

2012 AUG 31 PM 1:15

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

MICHAEL C. SULLIVAN (SBN 131817)
KARIN K. SHERR (SBN 229423)
NOAM GLICK (SBN 251582)
PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP
401 B Street, Tenth Floor
San Diego, California 92101-4232
Telephone: 619-237-5200
Facsimile: 619-615-0700

Attorneys for Defendant
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,

Plaintiff,

v.

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

Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT THOMAS JEFFERSON
SCHOOL OF LAW'S MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION AS TO PLAINTIFF, ANNA
ALABURDA**

Date:	November 16, 2012
Time:	10:30 a.m.
Dept:	66
Judge:	Hon. Joel M. Pressman
Complaint Filed:	May 26, 2011
Trial Date:	Not set

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF ARGUMENT	1
II. FACTUAL BACKGROUND	2
A. Thomas Jefferson School of Law	2
B. Alaburda Decides to Attend Law School.....	2
C. Alaburda Chooses to Attend TJSL After Conducting Virtually No Research Into Her Post-Graduation Job Prospects	2
D. Alaburda Attends TJSL for Three Years Despite Her Alleged Misgivings	4
E. Alaburda Makes Almost No Effort to Obtain Post-Graduate Employment.....	5
F. The Allegedly “Misleading” Data Published by TJSL	6
1. TJSL’s Data Collection Efforts.....	6
2. Data Provided by TJSL to Third Parties	7
3. TJSL’s Data is Published.....	8
III. ALABURDA’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS	8
IV. ALABURDA SUFFERED NO INJURY AS A MATTER OF LAW	9
A. Alaburda Suffered No Injury Because She Successfully Obtained a Full-Time Lawyer Position After Graduating from TJSL.	10
B. Alaburda Failed to Mitigate Her Damages By Making Little Effort to Secure Post-Graduation Work	11
V. ALABURDA’S CLRA CLAIM FAILS BECAUSE SHE IS NOT A “CONSUMER” WITHIN THE MEANING OF THAT STATUTE	11
VI. CONCLUSION.....	13

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

MacDonald v. Thomas Cooley Law School

W.D. Mich. July 20, 2012 __ F. Supp.2d __, 2012 WL 29941072, 12

STATE CASES

Aryeh v. Canon Business Solutions, Inc.

185 Cal.App.4th 1159 (2010)8

Bower v. AT&T Mobility

(2011) 196 Cal.App.4th 15459

Creative Ventures, LLC v. Jim Ward & Associates

(2011) 195 Cal.App.4th 14309

Fox v. Ethicon Endo-Surgery, Inc.

(2005) 35 Cal.4th 7978

Friedman v. Merck & Co.

(2003) 107 Cal.App.4th 4549

Hall v. Time Inc.

(2008) 158 Cal.App.4th 84710

Krauss v. Strop

(1941) 47 Cal.App.2d 4529

Lazar v. Hertz Corp.

(1983) 143 Cal.App.3d 12812

Lewis v. Superior Court

(1978) 77 Cal.App.3d 84411

Massachusetts Mut. Life Ins. Co. v. Superior Court

(2002) 97 Cal.App.4th 12828

Peterson v. Cellco Partnership

(2008) 164 Cal.App.4th 158310

Shaffer v. Debbas

(1993) 17 Cal.App.4th 3311

Snapp & Assocs. Ins. Servs., Inc. v. Robertson

(2002) 96 Cal.App.4th 8848

1	<i>State Dept. of Health Services v. Superior Court</i>	
2	(2003) 31 Cal.4th 1026	11
3	STATE: STATUTES, RULES, REGULATIONS, CONSTITUTIONAL PROVISIONS	
4	Bus. & Prof. Code § 17200.....	1
5	Bus. & Prof. Code § 17204.....	9
6	Bus. & Prof. Code § 17208.....	8
7	Bus. & Prof. Code § 17500.....	1
8	Bus. & Prof. Code § 17535.....	9
9	Civ. Code § 1572	9
10	Civ. Code § 1760(d).....	12
11	Civ. Code § 1770(a).....	9
12	Civ. Code § 1783	8
13	Code Civ. Proc. § 338	8
14	Code Civ. Proc. § 339.....	8
15	OTHER AUTHORITIES	
16	<i>Gomez-Jimenez v. New York Law School</i>	
17	Case No. 652226/11	2
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

INTRODUCTION AND SUMMARY OF ARGUMENT

Despite admitting that she was offered a full-time attorney position several months after graduating from law school, plaintiff Anna Alaburda ("Alaburda"¹) seeks restitution of her law school tuition on the theory that her degree from Thomas Jefferson School of Law ("TJSL") has "no value." At the heart of her lawsuit is Alaburda's contention that she decided to attend TJSL based primarily on the post-graduate employment statistics published by a popular magazine (*U.S. News and World Report* ("*U.S. News*")). Alaburda now claims that she was "misled" by the one line summary information about TJSL in *U.S. News* because she assumed (without any research or corroboration) that the column entitled "percent employed nine months after graduation" referred to only full-time, permanent, attorney positions (like the one she was subsequently offered).

