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Did You Fail to Tell Me Something, Mom? Nondisclosure Fraud in the Wake of Varsity Blues

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DID YOU FAIL TO TELL ME SOMETHING, MOM? NONDISCLOSURE FRAUD IN THE WAKE OF VARSITY BLUES

Valerie Flugge and Nanci K. Carr***

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How many times have parents grounded their children for failing to tell them something? No adult supervision at the party? A bad grade on a test? The tables were turned in the Varsity Blues scandal where parents ranging from major executives to Hollywood celebrities were involved in a college admissions bribery scheme, and in many cases, the children of those parents did not know about their parents' "appalling and mind-boggling"¹ conduct. Once the scheme was revealed, many of those children who had already been admitted were expelled and others were denied admission. Their lives were turned upside down, with lifelong ramifications. Can those children recover monetary damages from their parents for nondisclosure fraud?

I. INTRODUCTION

This Article addresses the Varsity Blues scandal, the huge college admission scam that resulted in criminal charges and sentences for numerous extremely wealthy parents who used their resources to obtain fraudulent admissions for their children to prestigious universities throughout the United States. Following this introduction, the second part of this Article summarizes the extent of the scandal, the numerous people affected by it, and the resulting litigation. The third part details the fallout of the scandal, including prison sentences and lawsuits against universities. All of that leads to, in the final part, an exploration of the rights of those children who were unaware of their parents' actions in committing crimes to get them admitted to desirable colleges: can these students recover damages from their parents for the significant harm caused to them? This Article concludes that many of these students potentially have viable claims against their parents for nondisclosure fraud. The result hinges on the type of fraud damages available in their state and the nature of damages that they incurred as the result of their parents' actions.

II. THE VARSITY BLUES SCANDAL

On March 12, 2019, U.S. Attorney Andrew Lelling announced that the United States Justice Department charged fifty people in connection with their participation in a college admissions scandal known as Operation Varsity Blues, the largest such scam ever prosecuted by the Justice

¹ Joey Garrison, *Judge Sentences Ex-CEO to Longest Prison Term in College Admissions Scandal, Describes 'Appalling' Actions*, USA TODAY, <https://www.usatoday.com/story/news/nation/2020/02/07/college-admission-scandal-former-financier-doug-hodge-serve-xx-months-prison-most-so-far-parents-ple/4689485002/> (quoting statement of U.S. District Judge Nathaniel Gorton) (last updated Feb. 9, 2020, 1:16 PM). U.S. District Judge Nathaniel Gorton, when addressing Douglas Hodge, former CEO of Pacific Investment Management Company (Pimco), said: "Mr. Hodge, your conduct in this whole sordid affair is appalling and mind-boggling at the same time." *Id.* (quoting statement of U.S. District Judge Nathaniel Gorton).

Department.² The participants, including celebrities and executives, allegedly conspired with William Singer, a college admissions adviser and head of Edbe College & Career Network of Newport Beach, California.³ Allegedly, Singer moved \$25 million through his nonprofit organization, Key Worldwide Foundation, from 2011 to 2018, with the money ultimately being used to bribe standardized test administrators.⁴ It is also alleged that the money was used to bribe coaches and athletic directors at prestigious universities including Yale, Stanford, UCLA, Georgetown, University of San Diego, University of Texas, and University of Southern California (“USC”).⁵

² Kenzie Bryant, “Operation Varsity Blues” is the One Scam to Rule Them All, VANITY FAIR (Mar. 12, 2019), <https://www.vanityfair.com/style/2019/03/lori-loughlin-felicity-huffman-college-cheating-scandal>; see also Jody Godoy, *What’s Next in the ‘Varsity Blues’ Admissions Fraud Case*, LAW360 (Mar. 14, 2019, 9:52 PM), <https://www.law360.com/media/articles/1139010> (noting that the charges include conspiracy to commit mail and honest services fraud); Chris Villani & Aaron Leibowitz, *Lori Loughlin, 15 Others Hit with New ‘Varsity Blues’ Charge*, LAW360 (Apr. 9, 2019, 2:48 PM), <https://www.law360.com/media/articles/1148227> (announcing conspiracy to commit money laundering had been added as an additional charge).

³ Kate Taylor & Patrick J. Lyons, *William Singer, the Man in the Middle of the College Bribery Scandal*, N.Y. TIMES (March 12, 2019), <https://www.nytimes.com/2019/03/12/us/william-singer-admissions-scandal.html>; see also Aaron Leibowitz, *Ex-Willkie Co-Chair Pleads Guilty In ‘Varsity Blues’*, LAW360 (May 21, 2019, 3:16 PM EDT), <https://www.law360.com/media/articles/1161618> (noting that Gordon Caplan, former co-chair of Willkie Farr & Gallagher LLP, pled guilty to paying \$75,000 to have an ACT proctor alter his daughter’s exam answers); Aaron Leibowitz, *Ex-USC Coach Admits Making Fake Profiles in ‘Varsity Blues’*, LAW360 (May 14, 2019, 3:20 PM EDT), <https://www.law360.com/media/articles/1159444/> (reporting that Florida nursing home executive Philip Esformes bribed Laura Janke, USC women’s soccer coach, for his daughter’s admission, and a University of Pennsylvania basketball coach for his son’s admission); Cynthia Littleton, *TPG Growth Founding Partner Bill McGlashan Fired Amid College Admissions Scandal*, VARIETY (Mar. 14, 2019, 2:56 PM PT), <https://variety.com/2019/biz/news/college-admissions-scandal-bill-mcglashan-resign-1203163897/> (noting that Bill McGlashan of TPG Growth and STX Entertainment was fired after giving a faked photo of his son playing football to USC athletic director Donna Heinel, and bribing her to have him admitted, after paying \$50,000 to have a proctor correct some of his son’s ACT answers in addition to having a test taker for part of the exam); Nate Raymond, *Second Wealthy Parent to Plead Guilty in US College Admissions Scandal*, REUTERS (Apr. 5, 2019, 1:03 PM), <https://www.reuters.com/article/uk-usa-education-cheating-idUKKCN1RH21X> (noting that Peter Sartorio, packaged food entrepreneur, was also involved in the scandal). Actresses Felicity Huffman and Lori Loughlin were also among those charged. See Bryant, *supra* note 2. Emphasizing the seriousness of the matter, Huffman was arrested at gunpoint. Suzy Byrne, *Felicity Huffman Wants Passport Returned as she Completes College Admissions Scandal Sentence*, YAHOO (Oct. 22, 2020), <https://www.yahoo.com/entertainment/felicity-huffman-wants-passport-returned-college-admissions-scandal-sentence-144939647.html>.

⁴ Meghan Keneally, *What to Know About William ‘Rick’ Singer, the Lynchpin of the College Scam Case who Claimed to Help Nearly 800 Families*, ABC NEWS (Mar. 14, 2019, 3:02 PM), <https://abcnews.go.com/US/william-rick-singer-lynchpin-college-scam-caseclaimed/story?id=61653747>. Students applying to college typically take either the ACT or the SAT, the scores of which are used by college admission boards when making admission decisions. See generally Kristin Fracchia, *ACT vs SAT: Ultimate Guide to Choosing the Right Test*, STUDYUSA (Nov. 13, 2016), <https://www.studyusa.com/en/a/1305/act-vs-sat-ultimate-guide-to-choosing-the-right-test>.

