



5. Marinello offered both day and night classes<sup>6</sup> to cater to working-class people, including significant numbers of students who had not received either a high school diploma or a General Education Development (“GED”) certificate.<sup>7</sup>
6. Each Marinello location included both classrooms and an on-campus clinic, where customers would pay for services performed by Marinello students.<sup>8</sup>
7. All campuses closed on or about February 4, 2016 and February 5, 2016 following denial of recertification for access to Federal Student Aid loans, as discussed below.<sup>9</sup> At the time of its closure, Marinello operated in California (forty-five locations), Nevada (two locations), Utah (three locations), Connecticut (eight locations), and Kansas (four locations).
8. Following the closure of its Marinello campuses, B&H ceased operations and executed a general assignment for the liquidation of its assets and repayment of its creditors. The assignment designated Development Specialists, Inc. (“DSI”) as its assignee, effective February 26, 2016.<sup>10</sup>
9. Marinello had not provided a letter of credit to the Department, and there is no successor entity.<sup>11</sup>

## **B. Relevant State Regulations**

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<sup>6</sup> Exhibit 7 (*Marinello is the Right Place for You*, MARINELLO SCHOOLS OF BEAUTY (Mar. 24, 2012), <http://www.marinello.com/right-place.aspx> [<https://web.archive.org/web/20120324172222/http://www.marinello.com/right-place.aspx>]) [hereinafter Marinello Details Webpage] (“We offer a comprehensive menu of programs and offer day and evening classes.”).

<sup>7</sup> In order to be eligible for Title IV funding borrowers must possess a GED or high-school diploma. The Department’s October 2015 Program Review determined that a large number of Marinello’s students had high school diplomas that the Department deemed “ineligible.” Prospective students without high school diplomas or GEDs were invited to enroll, through Marinello, with Parkridge Private High School in Long Beach, CA. Those students paid seventy-five dollars, and Marinello paid the rest of Parkridge’s fee (\$275). Marinello then provided the students with the necessary books. Students took the necessary tests at Marinello and immediately received copies of their diplomas. Exhibit 8 (Final Program Review Determination, All OPE IDs and PCRNs Associated with Marinello Schools of Beauty (Oct. 18, 2017)), at 16 [hereinafter Final Program Review Determination]. The Department calculated that in the 2012–13, 2013–14, 2014–15, and 2015–16 award years, Marinello received \$40,584,322 in Pell Grants and Direct Loan funds for students with Parkridge diplomas. Exhibit 8 (Final Program Review Determination), at 20. *See also infra* ¶ 70.

<sup>8</sup> Exhibit 9 (MARINELLO SCHOOLS OF BEAUTY, *School Catalog for California Campuses* (Jun. 1, 2011)), at 14 [hereinafter CA 2011 Catalog] (“Students enrolling at Marinello will be trained in an environment that mirrors professional salons and spas. The Marinello student salon presents students with the opportunities and challenges that exist in the ‘real world’ ... Practical Training includes students working on models, paying salon guests and training assignments on mannequin heads.”). *See also* Exhibit 10 (*Guest Services*, MARINELLO SCHOOLS OF BEAUTY (Mar. 3, 2012), <http://www.marinello.com/guest-services.aspx> [<https://web.archive.org/web/20120303122044/http://www.marinello.com/guest-services.aspx>]) [hereinafter Guest Services Webpage] (displaying Marinello’s guest services price list).

<sup>9</sup> Exhibit 8 (Final Program Review Determination), at 18.

<sup>10</sup> Exhibit 11 (Letter from Development Specialists, Inc. regarding Marinello’s general assignment for the benefit of creditors to the Creditors and Shareholders of B&H Education, Inc. (Mar. 10, 2016) (on file with Department)) [hereinafter General Assignment Letter].

<sup>11</sup> Exhibit 12 (Email from Federal Student Aid, Program Compliance, to Federal Student Aid, Borrower Defense Group (Apr. 15, 2019) (on file with Department)) [hereinafter Apr. 15 Email] (explaining there is “no letter of credit on file” with the Department and that “there is no successor entity that is assuming the liabilities”).

10. Each of the states in which Marinello operated has and had at the relevant times, exacting regulations governing the education that cosmetology and barbering schools are required to provide, such as what subjects the curricula must cover, when schools could have students work on paying customers; and minimum instructor/student ratios.
11. As discussed *infra*, Marinello failed to provide instruction in all of the required/promised subject matter by: 1) requiring students to work on the salon floor when they were scheduled to be in classroom sessions, thereby depriving them of necessary classroom instruction;<sup>12</sup> 2) failing to cover all material that was promised by the school and/or required by law when students *were* in their classroom sessions;<sup>13</sup> and 3) failing to provide any active instruction at all for significant periods of time.<sup>14</sup>

## 1. Curriculum Regulations

12. Marinello was required by law in the various states in which it operated to provide certain in-person instruction covering specific topics,<sup>15</sup> including both technical theory in the classroom<sup>16</sup> and practical training on the clinic floor.<sup>17</sup> The requirements varied by both state and program, but all included a required minimum number of hours (from 100 hours of instruction for a manicuring program to 1,600 hours for cosmetology programs) and required subject matter.<sup>18</sup>
13. For example, in California, where Marinello had forty-five of its locations, regulations require that a cosmetology student receive a total of 1,600 hours of instruction, including 1,100 hours of classroom and clinic floor training in hair dressing, 200 hours of classroom instruction in health and safety, 200 hours of classroom instruction and clinic floor training in esthetics, and 100 hours of classroom instruction and clinic floor training in manicuring and pedicuring.<sup>19</sup>

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<sup>12</sup> See *infra* ¶¶ 76–92.

<sup>13</sup> See *infra* ¶¶ 94–104.

<sup>14</sup> See *infra* ¶¶ 105–118.

<sup>15</sup> Exhibit 13 (Chart of Regulations and Statutes Applicable to Marinello Campuses, Borrower Defense Group (on file with Department)) [hereinafter State Curriculum Requirements Chart].

<sup>16</sup> See 16 CAL. CODE REGS. § 950.2(b) (“technical instruction shall mean instruction by demonstration, lecture, classroom participation, or examination”); NEV. ADMIN. CODE 644A.075 (“‘Theory’ means instruction by demonstration, lecture, classroom participation or examination.”). Arizona, Connecticut, and Massachusetts regulations refer to “theory” or “theoretical” instruction, but do not define the terms. ARIZ. ADMIN. CODE R4-10-101; 240 MASS. CODE REGS. 4.00; *Hairdresser School Curriculum*, CONN. STATE DEPT. OF PUB. HEALTH, <https://portal.ct.gov/DPH/Practitioner-Licensing--Investigations/Hairdresser/Hairdresser-School-Curriculum>. Kansas, Oregon, and Utah regulations do not use the terms “theory” or “technical,” but require instruction in subjects such as “Scientific concepts” (including sanitation, disorders of hair/nails/skin, etc.), “state law,” “safety and sanitation requirements, and career development requirements,” “business and shop management,” “diseases and disorders of the hair and scalp,” and “anatomy” which requires lecture-style instruction. KAN. STAT. ANN. § 65-1903(a)(2)(D)(2); OR. ADMIN. REG. 715-045-0200; UTAH ADMIN. CODE R156-11a-700. The Department uses both terms — theory and classroom — herein consistent with these definitions.

<sup>17</sup> See 16 CAL. CODE REGS. § 950.2(b) (“practical operations shall mean the actual performance by the student of a complete service on another person or on a mannequin”); NEV. ADMIN. CODE 644A.055 (“‘Practical’ means the actual performance by a student of a partial or complete service on another person or a mannequin.”). The Department uses both terms — practical and clinic — herein consistent with these definitions.

<sup>18</sup> See Exhibit 13 (State Curriculum Requirements Chart).

<sup>19</sup> 16 CAL. CODE REGS. § 950.2.

14. Similarly, with respect to barbering programs, California regulations require 1,500 total hours of instruction, 585 hours of which must be classroom instruction.<sup>20</sup> California regulations also establish curricula requirements for skin care (600 hours total, 330 classroom),<sup>21</sup> nail care (400 hours total, 125 classroom),<sup>22</sup> and electrolysis (600 hours total, 215 classroom)<sup>23</sup> programs.

## 2. Requirements for Students Practicing on the Public

15. Additionally, most of the states in which Marinello operated require students to be provided significant classroom training *before* they are allowed to work on paying customers.<sup>24</sup>

16. For example, California regulations prohibited a student from performing services on paying customers until the student completed ten percent of the total training hours for each course.<sup>25</sup> This means that a cosmetology student had to complete a minimum of 110 hours of classroom training in hair dressing, twenty hours of health and safety, twenty hours of training in esthetics, and ten hours of classroom instruction in manicuring and pedicuring before they could perform any service on a paying customer.<sup>26</sup> Additionally, a student could not work on a paying customer until that student completed instruction and training in the specific service for which a patron was paying.<sup>27</sup>

17. Of the states in which Marinello operated, Oregon was the only state that did not have regulatory guidelines specifying when schools could have students perform work on the general public, requiring only that the student achieve “verifiable minimum competence, as determined and documented by the school.”<sup>28</sup>

## 3. Minimum Instructor-Student Ratios

18. Other than California, all the states in which Marinello operated had regulations requiring a minimum instructor-student ratio.<sup>29</sup>

19. Kansas had the most restrictive instructor-student ratio requirements (one instructor for every ten students).<sup>30</sup> Arizona had the least restrictive requirements (one instructor for every forty

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<sup>20</sup> *Id.* at § 950.1.

<sup>21</sup> *Id.* at § 950.3.

<sup>22</sup> *Id.* at § 950.4.

<sup>23</sup> *Id.* at § 950.5.

<sup>24</sup> See Exhibit 14 (Chart of Regulations and Statutes Relating to Remuneration for Student Services, Borrower Defense Group (on file with Department)) [hereinafter Paying Customers Requirements Chart].

<sup>25</sup> 16 CAL. CODE REGS. § 950.12(a).

<sup>26</sup> California regulations require 1,100 hours of instruction in Hair Dressing, 200 hours of Health & Safety, 200 hours in Esthetics, and 100 hours of instruction in Manicuring & Pedicuring. 16 CAL. CODE REGS. §§ 950.2(b)(1)–(4).

<sup>27</sup> *Id.* at § 950.12(b).

<sup>28</sup> OR. ADMIN. REG. 715-045-0200(7).

<sup>29</sup> See Exhibit 15 (Chart of State Regulations Relating to Student-to-Teacher Ratio, Borrower Defense Group (on file with Department)) [hereinafter Student-to-Teacher Ratio Chart].

<sup>30</sup> See Exhibit 15 (Student-to-Teacher Ratio Chart).

students in the classroom,<sup>31</sup> one for every twenty students on the clinic floor).<sup>32</sup> The remaining states' requirements fell between those two examples.

20. As well as setting a minimum instructor-student ratio, Massachusetts,<sup>33</sup> Nevada,<sup>34</sup> Oregon,<sup>35</sup> and Utah<sup>36</sup> also required that schools provide “direct” or “immediate” supervision of students.

