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THOMAS JEFFERSON SCHOOL OF LAW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ANNA ALABURDA, JILL BALLARD,
DANIELA LOOMIS, AND NIKKI
NGUYEN, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

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

Defendants.

AND RELATED ACTIONS.

Case No. 37-2011-00091898-CU-FR-CTL

[RELATED CASES 37-2014-33723, 37-2014-33730, 37-2014-33744, 37-2014-33749, 37-2014-34840, 37-2014-34858, 37-2014-37786, 37-2014-38734]

**DEFENDANT THOMAS JEFFERSON
SCHOOL OF LAW'S TRIAL BRIEF**

Date: March 4, 2016
Time: 9:00 a.m.
Judge: Hon. Joel M. Pressman
Dept.: 66
Action Filed: May 26, 2011
Trial Date: March 4, 2016

ORIGINAL

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1 **I. INTRODUCTION**

2 Plaintiff Anna Alaburda ("Alaburda") alleges that in deciding to attend TJSL she relied on
3 post-graduate employment statistics published in the popular magazine *U.S. News & World*
4 *Report*. Alaburda claims that TJSL inaccurately reported post-graduate employment statistics.
5 She also claims that she was "misled" by the on-line summary information about TJSL because
6 she assumed the term "employed" was limited to full-time, permanent, attorney positions, and
7 because, she contends, the reported numbers were inflated.

8 Alaburda's Fifth Amended Complaint ("FAC") alleges unfair business practices in
9 violation of Business & Professions Code section 17200, false advertising in violation of Bus. &
10 Prof. Code section 17500, intentional fraud, negligent misrepresentation, violation of the
11 Consumer Legal Remedies Act ("CLRA") and negligence. The evidence—including plaintiff's
12 own deposition admissions—demonstrates that she cannot prevail on any of her claims.

13 All of Alaburda's claims fail at the outset – they are barred by the statute of limitations.
14 Ms. Alaburda contends that she was damaged by enrolling at TJSL in 2005 – but she waited until
15 2011 to sue, well after the statutes of limitations had all passed.

16 Moreover, Plaintiff will not be able to establish the following elements of her claims:

- 17 • Alaburda has no evidence that TJSL inaccurately reported post-graduate
18 employment statistics for the data she relied upon in deciding to attend TJSL.
- 19 • Even if she had such evidence, she could not show that TJSL acted intentionally.
- 20 • She cannot show that she substantially relied on the employment statistics. She
21 chose to attend TJSL for a simple reason – *it was the only school that admitted her*.
- 22 • Even if she could show she substantially relied on the employment statistics (she
23 cannot), Alaburda cannot show her reliance was *reasonable*. She read the term
24 "employed" in a strained, limited way; ignored published methodology
25 information; ignored that bar passage rates were lower than the employment rates;
26 ignored other data sources that provided granular breakdowns of the statistics;
27 ignored that the employment statistics varied widely from year to year; and failed
28 to perform any further inquiry or investigation.

25 Additionally, Alaburda suffered no cognizable legal injury because, among other reasons,
26 she admits she obtained a full-time attorney position, earning \$60,000 per year, plus benefits,
27 shortly after graduating.

28 ///

1 **II. FACTUAL BACKGROUND**

2 **A. Thomas Jefferson School of Law**

3 TJSL is a non-profit organization with a stated mission of providing an outstanding legal
4 education for a diverse student body in a collegial and supportive environment. Located in
5 downtown San Diego, TJSL has been fully accredited by the American Bar Association (ABA)
6 since August 2001.

7 **B. TJSL Reported its Employment Statistics in Accordance with the Same**
8 **Protocol Required of All Other Accredited Law Schools.**

9 All accredited law schools must provide highly-detailed employment data, on a student-by-
10 student basis, to the National Association for Law Placement ("NALP"). In response to NALP's
11 requests, TJSL provides data gathered from students regarding the industry in which they are
12 employed, including distinguishing between law firms, business and industry, government and
13 other categories. The school also reports the number of graduates who held jobs for which bar
14 admission was required; for which a J.D. is an advantage (but not required); and for which a J.D.
15 is neither required nor preferred. Additionally, TJSL provides a breakdown of the number of
16 graduates whose employment status is known versus unknown. Once this information is
17 transmitted to NALP, NALP processes the data into summary numbers. Those summary numbers
18 are then used in reporting to *U.S. News* and other publications, which process the information
19 pursuant to their own methodologies.

20 **C. Alaburda Decided to Attend Law School After a Cost-Benefit Analysis.**

21 Alaburda attended TJSL from August 2005 to May 2008. After graduating from New
22 York University, Alaburda began contemplating a professional degree. In addition to law, she
23 considered a career in journalism or psychology. Ultimately, she decided to attend law school
24 after a "cost-benefit analysis" because, among other reasons, she "knew [she] needed money."