⁵ Bryant, *supra* note 2. For specific cases of admissions fraud, see Aaron Feis & Lia Eustachewich, *Meet the Finance Fraudster who Blew the Lid off the College Admissions Scandal*, N.Y. POST (Mar. 14, 2019, 7:45 PM), <https://nypost.com/2019/03/14/meet-the-finance-fraudster-who-blew-the-lid-off-the-college-admissions-scandal/>. (describing how financier Morrie Tobin, in an effort to seek leniency in an unrelated securities fraud case, broke open the scandal by telling investigators that Yale’s women’s soccer coach, Rudy Meredith, and Singer sought \$450,000 to recruit Tobin’s daughter to the soccer team); Daniel Golden & Doris Burke, *The Unseen Student Victims of the “Varsity Blues” College Admissions Scandal*, NEW YORKER (Oct. 8, 2019), <https://www.newyorker.com/books/page-turner/the-unseen-student-victims-of-the-varsity-blues-college-admissions-scandal> (highlighting how over \$9 million went to Stanford and Georgetown to get students admitted under tennis or sailing programs, with

Singer used the technique that best suited his wealthy clients who were willing to do anything to get their child into what they perceived to be the right school. For example, if a child struggled with taking standard exams, Singer would arrange to pay proctors administering the tests to change the scores or permit extra time; however, care was taken to not overinflate the scores in an effort to avoid raising red flags.⁶ In other cases, Singer would provide families with test answers in advance of the test or send a test-taker pretending to be the struggling college applicant.⁷

Another strategy used by Singer was to bribe university coaches. In the now well-known case of the daughters of actress Lori Loughlin and her husband, fashion designer Mossimo Giannulli, Singer arranged for altered photos to be made of their daughters posing as crew coxswains—to make it appear that they were experienced rowers—and sent them to Donna Heinel, the senior associate athletic director at USC in an attempt to recruit them to the rowing team.⁸ In Singer’s affidavit, he describes how Giannulli paid \$200,000 to Singer’s foundation.⁹ According to U.S. Attorney Lelling, once the students would begin attending the college, “some didn’t show up [to play the sport in question], some pretended an injury, and some played briefly and quit.”¹⁰

III. THE FALLOUT

A. Parents Arrested and Jailed

In the fall of 2019, the sentencing of the parents began with actress Felicity Huffman, who was sentenced to fourteen days in prison after she

\$6.5 million going towards just one student at Stanford); Jenni Fink, *College Admissions Scandal: How are Universities Handling Students Whose Parents Have Been Indicted?*, NEWSWEEK (May 31, 2019), <https://www.newsweek.com/college-admissions-scandal-universities-discipline-students-1440974> (noting that real estate developers Bruce Isackson and Robert Flaxman each schemed to get their own kids admitted to either UCLA or the University of San Diego on bogus athletic or academic grounds); Brad Hunter, *EXAMGATE: Rich Kid Suing University for Not Catching Bogus Application*, TORONTO SUN (May 15, 2019, 2:40 PM EDT), <https://torontosun.com/news/world/examgate-rich-kid-suing-university-for-not-catching-bogus-application> (noting that Steven Semprevivo paid Georgetown \$400,000 to accept his underachieving son, Adam, as a tennis recruit); Golden & Burke, *supra* (stating that court documents showed that Singer “paid Georgetown tennis coach Gordon Ernst more than \$2.7 million in ‘consulting’ fees to designate at least a dozen applicants . . . as tennis recruits.”); Fink, *supra* (describing how real estate developer, Robert Flaxman, was accused of falsifying his son’s athletic records and paying to inflate his daughter’s ACT scores to gain admission to the University of San Diego).

⁶ Bryant, *supra* note 2.

⁷ *Id.*

⁸ Leibowitz, *Ex-USC Coach Admits Making Fake Profiles in ‘Varsity Blues’*, *supra* note 3. Loughlin and Giannulli were ordered to report to prison by November 19, 2020 to serve their two-month and five-month sentences, respectively. Byrne, *supra* note 3. Loughlin was released in December 2020, after serving her two-month sentence, while Giannulli was released in April 2021. See Ally Mauch, *Mossimo Giannulli Released from Home Confinement, Marking End of Sentence for College Admissions Scandal*, PEOPLE (Apr. 17, 2021), <https://people.com/crime/mossimo-giannulli-released-from-home-confinement/>. Together, they will pay \$400,000 in fines, in addition to their community service and supervised release. Byrne, *supra* note 3.

⁹ Bryant, *supra* note 2.

¹⁰ *Id.*

admitted to paying \$15,000 to falsify her daughter's SAT score.¹¹ In addition, she received a \$30,000 fine, was ordered to perform 250 hours of community service, and was on supervised release for a year.¹² Unlike Huffman's light two-week sentence, Douglas Hodge, the former CEO of Pimco, received the longest sentence to date: nine months in prison.¹³ In addition, he was fined \$750,000 and had to complete 500 hours of community service.¹⁴ He pled guilty to paying bribes of \$500,000 to secure athletic recruitments to USC for two of his children in 2013 and 2015; however, court documents show that he contacted Singer in 2008 for one child to attend Georgetown, and in 2018 for his youngest son to attend Loyola Marymount University.¹⁵ Twenty-two parents have been sentenced to date, with prison terms and fines ranging between those given to Huffman and Dodge.¹⁶ Prosecutors continue to investigate, announcing on September 2, 2020, that Amin Khoury was the fifty-seventh person to be charged.¹⁷

B. Children Suffered

While parents may be paying fines and serving jail terms, the real victims here are the innocent students, including those who, without their knowledge, were fraudulently admitted and those who were not admitted—arguably because their seats were taken by students whose parents' bribes bought their way into the university. Students admitted under fraudulent circumstances suffered consequences ranging from embarrassment and ridicule to revocation of admission or expulsion. For example, a student admitted to Yale with fraudulent soccer records had their admission rescinded.¹⁸ A Stanford admittee who lied about sailing credentials was

¹¹ Byrne, *supra* note 3.

¹² Kelly McLaughlin, *Here's Everyone Who Has Been Sentenced in the College Admissions Scandal so Far*, INSIDER (Dec. 23, 2020, 11:28 AM), <https://www.insider.com/college-admissions-scandal-full-list-people-sentenced-2019-9>. As of the writing of this Article, Huffman paid her fine and has completed her prison sentence, community service, and supervised release. Byrne, *supra* note 3. She has since requested that her passport be returned to her. *Id.*

¹³ McLaughlin, *supra* note 12. He may be wondering why his sentence is so harsh following the recent announcement that a California audit revealed that the University of California unfairly admitted at least sixty-four wealthy students over the past six years—most of which were admitted as favors to donors, family, and friends. Elana Lyn Gross, *The University of California System 'Unfairly' Admitted 64 Well-Connected Students, State Audit Found*, FORBES (Sept. 22, 2020, 01:39PM EDT), <https://www.forbes.com/sites/elanagross/2020/09/22/the-university-of-california-system-unfairly-admitted-64-well-connect-student-state-audit-found/#4980ecec0ec6b>.

¹⁴ McLaughlin, *supra* note 12.

¹⁵ *Id.*; Thornton Mcenery, *Former PIMCO CEO Doug Hodge Named in Fraud Complaint Alongside Aunt Becky From "Full House"*, DEALBREAKER (Mar. 12, 2019), <https://dealbreaker.com/2019/03/doug-hodge-bill-mcglashan-college-bribery-fraud-complaint>.