### C. Department Investigation and Compliance Actions

21. The Department began investigating Marinello in 2015 following complaints that Marinello was falsely certifying students for Title IV eligibility.<sup>37</sup>

#### 1. 2015 Program Review

22. Department personnel from the Program Compliance (“PC”) unit and the Administrative Actions and Appeals Service Group (“AAASG”) performed reviews of seven Marinello locations<sup>38</sup> in October 2015. This program review covered “Marinello Schools of Beauty's (Marinello) administration of programs ... for the 2012-13, 2013-14, 2014-15, and 2015-16 award years.”<sup>39</sup>
23. At that time, Marinello was seeking recertification of its Program Participation Agreement (“PPA”) for six of those locations, which would allow those locations to continue their participation in the Title IV program.<sup>40</sup> Without that recertification, those Marinello locations would no longer be eligible to participate in Title IV programs and could not receive Title IV funds.
24. As part of the program review, Department personnel interviewed Marinello staff and students at those seven locations.<sup>41</sup> In addition to on-site interviews, the Department conducted off-site interviews<sup>42</sup> with, or took written statements from, ninety-four Marinello students and one employee between October 2015 and January 2016.

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<sup>31</sup> Marinello defined “Theory or Technical instruction” as “the instruction students receive through demonstration, lecture, classroom participation and examination.” Exhibit 9 (CA 2011 Catalog), at 17.

<sup>32</sup> ARI. ADMIN. CODE § R4-10-302(D).

<sup>33</sup> 240 MASS. CODE REGS. 4.02(6), 5.04(1).

<sup>34</sup> NEV. REV. STAT. § 644A.740(1).

<sup>35</sup> OR. ADMIN. REG. 715-045-0200(17).

<sup>36</sup> UTAH ADMIN. CODE R156-11a-502(1).

<sup>37</sup> Exhibit 8 (Final Program Review Determination), at 12.

<sup>38</sup> Whittier, San Bernadino, Palmdale, Moreno Valley, and Stockton, CA; Las Vegas, NV; and East Hartford, CT. *Id.*

<sup>39</sup> *Id.* at 1. Award years run “from July 1 of one calendar year to June 30 of the next calendar year.” *Calculating Pell Grant Lifetime Eligibility Used*, FEDERAL STUDENT AID, <https://studentaid.gov/understand-aid/types/grants/pell/calculate-eligibility> (last visited Mar. 5, 2021).

<sup>40</sup> Exhibit 8 (Final Program Review Determination), at 13.

<sup>41</sup> *Id.* at 16.

<sup>42</sup> See Exhibit 16 (Collection of Marinello Student Statements and Interviews, U.S. Department of Education (on file with Department)) [hereinafter Student Statements and Interviews].

25. As an immediate result of the program reviews, on November 24, 2015, the Department placed the entire Marinello chain on Heightened Cash Monitoring 2 (“HCM2”) status,<sup>43</sup> meaning that the school could no longer receive Title IV funds from the Department until after the school had already made disbursements to students from its own funds, at which point the Department would reimburse the school.<sup>44</sup> The Department put Marinello on HCM2 status due to the Department’s “concerns with the institution's administrative capability.”<sup>45</sup>

## 2. Denial of Recertification

26. On February 1, 2016, “after finding that the schools failed to meet their fiduciary responsibility to the Department and its students,”<sup>46</sup> the Department denied recertification to campuses associated with five of Marinello’s Office of Postsecondary Education Identification Numbers (“OPEIDs”),<sup>47</sup> these OPEIDs applied to twenty-three of the school’s locations, including six of the seven locations reviewed in the October 2015 site visits.<sup>48</sup> As a result of that Denial of Recertification, those locations were no longer eligible for Title IV funds.

27. At that time, the seventh site was not yet due for recertification, but the Department nevertheless was positioned to revoke that location’s PPA<sup>49</sup> and, therefore, its access to Title IV funds.

28. However, before the Department could take further action, Marinello closed all fifty-seven of its remaining locations.<sup>50</sup>

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<sup>43</sup> Exhibit 8 (Final Program Review Determination), at 13. Following that action, Marinello’s owner wrote to California’s Bureau for Private Postsecondary Education (“BPPE”) on January 26, 2016, informing the BPPE that the Department’s decision to place all Marinello schools on Heightened Cash Monitoring 2 created a “dire cash flow situation” for Marinello. *See* Exhibit 17 (Letter from Bureau for Private Postsecondary Education regarding notice of emergency decision to ██████████, Chief Executive Officer of Marinello Schools of Beauty (Jan. 29, 2016) (on file with Department)), at 27 [hereinafter BPPE Emergency Decision]. As a result, the BPPE issued an Emergency Decision on January 29, 2016, ordering Marinello to cease enrolling new students at forty-five of its California locations, effective February 4, 2016. Exhibit 17 (BPPE Emergency Decision), at 1.

<sup>44</sup> Exhibit 18 (DEP’T. OF EDUC., *Heightened Cash Monitoring* (Federal Student Aid Data Center, Dec. 1, 2015) <https://studentaid.gov/data-center/school/hcm> (last visited Mar. 5, 2021)) [hereinafter Heightened Cash Monitoring].

<sup>45</sup> Exhibit 8 (Final Program Review Determination), at 10.

<sup>46</sup> *Id.* at 13.

<sup>47</sup> These numbers are used by the U.S. Department of Education to identify colleges that have Program Participation Agreements, allowing their students to enroll in federal financial aid programs.

<sup>48</sup> Exhibit 2 (Denials of Recertification). These Denials of Recertification included the Whittier, San Bernardino, Palmdale, Moreno Valley, and Stockton, CA; and Las Vegas, NV locations.

<sup>49</sup> Exhibit 19 (Email from Federal Student Aid, Program Compliance, to Federal Student Aid, Borrower Defense Group (Apr. 22, 2019) (on file with Department)) [hereinafter Apr. 22 Email] (“At the time of the review, East Hartford was not up for recertification yet the CA and NV locations were on a month to month application as their recertification was pending. Therefore, we could take the denial of recertification action on them based on what was uncovered in the program reviews. All of the locations had the same issues. Had the schools not closed on their own, we would have proceeded with a revocation of the PPA of the CT location which is a completely different process.”).

<sup>50</sup> Marinello closed eleven other locations between April 2008 and January 2016. *See* FEDERAL STUDENT AID, *Postsecondary Educ. Participants System Closed School Weekly/Monthly Reports*, <https://www2.ed.gov/offices/OSFAP/PEPS/closedschools.html>.

29. The denials of recertification made five separate findings of misconduct by Marinello: (1) Lack of Administrative Capacity; (2) Ineligible High School Diploma(s); (3) Improper Origination — Failure to Properly Award Loan Funds to Eligible Students; (4) Imposition of Excessive Overtime Charges; and (5) Misrepresentation.<sup>51</sup>

30. The Department made the following finding regarding misrepresentations by Marinello:

The Department discovered through student interviews that Marinello misrepresented its educational programs to prospective students. When students enrolled, Marinello staff promised the students they would receive an exceptional education taught by quality staff. **Students were promised in-depth training in all areas of cosmetology, nails, and barbering. The training was to include both theory and hands on work in the clinic; however, students repeatedly informed Department staff that they did not receive the training in all functional areas needed to obtain jobs in the field. Students also stated that Marinello staff would pull them out of theory instruction in order to work on the clinic floor and then would not provide students instruction in the material they missed as a result of their absence from class.** Departmental staff interviewed Marinello cosmetology students who supposedly “graduated” yet were unable to cut hair. The Department also spoke with barbering students who could not perform all of the various cuts required to perform successfully in that field. Marinello’s failure to ensure students were provided training sufficient to obtain jobs in their field of study provides further evidence that the institution’s recertification application should be denied.<sup>52</sup>

31. The denials of recertification allowed Marinello until February 16, 2016 to provide factual evidence disputing the findings, but instead, Marinello closed all of its remaining locations on February 4, 2016 and February 5, 2016.<sup>53</sup>

32. The Department’s findings regarding Marinello’s educational services misrepresentations encompassed the 2012–2016 award years<sup>54</sup> and were subsequently applied to all Marinello locations.<sup>55</sup> Neither Marinello nor its successor entity, DSI, disputed those findings.<sup>56</sup>

### **3. 2017 Program Review Report and Final Program Review Determination**

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<sup>51</sup> Exhibit 8 (Final Program Review Determination), at 5.

<sup>52</sup> *Id.* at Appendix B, at 32 (emphasis added).

<sup>53</sup> Marinello requested reconsideration of the denial on February 16, 2016, but “because the Marinello locations that were denied recertification lost Title IV eligibility on February 4, 2016 when those locations closed, Marinello’s request for reconsideration was moot.” *Id.* at Exhibit 2, at 11.

<sup>54</sup> *Id.* at Exhibit 1, at 1.

<sup>55</sup> *Id.*

<sup>56</sup> Marinello requested reconsideration of the denial on February 16, 2016, but “because the Marinello locations that were denied recertification lost Title IV eligibility on February 4, 2016 when those locations closed, Marinello’s request for reconsideration was moot.” *Id.* at Exhibit 2, at 11.

33. The Department issued its Program Review Report (“PRR”) detailing the October 2015 reviews in January 2017. The PRR made the same five findings included in the denials of recertification.<sup>57</sup>
34. In July 2017, the Department reached a settlement with DSI, the assignee for Marinello’s creditors; as part of that settlement, Marinello agreed not to appeal the Final Program Review Determination (“FPRD”) when it was issued.<sup>58</sup>
35. The Department issued the FPRD in October 2017. When sending the FPRD to DSI, Marinello’s successor entity, the Department applied its earlier findings to all Marinello locations.<sup>59</sup>
36. The FPRD stated, “[s]ince Marinello ceased operations on February 4 and 5, 2016, the Department considers these findings closed. If Marinello, or any of its principles, wishes to obtain Title IV eligibility in the future, all findings identified in the program review report must be resolved.”<sup>60</sup>

#### **D. Student Class Action Lawsuit Regarding Unpaid Labor**

37. In 2013, Marinello students<sup>61</sup> in California and Nevada filed a complaint against Marinello’s corporate owner, B&H, under the Fair Labor Standards Act (“FLSA”) and state wage-and-hour laws, seeking wages for unpaid labor.<sup>62</sup>
38. The complaint was filed October 22, 2013 and alleged misconduct dating back to 2010.<sup>63</sup>
39. The basis of the complaint was that Marinello used its clinics (salons) as profit generators, using its students as unpaid workers rather than teaching them.<sup>64</sup>
40. Student plaintiffs testified under oath that they were regularly denied classroom instruction so that they could work on the salon floor;<sup>65</sup> that Marinello did not cover

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<sup>57</sup> Exhibit 8 (Final Program Review Determination), at 2.

<sup>58</sup> *Id.* at Exhibit 1, at 1.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at Exhibit 1, at 11. Marinello’s principles were not identified in the Final Program Review Determination. Marinello’s principles were [REDACTED], Chief Executive Officer, and [REDACTED], President. Exhibit 2 (Denials of Recertification); Exhibit 3 ([REDACTED] Deposition), at 146. B&H’s Board of Directors consisted of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Exhibit 3 ([REDACTED] Deposition), at 40.