25 In deciding whether, and which law school to attend, Alaburda had extended discussions
26 with an attorney and other prospective students, scoured law school mailers, and consulted
27 multiple websites (*e.g.*, the ABA, LSAC, and California Bar websites).

28 ///

1 **D. Alaburda Chose to Attend TJSL After Conducting Virtually No Research Into**
2 **Her Post-Graduation Job Prospects.**

3 Alaburda reduced her list of possible law schools to seven California law schools and one
4 school in New York. In choosing a law school, Alaburda claims that her most important
5 consideration was the ability to find post-graduation employment. However, she admits the *only*
6 source of employment statistics she ever consulted was *U.S. News* and law school websites.
7 Further, she never endeavored to understand how the *U.S. News* statistics were developed and
8 could not recall reading the section describing that magazine's methodology. Alaburda does not
9 recall ever exploring any of the detailed job data published by the ABA/LSAC, although she
10 admits knowing that this information was available. She also does not recall visiting or contacting
11 TJSL's Career Services staff, or even the Career Services staff of any of the law schools to which
12 she applied.

13 **E. Alaburda Considered Multiple Factors in Evaluating Law Schools, but**
14 **Ultimately Decided to Enroll at TJSL *Because It Was Her Only Viable Option.***

15 Alaburda considered many disparate factors in her decision to apply to TJSL, including
16 location, cost, student-faculty ratio, LSAT scores, student GPAs, the writing program, the
17 percentage of women in the class, diversity, and bar passage rates.

18 Ultimately, Alaburda was admitted to just one law school – TJSL. She selected TJSL
19 because she wanted to go to law school, and TJSL was her only option:

20 Q. Is it fair to say that you chose to attend TJSL because you
21 wanted to go to law school and it was the only law school to which
 you were selected for admission?

22 A. Yes.

23 Alaburda was awarded a \$10,000 per semester scholarship, which covered approximately
24 two-thirds of her law school tuition. With the scholarship, Alaburda paid a total of only \$32,745
25 in tuition for her entire three-year legal education at TJSL.

26 ///

27 ///

28 ///

1 **F. Alaburda Saw Employment Statistics in *U.S. News* but Did Not Read Them**
2 **Closely.**

3 Alaburda testified that she considered the 2004 and 2005 Best Graduate Schools Editions
4 of *U.S. News*. Those Editions listed the following statistics:

5

EDITION	EMPLOYED NINE MONTHS AFTER GRADUATION	CA BAR PASSAGE RATE
2004	80.1%	54.1%
2005	56.4%	48.4%

7

8 Those Editions also listed TJSL as a fourth-tier law school, which Alaburda acknowledges she
9 considered before accepting admission.

10 In reviewing the employment statistics, Alaburda “assumed” that the “percent employed”
11 figure represented only full-time legal positions, never considering that lawyers might work part-
12 time.¹ She made no effort at all to determine what jobs law school graduates secured, or where
13 those jobs were located.

14 **G. Alaburda Attended TJSL for Three Years Despite Her Alleged Misgivings**

15 Alaburda began attending TJSL in the Fall of 2005. By the end of her first year —*i.e.*,
16 Spring 2006—she testified that she believed that TJSL’s representations regarding the quality of
17 education were deceptive. As a result, at the end of her first year, Alaburda applied to transfer to
18 UCLA. Despite her alleged misgivings about TJSL, she did not apply for transfer to any other
19 school.

20 After being denied admittance to UCLA, Alaburda decided to remain enrolled at TJSL.
21 She testified that by her second year of law school (May 16, 2007), she was openly concerned
22 about her employment prospects. She complained to classmates and was discouraged by the
23 options available. Nevertheless, she never complained to anyone in TJSL Career Services,
24 requested to withdraw from TJSL, or demanded a tuition refund. Rather, she chose to remain
25 enrolled.

26 ///

27 _____
28 ¹ This was despite the fact that Alaburda worked 30-hours per week at a job at USC prior to law school and considered herself employed.

1 **H. Alaburda Made Almost No Effort to Obtain Post-Graduate Employment, But**
2 **Still Was Offered an Associate Position in a Law Firm. She Turned It Down.**

3 While proclaiming the importance of finding a job, Alaburda made little effort to do so.
4 TJSL provides numerous avenues for students to find post-graduation employment and students
5 are strongly urged to seek a summer position after their second year of law school. The school
6 encourages students to cast a wide net and submit many applications to various employers.
7 Heeding this advice, students frequently submit anywhere from 50 to several hundred
8 applications. Yet, despite this recommendation, Alaburda admits she submitted only between *two*
9 and *four* applications for a summer position during her entire second year of law school. From
10 this effort, she received one call back interview, but was not successful in landing the position.

