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SAN DIEGO COUNTY, CA

6 Attorneys for Defendant
Thomas Jefferson School of Law
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 ANNA ALABURDA, an individual, on
behalf of herself and all others similarly
11 situated,

12 Plaintiff,

13 v.

14 THOMAS JEFFERSON SCHOOL OF
LAW, and DOES 1 through 100,

15 Defendants.
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17
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19

CASE NO. 37-2011-00091898-CU-FR-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Date: November 18, 2011
Time: 10:30 a.m.
Dept: 66
Judge: Hon. Joel M. Pressman
Complaint Filed: May 26, 2011
Trial Date: None Set

1 I.

2 INTRODUCTION

3 Plaintiff Anna Alaburda alleges that defendant Thomas Jefferson School of Law (“TJSL”)
4 fraudulently induced her to enroll in law school by providing false and/or misleading employment
5 statistics to the U.S. News and World Report (“USNWR”). Plaintiff’s First Amended Complaint
6 (“FAC”), however, is replete with allegations that have absolutely nothing to do with either
7 plaintiff, TJSL, or the information that TJSL provided to USNWR. Culled from newspaper
8 articles and online blogs, the FAC is filled with allegations such as, “there have been reports that
9 ...” and “law schools are also believed to be.” Indeed, the FAC is largely devoted to allegations
10 regarding *other* law schools and the broader law school “industry.” These allegations serve only
11 to sensationalize plaintiff’s claims and tarnish TJSL’s reputation by casting the school as
12 somehow “guilty by association.” Furthermore, even where the FAC does address TJSL, it is
13 riddled with irrelevant “facts” and speculative assertions.

14 This Court is empowered to strike from the FAC the irrelevant and improper allegations
15 that have no bearing on plaintiff’s claims. (*See* Code Civ. Proc. § 436.) For the reasons set forth
16 below, this Court should exercise its discretion to do so.

17 II.

18 **MUCH OF PLAINTIFF’S COMPLAINT HAS NOTHING TO DO WITH TJSL**

19 Plaintiff filed her original Complaint on May 26, 2011, asserting statutory claims under
20 California Business and Professions Code sections 17200 (unfair competition) and 17500 (false
21 advertising), and Civil Code section 1750 *et seq.* (the Consumer Legal Remedies Act or
22 “CLRA”), as well as common law claims for fraud and negligent misrepresentation. The crux of
23 plaintiff’s claims is that TJSL provided false and/or misleading employment statistics to
24 USNWR, which then published this information in their “Best Graduate Schools” edition.
25 Plaintiff claims that she relied on the 2003 edition of the USNWR in deciding to attend law
26 school in September 2005. (FAC, ¶ 53.) Plaintiff also purports to represent a class of California
27 residents who attended TJSL during the statutory period. (FAC ¶ 62.)

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1 On June 13, 2011, plaintiff filed her FAC, which is substantially identical to the
2 Complaint, except that it omits the CLRA claim. Like the original Complaint, the FAC is replete
3 with allegations that have absolutely no bearing on the issues pertaining to TJSL in this litigation.
4 Most egregious is plaintiff's repeated citations to blogs and newspaper articles in which "experts
5 and practitioners" purport to describe the broader "industry" practices and experiences at other
6 law schools. These sections do not address or concern TJSL and, therefore, do not support any of
7 her relevant allegations. Furthermore, plaintiff inserts several allegations regarding TJSL that are
8 inherently speculative and wholly irrelevant to her claims.

9 **III.**

10 **THIS COURT SHOULD STRIKE THE IRRELEVANT ALLEGATIONS CONTAINED**
11 **IN THE FIRST AMENDED COMPLAINT**

12 By statute, this Court "may, upon a motion . . . or at any time in its discretion . . . [s]trike
13 out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc. § 436(a);
14 *see also Los Altos El Granada Investors v. City of Capitola* (9th Cir. 2009) 583 F.3d 674, 687
15 [interpreting California law and explaining that a court "may strike anything else it determines to
16 be irrelevant"].) "Irrelevant matter" includes any allegations that are (1) "not essential to the
17 statement of a claim or defense," and/or (2) "neither pertinent to nor supported by an otherwise
18 sufficient claim or defense." (Code Civ. Proc. § 431.10(b).)

19 Here, plaintiff's allegations pertaining to other law schools or broader industry practices
20 satisfy both criteria for lack of relevance. The alleged actions of other law schools—and the
21 opinion by pundits and commentators regarding these actions—are simply immaterial to
22 plaintiff's claim that TJSL falsified or misrepresented any employment data of its own graduates.
23 Plaintiff does not assert claims against any of these other law schools, nor does she purport to
24 represent a national class of law students. Likewise, it irrelevant that TJSL recently moved into a
25 new building which is eight stories (FAC, ¶43), or that TJSL allegedly made "grandiose
26 representations about the campus and local community." (FAC, ¶ 36.) Even if every one of these
27 allegations was true, it would have no effect whatsoever on the viability of any of plaintiff's
28 claims.

1 But more than simply being irrelevant, the challenged allegations serve the improper
2 purposes of sensationalizing plaintiff's claims to this Court, generating publicity for her lawsuit,
3 and unfairly portraying TJSJ as part of a broader "trend" of law schools duping students. Indeed,
4 the FAC offers a preview of plaintiff's apparent strategy in this case to divert attention from the
5 substantive claims, which are flimsy at best. (See Defendant Thomas Jefferson School of Law's
6 Demurrer to Plaintiff's First Amended Complaint.) This Court should not countenance such a
7 tactic.