<sup>61</sup> [REDACTED] v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC). The named Plaintiffs were [REDACTED], [REDACTED], and [REDACTED]. None of the named plaintiffs have submitted borrower defense applications.

<sup>62</sup> [REDACTED], 2014 WL 8367808. In October 2015, the District Court ruled for the Defendants on Summary Judgment, determining that the students were not covered by the FLSA. *See* [REDACTED] v. *B&H Education, Inc.*, 2015 WL 6164891 (N.D. Cal. Oct. 16, 2015) (No. 13-CV-04993-VC).

<sup>63</sup> [REDACTED], 2014 WL 8367808.

<sup>64</sup> Exhibit 20 (Complaint, [REDACTED] v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC)), at 8 [hereinafter [REDACTED] Complaint].

<sup>65</sup> Exhibit 21 ([REDACTED] Dep. (Former Marinello Student), [REDACTED] v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC)), at 163 [hereinafter [REDACTED] Deposition].

all the subject matter that it advertised;<sup>66</sup> and that Marinello regularly failed to provide instructors.<sup>67</sup>

41. Deposition testimony from this case, as discussed below in Section II, is consistent with and corroborates the Department's previous findings as well as the student allegations in sworn borrower defense applications and student statements contained in the Department's program reviews.<sup>68</sup>
42. The District Court granted B&H's Motion for Summary Judgment in October, 2015<sup>69</sup> on the basis that the three named plaintiffs had not established that they were employees under the FLSA. The Ninth Circuit affirmed that decision in 2017.<sup>70</sup>

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<sup>66</sup> Exhibit 22 (██████ Dep. (Former Marinello Student), ██████ v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC)), at 70–71 [hereinafter ██████ Deposition].

<sup>67</sup> Exhibit 23 (██████ Dep. (Former Marinello Student), ██████ v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC)), at 49–50 [hereinafter ██████ Deposition].

<sup>68</sup> See *supra* ¶¶ 22–30, 40.

<sup>69</sup> ██████, 2015 WL 6164891 (“Accordingly, the question here is limited to whether these three people—██████, ██████, and ██████—were employees when they did their clinical work.”).

<sup>70</sup> ██████ v. *B & H Educ., Inc.*, 877 F.3d 1139 (9<sup>th</sup> Cir. 2017).

## **II. Marinello Misrepresented the Nature and Extent of its Instruction by Failing to Provide Necessary Components of Instruction as Represented and Required by Regulation from 2009 until its Closure in 2016**

43. From at least 2009 until its closure in 2016, Marinello failed to provide the educational services it promised — and was required by law to provide — in three related ways: (1) by overstating the amount of classroom instructions that students would receive as Marinello required students to work on the clinic floor when they were scheduled to be in classroom sessions, thereby depriving them of necessary classroom instruction; (2) overstating the number of cosmetology disciplines and skills that would be taught by failing to cover all material that was promised by the school and/or required by law when students *were* in their classroom sessions; and (3) by failing to provide any active instruction at all for significant periods of time.<sup>71</sup>
44. Through its advertising materials, course catalogs and website, Marinello represented that it provided students both classroom instruction and practical training to students, that it offered programs covering a wide range of subject matters, and that its programs complied with regulatory and accreditation requirements.<sup>72</sup>
45. Despite its representations to the contrary, Marinello failed to provide its students with the required classroom instruction.<sup>73</sup>
46. Marinello students enrolled in school to learn trade-specific skills. As a result of Marinello's failure to provide instruction, Marinello students were unable to complete their program with the necessary skills for their field.<sup>74</sup>
47. As of March 17, 2021, over 1,400 borrower defense applications had been submitted by Marinello students.<sup>75</sup> Of the 1,400 applications, over 750 borrowers submitted educational services allegations against Marinello.<sup>76</sup> The evidence demonstrates that Marinello frequently made misrepresentations to borrowers about its educational services between 2009 and 2016 across all its campuses.<sup>77</sup>

### **A. Marinello's Representations Regarding its Educational Programs**

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<sup>71</sup> *Infra* ¶¶ 69–118.

<sup>72</sup> *Infra* ¶¶ 49–65.

<sup>73</sup> *Infra* ¶¶ 69–97.

<sup>74</sup> *Infra* ¶¶ 119–121.

<sup>75</sup> Exhibit 24 (Report of All Borrower Defense Cases Submitted by Marinello Borrowers, Borrower Defense Group (Mar. 17, 2021) (on file with Department)) [hereinafter Total Marinello Cases Report] (as of Mar. 17, 2021, the date of the report, there were 1,451 borrower defense cases submitted by Marinello borrowers). The Department received Marinello applications in a wide variety of formats, including narratives written in Word documents, emails, forms provided by BDG, and some forms prepared by third parties. The applications offer each borrower's individual account of what happened at their school.

<sup>76</sup> Exhibit 25 (Report of All Educational Services Allegations Submitted by Marinello Borrowers, Borrower Defense Group (Mar. 17, 2021) (on file with Department)) [hereinafter Total Educational Services Allegations Report] (as of Mar. 17, 2021, the date of the report, there were 757 educational services allegations submitted by Marinello borrowers).

<sup>77</sup> *Infra* § II(A).

48. Marinello made several representations regarding its education and programs offered. First, Marinello represented that its programs provided a mix of theory instruction in the classroom and practical training on the clinic floor.<sup>78</sup> It also represented that its programs included a wide subject matter, including hair design, health and safety, salon management, esthetics, manicuring and pedicuring and advanced techniques in hairstyling and makeup.<sup>79</sup> Finally, Marinello advertised in its course catalogs and on its website that it was in compliance with state and federal regulations and requirements.<sup>80</sup>

**1. Marinello Represented that its Programs Provided a Mix of Theory Instruction in the Classroom and Practical Training on the Clinic Floor**

49. Marinello offered a range of programs, such as Cosmetology, Barbering, and Manicuring, etc., each of which was to include classroom instruction and practical training on the clinic floor. Marinello's catalogs acknowledge "the importance of both Theory and Practical Training that are necessary for a student to be successful in their program of study."<sup>81</sup> Marinello defined "Theory or Technical instruction" as "the instruction students receive through demonstration, lecture, classroom participation and examination," while "Practical Training or Practical Operations are the projects, practical operations and services students perform on another person (client or another student) or on a mannequin."<sup>82</sup>

50. For example, Marinello advertised that, "Students enrolled in our Cosmetology program receive practical training and technical instruction that includes haircutting, hairstyling, hair coloring, texturizing, skin care, makeup, nail care, salon management and state board training."<sup>83</sup>

51. Marinello expressly represented that while "the majority of training is acquired through real-life experience with guests," students would "receive traditional classroom training,"<sup>84</sup>

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<sup>78</sup> *Infra* ¶¶ 49–55.

<sup>79</sup> Exhibit 9 (CA 2011 Catalog).

<sup>80</sup> *Infra* ¶¶ 62–65.

<sup>81</sup> Exhibit 9 (CA 2011 Catalog), at 6. *See also* Exhibit 26 (*Barbering Career Training*, MARINELLO SCHOOLS OF BEAUTY (Apr. 3, 2013), <http://www.marinello.com/programs/hair-care/barbering.aspx>) [<https://web.archive.org/web/20130403032254/http://www.marinello.com/programs/hair-care/barbering.aspx>] [hereinafter Barbering Webpage]; Exhibit 27 (*Cosmetology Career Training*, MARINELLO SCHOOLS OF BEAUTY (Mar. 17, 2013), <http://www.marinello.com/programs/hair-care/cosmetology.aspx>) [<https://web.archive.org/web/20130317092128/http://www.marinello.com/programs/hair-care/cosmetology.aspx>] [hereinafter Cosmetology Webpage]; Exhibit 28 (*Esthetics (Skin Care) Career Education*, MARINELLO SCHOOLS OF BEAUTY (Mar. 17, 2013), <http://www.marinello.com/programs/esthetics.aspx>) [<https://web.archive.org/web/20130317093609/http://www.marinello.com/programs/esthetics.aspx>] [hereinafter Esthetics Webpage]; Exhibit 29 (*Hair Design Career Training*, MARINELLO SCHOOLS OF BEAUTY (Apr. 3, 2013), <http://www.marinello.com/programs/hair.aspx>) [<https://web.archive.org/web/20130403051356/http://www.marinello.com/programs/hair.aspx>] [hereinafter Hair Design Webpage]; Exhibit 30 (*Manicuring/Nail Technology Career Education*, MARINELLO SCHOOLS OF BEAUTY (Mar. 17, 2013), <http://www.marinello.com/programs/manicuring.aspx>) [<https://web.archive.org/web/20130317100210/http://www.marinello.com/programs/manicuring.aspx>] [hereinafter Manicuring Webpage].

<sup>82</sup> Exhibit 9 (CA 2011 Catalog), at 17.

<sup>83</sup> Exhibit 27 (Cosmetology Webpage).

<sup>84</sup> *Id.*

explaining the details and demonstrating the techniques that students would later practice in Marinello's on-campus clinic/salon.

52. Marinello's 2011 catalog for its California campuses states that the Cosmetology program provided 370 hours of technical instruction, including 100 hours of Health and Safety instruction with no practical component, out of a total of 1,600 hours.<sup>85</sup>
53. The same catalog described the Barbering program as including 365 hours of technical instruction in a 1,100-hour program.<sup>86</sup> The Manicuring program provided 125 hours of technical instruction out of 400 hours total.<sup>87</sup>
54. Descriptions of other programs, such as "Advanced Facial and Body Treatments," were not clearly separated into technical and practical hours but included sections that require being taught in a theoretical, classroom setting, such as "[a]natomy, physiology, pathology of the body & systems."<sup>88</sup>
55. Marinello's 2014–2015 California catalog,<sup>89</sup> 2014–2015 Connecticut catalog,<sup>90</sup> 2014–2015 Nevada catalog,<sup>91</sup> 2013–2014 Oregon catalog,<sup>92</sup> and 2015–2016 Utah catalog<sup>93</sup> all made similar detailed representations regarding the mix of classroom instruction and clinic floor training that Marinello offered.<sup>94</sup>
56. Additionally, none of Marinello's enrollment agreements nor its catalogs contain any relevant disclaimers or disclosures relating to the instruction provided at Marinello.

## **2. Marinello Represented that its Programs Covered a Wide Range of Subject Matter**

57. Marinello offered a range of programs, such as Cosmetology, Barbering, Esthetics, Hair Design, and Nail Technology (Manicuring).<sup>95</sup>

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<sup>85</sup> Exhibit 9 (CA 2011 Catalog), at 18.

<sup>86</sup> *Id.* at 19.

<sup>87</sup> *Id.* at 20.

<sup>88</sup> *Id.* at 24–31.

<sup>89</sup> Exhibit 31 (MARINELLO SCHOOLS OF BEAUTY, *School Catalog for California Campuses* (Mar. 6, 2015)), at 17–25 [hereinafter CA 2014–2015 Catalog].

<sup>90</sup> Exhibit 32 (MARINELLO SCHOOLS OF BEAUTY, *School Catalog for Connecticut Campuses* (Mar. 6, 2015)), at 14–19 [hereinafter CT 2014–2015 Catalog].

