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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DISTRICT

ANNA ALABURDA, JILL BALLARD,
DANIELA LOOMIS, AND NIKKI NGUYEN

Plaintiffs,

v.

THOMAS JEFFERSON SCHOOL OF LAW,
a non-profit corporation, and DOES 1 through
100,

Defendants.

AND RELATED ACTIONS.

FILED
Clerk of the Superior Court
MAR 03 2016

Case No. 37-2011-00091898-CU-FR-CTL
(and related actions)

The Hon. Joel M. Pressman, Dept. C-66

**PLAINTIFF ANNA ALABURDA'S TRIAL
BRIEF**

Trial Call Date: March 4, 2016

Time: 9:00 a.m.

Place: Dept. C-66

Action Filed: May 26, 2011

MEMORANDUM OF POINTS AND AUTHORITIES

I. OVERVIEW

For the better part of a decade, Defendant Thomas Jefferson School of Law ("TJSL") has engaged in a fraudulent course of conduct designed to deceive prospective law students and the public at large. TJSL did this by disseminating false and misleading employment data. Plaintiff Anna Alaburda ("Alaburda") brings this lawsuit in order to put an end to TJSL's improper practices and to recover the harm caused to her.

II. THE PARTIES

A. Anna Alaburda

Alaburda graduated from TJSL in 2008 with honors. She received her undergraduate degree from New York University ("NYU"), where she also graduated with honors.

Alaburda grew up in a single-parent household in Connecticut. Her mother worked as a secretary and had no college degree. Their family constantly struggled to make ends meet. Alaburda wanted to attend law school because she believed that it would provide her with a path to financial independence and allow her to provide her family with a better life.

B. Thomas Jefferson School of Law

TJSL was originally founded in 1969 as the San Diego campus of Western State University College of Law and operated as such until 1995. It became independent in 1995 and received approval from the ABA in 1996. In January 2011, TJSL opened a new \$90-million campus located in the East Village district of downtown San Diego. The campus is an eight-story, 305,000-square-foot building.

TJSL is one of the most expensive schools in the country.

III. FACTS TO BE ESTABLISHED AT TRIAL

A. TJSL Published False, Inaccurate, Misleading, and Inflated Employment Data

1. TJSL's Published Employment Data Is Based on Information that It Compiles and Sends to U.S. News

Each year, TJSL collects employment data for its students and graduates. TJSL reports this employment data to publications like *U.S. News & World Report* ("U.S. News"), as well as the

1 American Bar Association (“ABA”) and information clearinghouse National Association for Law
2 Placement (“NALP”). The process starts off with TJSL collecting and then reporting employment
3 and salary data on a graduate-by-graduate basis to NALP (“ERSS Submission”). Based on the
4 data that it receives from TJSL, NALP prepares a summary that contains aggregate employment
5 and salary figures for the recent graduating class (the “NALP Summaries”). TJSL then uses the
6 numbers and percentages from the annual NALP Summaries to complete a questionnaire from
7 *U.S. News* and to prepare its website.

8 The information TJSL reports to NALP in ERSS Submissions is coded. To streamline trial
9 and make things easier for the jury to understand, Plaintiff offered to decode to ERSS Submissions
10 and prepare a spreadsheet reflecting the manner in which graduates were reported to NALP. The
11 parties have entered into factual stipulations reflecting the manner in which graduates for the
12 Classes of 2004-2010 were reported. This will trim a significant amount of time off of the trial.

13 **2. TJSL’s Published Employment Figures Are Inaccurate and Misleading**

14 **a. Plaintiff Will Present Direct Evidence of Misreporting**

15 Plaintiff alleges that TJSL engaged in a course of conduct designed to inflate its
16 employment statistics up until she filed this lawsuit. She will use both direct and circumstantial
17 evidence to show that TJSL inflated its employment figures.

18 Plaintiff will present testimony from current and former TJSL employees to establish
19 misreporting. This will include former Career Services Office (the “CSO”) employee Karen Grant
20 (“Grant”). Grant will testify that she misreported the employment status of TJSL graduates based
21 on instructions that she received from her supervisor. Plaintiff will introduce documents prepared
22 by Grant that further support her testimony. The evidence relating to Grant was highlighted
23 extensively at the recent summary judgment hearing.