¹⁶ See generally *id.*

¹⁷ Chris Villani, *'Varsity Blues' Feds Add Charges Against 2 Coaches, Parent*, LAW360 (Sept. 2, 2020, 1:02 PM EDT), https://www.law360.com/articles/1306571?e_id=4be8e519-7149-4414. Khoury is alleged to have paid Georgetown tennis coach Gordon Ernst \$200,000 to recruit Khoury's daughter. *Id.*

¹⁸ Eric Levenson & Augusta Anthony, *Yale Rescinds Admission of a Student whose Family Paid \$1.2 Million to Get Her in*, CNN (Mar. 26, 2019, 3:05 PM ET), <https://www.cnn.com/2019/03/25/us/yale-rescinds-student-admissions-scandal/index.html>; see also *Frequently Asked Questions Related to Admissions Fraud Scheme*, YALE UNIV. (Mar. 26, 2019), <https://president.yale.edu/frequently-asked>

expelled and all credits were lost.¹⁹ Lori Loughlin's daughters (as well as several other of the Varsity Blues children admitted to USC) tried to withdraw, but USC would not allow that.²⁰ USC also put a hold on those students' accounts, thus preventing them from enrolling for additional classes while the school reviewed each case.²¹ Finally, a Georgetown student, who had just finished his junior year, was expelled and not allowed any credits for his coursework after it was discovered that his father paid a \$400,000 bribe to the tennis coach.²²

Although in some instances the children may have been aware of their parents' actions, in several instances, the children had no idea what their parents had done.²³ For example, Gordon Caplan, former co-chair of a prestigious law firm and a father who pled guilty for his involvement in the scandal, asserted that his daughter "had no knowledge whatsoever about my actions, has been devastated to learn what I did and has been hurt the most by it."²⁴ In fact, Singer had a habit of assuring parents that their children would not know what was happening.²⁵ One parent, Michelle Janavs, who arranged

questions-related-admissions-fraud-scheme ("Yale investigated the allegations, and the admission of the student who received a fraudulent endorsement has been rescinded.")

¹⁹ Gabrielle Fonrouge, *Stanford Kicks Out First Student Connected to Admissions Scandal*, N.Y. POST (Apr. 8, 2019, 4:33 PM), <https://nypost.com/2019/04/08/stanford-kicks-out-first-student-connected-to-admissions-scandal/> (noting that Stanford concluded its investigation into false application allegations and rescinded admission of the student, vacated credit, and removed the student from campus grounds).

²⁰ Jackie Salo, *Lori Loughlin's Daughters Not Allowed to Withdraw From USC*, PAGE SIX (Apr. 10, 2019, 10:17 AM), <https://pagesix.com/2019/04/10/lori-loughlins-daughters-not-allowed-to-withdraw-from-usc/>.

²¹ *Id.*

²² Hunter, *supra* note 5.

²³ When addressing the four worst offenders, Douglas Hodge, Michelle Janavs, and Manuel and Elizabeth Henriquez, prosecutors told U.S. District Judge Nathaniel M. Gorton: "They allowed their children to become complicit in their crimes." Chris Villani, *Feds Want 2 Years for Ex-Pimco CEO's 'Varsity Blues' Bribes*, LAW360 (Feb. 3, 2020, 7:03 PM EST), <https://www.law360.com/media/articles/1239785>; see also Aaron Leibowitz & Chris Villani, *Feds Threaten 'Varsity Blues' Children with Charges*, LAW360 (Apr. 12, 2019, 6:04 PM EDT), <https://www.law360.com/media/articles/1149746>. (noting "[e]vidence in the case suggests that some of the students knew about the scheme and were active participants" and quoting Assistant U.S. Attorney Eric Rosen, who said: "At times, the students were in on it."). In one instance, a student sat next to a "test-taking whiz" who gave her the answers. *Id.* Patrick Cotter, a defense attorney with Greensfelder Law Firm, and a former federal prosecutor, expressed doubts that the students could not have known about their parents' activity, stating:

You suddenly find yourself getting an acceptance letter based on your being on the crew team and you have never been in a scull and don't know what an oar is . . . If you're smart enough to go to college, you're smart enough to know that is a lie.

Chris Villani, *Tough 'Varsity Blues' Prosecution Tactics Level Playing Field*, LAW360 (Apr. 17, 2019, 8:42 PM), <https://www.law360.com/articles/1149933/tough-varsity-blues-prosecution-tactics-level-playing-field>.

In other instances, the students knew that their parents were exerting influence to gain their admission but did not know that their parents were engaging in criminal activity. Desiree Murphy, *Olivia Jade 'Terrified' at the Possibility of Testifying Against Parents Lori Loughlin and Mossimo Giannulli*, YAHOO (Apr. 17, 2019), <https://www.yahoo.com/entertainment/olivia-jade-aposterrified-apos-212817267.html>. For example, Olivia Jade and her sister Isabella knew that her parents were talking to a man who could help them get into USC, but "didn't realize the extreme lengths" of their parents' actions. *Id.* Supposedly, "the sisters thought that the money their parents allegedly 'donated' was going to scholarships for students actually on the crew team." *Id.*

²⁴ Leibowitz, *Ex-Willkie Co-Chair Pleads Guilty In 'Varsity Blues'* *supra* note 3 (quoting statement of Gordon Caplan).

²⁵ *Id.*

for her son to attend Georgetown as a tennis recruit and her daughter to attend USC as a beach volleyball recruit, asked Singer how he worked with the children without them knowing what he was really doing.²⁶ He reportedly replied: “Oh, in most cases, Michelle, none of the kids know.”²⁷ Similarly, another parent, Bill McGlashan, expressed concern about keeping his son in the dark about the scheme to admit him to USC as a football recruit.²⁸ Felicity Huffman also claims that her daughter knew nothing about her actions.²⁹

C. *Students Sued the Universities*

“[T]he real victims in this case are the hardworking students who did everything they could to set themselves up for success in the college admissions process, but ended up being shut out because far less qualified students and their families simply bought their way in,” said FBI Special Agent Joseph Bonovolonta.³⁰ Agent Bonovolonta additionally said that the Varsity Blues parents’ “actions were without a doubt insidious, selfish and shameful.”³¹ Lawsuits by third parties have been filed against the schools involved in the scandal as well as the parents involved in the scheme. Jennifer Kay Toy is suing the Varsity Blues parents, alleging that “the actions of those implicated in the scheme prevented her son, Joshua Toy, from being admitted to several colleges ensnared in the scandal.”³² Two Stanford students filed a federal class-action against the eight universities involved in the scandal, arguing they were denied a fair chance to be admitted.³³ They seek damages for anyone who applied and was rejected between 2012 and 2019.³⁴ One of those students, Erica Olsen, claims she “did not receive what she paid for—a

²⁶ Golden & Burke, *supra* note 5.

²⁷ *Id.* (quoting statement of William Singer). Grant Janavs, a graduate of Sage Hill School in Newport Coast, California was recruited to the Georgetown tennis team after his mother arranged to have his grandfather’s foundation wire \$400,000 to Singer’s foundation. *Id.* Grant was a member of the Sage Hill tennis team and had no reason to suspect his admission was not deserved. *Id.* No charges were filed against Grant and there is no evidence to suggest he knew what his mother had arranged. *Id.* While two other Georgetown students were expelled, Janavs was allowed to stay. *Id.*

²⁸ See Littleton, *supra* note 3.

²⁹ Nate Raymond, *Actress Felicity Huffman, 13 Others to Plead Guilty in U.S. College Admissions Scandal*, REUTERS (Apr. 8, 2019, 11:59 AM), <https://www.reuters.com/article/us-usa-education-cheating/actress-felicity-huffman-13-others-to-plead-guilty-in-u-s-college-admissions-scandal-idUSKCN1RK27B> (Huffman said: “My daughter knew absolutely nothing about my actions . . .”). Huffman’s daughter reportedly asked Huffman why Huffman “didn’t believe in her.” Bill Hutchinson et al., *Felicity Huffman Sentenced to 14 Days in Prison for ‘Varsity Blues’ College Scam*, ABC NEWS (Sept. 13, 2019, 2:52 PM), <https://abcnews.go.com/US/sentencing-day-actress-felicity-huffman-varsity-blues-college/story?id=65563086>.