<sup>91</sup> Exhibit 33 (MARINELLO SCHOOLS OF BEAUTY, *School Catalog for Nevada Campuses* (Mar. 6, 2015)), at 14–20 [hereinafter NV 2014–2015 Catalog].

<sup>92</sup> Exhibit 34 (MARINELLO SCHOOLS OF BEAUTY, *School Catalog for Oregon Campuses* (Oct. 4, 2013)), at 14–20 [hereinafter OR 2013–2014 Catalog].

<sup>93</sup> Exhibit 35 (MARINELLO SCHOOLS OF BEAUTY, *School Catalog for Utah Campuses* (Nov. 11, 2015)), at 14–25 [hereinafter UT 2015–2016 Catalog].

<sup>94</sup> The Borrower Defense Group ("BDG") has been unable to obtain earlier versions of these catalogs, or catalogs for the Arizona, Kansas, or Massachusetts campuses.

<sup>95</sup> See Exhibit 26 (Barbering Webpage); Exhibit 27 (Cosmetology Webpage); Exhibit 28 (Esthetics Webpage); Exhibit 29 (Hair Design Webpage); and Exhibit 30 (Manicuring Webpage). See also Exhibit 9 (CA 2011 Catalog); Exhibit 31 (CA 2014–2015 Catalog); Exhibit 32 (CT 2014–2015 Catalog); Exhibit 33 (NV 2014–2015 Catalog); Exhibit 34 (OR 2013–2014 Catalog); and Exhibit 35 (UT 2015–2016 Catalog).

58. For each of the programs that Marinello offered, it represented that the program would include instruction in a wide array of subfields.
59. For example, Marinello’s website described the Cosmetology program as covering Health and Safety (with sections on laws and regulations, disinfection and sanitation, and anatomy and physiology); Practical Training (including hairstyling, permanent waving/chemical straightening, hair cutting, hair coloring, and hair bleaching); Esthetics (including manual, electric, and chemical facials, as well as eyebrow beautification and makeup), and Manicuring/Pedicuring (including instruction on artificial nails and wraps).<sup>96</sup>
60. Similarly, the 2011 catalog represented that students in the Cosmetology program would learn the same material as represented on the website, as well as Career Development (including professional ethics, decorum, effective communication and human relations, salesmanship, compensation package and payroll deductions, record keeping, client service records, licensing requirements and regulations), and “advanced techniques in haircutting, hairstyling, hair coloring, texturizing, esthetics, manicuring, pedicuring, makeup and guest service.”<sup>97</sup>
61. The descriptions of the Barbering, Manicurist, Esthetician, and other programs had equally detailed representations regarding the material Marinello would teach its students.<sup>98</sup>

### **3. Marinello Represented that its Programs were in Compliance with State, Federal and Oversight Bodies’ Regulations and Requirements**

62. Marinello represented that their schools were licensed and approved in the state in which they operated and accredited by the National Accrediting Commission of Career Arts & Sciences, Inc. (“NACCAS”).<sup>99</sup>
63. Marinello’s catalogs included representations that the school was approved by the relevant state regulatory bodies.<sup>100</sup> For example, Marinello’s 2011 catalog for its California campuses states that “Marinello is approved to operate in California by the Bureau for Private Postsecondary Education (BPPE). Marinello is also recognized by the United States Department of Education (U.S. DOE) as an institution eligible to participate in Title IV programs. The California Board of Barbering and Cosmetology (BBC) sets minimum standards for our programs of study and issues licenses to graduates upon passing the Board of Barbering and Cosmetology licensing examinations.”<sup>101</sup>

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<sup>96</sup> Exhibit 27 (Cosmetology Webpage).

<sup>97</sup> Exhibit 9 (CA 2011 Catalog), at 18.

<sup>98</sup> *Id.* at 19–33.

<sup>99</sup> See Exhibit 26 (Barbering Webpage); Exhibit 27 (Cosmetology Webpage); Exhibit 28 (Esthetics Webpage); Exhibit 29 (Hair Design Webpage); and Exhibit 30 (Manicuring Webpage).

<sup>100</sup> Exhibit 9 (CA 2011 Catalog), at 4; Exhibit 31 (CA 2014–2015 Catalog), at 4; Exhibit 32 (CT 2014–2015 Catalog), at 2; Exhibit 33 (NV 2014–2015 Catalog), at 2; Exhibit 34 (OR 2013–2014 Catalog), at 2; and Exhibit 35 (UT 2015–2016 Catalog), at 2.

<sup>101</sup> Exhibit 9 (CA 2011 Catalog), at 4.

64. The 2014–2015 California catalog,<sup>102</sup> the 2014–2015 Connecticut catalog,<sup>103</sup> the 2014–2015 Nevada catalog,<sup>104</sup> the 2013–2014 Oregon catalog,<sup>105</sup> and the 2015–2016 Utah catalog<sup>106</sup> all make similar representations of approval by — and imply compliance with — the relevant regulatory bodies and/or minimum standards.<sup>107</sup>
65. Marinello’s website also stated that its schools were accredited by NACCAS and, in the context of its accreditation and approval to operate within various states, Marinello provided links to the websites of NACCAS, BPPE, BBC, U.S. DOE and various other state regulatory bodies.<sup>108</sup>

#### 4. Summary of Marinello’s Representations and Requirements Under State Regulations

66. Marinello promised its students a combination of training in a classroom setting and hands-on, practical training “acquired through real-life experience with guests.”<sup>109</sup> A combination of classroom instruction and practical training was also required by regulation in the states where Marinello operated, almost all of which required significant classroom training before students could work on members of the public.<sup>110</sup>
67. Marinello promised its students that it would provide “in-depth training in all areas of cosmetology, nails, and barbering,”<sup>111</sup> as well as in its other programs. In addition to those representations by the school, the various states where Marinello operated had regulations requiring that cosmetology school curricula include not only actual skills training, but also classroom instruction in areas such as safety/hygiene, ethics, physiology, etc.<sup>112</sup>
68. Marinello was required by the states in which it operated, with the exception of California, to maintain a minimum instructor-student ratio.<sup>113</sup> Those minimum ratios ranged from one instructor per ten students to one instructor per forty students, with most requiring one to

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<sup>102</sup> Exhibit 31 (CA 2014–2015 Catalog), at 4.

<sup>103</sup> Exhibit 32 (CT 2014–2015 Catalog), at 2.

<sup>104</sup> Exhibit 33 (NV 2014–2015 Catalog), at 2.

<sup>105</sup> Exhibit 34 (OR 2013–2014 Catalog), at 2.

<sup>106</sup> Exhibit 35 (UT 2015–2016 Catalog), at 2.

<sup>107</sup> The Borrower Defense Group has been unable to obtain earlier versions of these catalogs, or catalogs for the Arizona, Kansas, or Massachusetts campuses.

<sup>108</sup> Exhibit 36 (*FAQ, MARINELLO SCHOOLS OF BEAUTY* (Feb. 4, 2009), <http://www.marinello.com/def/custom-pages/faqs.aspx> [<https://web.archive.org/web/20090204051351/http://www.marinello.com/def/custom-pages/faqs.aspx>]) [hereinafter 2009 FAQ Webpage]; Exhibit 37 (*FAQ, MARINELLO SCHOOLS OF BEAUTY* (Oct. 18, 2011), <http://marinello.com/def/custom-pages/faqs.aspx>

[<https://web.archive.org/web/20111018003257/http://marinello.com/def/custom-pages/faqs.aspx>]) [hereinafter 2011 FAQ Webpage]; Exhibit 38 (*FAQ, MARINELLO SCHOOLS OF BEAUTY* (Jan. 5, 2012), <http://marinello.com/def/custom-pages/faqs.aspx> [<https://web.archive.org/web/20120105094228/http://marinello.com/def/custom-pages/faqs.aspx>]) [hereinafter 2012 FAQ Webpage].

<sup>109</sup> Exhibit 27 (Cosmetology Webpage).

<sup>110</sup> See Exhibit 14 (Paying Customers Requirements Chart).

<sup>111</sup> Exhibit 8 (Final Program Review Determination), at Appendix B, at 32.

<sup>112</sup> See Exhibit 13 (State Curriculum Requirements Chart).

<sup>113</sup> See Exhibit 15 (Student-to-Teacher Ratio Chart).

twenty or one to twenty-five. Massachusetts,<sup>114</sup> Nevada,<sup>115</sup> Oregon,<sup>116</sup> and Utah<sup>117</sup> required that students be directly or immediately supervised by instructors.

**B. Marinello Failed to Provide Necessary Components of Instruction as Represented and Required by State Regulation**

69. The Department’s investigation of Marinello began in October 2015 and included site visits to seven Marinello locations.<sup>118</sup>
70. The Department’s investigation focused on Marinello’s use of “diploma mill” high school diplomas to obtain Title IV funds for students who had not graduated high school or received a GED.<sup>119</sup>
71. As part of the investigation, Department personnel prepared a four-page questionnaire for students to fill out. None of the questions on those questionnaires referred to Marinello’s failure to provide necessary components of its programs.<sup>120</sup>
72. Nonetheless, students repeatedly brought up — unsolicited — Marinello’s failure to provide the promised instruction. Of the ninety-four students interviewed, thirty-two of the students (thirty-four percent) made statements regarding Marinello’s failure to provide necessary components of its programs.<sup>121</sup>
73. The allegations made by Marinello students in the course of the Department’s investigation into unrelated matters are consistent with allegations made in borrower defense applications, which are signed under the penalty of perjury.<sup>122</sup>
74. Those allegations are further corroborated and supported by testimony in the civil wage and hour case brought by Marinello students against the school.<sup>123</sup>
75. These student interviews, deposition testimony, and borrower allegations make clear that Marinello consistently prioritized having its students provide services to paying customers, rather than providing those students with the education for which they paid, primarily using Title IV funds.

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<sup>114</sup> 240 MASS. CODE REGS. 4.02(6); 240 MASS. CODE REGS. 5.04(1).

<sup>115</sup> NEV. REV. STAT. § 644A.740(1).

<sup>116</sup> OR. ADMIN. REG. 715-045-0200(17).

<sup>117</sup> UTAH ADMIN. CODE R156-11a-502(1).

<sup>118</sup> Exhibit 8 (Final Program Review Determination), at 12.

<sup>119</sup> See *supra* n. 7.

<sup>120</sup> See Exhibit 16 (Student Statements and Interviews), at 4–7 (2015, East Hartford, Cosmetology).

<sup>121</sup> To date, only three of those students have submitted a borrower defense application regarding Marinello.

<sup>122</sup> Borrower Defense to Repayment Application form, OMB Number: 1845-0163 (“Any person who knowingly makes a false statement or misrepresentation on this form or on any accompanying document is subject to penalties that may include fines, imprisonment, or both, under the U.S. Criminal Code and 20 U.S.C. 1097. I sign this application under penalty of perjury.”)

<sup>123</sup> *Supra* ¶¶ 37–42.