24 Plaintiff also intends to use TJSL internal documents to establish that Grant, her
25 predecessors, and her successors misreported the employment statuses of graduates. For instance:

- 26 • **Ryan Kohut.** Kohut sent an email dated February 21, 2006 to Rebecca Rauber in the CSO
27 indicating he was unemployed. His email stated that he “did a little bit of contract legal
28 work before Christmas” but had not taken a job. TJSL reported him as employed in the

1 job that he had previously held.

- 2 • **Orchid Barzin.** Orchid Barzin emailed TJSL and said that she had been unemployed on
3 the February 15, 2011 reporting cutoff. She told TJSL that she had been “in and out” the
4 CSO on several occasions for assistance with sending out resumes. Despite this, TJSL
5 reported that she was employed as of February 15, 2011.

6 Plaintiff will introduce testimony from TJSL graduates to prove misreporting as well.
7 Several graduates will testify about their communications with the school after graduating that
8 relate to their employment status. This shows that TJSL knowingly disregarded information that
9 negatively affected its figures.

10 **b. Plaintiff Will Present Circumstantial Evidence of Misreporting**

11 Plaintiff will also present circumstantial evidence to show that TJSL’s employment figures
12 are inflated. This will consist of introducing evidence of TJSL’s policies and practices, which
13 have remained essentially unchanged over the years:

- 14 • falsifying graduates’ employment status on the eve of the reporting deadline;
15 • disregarding communications from graduates who said they were unemployed;
16 • falsely claiming that graduates were “unknown” rather than unemployed;
17 • concealing unfavorable “salary” and “employed at graduation” figures from *U.S. News*;
18 • reporting graduates as “employed” if they had a job at any time “since graduation,” even if
19 they were unemployed at the time of the reporting deadline;
20 • sending biased cover letters along with the employment surveys;
21 • disciplining employees who failed to hit target employment numbers; and
22 • training employees to falsify the numbers

23 Plaintiff will present expert testimony to show that TJSL’s policies and practices were
24 designed to skew the figures. Survey and marketing expert Michael A. Belch will opine that
25 TJSL’s policies and practices resulted in a systematic bias that favors TJSL. Belch also conducted
26 a survey of graduates from the Classes of 2009 and 2010 to determine the extent to which these
27 practices yielded inflated data. The survey results indicated that TJSL’s policies and practices
28 yielded data that was inflated by 20-28 percent.

1 Plaintiff will also introduce evidence of TJSL's policy and practice of shredding
2 documents. TJSL has shredded virtually all forms of source data—including post-graduate
3 employment surveys, graduation cards, and exit interview forms—from all years before 2010.
4 There will be graduates who testify that they emailed the CSO about their employment status
5 following graduation. However, TJSL never produced the version of the emails that it received
6 from these witnesses. Plaintiff will argue that TJSL is attempting to cover its tracks.

7 **B. TJSL's Conduct with Respect to Its Employment Figure Was Intentional**

8 Plaintiff will prove that TJSL's publication of inflated employment figures did not happen
9 by accident. It was part of a plan to help TJSL move up in the rankings. Employment figures
10 count toward 20 percent of a school's rankings in *U.S. News*. CSO Director Beverly Bracker
11 ("Bracker") is on record telling students that the school will be moving up in the rankings based,
12 in part, on improvements to its employment figures. The evidence will be that higher employment
13 figures help schools attract stronger, more qualified candidates.

14 Furthermore, TJSL was keenly aware that prospective law students placed quite a bit of
15 emphasis of its employment figures. During the data collection process, CSO employee Rebecca
16 Rauber told recent graduates that the information provided in response to a post-graduate
17 employment survey would help prospective students make a decision as to whether to attend
18 TJSL.

19 TJSL's obsession with its employment figures was pervasive throughout the organization.
20 During the reporting process, TJSL employees were monitoring the employment nine months after
21 graduation percentage on almost a daily basis.

22 **C. Alaburda Reasonably Relied on TJSL's False, Inaccurate, and Misleading**
23 **Employment**

24 Alaburda's decision to attend law school was the product of extensive research and
25 deliberation. She started considering obtaining a post-graduate degree after she started working in
26 the pathology department at the University of Southern California ("USC"). Alaburda wanted a
27 degree that would lead to a career that paid for the cost of the degree. She believed that law
28 school was a viable option.