³⁰ Hanna Fry, *College Admissions Scandal Fallout: Stanford Students Sue UCLA, USC and Yale*, L.A. TIMES (Mar. 14, 2019, 9:10 AM), <https://www.latimes.com/local/lanow/la-me-ln-college-admissions-scam-stanford-ucla-usc-lawsuit-20190314-story.html> (quoting statement of FBI Special Agent Joseph Bonovolonta).

³¹ *Id.* (quoting statement of FBI Special Agent Joseph Bonovolonta).

³² Josh Korp, *Lori Loughlin and Felicity Huffman are Being Sued by an Angry Parent for \$500 Billion Over Operation Varsity Blues*, UPROXX (Mar. 18, 2019), <https://uproxx.com/viral/lori-loughlin-felicity-huffman-lawsuit-operation-varsity-blues/> (quoting statement of Jennifer Kay Toy).

³³ Fry, *supra* note 30.

³⁴ *Id.*

fair admissions consideration process,” referring to the \$80 she paid to apply to Yale in 2017.³⁵ An additional class action was filed by fourteen students and twelve parents of students denied admission for refund of application fees.³⁶ This action asks the judge to enjoin the universities from continuing unfair business practices and require that the universities pay damages and restitution, including punitive damages and attorneys’ fees.³⁷

One of the students who was expelled from Georgetown after the scandal broke, Adam Semprevivo, also brought a lawsuit against Georgetown, seeking an injunction prohibiting Georgetown from revoking his academic credits.³⁸ Semprevivo voluntarily dismissed the lawsuit about two months after it was filed.³⁹ His lawyer claimed the purpose of the dismissal was to permit Semprevivo to “focus on successfully finishing his undergraduate degree.”⁴⁰

IV. FUTURE ACTIONS FOR NONDISCLOSURE FRAUD?

As of yet, the innocent student victims of the Varsity Blues scandal—those children who did not know what their parents did and who suffered greatly when the scandal broke—have not sued the perpetrators of the fraud: their own parents. Obviously, lawsuits between children and their parents are fraught with difficulties due to the relationship between the parties, but lawsuits between children and their parents do occur. While litigation between parents and children may seem distasteful, parents are not shielded from the consequences of their wrongdoing simply because of the parental relationship. Children have sued for college tuition, child abuse, and even being born without consent, all with varying degrees of success.⁴¹ And, in a very public disclosure of former White House Counselor KellyAnne Conway’s family strife, her fifteen-year-old daughter sought emancipation to

³⁵ *Id.* (quoting Complaint at 16, *Olsen et al. v. Singer et al.*, No. 3:19-cv-01351 (N.D. Cal. Mar. 13, 2019)).

³⁶ Joey Garrison, *14 More Rejected Students Sue Universities, Mastermind of Admissions Scheme*, USA TODAY (June 19, 2019), <https://www.usatoday.com/story/news/nation/2019/06/18/14-more-rejected-students-file-class-action-suit-against-universities-mastermind-admissions-scheme/1489550001/>.

³⁷ *Id.*

³⁸ Riley Rogerson, *Former GU Student Dismisses His Lawsuit Against School*, HOYA (July 19, 2019), <https://thehoya.com/former-gu-student-dismisses-lawsuit-school/>.

³⁹ *Id.*

⁴⁰ *Id.* (quoting statement of Mark Zaid, attorney to Adam Semprevivo).

⁴¹ See Rachel Bertsche, *21-Year-Old Sues Parents for College Tuition—and Wins*, YAHOO (Dec. 9, 2014), <https://www.yahoo.com/news/21-year-old-sues-parents-for-college-tuition-and-104767331362.html> (detailing the story of Caitlyn Ricci who sought tuition reimbursement from her parents for Rowan College and Temple University); George Khoury, *Can You Sue Your Parents for Child Abuse?*, FINDLAW (Mar. 31, 2017, 12:00 PM), <https://blogs.findlaw.com/injured/2017/03/can-you-sue-your-parents-for-child-abuse.html>; Amanda Tarlton, *Son is Suing Parents Because He Did Not Consent to Being Born*, YAHOO (Feb. 6, 2019), <https://www.yahoo.com/lifestyle/son-suing-parents-because-did-161123620.html> (noting that anti-natalist Raphael Samuel believes birth forces children to live a life they did not request).

separate from her parents.⁴² As discussed below, should the Varsity Blues children decide to sue their parents, the best path for the children may be an action for nondisclosure fraud, particularly for those who can establish that they suffered economic damages.

A. *Elements of Nondisclosure Fraud*

The most common type of fraud is when a person makes an affirmative misrepresentation of fact to another.⁴³ However, the failure to *disclose* a fact may be treated the same as an affirmative misrepresentation under certain circumstances.⁴⁴ According to the *Restatement of Torts* (“*Restatement*”):

One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting . . . is subject to the same liability . . . as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.⁴⁵

There are five elements in an action for fraud and deceit based on a concealment. First, the defendant must have concealed or suppressed a material fact.⁴⁶ Second, the defendant must have been under a duty to disclose the fact to the plaintiff.⁴⁷ Third, the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff.⁴⁸ Fourth, the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact.⁴⁹ Finally, as a result of the concealment or suppression of the fact, the plaintiff must

⁴² *Kellyanne Conway's Daughter I Can't Take it Anymore!!! I Want Emancipation!!!*, TMZ (Aug. 23, 2020, 6:39 AM), <https://www.tMZ.com/2020/08/23/kellyanne-conways-daughter-claudia-officially-pushing-for-emancipation/> (noting that daughter Claudia's strong opposition to her parents' politics led her to seek emancipation).

⁴³ Michael M. Krauss, *Common Law Fraudulent Misrepresentation and Negligent Misrepresentation*, BUS. DISPS.: CLAIMS & REMEDIES 2019 at 1-1, 1-1. According to the *Restatement of Torts*:

One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.

RESTATEMENT (SECOND) OF TORTS § 525 (AM. LAW INST. 1977).

⁴⁴ See RESTATEMENT (SECOND) OF TORTS § 551 (AM. LAW INST. 1977).

⁴⁵ *Id.*

⁴⁶ *Boschma v. Home Loan Ctr., Inc.*, 198 Cal. App. 4th 230, 248 (2011) (citing *Hahn v. Mirada*, 147 Cal. App. 4th 740, 748 (2007) (reversing lower court's sustaining of a demurrer in borrowers' claim against mortgage lender for nondisclosure fraud based on mortgage lender's failure to disclose that making scheduled payments in an adjustable rate mortgage definitely would result in negative amortization).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

have sustained damage.⁵⁰ Following is an analysis of each of these elements in the context of the Varsity Blues scandal.

B. Element 1: The Parents Concealed or Suppressed a Material Fact

The nature of the facts allegedly concealed or suppressed by the parents in the Varsity Blues scandal fall into two general categories: (1) the parents paid test proctors to correct their child's ACT or SAT exam; and/or (2) the parents paid a bribe to sports coaches or athletic directors to accept their child onto a particular sports team.⁵¹ The question is whether the fact that the invitation to admission at a certain educational institution was based not on the student's merits but instead on cheating on the college admissions exams and/or a bribe to an athletic coach or director is material. Under the applicable law, a fact is material if a person would attach significance to it in determining their course of action.⁵² One could certainly make a strong argument that knowing that a college admission invitation was based on some criminal activity rather than the student's own merits would be significant in the student's choice to accept or decline the invitation.