**1. Marinello Required Students to Perform Services on Paying Customers Rather than Providing Them Classroom Instruction as Represented and Required by Regulations.**

76. According to Marinello students, the school frequently kept students out of scheduled classroom sessions in order to put them to work on the clinic floor. Marinello's official policies, as described by Marinello's executives, show how the school focused on having students perform services for paying customers, rather than teaching the material Marinello promised to teach. Additionally, Marinello's policies not only deprived students of the instruction for which they paid, but also very likely resulted in direct violations of relevant state regulations.

Student Statements Show Marinello had a Practice of Denying Students Classroom Instruction

77. The students interviewed during the Department's October 2015 program review consistently stated that Marinello regularly sacrificed students' classroom instruction in order to have its students perform services on paying customers.<sup>124</sup>

78. For instance one student recalled that:

Students [were] taken out of class on a regular basis to work on clients. They [were] taken out even if they [were] going to miss instruction or a test. The students never [made] up the actual work missed. [They had] to learn the material [them]selves.<sup>125</sup>

79. One student who enrolled at Marinello, then dropped out, reported:

"A lot of times [the instructors] would skip theory and make [students] work in the clinic. When [students] were working on clients in the clinic [students] had a lot of questions because [students] hadn't learned what [they] needed to perform the services the clients wanted."<sup>126</sup>

80. As another student explained, "when the school was short on the clinic floor they would pull students out of class even if there was a test. [I] would never receive instruction on what [I] missed and [I] would have to learn it on [my] own."<sup>127</sup>

81. Consistent with what students told Department personnel during the program review, Borrower Defense applicants have also made the following allegations regarding Marinello taking students out of the classroom in order to work on paying customers:

- 2012, West Covina: "I was told I would get an hour of theory every night. That's where I would learn the basics of chemistry, anatomy, skin care, hair, the [list] goes on. More often then [sic] not I wasn't able to go into theory cause they would make

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<sup>124</sup> See *infra* ¶¶ 78–80.

<sup>125</sup> Exhibit 16 (Student Statements and Interviews), at 16 (2015, East Hartford, Cosmetology).

<sup>126</sup> *Id.* at 17–19 (2011, Cosmetology).

<sup>127</sup> *Id.* at 34–36 (2015, Cosmetology).

- me do clients. And when I asked to not take a client so I could go to theory my request would be denied. Therefore I would end up reviewing whatever it was they were ‘taught’ on my own. That was supposed to be part of my education.”<sup>128</sup>
- 2011, Palmdale: “The school failed to inform me that there would be services that I would have to perform but would not be trained how to do so for example clipper cuts ... I was puzzled when I was forced to do a male clipper cut and texturizer when I had just gotten onto the service floor and had no training on either of the two services.”<sup>129</sup>
  - 2014, West Covina: “The teachers did not teach they just gave us clients and made us work on them all day with little to no instructions.”<sup>130</sup>
  - 2009, Inglewood: “I was told that I was going to learn state board procedures to be able to pass and receive my license and be able to learn hair color hair cutting and hairstyles facials and make up which I didn’t learn any of those things They had us press and curl women [sic] hair which they were running a salon instead of a school every day we never learned anything from the books about colors or state for [sic] procedures [.] Instead we were doing a clients [sic] hair...”<sup>131</sup>
82. Marinello’s focus on making students work on paying customers, rather than providing the instruction for which students were paying, was so pronounced that in 2013, students in California and Nevada filed suit under the Fair Labor Standards Act and state wage-and-hour laws, seeking wages for their unpaid labor.<sup>132</sup>
83. Students testified that they were taken out of classroom instruction to work on the clinic floor, or even to perform menial tasks for the salon’s benefit, with no educational value. For instance, one student stated that instead of classroom instruction, she was pulled into things on the clinic floor, such as folding towels, and helping with whatever was needed to keep the salon operating.<sup>133</sup>
84. Students further testified that services they had to perform were unrelated to anything they had learned in any theory instruction. For instance, one student testified that she did not learn anything new while performing services on the clinic floor and that there were often not instructors available to assist with learning on the clinic floor.<sup>134</sup>
85. According to deposition testimony, school records indicated that one of the plaintiffs generated nearly \$800 in revenue for the school, performing roughly the same technique/haircut on paying customers forty-four separate times, rather than being taught and then practicing new techniques.<sup>135</sup>

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<sup>128</sup> Application BD [REDACTED] (2012, West Covina); *see also* Appendix A (Statements of Former Students Evidencing that Marinello Improperly Utilized its Students as Salon Workers).

<sup>129</sup> Application BD [REDACTED] (2011, Palmdale).

<sup>130</sup> Application BD [REDACTED] (2014, West Covina).

<sup>131</sup> Application BD [REDACTED] (2009, Inglewood).

<sup>132</sup> *See* Exhibit 20 ([REDACTED] Complaint).

<sup>133</sup> *See* Exhibit 21 ([REDACTED] Deposition), at 163.

<sup>134</sup> *Id.* at 266.

<sup>135</sup> Exhibit 39 ([REDACTED] Dep. (Director of Compliance, B&H Educ., Inc.), [REDACTED] v. B & H Educ., Inc., 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC), at 142 [hereinafter [REDACTED] Deposition] (the records in question were presented as deposition exhibits, filed under seal, and unavailable to BDG).

86. One of the students testified that they had no guidance, instruction, or correction from instructors while on the clinic floor.<sup>136</sup> The student stated they never received feedback for any services provided on the clinic floor.<sup>137</sup>
87. Another student testified that at night, students spent between twenty and forty percent of their time at the school cleaning, rather than receiving any form of instruction or even practicing techniques they had been taught.<sup>138</sup>

Marinello's Official Policies Prioritized Services to  
Paying Clients over Instruction

88. These allegations are consistent with Marinello official policies that prioritized services to paying clients over instruction.<sup>139</sup> In the FLSA litigation, B&H principles testified about the policies in place at Marinello as early as 2010.<sup>140</sup> Marinello's President, ██████████, acknowledged in his deposition that Marinello placed such importance on students performing services on paying customers that students were not allowed to refuse to work on paying customers.<sup>141</sup>
89. ██████████ further testified that, despite California regulations,<sup>142</sup> students were not allowed to work on mannequins if there were paying customers.<sup>143</sup> If there were paying customers at the salon, the students were required to work on the customers.<sup>144</sup> He also testified that students were encouraged to find paying customers for the salon.<sup>145</sup>
90. Co-owner ██████████ also admitted that it was mandatory for Marinello students to work on paying customers, rather than on mannequins.<sup>146</sup>
91. Not only did Marinello regularly remove students from class to work on paying customers, but the school's emphasis on making students perform services for Marinello's profit led to a policy that all but required students to work in the salon beyond the end of their scheduled school day if there were paying customers in need of services. Students who worked in the

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<sup>136</sup> Exhibit 23 (█████████ Deposition), at 50.

<sup>137</sup> *Id.* at 54.

<sup>138</sup> Exhibit 21 (█████████ Deposition), at 262.

<sup>139</sup> In the wage and hour suit, regarding conduct from 2010 until 2013, testimony from Marinello and/or B&H executives established that Marinello's official policies: did not allow students to refuse to work on paying customers; required students to continue working on customers beyond their scheduled school day, "making up" the extra time by missing an equal amount of time the next day; and only required instructors to be present on campus, and did not require that they be in class, providing active instruction. *See supra* ¶¶ 76–87.

<sup>140</sup> The deposition excerpts in BDG's possession are unclear on timeframe, but the depositions were taken in the FLSA case, which related to the 2010–2013 timeframe. *See* ██████████, 2014 WL 8367808. Additionally, borrower statements demonstrate that this policy was in effect from as early as 2009 until the time Marinello closed in 2016. *See supra* ¶ 81.

<sup>141</sup> Exhibit 40 (█████████ Dep. (President, Marinello Schools of Beauty), ██████████ v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC)), at 72 [hereinafter ██████████ Deposition].

<sup>142</sup> 16 CAL. CODE REGS. § 950.1(b) ("For the purpose of this section... practical operations shall mean the actual performance by the student of a complete service on another person *or on a mannequin.*") (emphasis added).

<sup>143</sup> Exhibit 40 (█████████ Deposition), at 76.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 135.

<sup>146</sup> Exhibit 3 (█████████ Deposition), at 154.

salon past the end of their school day were “allowed” to miss an equal amount of class time the next day, further cutting into the instruction they should have been provided.<sup>147</sup>

92. B&H Director of Compliance ██████ testified in her deposition that “our accrediting commission also mandates that you cannot pull students out of theory to work on paying customers, and we don’t.”<sup>148</sup> However, ██████ could not identify any evidence to support that assertion, and her testimony is contradicted by the substantial weight of the evidence.
93. As reflected in Appendix A, the similarity of statements submitted by borrowers who attended Marinello across campuses nationwide between 2009 and 2016 indicates that Marinello’s policies started as early as 2009 and were prevalent until Marinello’s closure in 2016. The following representative sample of unprompted, specific and consistent statements from former Marinello students demonstrates Marinello’s pattern of sacrificing students’ education in order to have students work on the clinic floor:<sup>149</sup>
- 2009, Inglewood: “I was told that I was going to learn state board procedures to be able to pass and receive my license and be able to learn hair color hair cutting and hairstyles facials and make up which I didn’t learn any of those things. They had us press and curl women hair which they were running a salon instead of a school every day we never learned anything from the books about colors or state for procedures Instead we were doing a clients hair.”<sup>150</sup>
  - 2010, Las Vegas: “No director for a period of time 6 months no teacher 1 instructor on the floor. Forced to do services on public with little knowledge Lot of skills were learned with students teaching each other.”<sup>151</sup>
  - 2011, Chico: “Turned out Marinello didn’t have a great reputation, either. They pretty much just used us for labor. We did haircuts, pedicures, colors, etc for clients but didn’t make money. We paid to work for them basically.”<sup>152</sup>
  - 2012, Fairfield: “We barely had enough instructors to cover class sometimes and we all just sat around and collected hours. We spent most of our time working in the

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<sup>147</sup> Exhibit 40 (█████ Deposition), at 75–76. (“Q: And even if completing service on all of the customers that want services that day would extend the hours of the students beyond their normal scheduled shift in the salon, the requirement is that they stay and complete the guest services; isn’t that right? MR. CRAMP: Objection. Incomplete hypothetical. THE WITNESS: No. BY MR. MANDELBAUM Q: Okay. I’d like you to take a look at the third page of this document, second bullet point from the bottom. A: Uh-huh. Q: It says, ‘Students and instructors putting additional time for services should be allowed an equivalent time off the following day in order to prevent students from exceeding 100 percent of their scheduled time or for employees to create an overtime.’ A: So what’s the question? Q: My question is, doesn’t that acknowledge the fact that students and instructors were supposed to stay after hours to complete services on guests that wanted services at the school? A: I asked the department to communicate and coordinate that in case it happens. Once again, the objective of this memo is if we refuse clients, we are teaching our students a very bad habit that would make them unemployable when they graduate. So although I asked them to accommodate the clients, I asked them to develop the proper procedures to accommodate.”).

<sup>148</sup> Exhibit 39 (█████ Deposition), at 106 (“And our accrediting commission also mandates that you cannot pull students out of theory to work on paying customers, and we don’t”).

<sup>149</sup> See Appendix A (Statements of Former Students Evidencing That Marinello Improperly Utilized its Students as Salon Workers) for additional examples across campuses and from 2009 to 2016 demonstrating Marinello’s policy was to have students work on paying clients rather than receive instruction.

