direct cause of Petitioner's business failure as Petitioner could not focus on his business because of them.

**2. Violations of Section 1962(d) of the "RICO Act"; 18 U.S.C. § 1962(d) — Conspiracy to violate any provision of the RICO Act (Federal Felony).**

[Statutory Text]:

It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

[Analysis]:

The individual Respondents violated this section by agreeing to participate in or aid and abet the predicate racketeering acts of mail and wire fraud across several years while knowing the general status of the conspiracy and that the conspiracy existed beyond their individual roles.

**3. Violation of 18 U.S.C. § 371 — Conspiracy to Commit Offense or to Defraud the United States (Federal Felony).**

[Relevant Statutory Text]:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

[Analysis]:

Respondents violated the statute by conspiring to use the United States Postal Service to send letters and bills in the mail, either directly or through third-party loan-servicers, to victims of the unlawful loan scheme. Petitioner received numerous letters and bills in the mail, as recently as April 2019, from both Columbia and its third-party loan servicer. As a direct result of Respondents' engagement in mail fraud, Respondents fraudulently obtained $35,779.80 from Petitioner between 2012 and 2017.

**4. Violation of 18 U.S.C. § 666(a)(1)(A) — Theft or Bribery Concerning Programs Receiving Federal Funds (Federal Felony).**

[Relevant Statutory Text]:

> (a) Whoever, if the circumstance described in subsection (b) of this section exists—
>
> (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—
>
> (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—
>
> (i) is valued at $5,000 or more, and
> (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency;
>
> * * * * *

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

[Analysis]:

Respondent Columbia receives Federal financial assistance in an amount greater than $10,000 annually. Respondents violated this statute by (1) misapplying tuition ledger (debts owed) under the control of the University to fraudulently obtain money—through the unlawful loan scheme—from Petitioner and other Columbia students and alumni and (2) obtaining by fraud $35,779.80 from Petitioner.

**5. Violation of 18 U.S.C. § 1341 — Mail Fraud (Federal Felony).**

[Relevant Statutory Text]:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such

scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

[Analysis]:

Respondents violated the statute by using the United States Postal Service to send letters and bills in the mail, either directly or through third-party loan servicers, to victims of the unlawful loan scheme. Petitioner received numerous letters and bills in the mail, as recently as April 2019, from both Columbia and its third-party loan servicer. As a direct result of Respondents' engagement in mail fraud, Respondents fraudulently obtained $35,779.80 from Petitioner between 2012 and 2017.

**6. Violation of 18 U.S.C. § 1343 — Wire Fraud (Federal Felony).**

[Relevant Statutory Text]:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or

causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

[Analysis]:

Respondents violated the statute by using electronic communications with victims (namely email and interstate telecommunications) to execute its unlawful loan scheme. Petitioner received numerous emails and telephone calls from Columbia administrators misrepresenting the loans as legitimate. As a direct result of Respondents' engagement in wire fraud, Respondents fraudulently obtained $35,779.80 from Petitioner between 2012 and 2017.

**7. Violation of 18 U.S.C. § 1349 — Conspiracy to Commit Mail or Wire Fraud (Federal Felony).**

[Statutory Text]:

Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

[Analysis]:

The individual Respondents violated the statute by conspiring to commit mail and wire fraud in the execution of the unlawful loan scheme. Because the individual Respondents were aware of the unlawful

nature of the loans, they knew or should have known that all communications with Petitioner that involved the mail or wires would be in violation of mail and wire fraud statutes. Yet, Petitioner nonetheless received correspondences via mail and email and telephone where the loans were misrepresented as lawful.

**C. New York state criminal statutes involved.**

**1. Violation of N.Y. Penal Law § 460.20(1)(a) — Enterprise Corruption (Class B Felony).**

[Statutory Text]:

1. A person is guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he:

(a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity; or

(b) intentionally acquires or maintains any interest in or control of an enterprise by participating in a pattern of criminal activity; or

(c) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise.

2. For purposes of this section, a person participates in a pattern of criminal activity when, with intent to participate in or advance the affairs of

the criminal enterprise, he engages in conduct constituting, or, is criminally liable for pursuant to section 20.00 of this chapter, at least three of the criminal acts included in the pattern, provided that:

(a) Two of his acts are felonies other than conspiracy;

(b) Two of his acts, one of which is a felony, occurred within five years of the commencement of the criminal action; and

(c) Each of his acts occurred within three years of a prior act.

3. For purposes of this section, the enterprise corrupted in violation of subdivision one of this section need not be the criminal enterprise by which the person is employed or with which he is associated, and may be a legitimate enterprise.

[Analysis]:

The individual Respondents violated the statute by sharing a common purpose to conduct and engage in a pattern of criminal activity (with at least 10 acts being felonies other than conspiracy) in their administration of the unlawful loan scheme. The individual Respondents oversee the origination of unlawful loans and support the systematic ongoing, nearly-decade-long scheme to misrepresent the nature of those loans to defraud the Columbia community. The purpose of the criminal enterprise exists beyond any individual criminal acts.

**2. Violation of N.Y. Penal Law § 110.05(4) — Attempt to commit a Class B Felony (Class C Felony).**

[Relevant Statutory Text]:

An attempt to commit a crime is a:

* * * * *

4. Class C felony when the crime attempted is a class B felony[.]

[Analysis]:

Respondents committed a Class C Felony in their attempt to engage in Enterprise Corruption (a Class B Felony).

**3. Violation of N.Y. Penal Law § 155.35 — Grand Larceny in the Third Degree (Class D Felony).**

[Relevant Statutory Text]:

A person is guilty of grand larceny in the third degree when he or she steals property and:

1. when the value of the property exceeds three thousand dollars[.]