8 For these reasons, TJSJ moves to strike the following portions of plaintiff's First
9 Amended Complaint on the grounds that they are irrelevant and improper matter inserted without
10 basis and without relevance to her pleading proper causes of action:

11 1. Paragraph 20: In order to attract larger numbers of prospective students, law
12 schools nationwide have adopted the practice of inflating statistics and presenting misleading
13 figures to U.S. News & World Report, as well as the American Bar Association ("ABA").
14 Students are unaware that these statistics are false and misleading, and they frequently rely on the
15 false statistics in deciding which law school to attend.

16 2. Paragraph 21: The pressure to maintain or boost a given law school's ranking in
17 U.S. News & World Report is substantial. Indeed, "striving for a high U.S. News ranking
18 consumes the bulk of the marketing budget of a vast number of schools."

19 3. Paragraph 22: The Dean at Villanova Law School recently admitted that the law
20 school "knowingly reported" false and inaccurate information to the American Bar Association,
21 which may have included false LSAT scores and median grade point averages of entering
22 students.

23 4. Paragraph 23: In 2011, the Dean of Emory Law School immediately stepped down
24 after the school fell in the U.S. News & World Report rankings by eight slots (he has denied any
25 correlation between the rankings and his resignation).

26 5. Paragraph 24: Indeed, there have been reports of law schools: (1) hiring
27 unemployed students around the time that the law school needs to report its employment
28 statistics; (2) strategically shifting students from full time to part time in order to avoid reporting

1 their grades and entrance examination scores; and (3) accepting students late in the academic year
2 (after the law schools have reported the grades and examination scores of their incoming class).
3 These practices are undertaken in order to manipulate the law school's statistics and to artificially
4 bolster the law school's rankings.

5 6. Paragraph 25: Law schools are also believed to be manipulating post-graduation
6 employment statistics, as well as median salary information for their graduates.

7 7. Paragraph 26: This salary data is being manipulated to provide a much rosier
8 employment picture to prospective law students, which in turn may contribute to the increase in
9 law school enrollment.

10 8. Paragraph 27: William Henderson, a law professor at Indiana University, stated
11 with respect to the reporting of law school statistics that "Enron-type accounting standards have
12 become the norm."

13 9. Paragraph 28: According to David N. Yellen, Dean of Loyola University Chicago
14 School of Law, "[e]ven if no one is lying, those statistics are hopelessly misleading to students."

15 10. Paragraph 29: Law schools have also come under fire for failing to report statistics
16 regarding the number of students receiving scholarships that are not renewed. Law schools have
17 an incentive to provide scholarships in order to attract students with high grade point averages and
18 high entrance examination scores (factors that are considered by U.S. News & World Report in
19 ranking the law schools), only to withdraw those scholarships after the first year when the
20 students have few options other than to take out thousands of dollars in student loans. This
21 method has been described as a "bait and switch" as to prospective law students.

22 11. Paragraph 35: On January 8, 2011, the New York Times published an article
23 entitled "Is Law School A Losing Game?" by David Segal. The article reported that TJSL leads
24 the nation's law schools with 95 percent of students graduating with debt. Additionally, the
25 article focused on a former TJSL student, Michael Wallerstein, who graduated with more than
26 \$250,000 in schools loans and has since been forced to accept employment at \$10 per hour. Mr.
27 Wallerstein's experience—graduating with tremendous debt and being forced to accept low-wage
28 employment—is common among TJSL students. There is a glaring disparity between the

1 expectations of entering first year law students and recent graduates: students enter law school
2 hoping to work as full time attorneys who will enjoy financial and professional success. Instead,
3 many end up working low-wage jobs while struggling to repay their student loans.

4 12. Paragraph 37: Experts and practitioners have been warning students to analyze the
5 current economic conditions before deciding to enroll in law school. “Those considering law
6 school might want to reconsider,” said Allen Tanenbaum, chairman of the American Bar
7 Association commission studying the impact of the economic crisis on the legal profession. The
8 Dean of Boston University Law School recently apologized to students for the abysmal job
9 market during a graduation speech.

10 13. Paragraph 38: Law schools have reported that on-campus interviews are down by
11 one-third to one-half.

12 14. Paragraph 39: One example of the dire market for lawyers involves the Ohio
13 Supreme Court. On January 11, 2011, the Ohio Supreme Court denied a state bar application—
14 i.e., a license to practice law—from a law school graduate on the ground that he lacked a “feasible
15 plan” to satisfy his financial obligation to repay the \$170,000 he incurred in law school debt.

16 15. Paragraph 40: Richard Matasar, Dean of New York Law School, assailed law
17 schools for “exploiting” students by taking their money knowing that the odds of obtaining a
18 high-paying job in the legal field is a “lottery shot.”

19 16. Paragraph 43: TJSL’s growth is achieved by saddling its students with debt that
20 many will not be in a position to repay. In fact, in January 2011, TJSL opened its new campus,
21 located in Downtown San Diego. TJSL advertises its 305,000 square foot campus as including an
22 eight story state-of-the art building, 12 classrooms, two recording studios, a student lounge and a
23 “sophisticatedly designed” moot court room. TJSL broke ground on its multi-million dollar new
24 campus at a time when experts were cautioning students to think twice about attending law
25 school.

26 17. Paragraph 50: This trend has been recognized and frowned upon by legislators,
27 including Senator Barbara Boxer, who recently expressed concern that law schools “are not
28 distinguishing between graduates practicing full-time from those working part-time or in non-

1 legal fields.”

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IV.

CONCLUSION

Given the irrelevant and improper nature of the challenged allegations, TJSL respectfully requests that the statements noted above be stricken from the FAC pursuant to Code of Civil Procedure section 436.

Dated: July 18, 2011

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CONNAUGHTON LLP

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