<sup>150</sup> Application BD ██████ (2009, Inglewood).

<sup>151</sup> Application BD ██████ (2010, Las Vegas).

<sup>152</sup> Application BD ██████ (2011, Chico).

salon for taking clients and providing services we were already familiar with to make money for the company.”<sup>153</sup>

- 2013, Murrieta: “I had 3-4 different teachers in the 9 months I went to that school. 2 of which hardly ever taught but mostly had us learn on our own. Was put in the client room not knowing what to do with the different clients skin.”<sup>154</sup>
- 2014, Los Angeles: “The teachers did not teach they just gave us clients and made us work on them all day with little to no instructions.”<sup>155</sup>
- 2015, Wichita: “They never taught me a proper hair cut. They let me work on clients then fixed the problem and wouldnt [sic] explain how to fix it.”<sup>156</sup>

#### Marinello’s Official Policies Likely Led to Violations of State Regulations

94. In addition to depriving students of the instruction for which they paid, Marinello’s practice of pulling students from classroom sessions to work on paying customers almost certainly led to violations of relevant state regulations.
95. Requiring students to miss classroom sessions to perform services on customers is expressly prohibited under Arizona law.<sup>157</sup> Marinello’s practice of taking students out of class to work on the clinic floor was one of the common allegations made by students, particularly in unsolicited comments to the Department during an investigation on other issues.<sup>158</sup>
96. Relatedly, California law prohibits students from performing techniques on paying customers when they have not completed both classroom and practical training (on another student or on a mannequin) in the technique the customer has requested.<sup>159</sup> Marinello students frequently alleged the school required them to do exactly that.<sup>160</sup>

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<sup>153</sup> Application BD [REDACTED] (2012, Fairfield).

<sup>154</sup> Application BD [REDACTED] (2013, Murrieta).

<sup>155</sup> Application BD [REDACTED] (2014, Los Angeles).

<sup>156</sup> Application BD [REDACTED] (2015, Wichita).

<sup>157</sup> ARIZ. ADMIN. CODE § 4-10-203(N)(5) (“A school licensee shall ensure ... [that a] student is not dismissed from a scheduled theory instruction or written or practical examination to perform clinical services for the public”), and § 4-10-203(G) (“[The school] shall not allow enrolled students to perform services on a person without a licensed instructor present.”).

<sup>158</sup> See *supra* ¶¶ 72–81.

<sup>159</sup> 16 CAL. CODE REGS. § 950.12(b).

<sup>160</sup> See, e.g., Application BD [REDACTED] (2011, Palmdale) (“I was puzzled when I was forced to do a male clipper cut and texturizer when I had just gotten onto the service floor and had no training on either of the two services.”); Application BD [REDACTED] (2015, Wichita) (“They never taught me a proper hair cut. They let me work on clients then fixed the problem and wouldnt [sic] explain how to fix it.”).

97. Similarly, Arizona,<sup>161</sup> Kansas,<sup>162</sup> Nevada,<sup>163</sup> and Utah<sup>164</sup> prohibit students working on paying customers in the early part of their program. Connecticut regulations prohibit “supervised practice on a clinic floor” in the first 200 hours of a cosmetology program<sup>165</sup> or first 150 hours of a barbering program,<sup>166</sup> regardless of whether the customer is paying for the service.

## 2. Marinello Did Not Provide Classroom Instruction in All the Necessary Components of its Programs

98. During the Department’s investigation of Marinello in 2015 and 2016, multiple students stated that Marinello did not provide instruction in all necessary components of its programs.

99. One student told the Department that “the teachers wouldn't explain/teach how to mix colors and they would just do it.”<sup>167</sup>

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<sup>161</sup> ARIZ. ADMIN. CODE § 4-10-303(C) (“An [aesthetics school] shall not receive remuneration for a student performing clinical services to the public until the student has received at least 120 hours of aesthetics training”), § 4-10-304(C) (“A [cosmetology school] shall not receive remuneration for a student performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training”), § 4-10-304.1(C) (“A [hairstyling school] shall not receive remuneration for a hairstyling student performing clinical services, except shampooing, for the public until the student has received at least 300 hours of hairstyling training”), and § 4-10-305(C) (“A [nail technology school] shall not receive remuneration for students performing clinical services to the public until the student has received at least 80 hours of nail technology”). California prohibits students from performing any work on paying customers until they have completed ten percent of their total training hours. 16 CAL. CODE REGS. § 950.12(b).

<sup>162</sup> KAN. ADMIN. REGS. § 69-4-9(a) (“A cosmetology student shall not work on the public until the student has completed 320 hours of training”), § 69-4-9(d) (“An electrology student shall not work on the public until the student has completed 100 hours of training”), § 69-4-9(c) (“An esthetics student shall not work on the public until the student has completed 130 hours of training.”), § 69-4-9(b) (“A manicuring student shall not work on the public until the student has completed 70 hours of training.”).

<sup>163</sup> Prior to 2015, NEV. REV. STAT. § 644A.745 (“A student enrolled as a cosmetologist, esthetician, electrologist, hair designer or nail technologist must receive a minimum of 10 percent of the total hours of instruction in the classroom before commencing work on members of the public”); after 2015, NEV. ADMIN. CODE § 644A.618(2) (“The student may not work on the public until the student has completed a preliminary training period of 300 hours for students in cosmetology or hair design, 150 hours for students in esthetics or electrology and 100 hours for students in nail technology.”).

<sup>164</sup> UTAH ADMIN. CODE R156-11a-801(10) (“An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training...”), R156-11a-802 (esthetics programs), and R156-11a-804 (nail technician programs).

<sup>165</sup> See CONN. GEN. STAT. ANN. § 20-262(b)(1)–(2) (noting that the Commissioner of Public Health shall adopt curriculum and procedures for the approval of hairdressing and cosmetology schools and shall post them on the Department of Public Health’s website); and see *Hairdresser School Curriculum*, CONN. STATE DEP’T OF PUBLIC HEALTH, <https://portal.ct.gov/DPH/Practitioner-Licensing--Investigations/Hairdresser/Hairdresser-School-Curriculum> (last visited Mar. 24, 2021) (“The first two-hundred (200) hours [of instruction] must be devoted to instruction in the theoretical aspects of all content areas. Practical instruction can be included in this first two hundred (200) hours but supervised practice on a clinic floor cannot.”).

<sup>166</sup> See CONN. GEN. STAT. ANN. §§ 20-236(a)(1)(A)(ii) (showing that applicants for Connecticut barber licenses must have “completed a course of not less than one thousand hours of study in a school approved in accordance with the provisions of this chapter, or, if trained outside of Connecticut, in a barber school or college whose requirements are equivalent to those of a Connecticut barber school or college”); and see *Barber School Curriculum*, CONN. STATE DEP’T OF PUBLIC HEALTH, <https://portal.ct.gov/DPH/Practitioner-Licensing--Investigations/Barber/Barber-School-Curriculum> (last visited Mar. 23, 2021) (“The first one hundred fifty (150) hours [of instruction] must be devoted to instruction in the theoretical aspects of all content areas. Practical instruction can be included in this first one hundred fifty (150) hours but supervised practice on a clinic floor cannot.”).

<sup>167</sup> Exhibit 16 (Student Statements and Interviews), at 17–19 (2011, Las Vegas).

100. Another stated that Marinello offered/classroom instruction “maybe once a week.”<sup>168</sup>
101. A third student explained that she often stayed late to make up hours, but she did not receive instruction during this time.<sup>169</sup> She also stated when she graduated, she did not know how to cut hair.<sup>170</sup>
102. One more student informed the Department that she “was not shown how to do things before [she] had to do them on a real person. For instance, [she] had never tried to do a clipper cut on a doll or a person before having to do it on a client.”<sup>171</sup> This student was from a California campus, where state regulations expressly prohibit students from performing techniques on paying customers until they have had both technical and practical training in the technique the customer has requested.<sup>172</sup>
103. One plaintiff in the FLSA suit testified that they were not taught all the material Marinello represented as being part of the curriculum due to teachers changing frequently.<sup>173</sup> He further elaborated that every week there was a different teacher.<sup>174</sup>
104. As reflected in Appendix C, the similarity of statements submitted by borrowers who attended Marinello across campuses nationwide between 2009 and 2016 indicates that Marinello did not teach the promised material, corroborating what students told the Department and testified to in the lawsuit:
- 2009, Inglewood: “I was told that I was going to learn state board procedures to be able to pass and receive my license and be able to learn hair color hair cutting and hairstyles facials and make up which I didn't learn any of those things They had us press and curl women [sic] hair which they were running a salon instead of a school every day we never learned anything from the books about colors or state for [sic] procedures [.] Instead we were doing a clients [sic] hair I'm sure that's why the school closed [.] I was unable to be [sic] to pass state board procedures due to the lack of education [.]”<sup>175</sup>
  - 2010, Redding: “The school did not tech me the information needed to pass my state board exam[.] There [sic] were suppose [sic] to teach me what i [sic] needed to know to be able to get a job in cosmetolgy [sic][.] I could not pass my state board exam there fore [sic] I [sic] was not able to work in this field there by wasteing [sic] 2 years and thousands of dollars[.]”<sup>176</sup>

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<sup>168</sup> *Id.* at 21–25 (2013, Whittier).

<sup>169</sup> *Id.* at 11–12 (2013).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 1–3 (2014).

<sup>172</sup> 16 CAL. CODE REG § 950.12(b).

<sup>173</sup> Exhibit 22 (██████████ Deposition), at 70–71.

<sup>174</sup> *Id.*

<sup>175</sup> Application BD ██████████ (2009, Inglewood).

<sup>176</sup> Application BD ██████████ (2010, Redding).

- 2011, Fresno: “We were told we would have hands on training daily to understand and learn the ins and out of they beauty industry, which was a lie. I never learned the fundamentals, the cuts, the colors.”<sup>177</sup>
- 2011, Los Angeles: “We never went over men's cuts or nails or a makeup course... I graduated not knowing a lot of things they promised to teach... I went to marinello [sic] originally for makeup and we received a makeup kit we never used it at school... never went over the nail section only anatomy... I attended marinello [sic] to learn what they promised to teach me when I enrolled and I don't feel like I got much education.”<sup>178</sup>
- 2012, West Covina: “nor did they ever teach me the ‘theory’ portion of my education. I learned it all on my own by reading my book and taking practice tests on my own time. While a lot of students were in the theory portion of class I was always forced to take the walk in [sic] clients. . . . I was told I would get an hour of theory every night. That’s where I would learn the basics of chemistry, anatomy, skin care, hair, theblait [sic] goes on. More often then [sic] not I wasn’t able to go into theory cause [sic] they would make me do clients.”<sup>179</sup>
- 2013, Los Angeles: “I was told there would be a full coverage on barbering even though the school was meant for more of a salon feel. The course was never taught at this location. I was given hair clippers and no other instructions on how to use them when it came down to styling hair.”<sup>180</sup>
- 2014, Los Angeles: “Marinello's website provided information about the things that Marinello would teach you when you would attend the school, like hair, nails, spa care, makeup, and barbering. We really didn't learn much about Cosmetology even though the school says that they can teach you about hair, makeup, and nails... We mostly learned about hair, not so much nails, and very little makeup even though the school said we learned about makeup.”<sup>181</sup>
- 2014, Murrieta: “The curriculum presented at signing up for this program seemed like it would be everything we needed to know for this career field. After graduation and meeting with other women from other schools, come to find out we didn't get half of the education promised to us.”<sup>182</sup>
- 2015, Wichita: “They never taught me a proper hair cut. They let me work on clients then fixed the problem and wouldnt [sic] explain how to fix it.”<sup>183</sup>

### **3. Marinello Regularly Failed to Provide *Any* Active Instruction to its Students**

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<sup>177</sup> Application BD1406325 (2011, Fresno); see also Appendix B (Statements of Former Students Regarding Marinello’s Failure to Provide Instruction in Promised Subject Matter).