[Analysis]:

Respondents violated the statute by obtaining $35,799.80 from Petitioner, through a systematic ongoing, nearly-decade-long scheme to originate unlawful loans and misrepresent the nature of loans to Petitioner and other Columbia students and alumni.

**4. Violation of N.Y. Penal Law § 110.05(6) — Attempt to commit a Class D Felony (Class E Felony).**

[Relevant Statutory Text]:

An attempt to commit a crime is a:

* * * * *

6. Class E felony when the crime attempted is a class D felony[.]

[Analysis]:

Respondents committed a Class E Felony in their attempt to violate N.Y. Penal Law § 155.35—Grand Larceny in the Third Degree (Class D Felony).

**5. Violation of N.Y. Penal Law § 105.10 — Conspiracy in the Fourth Degree (Class E Felony).**

[Relevant Statutory Text]:

A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting:

1. a class B or class C felony be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct[.]

[Analysis]:

Respondents violated the statute by conspiring to engage in Enterprise Corruption (a Class B felony).

**6. Violation of N.Y. Penal Law § 190.65(1)(b) — Scheme to Defraud in the First Degree (Class E Felony).**

[Relevant Statutory Text]:

A person is guilty of a scheme to defraud in the first degree when he or she:

* * * * *

(b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than

one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons[.]

[Analysis]:

Respondents violated the statute by originating unlawful loans to Petitioner and other Columbia students and alumni; engaging in a systematic ongoing, nearly-decade-long scheme to misrepresent the nature of those loans to defraud Petitioner and other Columbia students and alumni; acting with the intent to defraud Petitioner and other Columbia students and alumni by false or fraudulent pretenses, representations or promises; and obtaining $35,799.80 from Petitioner.

**7. Violation of N.Y. Penal Law § 110.05(7) — Attempt to commit a Class E Felony (Class A Misdemeanor).**

[Relevant Statutory Text]:

An attempt to commit a crime is a:

* * * * *

7. Class A misdemeanor when the crime attempted is a class E felony[.]

[Analysis]:

Respondents committed ***two*** Class A Misdemeanors in their attempt to commit violations of N.Y. Penal Law § 105.10—Conspiracy in the Fourth Degree (Class E Felony) and N.Y. Penal Law § 190.65(1)(b)—Scheme to Defraud in the First Degree (Class E Felony).

**8. Violation of N.Y. Penal Law § 105.05 — Conspiracy in the fifth degree (Class A Misdemeanor).**

[Relevant Statutory Text]:

A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct[.]

[Analysis]:

Respondents violated this statute by conspiring to run a systematic ongoing, nearly-decade-long scheme to misrepresent unlawful loans as lawful to Petitioner and the Columbia community. At least 13 acts constituted felonies.

**9. Violation of N.Y. Penal Law § 190.55 — Making a False Statement of Credit Terms (Class A Misdemeanor).**

[Relevant Statutory Text]:

A person is guilty of making a false statement of credit terms when he knowingly and willfully violates the provisions of chapter two of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, by understating or failing to state the interest rate required to be disclosed, or by failing to make or by making a false or inaccurate or incomplete statement of other credit terms in violation of such act.

[Analysis]:

Columbia employees violated this statute by administering the unlawful loan scheme, as Respondents failed to disclose complete and accurate loan costs and terms, misrepresented alternative lenders within disclosure documents, steered students and alumni to take on high-risk loans, and made unlawful reports to credit bureaus – all while the loans were never lawful, to begin with.

**D. Consumer Protection Statutes.**

**1. In opposition to Section 523(a)(2)(A) of the Bankruptcy Code; 11 U.S. Code § 523(a)(2)(A) — Exceptions to discharge.**

[Relevant Statutory Text]:

(a) A discharge under section 727, 1141, 1192 [,] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

* * * * *

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend[.]

(Footnote omitted.[1])

[Analysis]:

Since the loan scheme deceptively converts a dischargeable debt (tuition debt) into a non-dischargeable debt (private student loans), Respondents' loan scheme is inapposite to the goals of bankruptcy laws which ultimately aim to protect consumers with the option of bankruptcy as a fresh start.

**2. Violation of the Truth in Lending Act (Regulation Z); 15 U.S.C. § 1601 et seq.; 12 CFR § 1026.47 — Content of disclosures.**

[Relevant Statutory Text]:

(a) Application or solicitation disclosures. A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan:

(1) Interest Rates

* * * * *

(2) Fees and default or late payment costs.

* * * * *

(3) Repayment terms.

* * * * *

---

[1] References to Section 523 are to the most recent version of the statute.

(4) Cost estimates.

* * * * *

(5) Eligibility.

* * * * *

(6) Alternatives to private education loans.

* * * * *

(7) Rights of the consumer.

* * * * *

(8) Self-certification information.

[Analysis]:

Since the two loans Columbia issued to Petitioner were never lawful, Columbia misrepresented every facet of the loan disclosure, including the legal status, interest rates, fees and late payment costs, repayment terms, eligibility, alternatives lenders, and his rights as a consumer. Columbia violated this statute.

**3. Violation of Section 623(a)(1)(A) of the Fair Credit Reporting Act; 15 U.S.C. § 1681s–2(a)(1)(A) — Responsibilities of furnishers of information to consumer reporting agencies.**

[Relevant Statutory Text]:

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

[Analysis]:

Since Columbia made 22 adverse reports against Petitioner while his loans were never lawful,

Columbia violated this statute by furnishing information to third-party credit bureaus, negatively affecting Petitioner's creditworthiness reputation. Based on the unlawful status of the loans, Columbia knew or should have known the information was inaccurate.