1 Alaburda reviewed the employment figures for TJSL in the 2004, 2005, and 2006 "Best
2 Graduate Schools" editions of *U.S. News*. She spent several hours reviewing these magazines and
3 would often refer back to them during her decision-making process. She also looked at the
4 employment figures on TJSL's website. Alaburda understood all of the statistics that she
5 reviewed to refer to graduates working in a professional capacity. She did not believe that any of
6 the figures that she reviewed included non-professionals such as grocery store clerks and
7 bartenders.

8 Alaburda would never have enrolled at or paid tuition to attend TJSL if she had known that
9 TJSL's "employment nine months after graduation" figures in *U.S. News* were actually lower than
10 reported. Nor would she have attended a law school that was inflating its employment figures.
11 Had Alaburda known the truth, she would have remained in her job USC rather than invest more
12 than \$100,000 and three years into TJSL.

13 **D. Alaburda Suffered Damages Based on Her Decision to Attend TJSL**

14 Alaburda is seeking to recover her lost opportunity costs based on her decision to attend
15 law school. Specifically, she seeks to recover her tuition and lost wages during the period she was
16 enrolled. Alternatively, Alaburda will seek restitution from TJSL—either a full tuition refund of
17 \$32,475 or disgorgement of TJSL's profits on her tuition of \$4,247.

18 TJSL is not entitled to an offset based on the value of the law degree that it provided to
19 Alaburda. The degree has a negative value. Plaintiff's damages expert, Dwight Duncan
20 ("Duncan"), has concluded that Alaburda's law degree has a negative economic value of
21 **\$163,279**. Obtaining a law degree from TJSL actually reduced Alaburda's projected lifetime
22 earnings. Her projected lifetime earnings with a law degree will be \$2,115,092. Without going to
23 law school, she would have earned \$11,495 more. Alaburda will also incur \$151,784 in loans
24 relating to her decision to attend law school. This figure includes all interest on her law school
25 loans plus the principal relating to her tuition.

26 Alaburda has done everything in her power to maximize her post-law school earnings. She
27 has always taken the highest-paying job that anyone has ever offered her. And she is also current
28 on her student loan payments. She and her husband are currently able to make monthly student

1 loan payments of approximately \$600 per month.

2 **E. The Court Should Issue an Injunction**

3 Alaburda seeks injunctive relief to prevent TJSL from continuing to publish its inflated
4 employment data. Currently, TJSL is still disseminating inaccurate and inflated employment
5 figures to the public.

6 **IV. THE STATUTE OF LIMITATIONS DOES NOT BAR ALABURDA'S CLAIMS**

7 The delayed discovery rule tolls the limitations period "until a plaintiff discovers or could
8 have discovered through the exercise of reasonable diligence all facts essential to her cause of
9 action." *Sylve v. Riley*, 15 Cal. App. 4th 23, 26 (1993). The statute is also tolled if a wrongdoer
10 attempts to cover up its misconduct. *Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299,
11 1302 (9th Cir. 1986).

12 Alaburda will testify that she had no reason to believe that TJSL's employment figures
13 were inflated until she reviewed an article published in *The New York Times* in January 2011.
14 That article provided in an-depth analysis of the manner in which law school employment figures
15 are calculated. Among others, *New York Times* article states that some law schools count as
16 employed a waiter at Appleby's or stocking clerk at Home Depot. Finally, the article quotes TJSL
17 Associate Dean Elizabeth Kransberger ("Kransberger"). Kransberger lamented the fact that many
18 law schools "are manipulating results." (Exhibit 70 (emphasis added).)

19 Alaburda will testify that the detailed and comprehensive nature of the article caused her to
20 have doubts about the accuracy of TJSL's employment data. In particular, she was troubled by
21 Kransberger's candid admission that law schools do manipulate their figures.

22 Moreover, there was nothing that Alaburda should have, or could have, discovered had she
23 conducted a reasonably diligent investigation. There is no publicly available information that
24 would have tipped her off. And TJSL had already shredded nearly all of the internal source data
25 for the relevant graduating classes.