<sup>178</sup> Application BD [REDACTED] (2011, Los Angeles).

<sup>179</sup> Application BD [REDACTED] (2012, West Covina).

<sup>180</sup> Application BD [REDACTED] (2013, Los Angeles).

<sup>181</sup> Application BD [REDACTED] (2014, Los Angeles).

<sup>182</sup> Application BD [REDACTED] (2014, Murrieta).

<sup>183</sup> Application BD [REDACTED] (2015, Wichita).

105. In addition to requiring students to miss class in order to work on the salon floor, or not providing instruction in all the subject matter advertised and required by law, Marinello frequently provided no active instruction whatsoever to its students. Whether deprived of regularly scheduled classroom sessions, make-up sessions, or even on the clinic floor, students were left to learn what they could from each other or from YouTube videos that they could have watched at home for free.<sup>184</sup>

106. During the Department's program review, a number of students told the Department that Marinello simply failed to provide instruction for significant periods of time. Instructors often were not even present, and the "instruction" was merely students in the classroom hoping to learn from each other.

- "During my jr [sic] year we did not have a dedicated teacher. To learn, the students would practice new techniques on each other with the help of YouTube tutorials and trial & error."<sup>185</sup>
- "When we do make up hours, they are done in the clinic or sitting and doing work. We do not make up the actual instruction that we missed. When the school needs students to work on the clinic floor, we are pulled out of class even if it is during a test. We are never provided a chance to make up the work we missed."<sup>186</sup>
- "You come at night to just be in the building. It's a free for all, there is no structure and students are on the floor doing hair."<sup>187</sup>
- "The teachers . . . wouldn't fully pay attention to our weak points. When I needed to physically see what I would be doing I was never shown how to do it. Many times, the teachers weren't even present."<sup>188</sup>
- "There was no teacher involvement during make-up hours. We were required to do things for clients we had not learned yet."<sup>189</sup>

107. Borrower Defense applicants made similar corroborating allegations in their applications, stating that they frequently did not have any instructors.<sup>190</sup>

- 2010, Concord: "We were having teachers quit and was left without a teacher for month's and left to our books or our own devices."<sup>191</sup>
- 2012, Chico: "During my time there we had a lack of instructors and qualified teachers often times students were checking other students work and teaching classes because there was no instructor that day."<sup>192</sup>

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<sup>184</sup> See *infra* ¶ 106

<sup>185</sup> Exhibit 16 (Student Statements and Interviews), at 24 (2013, Whittier).

<sup>186</sup> *Id.* at 4 (2015, East Hartford).

<sup>187</sup> *Id.* at 28–33 (2015, East Hartford).

<sup>188</sup> *Id.* at 14 (2014).

<sup>189</sup> *Id.* at 26–27 (2014).

<sup>190</sup> See Appendix C (Statements of Former Students Regarding Marinello's Failure to Provide Active Instruction), for additional examples of instructors failing to provide active instruction.

<sup>191</sup> Application BD [REDACTED] (2010, Concord); see also Appendix C (Statements of Former Students Regarding Marinello's Failure to Provide Active Instruction).

<sup>192</sup> Application BD [REDACTED] (2012, Chico).

- 2011, Niantic: “We sat in class most days without a instructor and we're forced to try and teach ourselves we were told we would have licensed cosmetology experts. i [sic] saw one teacher after my first 2 weeks and then nothing.”<sup>193</sup>
- 2013, Fresno: “Most of the time teaches where doing there [sic] own thing by being in there [sic] break room when they where [sic] to be in class teaching us. Teachers would be in and out of class rooms. and teaches came though that school like a revolving door people either got fired or quit it wasn't stable.”<sup>194</sup>

108. Even when Marinello’s instructors were physically present in the classroom, they frequently were not actually teaching.<sup>195</sup>

- 2013, Chico: “The teacher would make us get on youtube [sic] for training videos and not teach us.”<sup>196</sup>
- 2012, Redding: “A few of the instructors we had would just let us sit around and do each other's hair.”<sup>197</sup>

109. In the FLSA suit, one of the plaintiffs testified that she and other students “constantly” complained to school administrators regarding a lack of instructors.

- Q: What was your complaint about the instructors?
- A: When are we going to get another teacher? When are we going to have an instructor? When is she coming? When is he coming? When? When? When?
- Q: Okay
- A: So we constantly asked about when is our – our instructors going to be here?<sup>198</sup>

110. Marinello’s instructors were often on the salon floor working on paying clients and not providing in-classroom instruction to paying students because there was no time to teach.<sup>199</sup>

111. Even on the salon floor, students frequently operated without instruction, guidance, or feedback.<sup>200</sup> One student reported that she never received feedback, grades, or even a check of the services she provided to paying clients on the salon floor.<sup>201</sup>

112. These student allegations were all corroborated by a former instructor, who told Department that “Marinello’s Instructors were not teaching the students... Teachers were expected to babysit the students, not teach them[.]”<sup>202</sup> Teachers “did not stay on the salon floor to

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<sup>193</sup> Application BD [REDACTED] (2011, Niantic).

<sup>194</sup> Application BD [REDACTED] (2013, Fresno).

<sup>195</sup> See Appendix C (Statements of Former Students Regarding Marinello’s Failure to Provide Active Instruction), for additional examples of instructors failing to provide active instruction.

<sup>196</sup> Application BD [REDACTED] (2013, Chico).

<sup>197</sup> Application BD [REDACTED] (2012, Redding).

<sup>198</sup> Exhibit 21 ([REDACTED] Deposition), at 86.

<sup>199</sup> Exhibit 22 ([REDACTED] Deposition), at 60. See also Appendix C (Statements of Former Students Regarding Marinello’s Failure to Provide Active Instruction), for additional examples of instructors failing to provide active instruction.

<sup>200</sup> Exhibit 21 ([REDACTED] Deposition), at 288.

<sup>201</sup> Exhibit 23 ([REDACTED] Deposition), at 54.

<sup>202</sup> Exhibit 16 (Student Statements and Interviews), at 37 (2013, [REDACTED], Instructor).

supervise the students. They would go together into their room away from the students and then talk and visit amongst themselves.”<sup>203</sup>

113. Regarding the allegations that students were without active instruction for significant periods of time, B&H executives could not or would not testify that Marinello policy required that students have active instruction in either clinical or theory sections.<sup>204</sup>
114. B&H Vice President of Education ██████ testified that while the California and Nevada “state boards” required specific student-to-instructor ratios, neither regulations nor Marinello policy required that those instructors be with the students, either in the classroom or on the clinic floor.<sup>205</sup>
115. B&H co-owner and president ██████ similarly admitted that Marinello policy did not require instructors to be in the same room with their students.<sup>206</sup>
116. B&H’s Director of Compliance, ██████, testified that Marinello did not track whether instructors were actually providing instruction, or whether they were scheduled to be teaching in the classroom or supervising practical experience on the clinic floor, but only tracked whether the instructors were clocked in.<sup>207</sup>
117. This was inconsistent with Nevada regulations, which require “immediate supervision” of students.<sup>208</sup> Massachusetts,<sup>209</sup> Oregon,<sup>210</sup> and Utah<sup>211</sup> also all expressly require that schools provide “direct” or “immediate” supervision of students. Even in those states that do not *expressly* require immediate supervision, leaving students without instruction or supervision simply because the state required number of instructors were somewhere on campus violates the spirit and intent of regulating instructor/student ratios.

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<sup>203</sup> *Id.* at 38 (2013, ██████, Instructor).

<sup>204</sup> *See infra* ¶¶ 114–116.

<sup>205</sup> Exhibit 41 (█████ Dep. (Vice President of Education, B&H Educ., Inc.), ██████ v. *B & H Educ., Inc.*, 2014 WL 8367808 (N.D. Cal. Aug. 4, 2014) (No. 13-CV-04993-VC), at 107–108 [hereinafter ██████ Deposition] (“Q: Do you know what those parameters are? A: I believe its 1 to 25. Q: And is that specific to the salon or campus wide? A: It’s specific to the school. . . . Q: So is it your understanding of the state regulations that if there were, say, 12 students in the salon and 13 in the classroom, it would be permissible to just have one instructor on campus? . . . A: it’s a school environment, and within the school environment, it’s one instructor per 25 students.”).

<sup>206</sup> Exhibit 40 (█████ Deposition), at 94.

<sup>207</sup> Exhibit 39 (█████ Deposition), at 105–106 (“Q: Okay. So – we could go back seven years and see if there were two teachers, for every 50 students, clocked in through that period of time or not, right? A: We would be able to see when staff was clocked in, yes. Q: Right. But could – would you be able to show to what degree the staff was actually working supervising employees or whether they were simply clocked in, or maybe they were only supervising certain employees that – certain students working the salon and not others? A: Teaching staff supervises students all day long whether they’re in the theory classroom or whether they’re on the clinic floor doing that portion, practical work. Q: Correct. But would you have any way of showing to what degree any particular student was actively supervised by a teacher during any period of time? A: We would only know who – what instruction – instructor was working the shift based on the time clock report, and we would know if the students were in attendance from their reports.”). At another point in the same deposition, when responding to a question about a complaint a former student had filed with the Business Consumer Alliance (a California organization similar to the Better Business Bureau) alleging that the instructors did not provide instruction, ██████ would only testify that records showed instructors were “present.” *Id.* at 95.

<sup>208</sup> NEV. REV. STAT. § 644A.740(1).

<sup>209</sup> 240 MASS. CODE REGS. 4.02(6), 5.04(1).

<sup>210</sup> OR. ADMIN. REG. 715-045-0200(17).

<sup>211</sup> UTAH ADMIN. CODE R156-11a-502(1).

118. The evidence from the borrowers, employees, and even management demonstrates that Marinello students were deprived of the instruction represented to them as they often received no instruction at all.

### **C. Marinello Students Considered the Characteristics of the Education when Enrolling**

119. Borrowers enrolled at Marinello to learn how to perform services related to hair cutting, cosmetology, barbering, massage therapy, and manicuring, etc. However, borrowers were left with a degree and no skills due to Marinello's failure to deliver the promised education.