**4. Violations of the Fair Debt Collection Practices Act; 15 U.S.C. § 1692 et seq.;**

**a. Violation of 15 U.S.C. § 1692e(2) — False or misleading representations about the loan and services rendered.**

[Relevant Statutory Text]:

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:

* * * * *

(2) The false representation of—

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

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

[Analysis]:

Since the two loans Columbia issued to Petitioner were never lawful, Columbia misrepresented every facet of the origination and servicing of the loans, including the character, amount, legal status, and the

lawfulness of its credit reporting against Petitioner. Columbia violated this statute.

**b. Violation of 15 U.S.C. § 1692e(10) — False representations or deceptive means to collect or attempt to collect any debt.**

[Relevant Statutory Text]:

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:

* * * * *

(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.

[Analysis]:

Since the loans were not lawful to begin with, Columbia used false representations and deceptive means when collecting and attempting to collect loan payments. Columbia violated this statute.

**c. Violation of 15 U.S.C. § 1692f — Unfair practices.**

[Relevant Statutory Text]:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

[Analysis]:

Since the two loans Columbia issued to Petitioner were never lawful, and Columbia utilized high-pressure tactics to convince Petitioner to convert his tuition debt into the unlawful loans and Columbia attempted to collect loan payments for years while knowing Petitioner was unaware of the unlawful nature of the loans, Columbia violated this statute.

**E. New York state consumer protection statutes.**

**1. Violation of Section 349 of the New York General Business Law; N.Y. Gen. Bus. Law § 349 — Deceptive acts and practices unlawful.**

[Relevant Statutory Text]:

(a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

[Analysis]:

To successfully assert a claim under this section, "a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice."

*Orlander v. Staples, Inc.*, 802 F.3d 289, 300 (2d Cir. 2015).

"[B]ecause GB[S] § 349 extends well beyond common-law fraud to cover a broad range of deceptive practices, ... and because a private action under § 349 does not require proof of the same essential elements (such as reliance) as common-law fraud, an action under § 349 is not subject to the pleading-with-particularity requirements of Rule 9(b) ...." *Pelman ex rel. Pelman v. McDonald's Corp.*, 396 F.3d 508, 511 (2d Cir. 2005).

Columbia violated this statute by its employees promoting or aiding and abetting a consumer-oriented unlawful loan scheme that materially misrepresented the legal status of loans issued to the broader Columbia community. Petitioner received confirmation from Columbia employees that the scheme affected other students and alumni. As a result of the scheme, Petitioner suffered economic, psychological, and reputational injuries.

**2. Violation of N.Y. Gen. Bus. Law § 380-O(2); Fair Credit Reporting Act — Obtaining or introducing information under false pretenses.**

[Relevant Statutory Text]:

2. Any person who knowingly and willfully introduces, attempts to introduce or causes to be introduced, false information into a consumer reporting agency's files for the purpose of wrongfully damaging or wrongfully enhancing the credit information of any individual shall, upon conviction,

be fined not more than five thousand dollars or imprisoned not more than one year, or both.

[Analysis]:

Since Columbia made 22 adverse reports against Petitioner while his loans were never lawful, Columbia violated this statute by furnishing information to third-party credit bureaus, negatively affecting Petitioner's creditworthiness reputation. Based on the unlawful status of the loans, Columbia knew or should have known the information was inaccurate.

**3. Violation of Section 601.2 of the New York General Business Law; N.Y. Gen. Bus. Law § 601.2 — Prohibited practices.**

[Relevant Statutory Text]:

No principal creditor, as defined by this article, or his agent shall:

* * * * *

2. Knowingly collect, attempt to collect, or assert a right to any collection fee, attorney's fee, court cost or expense unless such changes are justly due and legally chargeable against the debtor[.]

[Analysis]:

Since the two loans Columbia issued to Petitioner were never lawful, and Columbia collected and attempted to collect loan payments for years from Petitioner, Columbia violated this statute.

**4. Violation of Section 601.3 of the New York General Business Law; N.Y. Gen. Bus. Law § 601.3 — Prohibited practices.**

[Relevant Statutory Text]:

No principal creditor, as defined by this article, or his agent shall:

* * * * *

3. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false[.]

[Analysis]:

Since Columbia made 22 adverse reports against Petitioner while his loans were never lawful, Columbia violated this statute by disclosing information to third-party credit bureaus, negatively affecting Petitioner's creditworthiness reputation. At the same time, Columbia knew or should have known the information was false.

**F. New York City Consumer Protection Statutes Involved.**

**1. Violation of Section 20-700 of the New York City Consumer Protection Law; N.Y.C. Admin. Code § 20-700 — Unfair trade practices prohibited.**

[Statutory Text]:

No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.

[Analysis]:

Since the two loans Columbia issued to Petitioner were never lawful, and Columbia collected and attempted to collect loan payments for years from Petitioner, Columbia violated this statute.

**G. Discrimination Statutes Involved.**

**1. Violation of Section 504 of the Rehabilitation Act of 1973, As Amended ("Rehab Act"); 29 U.S.C. § 794 — Nondiscrimination under Federal grants and programs.**

[Relevant Statutory Text]:

No otherwise qualified individual with a disability in the United States, as defined in section 705 (20) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

[Analysis]:

Since Columbia employees discriminated against Petitioner on the basis of his disability while subjecting him to an unlawful loan scheme and failing to make reasonable modifications to its practices given its awareness of Petitioner's disability and Columbia receives Federal financial assistance, Columbia violated this statute.