C. Element 2: The Parents Had a Duty to Disclose Their Actions to Their Children

For purposes of nondisclosure fraud, a duty to disclose may arise under four circumstances: (1) the existence of a fiduciary or confidential relationship between the parties; (2) the defendant makes some representations but does not share facts that would materially qualify the disclosed facts or which render his disclosure misleading; (3) the facts are

⁵⁰ *Id.*; see also *Bombardier Aero. Corp. v. SPEG Aircraft Holdings, L.L.C.*, 572 S.W.3d 213 (Tex. 2019) (affirming a nondisclosure fraud judgment where defendant, who stood in a fiduciary relationship with plaintiffs, failed to disclose that engines on a "new" aircraft were repaired, not new); *Sousa v. Sousa*, 164 A.3d 702, 715-16 (Conn. App. Ct. 2017) (finding no nondisclosure fraud when husband in divorce proceeding did not knowingly conceal facts or purposely mislead).

⁵¹ See Bryant, *supra* note 2. Athletic departments have more leeway to accept students who do not otherwise meet the academic standards for admission at their respective institutions. Valerie Strauss, *Who Gets the Largest College Admissions Advantage? Let's look at the Athletes.*, WASH. POST (Mar. 13, 2019, 2:19 PM), <https://www.washingtonpost.com/education/2019/03/13/who-gets-largest-college-admissions-advantage-lets-look-athletes/> (citing *College and Beyond*, ANDREW W. MELLON FOUND., <https://mellon.org/grants/grants-database/grants/national-opinion-research-center/19600698/> (last visited May 14, 2021)) ("[A]thletes with lower academic credentials get admitted at four times the rate of non-athletes with similar credentials.")

⁵² RESTATEMENT (SECOND) OF TORTS § 538(2)(a) (AM. LAW INST. 1977) (a misrepresentation is material if "a reasonable [person] would attach importance to its existence or nonexistence in determining his [or her] choice of action . . ."); *id.* at § 538 (2)(b) (A misrepresentation is also material if the defendant knew or had reason to know that it had special significance for the plaintiff). In *Brown v. Search*, the Wisconsin Supreme Court addressed the issue of materiality in the context of admission to an educational institution. See generally 111 N.W. 210 (Wis. 1907). There, the Wisconsin Supreme Court found that defendant's false representation that several classmates of the plaintiff's daughter had already enrolled in its school, in order to induce the plaintiff to enroll his daughter, was material. *Id.* at 213. In the real estate context, a fact is material if it affects the value or desirability of the property. *Real Estate Transactions: Failure to Disclose Lawsuits*, WAGENSELLER L. FIRM BLOG, <https://wagensellerlaw.com/real-estate-transactions-failure-disclose-lawsuits/> (last visited May 14, 2021).

only known or accessible to the defendant, and defendant knows that the plaintiff does not know or reasonably discover them; or (4) the defendant actively conceals discovery of the facts from the plaintiff.⁵³ At least three of these four circumstances are arguably present here.

1. Existence of a Fiduciary or Confidential Relationship

A fiduciary duty arises as a matter of law in formal relationships, including attorney-client, partnership, and trustee relationships.⁵⁴ Whereas, a confidential relationship is one in which the “parties have dealt with each other in such a manner for a long period of time that one party is justified in expecting the other to act in its best interest.”⁵⁵ Finally, an informal relationship giving rise to a duty may also be formed from “a moral, social, domestic or purely personal relationship of trust and confidence.”⁵⁶

Courts have generally held that a fiduciary relationship exists between parents and their minor children. For example, in *Murphy v. Murphy* (“*Murphy*”), the court noted that parents, as the natural guardians of their children, owe a fiduciary duty to their children regarding the children’s property.⁵⁷ In *Murphy*, the court held that a father had a fiduciary duty to repay monies that he had taken from his children’s trust account.⁵⁸ In *Cumberland v. Cumberland*, the court held that parents receive child support payments as fiduciaries of their children.⁵⁹ Similarly, in *S.V. v. R.V.*, the court noted that parents generally stand in the role of fiduciaries to their minor children.⁶⁰ As noted by Elizabeth S. Scott and Ben Chen:

[T]he parent-child relationship shares much in common with other fiduciary relationships, such as guardianships, trusts, and relationships between corporate directors and shareholders. Like other fiduciaries, parents are agents who hold asymmetric power and wield substantial discretionary authority in a relationship that aims to benefit the principal. And like other principals, children are vulnerable and not in a position to supervise or control parental performance. Here, as in other fiduciary contexts, the goal of legal regulation is to encourage the parent to serve the child’s

⁵³ *Warner Constr. Corp. v. City of Los Angeles*, 2 Cal. 3d 285, 293 (1970); *Stolzoff v. Waste Sys. Int’l, Inc.*, 792 N.E.2d 1031, 1044 (Mass. 2003).

⁵⁴ *Bombardier Aero. Corp.*, 572 S.W.3d at 220.

⁵⁵ *Id.* (quoting *Ins. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998)).

⁵⁶ *Id.* at 219 (quoting *Meyer v. Cathey*, 167 S.W.3d 331 (Tex. 2005)). *But cf.* *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962) (holding that mere subjective trust is not enough to “transform arms-length dealing into a fiduciary relationship . . .”).

⁵⁷ 694 A.2d 932, 936 (Me. 1997).

⁵⁸ *Id.*

⁵⁹ 564 So. 2d 839, 847 (Miss. 1990) (citing *Alexander v. Alexander*, 494 So. 2d 365, 368 (Miss. 1986)); *see also* *Owen v. Wilkinson*, 915 So. 2d 493, 496 (Miss. Ct. App. 2005).

⁶⁰ 933 S.W.2d 1, 8 (Tex. 1996).

interest, and to do so under conditions in which monitoring is difficult.⁶¹

The existence of a fiduciary relationship between a parent and an adult child, on the other hand, is a factual determination.⁶² However, a fiduciary or confidential relationship is particularly likely to exist between family members and friends.⁶³ In *Crider v. Crider*, for example, the court held that:

Where the relationship is one of parent and child, if the plaintiff demonstrates both that such a relationship exists and that the questioned transaction between the two parties resulted in an advantage to the dominant party in whom the subordinate party had reposed both their trust and confidence, “the law imposes a presumption the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent, and thus void.” When this occurs, the burden shifts to the dominant party to demonstrate that the questioned transaction was in fact an arms-length transaction and thus valid. The question of which party has attained the position of the dominant party, under the evidence, is a question for the trier of fact.⁶⁴

In general, a confidential relationship arises when one party places confidence in the other with a resulting superiority and influence on the other side.⁶⁵

It is likely that the majority, if not all, of the Varsity Blues children will be able to establish that their parents stood in a fiduciary or confidential relationship with them. Since the children were applying to college, it is reasonable to assume that some of them were still minors at the time that their parents engaged in the bribery/testing schemes. For those children who had attained majority, their parents, in the eyes of the children, were assisting and guiding them in their college planning and applications. It is not difficult to conclude that these children placed trust and confidence in their parents

⁶¹ Elizabeth S. Scott & Ben Chen, *Fiduciary Principles in Family Law*, COLUM. L. SCH. 1, 3 (2018), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3087&context=faculty_scholarship.

⁶² *See id.*

⁶³ *See, e.g.*, RESTATEMENT (SECOND) TRUSTS § 2 cmt. f (AM. L. INST. 1959); RESTATEMENT (SECOND) OF TORTS § 551 cmt. f (AM. L. INST. 1977) (“Members of the same family normally stand in a fiduciary relation to one another”); *Vai v. Bank of America National Trust & Savings Ass’n*, 364 P.2d 247, 250 (Cal. 1961) (holding that husband owed wife a fiduciary duty, even though the parties had separated, because husband had management control over community property).