120. Sworn borrower defense statements, across campuses and persistently from 2009 through 2016, describe the importance of being able to get a comprehensive education and how they did not receive it at Marinello:<sup>212</sup>

- 2009, Redding: "I wanted to do all the things they promised me, and yes they were all PROMISED to my face. [...] I believed that when I showed up, there would be a teacher to teach me. I believed I would get a lot of hours and experience on the floor enabling me to be the amazing hairstylist I'd always dreamt of being. None of this happened. Ten years later and I've never done hair professionally because as I've stated I was not educated properly."<sup>213</sup>
- 2010, Ontario: "While attending school we hardly worked on any techniques that were needed to know to be able to utilize or perform in the beauty industry. No cutting, coloring, skin care, or makeup techniques were up to date. Everything taught was out dated or non useful."<sup>214</sup>
- 2012, Simi Valley: "When I first inquired about enrolling, I was very specific about wanting to become a makeup artist. I was NOT interested in hair and nails and certainly had no interest in massaging strangers. [REDACTED] promised I was at 'The PERFECT place to learn Makeup!' So, I signed up that same day. I attended the school for about 4 months and did not have ONE lesson on makeup. I worked mostly with hair, nails, and massaging which of course was never an interest of mine and is exactly what ultimately led to me leaving the school."<sup>215</sup>
- 2013, Enfield: "Everything the [sic] said they were about was a complete lie. The program was a joke, they did not teach me the proper basics in the Cosmetology field, or how the industry is. They left me and others to figure it out our selfs. [sic] Uneducational [sic] and unstructured."<sup>216</sup>

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<sup>212</sup> See Appendix B (Statements of Former Students Regarding Marinello's Failure to Provide Instruction in Promised Subject Matter), Appendix C (Statements of Former Students Regarding Marinello's Failure to Provide Active Instruction) and Appendix D (Statements of Former Students Regarding Their Inability to Obtain Employment in Their Field and Financial Impact as a Result of Attending Marinello), for additional examples.

<sup>213</sup> Application BD [REDACTED] (2009, Redding).

<sup>214</sup> Application BD [REDACTED] (2010, Ontario).

<sup>215</sup> Application BD [REDACTED] (2012, Simi Valley).

<sup>216</sup> Application BD [REDACTED] (2013, Enfield).

- 2015, Niantic: “This school was kind of pushy when it came to enrolling. While in class there was no proper materials for example hair coloring, no hot water and electricity while taking care of customers. Last but not least teachers will not show up to teach students.”<sup>217</sup>

121. Additionally, in sworn borrower applications, across campuses and persistently from 2009 through 2016, borrowers consistently report that they did not learn the material they paid to learn, and cannot perform the basic functions of hairdressing:<sup>218</sup>

- 2009, San Bernardino: “I graduated yet was still unable to perform basics like hair cutting.”<sup>219</sup>
- 2010, San Francisco: “They promised every student to fully prepared you to pass the State Board Exam and they failed in train us properly. As a consequence many students failed, including myself to achieved passing the State Board practical examination. In addition, the staff they hired were under trained and lack of professionalism.”<sup>220</sup>
- 2011, San Diego: “After completing the course, I was not prepared at all. Like many, I could not even complete a simple haircut. Their ‘main mission’ was to get us to pass state board, it took me 2 times to pass.”<sup>221</sup>
- 2012, Chico: “They taught us outdated technique even though they promised we would be able to attend special classes. This made it really difficult for some of us to succeed when we finally got jobs in the industry. Personally for me, a huge part of learning how to do hair was cuts and colors. Color is where the money is. I barely got to do ANY color in my year there. When clients came in, the girls would fight for who got to do the color. When a pedicure appointment would come in, everyone would hide and I’d get stuck with it. I wasn’t even a nail tech. I did many more pedicures than cuts or colors, wholly unfair system.”<sup>222</sup>
- 2014, Moreno Valley: “Marinello’s misled me because I thought I was going for good education but instead the teachers didn’t teach and gave up.”<sup>223</sup>
- 2015, Santa Clara: “We were told we would have trainings and or classes on certain classes for example makeup classes, special effects classes, and we never did They promised something that didn’t happen I have the loan to pay off for a full education that i did not receive.”<sup>224</sup>

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<sup>217</sup> Application BD [REDACTED] (2015, Niantic).

<sup>218</sup> See Appendix B (Statements of Former Students Regarding Marinello’s Failure to Provide Instruction in Promised Subject Matter); Appendix D (Statements of Former Students Regarding Their Inability to Obtain Employment in Their Field and Financial Impact as a Result of Attending Marinello), for additional examples.

<sup>219</sup> Application BD [REDACTED] (2009, San Bernardino).

<sup>220</sup> Application BD [REDACTED] (2010, San Francisco).

<sup>221</sup> Application BD [REDACTED] (2011, San Diego).

<sup>222</sup> Application BD [REDACTED] (2012, Chico).

<sup>223</sup> Application BD [REDACTED] (2014, Moreno Valley).

<sup>224</sup> Application BD [REDACTED] (2015, Santa Clara).

122. As a result of Marinello’s failure to deliver the education promised, borrowers consistently report, across all campuses and from 2009 through 2016, that they are unable to find jobs in their field:<sup>225</sup>

- 2009, Hemet: “I feel Marinello only prepared their students to be able to pass state board, but not for real life industry work ethics. I should be able to do a basic men and/or womens [sic] haircut along with simple highlights or coloring. But after all the time in school, I still feel like my knowledge of the industry is far from work ready. I have a student loan hanging over my head in a field of study that I can't work in, due to not receiving proper training.”<sup>226</sup>
- 2010, Castro Valley: “My skills and techniques to cut hair were not up to employment standards and I was forced to performed highlights and coloring learned in Germany (not associated with Marinella [sic]) to acquire the lowest level of employment and prove some competency.”<sup>227</sup>
- 2011, Bell: “After graduation the only way anyone would work with you is if you went through another training program to learn how to cut and color hair. After I just paid 15000 to learn that and now you want me to pay more because I wasn't properly taught how. The finance impact is now I'm stuck with thousands of dollars in loans and no way of working in that field so I can pay them off.”<sup>228</sup>
- 2012, Overland Park: “I was told when I enrolled that when I graduated I would be prepared to work in a full service salon. I couldn't even cut hair when I was done, I can't do nails or anything with skin or makeup. I'm very slow on chemical services and don't know how to use most products we had. I was unable to hold a position in the industry because I would of had to be retaught how to do men and women's haircuts or attend more schooling.”<sup>229</sup>
- 2013, Lake Forest: “I was informed that the school would provide me a place of employment after graduating the course. I was not informed or helped in any way to be placed with a job. I was unemployed and could not find a job with no resources.”<sup>230</sup>
- 2014, Santa Clara: “Marinello told me I would be prepared to work in my field and that they would help with career placement I was not prepared to work in the field because of the unorganized teaching from the school.”<sup>231</sup>
- 2015, Whittier: “They couldn't even get instructors to teach us, so there was no way for us to get the proper training to get our license let alone get work.”<sup>232</sup>

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<sup>225</sup> See Appendix A (Statements of Former Students Evidencing that Marinello Improperly Utilized its Students as Salon Workers), Appendix B (Statements of Former Students Regarding Marinello’s Failure to Provide Instruction in Promised Subject Matter), Appendix C (Statements of Former Students Regarding Marinello’s Failure to Provide Active Instruction) Appendix D (Statements of Former Students Regarding Their Inability to Obtain Employment in Their Field and Financial Impact as a Result of Attending Marinello), for additional examples.

<sup>226</sup> Application BD [REDACTED] (2009, Hemet).

<sup>227</sup> Application BD [REDACTED] (2010, Castro Valley).

<sup>228</sup> Application BD [REDACTED] (2011, Bell).

<sup>229</sup> Application BD [REDACTED] (2012, Overland Park).

<sup>230</sup> Application BD [REDACTED] (2013, Lake Forest).

<sup>231</sup> Application BD [REDACTED] (2014, Santa Clara).

<sup>232</sup> Application BD [REDACTED] (2015, Whittier).

123. Marinello borrowers also consistently allege they paid thousands of dollars in order to attend Marinello.<sup>233</sup> On average, Marinello students who applied for Borrower Defense relief took out over \$9,000 in Title IV loans for an education that was not what they were promised.<sup>234</sup> Borrower statements demonstrate students were adversely affected by Marinello's representations consistently at all campuses and from 2009 through 2016.

#### **D. Summary and Conclusions**

124. The evidence in the possession of the Borrower Defense Group relating to alleged educational services/educational program misrepresentations at Marinello establishes by a preponderance of the evidence that at all Marinello locations, from 2009 through its closing in 2016:

- Marinello Schools of Beauty misrepresented the nature and character of the programs of instruction that the school offered, by denying students the mix of theoretical instruction in the classroom and practical instruction on the clinic floor that it represented it provided, and that regulations required.
- Marinello Schools of Beauty misrepresented the nature and character of the programs of instruction that the school offered, by failing to provide instruction in all of the subject areas that it represented it provided, and that regulations required.
- Marinello Schools of Beauty misrepresented the nature and character of the programs of instruction that the school offered, by regularly failing to provide active instruction and supervision for significant periods – often weeks or months at a time – leaving students without instruction. Additionally, many of the states where Marinello operated had regulations explicitly requiring student have direct/immediate supervision.

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<sup>233</sup> See generally Appendix B (Statements of Former Students Regarding Marinello's Failure to Provide Instruction in Promised Subject Matter); Appendix C (Statements of Former Students Regarding Marinello's Failure to Provide Active Instruction).

<sup>234</sup> Exhibit 40 (Spreadsheet of Marinello Students' Title IV Funds, Borrower Defense Group (Mar. 17, 2021) (on file with Department)) [hereinafter BD Applicants' Title IV Funds for Marinello].

**III. Marinello Borrowers who Enrolled Before 2009, or who do not allege Educational Services Claims, are not Eligible for Relief Unless Additional Evidence is Provided or Otherwise Comes to Light**

125. As of the date of this memorandum, the Department does not have sufficient evidence in its possession regarding alleged misrepresentations against Marinello, except for misrepresentations relating to educational services from 2009 until the school's closure in 2016, as described in detail *supra* in Section II.
126. However, during its 2015 Program Review, the Department also made findings unrelated to the educational services misrepresentations detailed in Section II.<sup>235</sup> Specifically, the Department made findings that Marinello misrepresented the equipment and/or tool that students purchased from the school.<sup>236</sup> The Department also made findings concluding that Marinello charged excessive fees to students to make-up hours of instruction.<sup>237</sup> The Department currently does not have evidence in its possession that these additional funds would have come from Title IV loans, and does not have additional evidence to support these allegations, at this time.
127. Although the evidence for these acts of misconduct is limited, BDG will consider the evidence in the Department's possession when reviewing any related individual borrower applications. In the event a borrower asserts either of these claims in their application, BDG will evaluate the claim by reviewing the evidence submitted by the borrower and the Department's evidence to determine if there is sufficient evidence for an approval.
128. Additionally, aside from the evidence described *supra*, the Department currently does not have sufficient evidence in its possession that Marinello made any other types of widespread misrepresentations to its students. However, if additional evidence regarding widespread misconduct is discovered, or received in the future, other categories of claims may be revisited as warranted.

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<sup>235</sup> Exhibit 2 (Denials of Recertification), at 7–8.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*