26 **V. EVIDENTIARY ISSUES**

27 **A. Evidence and Testimony from Other TJSL Graduates**

28 Plaintiff plans to present a focused case to the jury that relates to evidence of misreporting.

1 Plaintiff is not planning to introduce witnesses who will testify that TJSL is a bad school or that it
2 has a bad reputation (because that it would be inadmissible character evidence).

3 TJSL, though, intends to call at least a dozen handpicked graduates to testify about the
4 “value” of a TJSL degree and its marketability. However, only an expert is qualified to testify
5 about the “value” of a TJSL degree. In this case, TJSL did not designate an expert to testify as to
6 the value of a TJSL law degree (TJSL’s economics expert, Frank McIntyre, testified that he will
7 not be opining on the value of a TJSL degree). TJSL cannot present anecdotal evidence where
8 TJSL graduates speculate on the “value of a degree.”

9 Nor is TJSL permitted to call witnesses who will testify that the school is good; that its
10 graduates do good things; or that it has a good reputation. Again, this is simply character evidence
11 and it is inadmissible. If TJSL were permitted to have witnesses testify about the reputation of the
12 school, Plaintiff is prepared to call witnesses in rebuttal, including partners at well-known law
13 firms who will state that TJSL may have the worst reputation of any accredited law school in the
14 country (and that most firms do not hire graduates of TJSL). TJSL is attempting to turn this case
15 into a beauty pageant, and this Court should not permit it.

16 That said, Plaintiff has no objection to TJSL offering statements concerning what its
17 employees and former employees who collected the employment data thought about the reputation
18 of the school during the relevant period. This testimony is relevant to negate any evidence that
19 those witnesses possessed fraudulent intent. And Plaintiff is entitled to present evidence that
20 TJSL’s employees provided inflated employment figures knowing that employers refused to hire
21 TJSL graduates (again, this is relevant to fraudulent intent).

22 **B. Alaburda’s Spending Habits**

23 TJSL is attempting to introduce Alaburda’s personal expenditures during and after law
24 school. TJSL simply wants to bias the jury against her based on where she bought her food and
25 her clothes, where she shops, and what her husband likes to eat and drink. The names of the
26 vendors on her credit card statements are totally irrelevant. There is no reason to focus on
27 Alaburda’s living expenses whatsoever. The fact that Alaburda scrimped and saved in order to go
28 on an occasional vacation is not relevant to this case. If TJSL presents evidence of these

1 expenditures, Plaintiff would need to present evidence of the instances where she saved her money
2 (e.g., not eating at restaurants, not drinking or going to many social engagements, driving an old
3 used car, etc.). TJSL's proffered testimony is a sideshow. If TJSL wants to argue that Alaburda
4 spent too much money and that it is not responsible for it, then TJSL can just say that she
5 exceeded a reasonable budget (without reference to specific expenditures). TJSL cannot do that,
6 though, because Alaburda graduated with less debt than the average TJSL student (i.e., her
7 spending was not excessive).

8 **C. Alaburda's Upbringing**

9 Alaburda's upbringing is relevant for a limited purpose. Her upbringing is what drove her
10 to succeed in law school. Alaburda faced a number of obstacles in her life. She is the daughter of
11 a single mother. Her mother worked as a secretary and their family barely had enough money to
12 make ends meet. Growing up, Alaburda oftentimes did not have enough to eat or heat to stay
13 warm. Alaburda paid her way through college, working up to 40 hours per week while taking a
14 full class load.

15 TJSL intends to argue that Alaburda was not committed to being a lawyer and that she did
16 not work hard enough to get a job. Alaburda is entitled to present evidence of her drive and
17 motivation. Her upbringing is the reason she worked so hard. She wanted to ensure that she had a
18 stable income; that she had a successful career; and that she would be able to provide for her
19 children so they would not need to experience the problems she endured while growing up.
20 Alaburda's drive and desire to get a job are at the center of this case. The jury is entitled to know
21 the full story (not merely TJSL's version of the story).

22 DATED: March 2, 2016

MILLER BARONDESS, LLP

23
24 By: 

25 VINAY KOHLI
26 Attorneys for Plaintiff
27 Anna Alaburda
28