**2. Violation of Title III of the Americans with Disabilities Act of 1990, As**

**Amended ("ADA"); 42 U.S.C. § 12182 — Prohibition of discrimination by public accommodations.**

[Relevant Statutory Text]:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.

* * * * *

(b)(2)(A): For purposes of subsection (a), discrimination includes—

* * * * *

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations[.]

[Analysis]:

Since Columbia employees discriminated against Petitioner on the basis of his disability while subjecting him to an unlawful loan scheme and failing to make reasonable modifications to its practices given its awareness of Petitioner's disability and

Columbia is a private entity that operates a place of public accommodation, Columbia violated this statute.

**3. Violation of Section 296(4) of the New York Executive Law; N.Y. Exec. Law § 296(4) — Unlawful discriminatory practices.**

[Relevant Statutory Text]:

4. It shall be an unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, gender identity or expression, military status, sex, age or marital status, except that any such institution which establishes or maintains a policy of educating persons of one sex exclusively may admit students of only one sex.

[Analysis]:

Since Columbia employees discriminated against Petitioner on the basis of his disability while subjecting him to an unlawful loan scheme and failing to make reasonable modifications to its practices given its awareness of Petitioner's disability and Columbia is an educational institution, Columbia violated this statute.

**4. Violation of Section 296(6) of the New York Executive Law; N.Y. Exec. Law § 296(6) — Aiding and Abetting.**

[Relevant Statutory Text]:

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

[Analysis]:

Since Columbia employees discriminated against Petitioner on the basis of his disability while collusively orchestrating and subjecting him to an unlawful loan scheme that they knew or should have known exacerbated his disability and Columbia is an educational institution, Columbia violated this statute.

**5. Violation of Section 40-c of the New York Civil Rights Law ("NYCRL"); N.Y. Civ. Rights Law § 40-C — Discrimination.**

[Relevant Statutory Text]:

1. All persons within the jurisdiction of this state shall be entitled to the equal protection of the laws of this state or any subdivision thereof.

2. No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation, gender identity or expression, or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

[Analysis]:

Since Columbia employees discriminated against Petitioner on the basis of his disability while subjecting him to an unlawful loan scheme and failing to make reasonable modifications to its practices given its awareness of Petitioner's disability and Columbia is based in New York state, Columbia violated this statute.

**6. Violation of Section 8-107(4) of the New York City Human Rights Law ("NYCHRL"); N.Y.C. Admin. Code § 8-107(4) — Unlawful discriminatory practices.**

[Relevant Statutory Text]:

> 4. Public accommodations.
>
> a. It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation:
>
> 1. Because of any person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or immigration or citizenship status, directly or indirectly:
>
> (a) To refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages,

services, facilities or privileges of the place or provider of public accommodation[.]

[Analysis]:

Since Columbia employees discriminated against Petitioner on the basis of his disability while subjecting him to an unlawful loan scheme and failing to make reasonable modifications to its practices given its awareness of Petitioner's disability and Columbia is based in New York City and offers public accommodations, Columbia violated this statute.

**7. Violation of Section 8-107(6) of the New York City Human Rights Law ("NYCHRL"); N.Y.C. Admin. Code § 8-107(6) — Aiding and Abetting.**

[Relevant Statutory Text]:

6. Aiding and abetting. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.

[Analysis]:

Since Columbia provides public accommodation and Columbia employees discriminated against Petitioner on the basis of his disability while collusively orchestrating and subjecting him to an unlawful loan scheme that they knew or should have known exacerbated his disability and Columbia is based in New York City and offers public accommodations, Columbia violated this statute.

Appendix E

## 2011-2018 CORRESPONDENCES THAT DEMONSTRATE THE CONSUMER-ORIENTED NATURE OF THE LOAN SCHEME AND RESPONDENTS' MISREPRENTATION OF THE UNLAWFUL LOANS AS LAWFUL

For nearly a decade, Columbia personnel strung Petitioner along to believe that his loans were lawful—when they were not. Despite full reviews of his circumstances by multiple senior administrators, including members of Columbia's Undergraduate Admissions and Financial Aid Office and the Office of the General Counsel, University officials collectively maintained that the loans were lawful and utilized the United States Postal Service and email and telephone communications while advancing the scheme. Below are several examples of the fraudulent misrepresentation from Columbia personnel between 2011 and 2018:

1. On May 3, 2011, Petitioner received a letter in the mail and an email from a member of Columbia's Student Financial Services office which stated:

> As of March 1, 2011, you have an outstanding tuition balance. You signed the six month repayment agreement. Based on the repayment agreement, your account balance will not be paid in full by the end of your six month repayment agreement. Your six month agreement cannot be renewed. The total balance will become due at the end of the six month agreement. If you are unable to pay the balance due, you can prevent the

> account from being sent to a collection agency under a one-time relief program. We would like to offer you the option of borrowing a Columbia University loan to cover the balance.

2. On January 18, 2012, Petitioner's financial aid advisor, Jacqueline Perez, sent him an email stating:

> I can help you with a loan for last year for $5500 but that is all I can do to help cover the past due balance. You can also try applying for a private loan for the past due amount. If you are interested in either option please come see me today anytime before noon.

3. On September 20, 2013, Petitioner received an email from a member of Columbia's Student Financial Services office which stated: "What I can do is, after you make your next payment, [we] can convert your tuition balance into a CU loan, and that will allow you to return to school." (Notably, Petitioner had already graduated when he received this email. But the mix-up goes to show that loans issued through the loan scheme were a recommended offering to students even after Petitioner's 2012 graduation.)

**This email demonstrates the consumer-oriented nature of the loan scheme.**

4. On February 24, 2014, Petitioner received an email from a member of Columbia's Student Financial Services office which stated: "In light of your large outstanding balance, we have created a 5% Private Education Loan for you."