11 Alaburda made even less effort to find post-graduate employment during her third year of
12 law school, submitting just *one* application for employment. She was selected for an interview,
13 and then was invited back for more interviews. However, *she withdrew her application* because
14 she “did not know how passionate [she] was” about the one position she had applied for.²

15 After graduating from TJSL and passing the California bar examination, Alaburda
16 interviewed with five to seven employers. Based on these interviews, *Alaburda was offered a*
17 *full-time lawyer position making \$60,000 per year, plus benefits*, by a Southern California law
18 firm. She initially accepted the position, and her employment was to begin in February 2009—
19 within nine months of graduation. She rescinded her acceptance because the firm would not pay
20 for her bar dues and required her to travel to San Bernardino for one month of training. At that
21 same time, in mid-February 2009, she began working for a legal publisher 30-40 hours per week
22 for \$33 per hour (plus bonuses and expenses) in a job where being an attorney was preferable.
23 Despite successfully obtaining a full-time attorney position within nine months of graduation,
24 Alaburda now alleges that she received “no value” from her degree because she was “misled”
25 about her ability to secure a full-time attorney job (even though it is undisputed that she did).

26 _____
27 ² Notably, the only other post-graduate opportunity Alaburda pursued during her third year of law school
28 was a teaching fellowship in Ethiopia—*i.e.*, a non-lawyer position. (Alaburda 207:18-23.) Alaburda
admits telling others that her primary interest at the time was teaching, not a traditional legal job.
(Alaburda 208:12-16.)

1 **III. ALL OF PLAINTIFF'S CLAIMS FAIL AT THE OUTSET, BECAUSE THEY ARE**
2 **TIME-BARRED.**

3 Alaburda's claims are subject to a two-, three- or four-year statute of limitations. (Code
4 Civ. Proc., § 339 [two years for negligent misrepresentation, negligence]; Code Civ. Proc., § 338,
5 subds. (a) and (h) [three years for false advertising]; Code Civ. Proc., § 338, subd. (d) [three years
6 for fraud]; Civ. Code, § 1783 [three years for CLRA]; Bus. & Prof. Code, § 17208 [four years for
7 unfair competition].) California law provides that the statute of limitations begins to run at the
8 time the allegedly deceptive statements were made, or, *at the very latest*, when the plaintiff
9 discovers (or has reason to discover) the deception. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35
10 Cal. 4th 797, 807 ["A plaintiff has reason to discover a cause of action when he or she has reason
11 at least to suspect a factual basis for its elements."].)

12 In this case, Alaburda filed her lawsuit on May 26, 2011. However, Alaburda testified she
13 felt misled about the quality of her TJSL education by the end of her first year (Spring of 2006),
14 which caused her to seek to transfer to UCLA. She then concedes that based on her experience at
15 TJSL, she was concerned about her job prospects before the end of her second year (May 16,
16 2007). Indeed, she even complained to other students during her second year that she feared she
17 would not receive the type of employment opportunities that she hoped to achieve. Thus, based
18 on her own testimony, Alaburda discovered the alleged "deceptiveness" of TJSL's reported job
19 statistics prior to the conclusion of her second year of law school on May 16, 2007. Therefore, the
20 very latest date that Alaburda could have timely filed this lawsuit was May 16, 2011.
21 Accordingly, all of her claims are barred by the statute of limitations.

22 **IV. ALABURDA HAS NO EVIDENCE TJSL INACCURATELY REPORTED ANY**
23 **GRADUATES DURING THE RELEVANT TIME PERIOD**

24 **A. Alaburda Has No Evidence of Misreporting During the Relevant Time Period.**

25 All of Alaburda's claims are based on the allegation that TJSL inaccurately reported its
26 post-graduate employment statistics to *U.S. News & World Report*. Alaburda relied on the 2004-
27 2006 editions of *U.S. News & World Report* in deciding to enroll in TJSL, which reported data for
28 the Classes of 2001-2003. TJSL served discovery requesting that she identify all graduates she

1 alleges were misreported. Alaburda identified 144 specific graduates that were misreported. *But*
2 *not one of these graduates was from the Class of 2001-2003.* TJSL has produced contact
3 information available for hundreds of graduates from the 2001-2003 time period. Still, Alaburda
4 has not identified a single graduate from 2001-2003 whom she contends was reported
5 inaccurately. Indeed, she admits precisely the opposite. Except for the 144 graduates from the
6 irrelevant time period, Alaburda states that she has *no graduate-specific evidence of misreporting*
7 for any other student.