⁶⁴ 635 N.E.2d 204, 210 (Ind. Ct. App. 1994) (emphasis in original) (quoting *Lucas v. Frazee* 471 N.E.2d 1163, 1166–67 (Ind. Ct. App. 1984)).

⁶⁵ *See, e.g.*, *Yohe v. Yohe*, 353 A.2d 417, 421 (Pa. 1976) (holding that a confidential relationship “arises when one party places confidence in the other with a resulting superiority and influence on the other side”); *In re Guardianship of Chandos*, 504 P.2d 524, 526 (Ariz. Ct. App. 1972) (holding that a confidential relationship existed between an elderly man and close friends with whom he lived); *Perry v. Jordan*, 900 P.2d 335, 338 (Nev. 1995) (holding that a confidential relationship existed between close friends and neighbors).

during this process and that the parents had superiority and influence on their children's decision as to which college to attend.

2. The Defendant Makes a Disclosure, but it is Likely to Mislead

Even if a fiduciary or confidential relationship did not exist, the parents arguably made a partial disclosure to the children and had a duty to complete the disclosure. A duty to disclose also arises when a party makes representations but does not disclose facts that materially qualify the facts disclosed or that render the disclosure likely to mislead.⁶⁶ It is reasonable to conclude that many such partial disclosures were made by the parents in these circumstances: "Wow! You scored a 35 on the ACT and got a perfect SAT math score! Fantastic job!!" (Did we mention that we paid the proctor to correct your test?); or, "Congratulations!! You got admitted to Stanford!" (By the way, you should know that we bribed the sailing coach to get you there.) Such partial disclosures would also give rise to a duty to disclose those facts that would make the facts that were disclosed not misleading.⁶⁷

3. The Defendant Knows that Undisclosed Facts are not Reasonably Discoverable by the Plaintiff

This third element is likely to be satisfied as well since, in many instances, the facts were known only to the parents and not reasonably discoverable by the children.⁶⁸ For those children who were unaware of what their parents were doing, it would not be reasonable for the children to discover that their parents had committed crimes to obtain their child's college admission. As noted above, many of the parents were adamant that steps be taken so that their children did not find out about the parents'

⁶⁶ See RESTATEMENT (SECOND) OF TORTS § 551 (AM. LAW INST. 1977).

⁶⁷ See, e.g., *Lubore v. RPM Assocs.*, 674 A.2d 547, 556 (Md. Ct. Spec. App. 1996) ("One who conceals facts that materially qualify affirmative representations may be liable for fraud."); *Mktg. W., Inc. v. Sanyo Fisher (USA) Corp.*, 6 Cal. App. 4th 603, 613 (1992) (noting where one undertakes to speak to a matter, he must not only state the truth, he must also not suppress or conceal facts within his knowledge that materially affect those stated); *McCue v. Bruce Enters., Inc.*, 228 Cal. App. 2d 21, 27–29 (1964) (noting that a duty to disclose may also arise in the so-called "half-truth" context—that is, when a speaker makes a representation which, though not false, he knows will be misleading absent full disclosure of additional facts known to him which qualify the initial representation.).

⁶⁸ See *Warner Constr. Corp. v. City of Los Angeles*, 2 Cal. 3d 285, 294–95 (1970) (holding that concealment by city of fact that cave-ins had occurred in both test holes drilled by the city and two ancient landslides had occurred at the construction site was fraud where facts were known exclusively by the city and were not reasonably discoverable by the plaintiff). Liability for facts known to only one person is a well-settled principle of law. For example *Jenkins v. McCormick* stated that:

There is much authority to the effect that if one party to a contract or transaction has superior knowledge, or knowledge which is not within the fair and reasonable reach of the other party and which he could not discover by the exercise of reasonable diligence, or means of knowledge which are not open to both parties alike, he is under a legal obligation to speak

339 P.2d 8 (Kan. 1959) (quoting 23 AM. JUR. 857 *Fraud and Deceit* § 80 (1940)). Further, "[i]f the fact concealed is peculiarly within the knowledge of one party and of such a nature that the other party is justified in assuming its nonexistence, there is a duty of disclosure, and deliberate suppression of such fact is fraud." *Id.* (emphasis omitted) (quoting 37 C.J.S. *Fraud* § 16b (1943)).

wrongdoings.⁶⁹

D. Element 3: The Parents Had an Intent to Defraud their Children

An intent to defraud means an intent to induce reliance by another party on the misrepresentation.⁷⁰ Undoubtedly, the primary parties that the parents intended to defraud by their actions were the educational institutions to which they sought to have their children admitted. However, the parents arguably intended to defraud their children as well. After all, the end goal here was to have their children accept the offer of admission once it was made. The act induced by the fraud can be a transaction entered into by the defrauded party with a third party.⁷¹ In this case, the child's acceptance of admission to the educational institution would be sufficient. The fact that the parents intended to defraud their children as well as the educational institutions can be inferred from the fact that many of the parents went to great efforts to conceal their actions from the children.

E. Element 4: The Children Were Unaware of the Facts and Would Not Have Acted as They Did Had They Known Them

With nondisclosure fraud, the only reliance required is that "the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact."⁷² This would be an element of proof at trial. Were the children truly unaware of what their parents did? If they knew that their offer of admission was based on the criminal activity of their parents, would they have nevertheless accepted the offer of admission or turned it down? Once again, the fact that many parents went to great measures to conceal their activities from their children leads to a conclusion that at least some of the children would have turned down their offer of admission had they known all the facts.

⁶⁹ See *supra* Part IV.

⁷⁰ See RESTATEMENT (SECOND) OF TORTS § 531 (AM. L. INST. 1977).

One who makes a fraudulent misrepresentation is subject to liability to the persons or class of persons whom he intends or has reason to expect to act or to refrain from action in reliance upon the misrepresentation, for pecuniary loss suffered by them through their justifiable reliance in the type of transaction in which he intends or has reason to expect their conduct to be influenced.

Id.; *Lovejoy v. AT&T Corp.*, 92 Cal. App. 4th 85, 93 (Cal. Ct. App. 2001) ("[L]iability is affixed not only where the plaintiff's reliance is *intended* by the defendant but also where it is *reasonably expected* to occur.") (emphasis in original).

⁷¹ See, e.g., *S. States Dev. Co., v. Robinson*, 494 S.W.2d 777, 782 (Tenn. Ct. App. 1972) ("[W]hen a party misrepresents a fact knowing that such misrepresentation is to be relied upon by another, he is liable to such other party for the loss caused by such reliance even in the absence of a contractual relationship between the misrepresenter and the one who has relied upon the fact.")

⁷² *Mktg. W., Inc.*, 6 Cal. App. 4th at 613; RESTATEMENT (SECOND) OF TORTS § 550 (AM. L. INST. 1977). Some courts have suggested that reliance should be presumed in cases of nondisclosure fraud because it can be difficult to prove reliance on a non-statement. See John C.P. Goldberg, Anthony J. Sebok, Benjamin C. Zipursky, *The Place of Reliance in Fraud*, 48 ARIZ. L. REV. 1001, 1007 (2006).