5. On January 26, 2017, Petitioner received an email from Jane Hojan-Clark, Columbia's then-

Associate Vice President of Student Financial Services, which stated:

> Columbia University is generally not a lender although student account balances may be converted to a loan in an effort to assist a student, as was done in your case. This is not the norm but when we do convert an outstanding balance to a loan for a student on an exception basis, it removes a balance from collections and allows the student to make payments at a fixed interest rate rather than accrue ongoing late payment charges at a higher rate. In your case, the decision to convert your balance to a loan provided a mechanism for you to continue enrollment, which otherwise would not have been allowed under our policy on outstanding accounts.

**This email demonstrates the consumer-oriented nature of the loan scheme.**

6. On February 2, 2017, Petitioner received an email from Jane Hojan-Clark, Columbia's then-Associate Vice President of Student Financial Services, which stated: "[the] two loans were provided to facilitate enrollment and ultimately the conferral of your diploma."

7. On March 8, 2017, Petitioner received an email from Columbia's then-Director of Student Accounts which stated:

> ...we appreciate your thoughts on financing at Columbia University but as you mentioned our focus was your completion. There are indeed instances in which the school can assist students

> and you were one such case. Certainly not continuing your education was an option but all parties involved wanted to focus on your completion.

**This email demonstrates the consumer-oriented nature of the loan scheme.**

8. On June 1, 2017, Petitioner had a phone call with Mark Hawkins (Columbia's Vice President of Finance and Controller), Jane Hojan-Clark, and Nida Williams (Columbia's Executive Director of Financial Services). On this call, Mark Hawkins confirmed that no changes or additional considerations would be made to Petitioner's loans as it would be unfair to other individuals who were in Petitioner's same situation, i.e., their tuition balance was also converted into loans.

**This phone call demonstrates the consumer-oriented nature of the loan scheme.**

9. On January 8, 2018, Petitioner received an email from Respondent Patricia S. Catapano in which she stated:

> Please understand that we have reviewed your case in detail and facts from those previous communications about your personal financial situation have not changed. The University has made good faith accommodations in the interest of assisting with your loan management, including deferrals, removing negative credit reporting and waiving six months of interest. We do appreciate and understand the challenges that education financial obligations can impose, and

therefore we are able to provide a reduced interest rate on your outstanding loans of 2.7 percent, a reduction of almost 50 per cent relative to the current 5 percent rate you are paying. This lower rate would apply prospectively to the balance of $17,238 with 38 payments remaining, and to the balance of $47,029 with 103 payments remaining. In addition to this interest rate reduction, you have the opportunity to make the time period for repaying these loans either longer or shorter, as you choose, and allowing prepayment of the loans. Regardless of your choice, you will pay less interest on each loan. The flexibility with the repayment schedule is intend to afford you discretion in determining the monthly payment and to help you address your financial obligations. Please confirm that you wish to move forward with these revised terms and let us know if you would like to change the time period for repayment (shorter or longer). We can then incorporate these changes in a new loan agreement. The changes will become effective immediately upon your signing of the loan agreement. This concludes the University's communication on this matter.

Appendix F

## SUMMARY OF PETITIONER'S ATTEMPTS TO RECEIVE CLARIFICATION FROM COLUMBIA ON THE NATURE OF HIS LOANS

The following summary depicts all attempts Petitioner made to receive clarification about the nature of his loans from Respondents, starting on May 29, 2017 through November 23, 2018—*a year and six months*. Repeatedly, his concerns and requests for clarification were invalidated or ignored. During this period, Columbia never suggested that they would speak to Petitioner's attorney if he had one.

1. On May 29, 2017, Petitioner emailed members of Columbia's Board of Trustees an outline of his loan dispute. This email contained 16 questions that demonstrated a material lack of knowledge on Petitioner's part regarding the circumstances around the origination and administration of his two private student loans. Respondent Jane E. Booth was carbon-copied in this email.[1] Later that same day, Petitioner sent the 16 questions to Columbia's then-Vice President of Financial Operations and Compliance Mark Hawkins, University Secretary Jerome Davis,

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[1] Petitioner included Respondent Jane E. Booth in his email to the board because she was previously carbon-copied in an email that Columbia's then-Chair of the board, Jonathan D. Schiller, sent to Petitioner in response to one of Petitioner's earlier emails. The email from the then-Chair was the first time Petitioner came across or interacted with any member of Columbia's legal team.

and Dean of Undergraduate Admissions and Financial Aid Jessica Marinaccio. Mark Hawkins had agreed to speak with Petitioner on a June 1, 2017 call where Petitioner hoped to receive clarification on the 16 questions.

2. During the June 1, 2017 call, Mark Hawkins refused to answer Petitioner's questions head-on and instead offered generic responses that did not address Petitioner's concerns or clarify Petitioner's lack of knowledge. Mark Hawkins stated that the University would not change its policy for Petitioner, as doing so would be unfair to the other students and alumni who were also in Petitioner's same position where their tuition debt had similarly been converted to student loans.

3. On July 15, 2017, Petitioner emailed the 16 questions to Respondent Lee C. Bollinger. Respondent Jane E. Booth, other University administrators, and members of the Board of Trustees were carbon-copied in this email. **Petitioner did not receive a response to this email.**

4. On October 20, 2017, Petitioner emailed the same questions to Respondent Patricia S. Catapano. Petitioner stated that he would like answers to the questions in writing which would enable him to concretely understand why he was in his current financial situation while borrowing from Columbia University. Respondent Jane E. Booth was carbon-copied in this email. **Petitioner did not receive a response to this email.**

5. On October 31, 2017, Petitioner followed up via email with Respondent Patricia S. Catapano after not receiving her response. Respondent Jane E. Booth was carbon-copied in this email.