8 Even plaintiff's expert, who she retained to assess TJSL's reporting, was unable to
9 conclude that any misreporting occurred in 2001-2003. He attempted to identify inaccuracies in
10 2003 and concluded: "I am unable to draw a meaningful conclusion." Nor did he reach any
11 conclusion that TJSL misreported any graduate in 2001-2002.

12 Alaburda has no evidence of misconduct by Lisa Kellogg, the person primarily responsible
13 for collection and reporting of employment statistics from 1998-2002. Indeed, Kellogg testified
14 that (i) she had a practice of requiring supporting documentation in order to report a graduate as
15 employed; and (ii) that she and all others responsible for reporting employment data followed the
16 NALP guidelines to the letter. Alaburda also has no evidence that Kellogg's successors
17 responsible for reporting, engaged in any improper conduct or misreporting, or that *anyone* in the
18 Alumni Office or in the Career Services office engaged in any improper conduct or misreporting
19 in 2003.

20 **B. Lacking Any Viable Evidence From the Relevant Time Period, Alaburda**
21 **Relies On Irrelevant Information From Later Years.**

22 All of Alaburda's evidence regarding TJSL's policies and practices dates from 2006 or
23 later – years *after* the she made her decisions to enroll at TJSL, and even after she graduated.
24 Alaburda thus cites practices from 2006 or later, but do not present any evidence whatsoever that
25 any of these alleged policies or practices were in place in 2001-2003, the relevant years. And
26 there was no continuity in practices that were passed down over the years. Rather, when, Ms.
27 Bracker took over the Career Services office in 2007, she learned the process anew:

28 ///

1 At the time I became director [in 2007], I would say largely that was
2 sort of self taught process then at that point because Laura Weseley
3 was no longer with the school *nor was anyone who had really been*
4 *directly involved with the process.*

5 Likewise, even though she obtained contact information for nearly 3,000 TJSL graduates,
6 she identifies only 144 graduates who she contends were mis-reported from 2000-2015.

7 **1. Alaburda's Claim of a "Pattern or Practice" Is Unsupported, and Does**
8 **Not Salvage Her Claims.**

9 **a. Alaburda may not rely on evidence of TJSL's "character."**

10 Rather than introducing evidence from the relevant time period, Alaburda relies on
11 evidence from irrelevant years in an effort to paint TJSL as dishonest. However, such character
12 evidence is not admissible: "evidence of a person's character or a trait of his or her character
13 (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his
14 or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion."
15 (Cal. Evid. Code § 1101.) As the Law Revision Commission explains:

16 Section 1101 excludes evidence of character to prove conduct in a
17 civil case for the following reasons. First, character evidence is of
18 slight probative value and may be very prejudicial. Second,
19 character evidence tends to distract the trier of fact from the main
20 question of *what actually happened on the particular occasion* and
21 permits the trier of fact to reward the good man and to punish the
22 bad man because of their respective characters. Third, introduction
23 of character evidence may result in confusion of issues and require
24 extended collateral inquiry.

25 (CAL. LAW REVISION COMMITTEE, Comment 29B pt. 3 (available at WEST'S ANN. EVID.
26 CODE § 1101) (emphasis supplied).) All of these concerns apply here. What matters to
27 Alaburda's claims is whether the information *that she reviewed* was accurate. Information she
28 admittedly *never reviewed and never relied on* is not relevant. Alaburda will default on her
burden of introducing any admissible evidence of inaccuracies during the relevant years.

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1 **b. Despite years of discovery, Alaburda cannot make a**
2 **foundational showing that TJSL had consistent collection and**
3 **reporting practices.**

4 Alaburda argues that data from years after she made the decision to attend TJSL (indeed,
5 from years after she *graduated* from TJSL) should nonetheless be considered, based on their
6 unsupported contention that TJSL had a “pattern and practice” of misreporting employment
7 statistics. But information only qualifies as “habit” or “custom” evidence if it is *materially similar*
8 to the practices from other time periods. (*See Holdgrafer v. Unocal Corp.*, 160 Cal. App. 4th 907,
9 929 (2008) (“the hallmark of admissibility is *similitude* of the prior and present conduct”).) The
10 party seeking to obtain such evidence bears the burden of demonstrating continuity of practices
11 across time. (*See Tyler v. Superior Court*, 102 Cal. App. 3d 82, 88 (1980) (finding “lack of
12 foundational facts” where plaintiff failed “to demonstrate the relationship between this past
13 incident and the instant one”).)

14 Alaburda cannot meet her burden of demonstrating continuity across time. To be sure,
15 TJSL’s practices, in a trivial sense, had certain uniformities. For example, TJSL’s policy, at all
16 times, has been to report all data accurately. And, TJSL reported data in February or March of
17 each year, based on individuals who graduated in the prior year, based on its diligent efforts to
18 collect and track such information. This is all true, but not relevant. What matters is that TJSL’s
19 *specific practices* on data collection and reporting in 2001-2003 (in which Alaburda identified *no*
20 alleged misreporting) were materially different from the years in which Alaburda purport to have
21 found violations (2004-2010).