F. Element 5: At Least Some of the Children Appear to Have Sustained Those Types of Damages Necessary to Support a Cause of Action for Nondisclosure Fraud

The next issue to examine is whether the children suffered recoverable damages as the result of the fraud. While the *Restatement* suggests that only pecuniary, i.e., economic, damages are available for actions for fraud, there is a split among the states as to whether non-economic damages such as emotional distress and pain and suffering, may also be recovered.⁷³

Some, but not all, states permit the award of damages for pain, suffering, and mental anguish in causes of action for nondisclosure fraud.⁷⁴ For the Varsity Blues children residing in such states, they would be allowed to claim damages based on provable emotional distress caused by the pain and suffering they endured when their parents' criminal conduct was exposed. Potential points of emotional distress could include expulsion from the university they were enrolled in, having their admission rescinded, or enduring ridicule and embarrassment from their situation.⁷⁵

But other jurisdictions reject recovery for non-economic damages in deceit cases, in which case the children would only be able to recover if they could prove that they incurred economic damages.⁷⁶ In exploring whether the Varsity Blues children incurred any economic damages, one must remember that arguably they were admitted to an institution to which they would not have been otherwise admitted on their own merits. Therefore, their seat in that educational institution was not one that they were entitled to in the first place, and, if they had their admission revoked, it is therefore likely that this act alone did not cause them economic damage.

Also, one must keep in mind the established principle that speculative damages are not awardable.⁷⁷ As stated in the *Restatement*:

⁷³ See RESTATEMENT (SECOND) OF TORTS § 525 (AM. L. INST. 1977). Compare *Williams v. Mann*, 143 A.D.3d 813, 813–14 (N.Y. App. Div. 2016) (“Here, the defendant established his prima facie entitlement to judgment as a matter of law by demonstrating that the sole damages claimed to have been sustained by the plaintiff were pain, suffering, and mental anguish.”), with *Sprague v. Frank J. Sanders Lincoln Mercury Inc.*, 120 Cal. App. 3d 412, 417 (1981) (“That general damages for mental pain and suffering are recoverable in a tort action of deceit is established by the cases.”). For a comparison of the laws of recoverable damages for deceit by jurisdiction, see Andrew L. Merrit, *Damages for Emotional Distress in Fraud Litigation: Dignitary Torts in a Commercial Society*, 42 VANDERBILT L. REV. 1, 4, n.11 (1989) (concluding that jurisdictions that have addressed the award of emotional distress damages in deceit cases are divided almost evenly).

⁷⁴ Merrit, *supra* note 73.

⁷⁵ In addition to emotional distress damages caused by the exposure of the parents' conduct, prosecutors sent target letters to some of the students involved, if they were over eighteen years old when the cheating scheme was exposed. Leibowitz & Villani, *supra* note 23 (“Target letters typically let individuals know they are the subject of a federal criminal investigation and encourage them to provide assistance to the government.”).

⁷⁶ Merrit, *supra* note 73, at n.11.

⁷⁷ See RESTATEMENT (SECOND) OF TORTS § 912 (AM. L. INST. 1977).

One to whom another has tortuously caused harm is entitled to compensatory damages for the harm if, but only if, one establishes by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit.⁷⁸

However, the specific circumstances of certain children in the middle of the scandal may establish sufficient economic damage to support an action for nondisclosure fraud against their parent(s). Consider, for example, Olivia Jade and Adam Semprevivo.

One of the most well-known students in the midst of the scandal is Olivia Jade, the daughter of actress Lori Loughlin and fashion designer Mossimo Giannulli.⁷⁹ Olivia had established herself as a social media beauty influencer with millions of followers.⁸⁰ She had endorsements from many well-known companies, such as Sephora, TRESemmé, and Estée Lauder.⁸¹ Olivia's parents allegedly paid \$500,000 to have Olivia and her older sister admitted to USC as members of the crew team, even though they had never participated in crew.⁸² One of the most tragic parts of this particular story is that Olivia purportedly never wanted to attend college—she was happy continuing on in her successful endeavor as a beauty influencer.⁸³

After the scandal broke, Olivia was disenrolled from USC.⁸⁴ With the resulting publicity, she was dropped by Sephora, TRESemmé, and Estée

⁷⁸ *Id.* Thus, in *Weinstein v. Wheeler*, letters written by and to the plaintiff regarding his intention to study for the concert stage were inadmissible because it was too uncertain and speculative for the plaintiff to tell what he intended to do in the future. 271 P. 733, 734 (Or. 1928). Similarly, in *Henne v. Balick*, the court held that an award of future earnings of a law student were too speculative. 146 A.2d 394, 397 (Del. 1958) (“In this case plaintiff at the time of the accident was a law student, without any history of actual earnings.”).

⁷⁹ Todd Spangler, *Olivia Jade, Lori Loughlin's Daughter, Stands to Lose Brand Deals Over College-Admissions Scandal*, VARIETY (Mar. 13, 2019, 12:31 PM), <https://variety.com/2019/digital/news/olivia-jade-lori-loughlin-college-scam-influencer-brand-deals-1203162624>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See Bryant, *supra* note 2.

⁸³ Christopher Rosa, *The Lori Loughlin and Felicity Huffman College Cheating Scandal is too Fascinating*, YAHOO (June 11, 2019), <https://www.yahoo.com/lifestyle/lori-loughlin-felicity-huffman-college-183944060.html>. “[Olivia Jade’s] parents said she would have to juggle college and her career. Now she’s devastated because everything she built imploded before her eyes. . . . She feels [her parents] ruined everything.” *Id.* After the scandal broke, a source reported to People Magazine that:

She is very angry with her parents. She wants to figure out how she can rebuild her brand. . . . She didn’t care if she got into USC. She just wanted to focus on her business. . . . She feels that she worked very hard for something that she loves, and she has no idea what will happen with her business in the future.

Emma Baty, *Olivia Jade is Reportedly “Distraught and Embarrassed” by the College Bribery Scandal*, COSMOPOLITAN (Apr. 5, 2019), <https://www.cosmopolitan.com/entertainment/celebs/a27056811/olivia-jade-lori-loughlin-bribery-scandal-brand/>.

⁸⁴ Susan Svrluga, *Lori Loughlin's Daughters are No Longer Enrolled at USC*, WASH. POST (Oct. 22, 2019, 2:55 PM), <https://www.washingtonpost.com/education/2019/10/22/lori-loughlins-daughters-are-no-longer-enrolled-usc/>.

Lauder, among others.⁸⁵ Many other companies who had previously done projects with Olivia announced that they would not participate in any future projects with her.⁸⁶ In this instance, there appears to be relatively certain and quantifiable economic damages that would possibly support a claim for nondisclosure fraud.⁸⁷

Adam Semprevivo's father paid a \$400,000 bribe to the tennis coach at Georgetown University and successfully got Semprevivo admitted.⁸⁸ Semprevivo had just finished his junior year when the scandal broke; after three years of attending Georgetown, Semprevivo was expelled and was not allowed any credits for his completed coursework.⁸⁹ Similarly, an anonymous student at Yale, whose parents paid a \$1.2 million bribe to the soccer coach, was already attending Yale when she had her admission revoked.⁹⁰ An unidentified Stanford student was similarly expelled and not allowed any credits for coursework completed.⁹¹ Several students at USC who were already enrolled were not allowed to register for the next semester.⁹² For these students, their time as a student at these educational institutions was arguably wasted. Some economic value can likely be ascribed to time spent enrolled at college, believing that academic credits were being earned, but, in the end, having nothing to show for it. This time will now have to be repeated in order to obtain the benefits the students believed they were obtaining, so some economic value can be ascribed to the lost time.⁹³

Another category of students are those whose admissions were

⁸⁵ Spangler, *supra* note 79 (reporting that Sephora had dropped its business dealings with Olivia Jade); Claire Lampen, *Olivia Jade Will Return to Full-Time Influencing*, VULTURE (Aug. 11, 2019), <https://www.vulture.com/2019/08/olivia-jade-quit-usc-to-rebuild-personal-brand.html> (reporting that Olivia Jade had been dropped by Sephora, TRESemme, and Estée Lauder).