6. On November 3, 2017, Respondent Patricia S. Catapano responded via email and stated that she had Petitioner's latest correspondence and will be responding.

7. On November 22, 2017, Petitioner followed up via email with Respondent Patricia S. Catapano again after not receiving her response. Respondent Jane E. Booth was carbon-copied in this email.

8. On November 24, 2017, Respondent Patricia S. Catapano responded via email and stated that she will be responding in the near future. Petitioner replied via email stating that her response would be very helpful.

9. On December 3, 2017, Petitioner emailed Respondent Patricia S. Catapano once again and asked whether she would confirm if he'd be receiving a response in 2017. Petitioner mentioned that since the situation concerns his finances head-on, he was requesting and would appreciate her immediate response. It had been 45 days since Petitioner originally requested clarification on the questions from Respondent Patricia S. Catapano. Petitioner ended the email by stating it is crucial that Petitioner, like any Columbia University student or alum, can receive clarification when there are outstanding questions concerning his finances. Respondent Lee C. Bollinger, Respondent Jane E. Booth, members of the Board of Trustees, University Secretary Jerome

Davis, Susan Glancy (Chief of Staff to Respondent Lee C. Bollinger), and Dean of Undergraduate Admissions and Financial Aid Jessica Marinaccio were carbon-copied in this email.

10. On December 6, 2017, Respondent Patricia S. Catapano responded via email and apologized for the unforeseen delays and stated that Petitioner would receive a response within a week.

11. On December 15, 2017, after not hearing back within the stated one-week period, Petitioner followed up via email with Respondent Patricia S. Catapano. Petitioner stated that he looked forward to receiving Respondent Patricia S. Catapano's response. Respondent Jane E. Booth, Respondent Lee C. Bollinger's Chief of Staff Susan Glancy, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

12. On December 21, 2017, Petitioner followed up via email with Respondent Patricia S. Catapano and sent an overview of the most concerning aspects of the situation and again stated that he anxiously awaited to hear from her so that he could understand Columbia's side. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

- *Up to this point, Petitioner made monthly payments totaling $853.49 on the two loans, which was mandated by Columbia administrators. Respondents Lee C. Bollinger,*

*Jane E. Booth, and Patricia S. Catapano were all aware Petitioner made these payments in the course of their repeated evasion as he tried to receive clarification about the nature of the loans.*

13. On January 8, 2018, Petitioner followed up again via email with Respondent Patricia S. Catapano and mentioned that she said on December 15, 2017 Petitioner would receive her response to his questions that he originally sent to her on October 20, 2017, 80 days prior to the date. Petitioner mentioned that he looked forward to her written response regarding this issue. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email.

14. On January 8, 2018, Respondent Patricia S. Catapano responded via email and stated that the University had reviewed Petitioner's case in detail and facts from those previous communications about his personal financial situation have not changed. She then offered to reduce the interest rate from 5% to 2.7% and stated that Petitioner could extend the repayment period either longer or shorter. Respondent Patricia S. Catapano ended her email by stating that this concluded the University's communications on the matter.

15. In response to Respondent Patricia S. Catapano's email, Petitioner responded via email and indicated that he was not reaching out with the aim of getting a reduced payment. Rather, Petitioner stated that the loans had already caused him much emotional distress, financial harm, and reputational

injury. Petitioner stated that he was interested in understanding *why* he was in the current situation with Columbia in the first place. Petitioner stated that, like any borrower interacting with a financial institution, he should have the right to understand questions about the loans. Petitioner also stated that many decisions were made between 2008 and 2016 regarding his account, and Petitioner was not able to thoroughly understand their implications. So, the questions Petitioner posed to Respondent Patricia S. Catapano were an opportunity to come to an understanding. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

16. On January 11, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and asked if she could confirm when he should expect answers to his questions originally sent to her on October 20, 2017. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

17. On January 17, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that it did not feel great to be ignored regarding something that concerns his money. Petitioner asked that she please view the situation with urgency. Petitioner also asked that Columbia respected his wish to understand the situation. Respondent Jane E.

Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

18. On January 24, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that it's clear there is no urgency regarding Petitioner's request for clarification on his personal financial situation with the University. Petitioner stated that he was confused about the decisions around the loans and yet, it seemed as though he was denied transparency. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

19. On January 29, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that since he made loan payments at the end of every month, and the end of the month had arrived, Petitioner would have appreciated it if she could provide answers to the questions originally sent to her on October 20, 2017. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

20. On January 31, 2018, the day Petitioner's January 2018 loan payments were due, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that he had many questions regarding his loans that had yet to be answered.

Petitioner stated that it felt like he was blindly throwing money towards something he did not understand and was uncomfortable continuing the payments without an opportunity to receive clarification. Petitioner stated that until he received clarification, he would hope that Columbia did not negatively report on him or send his account to a collections agency like the University had done in the past. As Petitioner had emailed Respondent Patricia S. Catapano multiple times to receive clarification on the nature of his loans but did not hear back, Petitioner asked her to please advise if there was a better point of contact with whom he should correspond. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email.

21. On February 1, 2018, Respondent Patricia S. Catapano responded via email and stated that she was out of the office due to a death in the family and that she would respond to the questions about his loans as soon as reasonably possible. On the same day, Petitioner followed up via email and stated that he would appreciate a heads up in the event the school decided to negatively report on him and/or send his account to a collection agency.