22 **c. The evidence demonstrates that TJSL’s practices changed**
23 **dramatically over the years. There was no common practice**
24 **tying 2001-2003 to later years.**

25 TJSL’s practices changed over the years, such that any claimed inaccuracies in later years
26 say nothing at all about TJSL’s practices in 2001-2003. Indeed, the “habits” of Career Services
27 employees in later years say nothing about reported in earlier years, which was handled by a
28 different unit (Alumni Relations), under different NALP guidelines, using different collection and

1 reporting practices. To qualify as “habit,” there must be both a uniform stimulus and a uniform
2 response. Here, there is neither. Both the stimulus (the questions raised) and the response (how
3 TJSL collected, tracked, and reported information, and who handled each step) varied significantly
4 over time.

5 **2. The survey by Alaburda’s expert is not relevant.**

6 Alaburda will offer testimony by her expert, Professor Belch, to present results of a survey
7 showing that TJSL misreported 20% of the Class of 2009 graduates and 28% of Class of 2010
8 graduates. However, this is not what Professor Belch’s report says. Rather, he concludes that
9 20% of the *respondents* to his survey of 2009 claimed they were unemployed. As he only reached
10 25 graduates, he identifies a grand total of 5 *graduates* from TJSL who were allegedly mis-
11 reported, out of a class of 220. For the class of 2010, he received 28 responses, and found a grand
12 total of 8 alleged inaccuracies, out of a class of 221.

13 The survey produces results that are entirely irrelevant, because *the survey asks the wrong*
14 *question*. Specifically, the survey asks each graduate to confirm their employment status “as of
15 February 15, 2010.” But the relevant question here is not whether TJSL’s graduates were
16 employed or unemployed on February 15, 2010. Rather, the question is whether TJSL *knew* that
17 its graduates were employed on February 15, 2010. The survey does not ask – (1) what did each
18 graduate tell TJSL about his or her employment status; or (2) when did he or she make that
19 disclosure to TJSL? Because it does not address the relevant inquiry—whether TJSL had
20 knowledge of graduates’ employment status, but reported them inaccurately nonetheless—the
21 survey is not relevant to Alaburda’s claims.

22 **3. Karen Grant testified that Career Services did not misreport any**
23 **graduate.**

24 Alaburda will also likely offer testimony by Karen Grant (who was only employed at TJSL
25 in 2006 – 2007) to support her allegation that TJSL inflated its employment statistics. But Grant
26 testified at her deposition as follows:

27 Q: Was the information that you compiled and recorded in the
28 spreadsheets, whether hard copy or electronic, all accurate
 information, to the best of your knowledge?

1 A: Yes.

2 Q: Did you ever record data in those spreadsheets that you knew to
3 be false or inaccurate?

4 A: No.

5 Q: Did anyone at Thomas Jefferson ever instruct you to make up
6 data regarding any graduate?

7 A: No. Never.”

8 Thus, Ms. Grant’s testimony does not support any standing practice of misreporting
9 graduates employment status.

10 **V. ALABURDA CANNOT DEMONSTRATE THE EMPLOYMENT STATISTICS
11 WERE A MATERIAL, SUBSTANTIAL FACTOR IN HER DECISION.**

12 Alaburda must show, *for each of her claims*, that TJSL’s alleged misrepresentations were
13 the legal cause of her injury. Stated differently, they must have been a material, substantial factor
14 in Alaburda’s decision to attend TJSL. (*See In re Tobacco II Cases*, 46 Cal. 4th 298, 306 (2009)
15 (“[A UCL] plaintiff must show that the misrepresentation was an immediate cause of the injury-
16 producing conduct” and “has played a substantial part, and so has been a **substantial factor**, in
17 influencing his decision.”) (citations omitted); Bus. & Prof. Code § 17535 (FAL suit may be
18 brought by one who “suffered injury in fact and has lost money or property **as a result of a**
19 violation of this chapter.”); Cal. Civ. Code § 3294(c) (fraud requires “intentional
20 misrepresentation, deceit, or concealment of **material fact**”); *Apollo Capital Fund, LLC v. Roth*
21 *Capital Partners, LLC*, 158 Cal. App. 4th 226, 243 (2007) (negligent misrepresentation claim
22 requires “misrepresentation of a past or existing **material fact**”); *Buckland v. Threshold*
23 *Enterprises, Ltd.*, 155 Cal. App. 4th 798 (2007) (“[A]ctual **reliance** is an element of a CLRA
24 claim sounding in fraud.”); *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917 (1996) (negligence
25 elements are “(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach
26 as the proximate or legal **cause** of the resulting injury.”) (emphasis added throughout).)