⁸⁶ Spangler, *supra* note 79 (stating that Hewlett Packard and online fashion retailer Lulus announced no plans to work with Olivia Jade in the future).

⁸⁷ While Olivia and her sister purportedly knew that their parents were exerting some influence to get them admitted to USC, they claim to have not known the magnitude of their actions. Murphy, *supra* note 23. Wealthy parents have often been able to gain their children's admissions to certain educational institutions by making large donations. See Wesley Whistle, *The Varsity Blues College Admissions Scandal Continues*, FORBES (Sept. 3, 2020, 2:20 PM), <https://www.forbes.com/sites/wesleywhistle/2020/09/03/the-varsity-blues-college-admissions-scandal-continues/?sh=3a289d1471cb>. ("Instead of bribing individuals to help their children get admitted, many parents or other family members donate directly to colleges and universities in hopes of doing so."); see also Gross, *supra* note 13. Mr. Whistle notes that former President Trump's son-in-law, Jared Kushner, was admitted to Harvard after his father made a \$2.5 million donation, and that the current Postmaster General, Louis DeJoy's son was admitted to Duke the same year that DeJoy made a \$737,000 donation to the university. Whistle, *supra*. That may seem unfair, but, in contrast to the Varsity Blues scandal, it is not illegal. *Id.*

⁸⁸ Hunter, *supra* note 5; see also Joey Garrison, *Georgetown to Expel Student After He Sues Over its Handling of College Admissions Probe*, USA TODAY (May 15, 2019, 11:25 AM), <https://www.usatoday.com/story/news/nation/2019/05/15/college-admissions-scandal-adam-semprevivo-stephen-semprevivo-georgetown-tennis-bribery-rick-singer/3677541002/>.

⁸⁹ Garrison, *supra* note 88.

⁹⁰ Levenson & Anthony, *supra* note 18.

⁹¹ Fonrouge, *supra* note 19.

⁹² Salo, *supra* note 20.

⁹³ See James Clear, *The Value of Time: How Much is Your Time Really Worth?*, JAMES CLEAR, <https://jamesclear.com/value-of-time> (last visited May 14, 2021).

revoked before they began attending the educational institution. While the damage to these students may appear to be less than that of students in the other categories, the full extent of the harm caused to them has yet to be discovered. It may seem that, at most, they will have to retake the ACT or SAT (for those whose scores were inappropriately inflated) and reapply to college in another year. However, Hanna Stotland, an admissions counselor who specializes in counseling students with “problem” backgrounds, told *Newsweek Magazine* that “it would be ‘very hard’ for any one connected to the scandal to pursue a college education in the United States. This includes younger siblings”⁹⁴ She asserts that a number of schools that she has already spoken with have given her a flat no and surmises that some of her clients who have been accused of sexual misconduct will have a better chance of gaining admission than the Varsity Blues students.⁹⁵ Stotland suggests that there will be limited options for these students, including community college or an education abroad.⁹⁶

Should Stotland’s prediction prove to be true and the Varsity Blues students are forced into community college, an overseas university, or no college at all, once again, there are models that can be used to establish the economic harm caused to these students. Brookings Institute, for example, has prepared a comprehensive report measuring the value of degrees from specific colleges irrespective of student characteristics.⁹⁷ Such a report could assist in proving the monetary difference in career earnings for a student graduating from a community college as opposed to, for example, the University of Colorado.

The proof of these damages for this category of students does raise an issue of speculative damages—it would be potentially difficult for students to prove that they would have been admitted to a particular educational institution but for the Varsity Blues scandal. This is similar to one of the problems faced by the students and families suing the universities and parents involved in the scandal—it will be extremely difficult to prove that they would have been admitted had the seat not been filled by a Varsity Blues student.

However, depending on circumstances, the issue of speculative damages may not be insurmountable. For example, for those students who did not cheat on their ACT or SAT but gained admission through bribery of a sports coach, it is possible that they received acceptances from universities

⁹⁴ Jenni Fink, *Getting ‘Varsity Blues’ Kids Into College After Scandal Is ‘New Frontier of Disadvantage’: Admissions Consultant*, NEWSWEEK (Oct. 23, 2019, 4:56 PM), <https://www.newsweek.com/college-admission-scandal-children-future-education-1467341>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See Siddharth Kulkarni & Jonathan Rothwell, *Beyond College Rankings: A Value-Added Approach to Assessing Two- and Four-Year Schools*, BROOKINGS (Apr. 29, 2015), <https://www.brookings.edu/research/beyond-college-rankings-a-value-added-approach-to-assessing-two-and-four-year-schools/>.

other than the one that was the bribery target. These students would be able to prove, therefore, that they were admitted to and could have attended these specific universities.

There is also a suggestion that even if the students are allowed to stay at the university where they were admitted, the value of that diploma may be reduced since the scandal has “tainted the school’s name and reputation . . .”⁹⁸

Finally, because fraud is an intentional tort, once compensatory damages have been proven, the plaintiffs may also potentially recover punitive damages.⁹⁹ These damages are designed to punish the wrongdoer and to provide an example to others.¹⁰⁰ Punitive damages generally require a showing that the defendant acted with bad faith, malice, or with willing and knowing disregard of the rights of others.¹⁰¹ It is doubtful that in any of these cases, the parents acted with an intent to harm their children. However, it can be argued that the parents acted not with the best interests of their children in mind but for their own egos and personal gratification.¹⁰² A case could be made, then, that the parents acted with willing and knowing disregard of the interests of their children. A jury may be more than willing to punish and make examples of these wealthy parents who have done such significant and lasting damage to the lives of their children.¹⁰³

V. CONCLUSION

More than two years after the first parents were charged, on March 12, 2019, the case continues.¹⁰⁴ With delays blamed in part on the COVID-19 pandemic, the trials of some of the parents have been postponed until September 2021.¹⁰⁵ While prosecutors and the court may be interested in concluding the criminal prosecutions, how does it end for the children of the charged parents? Will they ever feel that the matter is over? Some might argue that the children suing their parents for nondisclosure fraud would further delay the recovery and healing since suing one’s parents does not make for a happy Thanksgiving. On the other hand, if the children were

⁹⁸ Mike Curley, *Celebs, Colleges Hit With Suits Over Admissions Scandal*, LAW360 (Mar. 14, 2019, 1:03 PM EDT), <https://www.law360.com/media/articles/1138986/> (quoting Complaint at 16, Olsen et al. v. Singer et al., No. 3:19-cv-01351 (N.D. Cal. Mar. 13, 2019)).

⁹⁹ RESTATEMENT (SECOND) OF TORTS § 908 (AM. L. INST. 1977).

¹⁰⁰ *Id.* § 908(1).

¹⁰¹ *Id.* § 908(2); David G. Owen, *A Punitive Damages Overview: Functions, Problems and Reform*, 39 VILL. L. REV. 363, 364 (1994).

¹⁰² Did any of the parents stop to ask themselves what the effect would be on their children by having them admitted to and attend a university for which they were not qualified?

¹⁰³ The nature and extent of the harm to the plaintiff that the defendant caused and the wealth of the defendant may both be considered by the trier of fact in determining whether and, if so, how much punitive damages may be awarded. See RESTATEMENT (SECOND) OF TORTS § 908(2) (AM. L. INST. 1977).

¹⁰⁴ See Bryant, *supra* note 2.

¹⁰⁵ Cara Salvatore, *'Varsity Blues' Parents Will Have Single September Trial*, LAW360 (Feb. 16, 2021, 7:01 PM), <https://www.law360.com/articles/1355693>.

damaged by their parents' actions and they have a way to recover financially for that damage, maybe that is the beginning of their road to recovery.