22. On February 9, 2018, Respondent Patricia S. Catapano responded via email and stated that she agreed with Petitioner's suggestion to find a time to discuss the best next steps. She stated that until they were able to have a discussion, the University would hold Petitioner's loan in abeyance and take no action on the loans, including with respect to collection or

credit reporting. Respondent Patricia S. Catapano mentioned that dates in early-mid March 2018 would work best. She requested Petitioner provide as much advance notice as possible so that she can include colleagues with applicable expertise in the discussion. That same day, Petitioner replied via email stating that he would greatly appreciate that. Petitioner then provided his availability stating that he can meet on any day between March 5-9 and 12-16, 2018. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

23. On March 5, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that he was in New Jersey that week for a funeral. Petitioner stated that if Thursday or Friday worked for her, he could come to Columbia for the meeting. Otherwise, Petitioner would have to fly back to the east coast for a time that would work on her end, as Petitioner lived in Seattle. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email.

24. On March 7, 2018, Respondent Patricia S. Catapano responded via email and stated that she overlooked the email and would have to get back to Petitioner on dates. Petitioner thanked her and stated that sooner was better for him.

25. On April 3, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and asked what the holdup was. Petitioner stated that he

appreciated the hold on the loan payments, but that it would be more helpful to expedite his ability to understand the answers to the questions that were presented to her on October 20, 2017. Petitioner asked Respondent Patricia S. Catapano to please let him know if there was something he could do that would help speed up the process. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

26. On April 9, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that he was seeking to understand the reason for the delay and what he could do to expedite the arrangements to meet. Petitioner stated that, now 171 days since he originally sent the questions to Respondent Jane E. Booth, members of the Board of Trustees, and other University administrators, Petitioner had yet to receive answers. Petitioner stated that in addition to determining how to move forward regarding the outstanding balance, the questions also pertained to the past, including what's been paid, prior loan terms, the removal of holds despite owing more than $1,000, the request and subsequent denial of retroactive financial aid, Petitioner's homelessness, the negative credit reporting, decisions that were made by Columbia's Financial Aid office, the request for additional considerations once Petitioner made it clear that he was breaking even or running red with the then-current loan payments, the fact that Petitioner's

account was sent to a collections agency in May 2013 while he had adhered to a payment arrangement, and the fact that Petitioner's income, debt, and family contributions were never a factor when the loans were originated and administered. Petitioner asked for Respondent Patricia S. Catapano's urgency in the matter. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

27. On April 15, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that he anxiously awaited her response. Petitioner mentioned that the outstanding balance sitting idly could have credit score implications, as lenders may hesitate to work with him being that Petitioner's future student loan payments were not accounted for. Petitioner stated that endlessly holding out on resolving the loan situation is disadvantageous to him for the aforementioned reason. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

28. On May 1, 2018, Petitioner emailed Respondent Jane E. Booth and stated that he had not heard from Respondent Patricia S. Catapano since March 7, 2018 and that he had to assume she no longer worked at Columbia. Petitioner then asked if Respondent Jane E. Booth would be willing to help him receive answers to the questions that were provided to Respondent Patricia S. Catapano on

October 20, 2017. Respondent Patricia S. Catapano, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

29. On June 4, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that he would be on the east coast that Friday and was available to meet. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. Respondent Patricia S. Catapano responded via email on the same day stating that she was not available on Friday but would let him know some alternative dates.

30. On June 25, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and included his parents in the email thread. Petitioner stated that they would be accompanying him to the meeting and that for future correspondence, it would be helpful to include them in emails as well. Petitioner reiterated that he originally sent Respondent Patricia S. Catapano the questions regarding his loan situation in October 2017 and had been requesting answers ever since. Petitioner also provided additional questions. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

31. On June 26, 2018, Petitioner emailed the questions to the entire Board of Trustees along with

other University administrators such as Respondents Lee C. Bollinger, Jane E. Booth, and Patricia S. Catapano, and University Secretary Jerome Davis and Dean of Undergraduate Admissions and Financial Aid Jessica Marinaccio. **Petitioner did not receive a response to this email.**

32. On June 29, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and stated that he was not available to meet during fall or winter 2018 as he intended to travel overseas for work. Petitioner asked if she would confirm whether the meeting would occur in summer 2018. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

33. Later on June 29, 2018, Petitioner emailed Respondent Lee C. Bollinger and asked if he could advise on what was taking the University so long to get back to him on meeting details regarding his private student loans. Petitioner stated that drawing this out any longer was unnecessary and that this was not a way Columbia should treat its students and alumni. Petitioner ended the email by stating that he should not have had to escalate the situation beyond members of Student Financial Services and the Financial Aid office. Respondent Jane E. Booth, Respondent Patricia S. Catapano, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

34. On July 2, 2018, once again, Petitioner emailed Respondent Lee C. Bollinger and stated that he would like for it to serve as a record that he was skeptical as to why Columbia was continually pushing out the meeting and not setting a concrete date for it. Petitioner stated that he originally sent his questions to Respondent Patricia S. Catapano in October 2017 and that after some time, she suggested an early March 2018 meeting. But by July 2018, there was no concrete date established. Petitioner mentioned that he and his parents needed a concrete date and advance notice as soon as possible. Respondent Jane E. Booth, Respondent Patricia S. Catapano, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

35. On July 9, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano and asked if she would be able to confirm whether the meeting would occur in summer 2018. Petitioner stated that since future loan payments were not accounted for, meeting sooner than later was preferable for his financial situation. Petitioner also made a request to receive six financial summaries pertaining to his student account and the loans. Those reports were as follows:

a. A lifetime overview of the outstanding balance.
b. A lifetime overview of hold removals (including the date and outstanding balance).
c. A lifetime overview of payment periods for the loans.

d. A lifetime overview of all interest paid on the loans.
e. A copy of the promissory notes associated with each loan.
f. A lifetime overview of all negative reporting occurrences.