27 A misrepresentation of fact is material to a plaintiff’s decision “if it induced the plaintiff to
28 alter his position to his detriment. Stated in terms of reliance, materiality means that without the
misrepresentation, the plaintiff would not have acted as he did.” (*Lacher v. Superior Court*, 230

1 Cal. App. 3d 1038, 1049 (1991).)

2 Alaburda claims that she decided to attend TJSL based on her review of employment
3 statistics in U.S. News and its accreditation. This is nothing more than an *ex post* rationalization
4 of a decision that she made over ten years ago, which TJSL's expert will demonstrate is consistent
5 with consumers' evolving rationalizations for prior purchases. And here, the allegation plainly
6 contradicts her prior sworn deposition testimony. Alaburda selected TJSL for a simple reason –
7 she was determined to go to law school, and *it was her only option*:

8 Q. Is it fair to say that you chose to attend TJSL because you
9 wanted to go to law school and it was the only law school to which
you were selected for admission?

10 A. Yes.

11 It is clear that Alaburda did not rely on TJSL's employment statistics, and instead decided to
12 attend because she had no other law school options. Thus, she will not prevail on any of her
13 claims.

14 **VI. ALABURDA CANNOT DEMONSTRATE REASONABLE RELIANCE.**

15 “Reasonable reliance” is an essential element of each of Alaburda's causes of action. (*See*
16 *Hall v. Time Inc.*, 158 Cal. App. 4th 847, 859 (2008) (“[T]he representative UCL plaintiff must
17 plead he or she suffered an injury in fact caused by, or in **justifiable reliance** on, the alleged acts
18 of unfair competition.”); *Hill v. Roll Intern. Corp.*, 195 Cal. App. 4th 1295, 1304 (2011) (“The
19 reasonable consumer test used in the UCL and FAL derives from parallel parts of the Federal
20 Trade Commission Act . . . which requires a plaintiff to show potential deception of consumers
21 acting **reasonably** in the circumstances—not just any consumers.”); *Small v. Fritz Companies,*
22 *Inc.*, 30 Cal. 4th 167, 173 (2003) (intentional fraud requires “**justifiable reliance**”); *Apollo*
23 *Capital Fund, LLC*, 158 Cal. App. 4th 226, 243 (2007) (negligent misrepresentation requires
24 “**justifiable reliance**”); *Consumer Advocates v. Echostar Satellite Corp.*, 113 Cal. App. 4th 1351,
25 1360 (2003) (upholding trial court's requirement that plaintiffs prove “a reasonable consumer
26 would be likely to be misled” because advertisement under CLRA is “judged by the effect it
27 would have on a **reasonable** consumer”); *Garcia v. Superior Court*, 50 Cal. 3d 728, 734 (1990)
28 (“One who negligently gives false information to another is subject to liability for physical harm

1 caused by action taken by the other in **reasonable reliance** upon such information . . .”) (emphasis
2 added throughout.)

3 Reasonable reliance requires that the “circumstances were such to make it reasonable for
4 plaintiff to accept defendant’s statements without an independent inquiry or investigation.”
5 (*Wilhelm v. Pray, Price, Williams & Russell*, 186 Cal. App. 3d 1324, 1332 (1986); see also *Seeger*
6 *v. Odell*, 18 Cal. 2d 409, 415 (1941) (“If the conduct of the plaintiff in the light of his own
7 intelligence and information was manifestly unreasonable . . . he will be denied a recovery.”).) A
8 reasonable consumer is deemed to be an individual with the characteristics of an ordinary
9 consumer *within the population targeted by the advertisement or representation*. (*Lavie v. Procter*
10 *& Gamble Co.*, 105 Cal. App. 4th 496, 512 (2003) (“Where the advertising or practice is targeted
11 to a particular group or type of consumers, either more sophisticated or less sophisticated than the
12 ordinary consumer, the question whether it is misleading to the public will be viewed from the
13 vantage point of members of the targeted group, not others to whom it is not primarily directed.”).) Notably, the statement must be “likely to deceive,” which “implies more than a mere possibility
14 that the advertisement might conceivably be misunderstood by some few consumers viewing it in
15 an unreasonable manner.” (*Id.* at 508.)

17 For the reasons explained below, Alaburda’s claimed reliance on, and interpretation of, the
18 employment statistics was unreasonable.

19 **A. A reasonable prospective law student would understand that “employed”**
20 **means employed – not something more.**

21 Reasonable people interpret words based on their common usage. (*Brown v. Watt*, 256
22 Cal. App. 2d 44, 48 (1967) (“It is the presumption in this state that the words are used in their
23 generally accepted sense . . .”); *McMillan v. Siemon*, 36 Cal. App. 2d 721, 726 (1940) (“In
24 construing the Constitution the same rule which applies in construing statutes, contracts, and all
25 written or spoken language . . . words are presumed to have been used in their natural and ordinary
26 meaning.”).) A reasonable prospective law student would not have ignored the ordinary definition

1 of the term “employed”³ in favor of a much more restrictive definition, namely, “employed in full-
2 time, permanent, legal jobs.”

3 **B. A reasonable prospective law student would read the survey methodology.**

4 **Alaburda ignored it.**

5 A reasonably diligent reader would have understood that the category “% employed” did
6 not describe the precise percentage of graduates obtaining employment (much less full-time,
7 permanent, legal employment). *U.S. News* directly stated (on the same pages that Alaburda admits
8 she read) that “employment rates include graduates reported as working or pursuing graduate
9 degrees,” “25% of those whose status is unknown are also counted as working,” and “those not
10 seeking jobs are excluded.”

11 Alaburda never endeavored to understand how the *U.S. News* statistics were developed and
12 could not recall reading the section describing that magazine’s methodology. However, she had
13 seen the breakdown in *U.S. News* of the statistic into categories including law firm, legal
14 business/industry, non-legal business and industry, government, public interest, judicial clerk, and
15 academia. In light of her knowledge that employment was broken down into non-legal jobs, it
16 was not reasonable for her to rely on a strained interpretation of “employed” that included only
17 legal jobs.

18 Moreover, Alaburda assumed without any basis that the employment statistics represented
19 only full-time legal positions. Her assumption is particularly glaring, as she herself had previously
20 worked in a part-time job and considered herself employed at that time.

21 **C. Reading “employed” as limited to legal employment is inconsistent with other**
22 **available information.**

23 *U.S. News* did not publish the employment statistics in isolation. It also published bar
24 passage rates directly adjacent to the employment statistics. Specifically, it listed the following:

25 ///
26

27
28 ³ “Employ (transitive verb) . . . c (1) : to use or engage the services of (2) : to provide with a job that pays wages or a salary . . . (noun) . . . occupation, job . . .” (*Employ Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/employed> (last visited July 20, 2015).)

EDITION	EMPLOYED NINE MONTHS AFTER GRADUATION	CA BAR PASSAGE RATE
2004	80.1%	54.1%
2005	56.4%	48.4%

In light of the lower bar passage rates, it would be patently unreasonable for a prospective law student to believe that the employment statistics included only full-time attorney jobs. Alaburda admits that she reviewed the California Bar website and considered the bar passage rate in making the decision to enroll. Any reasonable reader (and certainly any reasonable aspiring law student) would immediately recognize that the employment figures must include non-lawyer positions.

D. After seeing conflicting information, a reasonable consumer would investigate further.

Alaburda's claimed reliance was also unreasonable because the editions of *U.S. News* she reviewed contained widely varying employment percentages. Alaburda claimed that she reviewed two editions, which reported 80.1% and 56.4% employment rates. No reasonable consumer would have assumed a consistent statistic each year after seeing a drop in the statistic of almost 25% between one year to the next.

Despite viewing conflicting statistics and seeing the much lower bar passage rate, Alaburda admits she did not do any further investigation or research. Nor did she contact career services or anyone else at TJSL. Indeed, she admits that she did not follow-up, and did not ask a single question, relying solely on *U.S. News* and law school websites for schools other than TJSL. In light of these various conflicting sources of information, it was not reasonable for her to substantially rely on the employment statistics from a single year in a single source, without making any inquiries.

VII. ALABURDA SUFFERED NO INJURY BECAUSE SHE SUCCESSFULLY OBTAINED A FULL-TIME LAWYER POSITION AFTER GRADUATING FROM TJSL.

Alaburda's claims all require that she prove some form of injury. (Bus. & Prof. Code, §§ 17204 (unfair competition) and 17535 (false advertising); *Krauss v. Strop* (1941) 47 Cal. App. 2d 452, 455 ["...where fraud has been committed and no injury has been sustained by the party

1 complaining, no action can be maintained...”]); *Creative Ventures, LLC v. Jim Ward &*
2 *Associates* (2011) 195 Cal. App. 4th 1430, 1444 [to recover for fraud or negligent
3 misrepresentation, “plaintiffs had to prove that the alleged misrepresentation resulted in a loss.
4 Deception without loss is not actionable.”]; Civ. Code, §1770(a) (CLRA); *Bower v. AT&T*
5 *Mobility* (2011) 196 Cal. App. 4th 1545, 1556 [“An individual seeking to recover damages under
6 the CLRA based on a misrepresentation must prove, among other things, actual injury.”];
7 *Friedman v. Merck & Co.* (2003) 107 Cal. App. 4th 454, 463 [negligence].)