Petitioner reiterated that as a borrower, this information would be very helpful. Petitioner also asked to know if there was a more relevant person to whom he should direct the request. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email. **Petitioner did not receive a response to this email.**

36. On August 12, 2018, Petitioner followed up via email with Respondent Patricia S. Catapano stating that it had been over a month since his last email where he requested the six financial summaries and that he had not heard anything from Columbia. Petitioner also stated, again, that he was in a financial hold as future loan payments were not accounted for, making his financing options limited. Petitioner also re-sent the six financial summary requests and stated that he looked forward to hearing from Respondent Patricia S. Catapano. Respondent Jane E. Booth, Respondent Lee C. Bollinger, and other University administrators were carbon-copied in this email.

37. On August 15, 2018, Respondent Patricia S. Catapano responded via email and sent four documents in response to Petitioner's request. However, in response to Petitioner's request for a

lifetime overview of the hold removals (including the date and outstanding balance), she stated: "There are no holds in place currently. Historical details or holds after are not retained in our system. Likewise, all communications around holds has not been retained from this time-period."

38. On November 18, 2018, Petitioner emailed Respondent Patricia S. Catapano where he listed his claims against the University, including his health, financial, and reputational injuries exacerbated by the University's practices.

39. On November 23, 2018, Respondent Patricia S. Catapano responded via email and agreed to speak with Petitioner, and, for the first time during this entire time, insinuated that she would alternatively speak with Petitioner's attorney if he had one. Up until this point, Columbia deliberately refused to answer any of the questions Petitioner sent dating back through May 2017—*one year and six months of Columbia's repeated evasion.*

Appendix G

## COLUMBIA'S BILLING POLICY

URL: https://www.sfs.columbia.edu/unpaid-bills

### When Bills Are Not Paid On Time

We want to do everything we can to assist you in paying your bill on time and avoiding unpaid balances.

This page explains late charges, holds, and other impacts when a bill is not paid.

### Unpaid Bills Are Subject To Late Charges and Financial Holds

### LATE CHARGES

Payments must be posted by the due date listed on the Student Statement Schedule to avoid late payment charges.

Additional charges that result from any course registration, or program changes made after the first statement of the term is issued, must be paid at the time of the change. A late fee will be assessed if these charges remain unpaid at their due date.

Please note that a late fee is not assessed when students are on a monthly payment plan, Details on this payment mechanism can be found on our payment plan page.

You will be charged a late payment of $150 if you make your payment after the due date of the first term bill.

An additional charge of 1.5% of the balance due will be assessed per month on any amount past due thereafter.

**FINANCIAL HOLDS**

If the balance on your student account is $1,000 or greater, your account will be placed on a financial hold prior to the start of registration for the subsequent term, and you will not be able to register until the balance is paid. Graduation holds are placed 30 days prior to the graduation date, and you will not be able to receive a diploma until the balance is paid. Registration and graduation dates are listed on the academic calendar.

At initial course registration, Columbia students affirm a financial responsibility statement. Please note that Columbia may withhold academic certification if tuition charges are not paid. Students are encouraged to meet with their school financial aid advising team if they are facing financial hardship or a change in financial circumstances.

Students who are allowed to register because they have anticipated credits (e.g., payment plan, sponsor payments, etc.) or because they have made payment will have their registration reversed if the funds were not remitted to the University as per anticipated credits or payment is canceled or unable to be completed due to a lack of funds.

A financial hold will be released once the balance is below $1,000 for currently enrolled students. For students that are not registered for the current term at the University, please refer to the Unenrolled Or

Withdrawn Students With Unpaid Bills section below.

**How We Collect Unpaid Bills**

As mentioned, students with past due balances may be prohibited from registering, changing programs, or obtaining academic certifications, or a diploma. The University may utilize external parties in pursuit of unpaid balances as described in the financial responsibility statement.

**Unenrolled Or Withdrawn Students With Unpaid Bills**

Any student who leaves the University with an unpaid balance that remains unpaid for sixty days or more may be subject to collection activities. The costs associated with collecting an unpaid account will be added to the student's outstanding debt and must be paid in full. Non-registered students with an outstanding balance of $50.00 or greater are prevented from registering for future courses, and from obtaining academic certifications, or a diploma. The total balance, including collection fees (if applicable), must be paid in full before releasing a financial hold.

The Student Accounts department in the Student Financial Services Accounting and Business Management team provides delinquent account management for students who are no longer enrolled. Our office works very closely with students until all outstanding balances billed are paid in full.

**Other Services We Offer**

Arranging six (6) month payment agreement for past due balances

Reviewing collection agency inquiries

Reviewing inquiries related to accounts referred to the University's attorney

Managing 1098-T inquiries

Managing Federal/CU Loan Entrance and Exit Counseling via Student Services Online (SSOL)

**Outside Collection Agencies**

If the account is more than 6 months past due, it may also be forwarded to an outside collection agency. Non-payment of delinquent accounts will prevent students from registering for future semesters and from obtaining academic certifications, or a diploma. Failure to pay may result in the account(s) being placed with an outside collection agency for final collection action. Once this occurs, you will need to deal directly with the collection agency to which your account(s) has been assigned. This action can be avoided by staying in contact with our office and making satisfactory arrangements to pay outstanding obligations.

Please Note: If your account is with a collection agency, any payments made towards your account balance will be updated within 30 days. If your account has not been updated within 30 days, please contact us by email.