8 The entire premise of Alaburda’s lawsuit hinges on her allegation that TJSL overstated the
9 percentages of its graduates who secure full-time lawyer positions. Thus, Alaburda argues that she
10 paid her \$32,745 in tuition, left her job, and took out student loans, under the mistaken belief that
11 she, too, could obtain such a position. However, Alaburda was offered precisely that—a full-time
12 lawyer position paying \$60,000 per year, plus benefits—which she turned down. This fact alone
13 destroys any claim that Alaburda was “injured” by TJSL’s allegedly deceptive practices.
14 Alaburda received the full benefit of the bargain. She alleges she attended TJSL based on her
15 belief that she could receive a full-time, lawyer position upon graduating, and that is precisely
16 what she received. Because, she got exactly what she claims she paid for (i.e., a legal education
17 resulting in a job offer as a full time attorney), she cannot demonstrate “injury.”

18 **VIII. ALABURDA FAILED TO MITIGATE HER DAMAGES BY MAKING LITTLE**
19 **EFFORT TO SECURE POST-GRADUATION WORK**

20 To the extent that Alaburda did not land her “dream job” after graduation, TJSL cannot be
21 held liable. Alaburda admits she submitted only a handful of applications for legal jobs
22 throughout her three years at TJSL. She was offered the opportunity to participate in the school’s
23 “On Campus Interview” program, but chose to submit only two to four applications during her
24 second year, and only *one* application during her third year. Alaburda now attributes her failure to
25 find a job to TJSL, when she did little more than sit back and wait for a job to come to her. (*See*
26 *Lewis v. Superior Court* (1978) 77 Cal. App. 3d 844, 853 [“...defendant is not required to
27 compensate for damages avoidable by reasonable effort.”] (citations omitted); *Shaffer v. Debbas*
28 (1993) 17 Cal. App. 4th 33, 41 [“A plaintiff . . . has a duty to take reasonable steps to mitigate

1 those damages and will not be able to recover for any losses which could have been thus
2 avoided.”]; *State Dept. of Health Services v. Superior Court* (2003) 31 Cal. 4th 1026, 1043
3 [same].)

4 In short, Alaburda was in a position to exercise significant control over her post-graduation
5 fate. Her decision to expend little effort towards this end illustrates a fundamental problem with
6 her claims—TJSL simply cannot be held responsible for securing a post-graduate legal position
7 for every student who does little to advance his or her own chances of success.

8 **IX. TJSL IS ENTITLED TO AN OFFSET OF ANY DAMAGES**

9 Plaintiff’s theory of damages is premised on the idea that the cost to her of attending TJSL
10 is higher than the value that she received. She seeks reimbursement of her tuition, and also seeks
11 (i) earnings that she purportedly lost as a result of attending TJSL; and (ii) interest on her student
12 loan payments. However, TJSL is entitled to an offset of any damages based on the value
13 Alaburda received from her degree. Alaburda passed the bar on the first try and received two
14 offers of employment in the legal profession within nine months of graduating, which are clear
15 indicators of the value provided by her TJSL degree.

16 As the California Court of Appeal recently explained, the proper measure of restitution
17 under the UCL is the difference between the price paid and the *actual value received*. *In re*
18 *Tobacco Cases II*, 240 Cal. App. 4th 779, 792 (2015). The actual value plaintiff received from her
19 tuition paid to TJSL is a significant disputed issue in this litigation. *See also FTC v. Kuykendall*,
20 371 F.3d 745, 765–66 (10th Cir.2004) (“Issues regarding valuation and offset relate to available
21 defenses and raise due process concerns. . . . A baseline of full-recovery is the starting point in the
22 damages analysis because, to accurately calculate actual loss, the defendants must be allowed to
23 put forth evidence supporting an offset,” citing *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997).

24 Indeed, courts have found that defendants have a due process right to present evidence of
25 an offset in a case closely analogous to this. In *Makaeff v. Trump University, LLC*, 309 F.R.D.
26 631, 642 (S.D. Cal. 2015), the plaintiffs argued that Trump University presenting misleading
27 information about its program, and sought full restitution of the tuition they paid. The Court held
28 that defendants had a right to present evidence regarding offset – *i.e.*, to present evidence that the

1 value offered by the education should offset any tuition payments. "Defendants will be afforded
2 the right to support an offset." (*Ibid.*)

3 Under settled law, TJSL has a due process right to introduce evidence that the value that
4 Ms. Alaburda received from her TJSL degree far exceeds the amount she paid. Any value plaintiff
5 received from her TJSL degree would function as an offset to her damages.

6
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