Alaburda's Fourth Amended Complaint ("FAC") includes six causes of action:

- (1) Unfair business practices in violation of Business & Professions Code section 17200;
- (2) False advertising in violation of Business & Professions Code section 17500;
- (3) Intentional fraud;
- (4) Negligent misrepresentation;
- (5) Violation of the Consumer Legal Remedies Act ("CLRA"); and
- (6) Negligence.

All of Alaburda's claims fail for two independent reasons. First, Alaburda's claims are barred by the statute of limitations because she testified that she discovered the alleged misrepresentations more than four years prior to filing her Complaint. Second, Alaburda suffered no cognizable legal injury because, among other reasons, she admits she obtained a full-time attorney position, earning \$60,000 per year, plus benefits, shortly after graduating.

Additionally, Alaburda's CLRA claim also fails because, as a matter of law, Alaburda is not a "consumer" within the meaning of that statute.²

¹ After filing the Complaint, Alaburda became Anna Braff by marriage. However, for purposes of consistency with the captioning in this case, TJSL refers to Alaburda by her maiden name in this motion.
² Alaburda has now amended her Complaint four times, the most recent amendment adding three new plaintiffs in an attempt to overcome the fundamental infirmities addressed by this motion. By filing this (footnote continued on next page)

II.

FACTUAL BACKGROUND

A. Thomas Jefferson School of Law

TJSL is a non-profit organization with a stated mission of providing an outstanding legal education for a diverse student body in a collegial and supportive environment. (Declaration of Mary E. Kransberger (“Kransberger Dec.”), ¶ 2.) Located in downtown San Diego, TJSL has been fully accredited by the American Bar Association (ABA) since August 2001. (*Id.* ¶ 3.)

B. Alaburda Decides to Attend Law School

Alaburda attended TJSL from 2005 to 2008. (*Id.* ¶ 4.) Prior to law school, Alaburda obtained her bachelor’s degree in 2002 from New York University (“NYU”). (Alaburda 16:18-17:1.)³ While at NYU, Alaburda pursued a career in film and performing arts. (Alaburda 27:15-24.) After graduating, she moved to California, worked as a Production Assistant, and took a theater class. (Alaburda 28:4-14; 30:6-8, 21-23.) It was then that she began contemplating obtaining a professional degree. (Alaburda 39:2-12.) In addition to law, she considered a career in journalism or psychology. (Alaburda 42:21-43:13.) Ultimately, she decided to attend law school after a “cost-benefit analysis” because, among other reasons, she “knew [she] needed money.” (Alaburda 53:17-54:6.)

C. Alaburda Chooses to Attend TJSL After Conducting Virtually No Research Into Her Post-Graduation Job Prospects

Having narrowed her list of possible career paths, Alaburda began considering which law school to attend. One of her primary criteria was geography – Alaburda reduced her list of

(footnote continued from previous page)
motion as to Alaburda, TJSL preserves its right to demur to Alaburda’s Fourth Amended Complaint as to all four plaintiffs—indeed, if this Court follows the reasoning of two other recent decisions involving virtually identical facts, this lawsuit will not survive the pleading stage. (*Gomez-Jimenez v. New York Law School*, Case No. 652226/11 (Schweitzer, March 21, 2012; *MacDonald v. Thomas Cooley Law School* (W.D. Mich. July 20, 2012 __ F. Supp.2d __, 2012 WL 2994107). (Request for Judicial Notice [“RJN”], Exhs. 1 and 2.) However, in the unlikely event that plaintiffs survive TJSL’s demurrer, TJSL also preserves its right to later seek summary judgment as to all plaintiffs included in the FAC.
³ All exhibit references are to the accompanying Notice of Lodgment. Relevant portions of Alaburda’s deposition testimony, filed under seal, are included as Exhibits 6 and 7 to the Notice of Lodgment, and will be cited as “Alaburda page:line.”

1 possible law schools to seven California law schools and one school in New York. (Alaburda
2 78:15-22.)

3 In choosing a law school, Alaburda claims that her most important consideration was the
4 ability to find post-graduation employment. (Alaburda 85:1-7.) However, she admits that the
5 *only* source of employment statistics she ever consulted was the popular magazine, *U.S. News*,
6 and law school websites. (Alaburda 110:14-111:4.) Further, she never endeavored to understand
7 how the *U.S. News* statistics were developed and could not recall reading the section describing
8 that magazine's methodology. (Alaburda 67:11-17; 80:23-81:6.) Furthermore, 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 readily available. (Alaburda 64:19-65:3; 170:12-16.)
11 She also does not recall visiting or contacting TJSL's Career Services staff, or even the Career
12 Services staff of any of the law schools to which she applied. (Alaburda 89:22-90:3.)

13 Alaburda was not admitted to any law school except TJSL. (Alaburda 92:18-93:6.) In
14 choosing to attend TJSL, her only law school option, Alaburda testified that she relied principally
15 on the 2004 and 2005 editions of *U.S. News*. (Alaburda 143:11-16.) Those reports listed TJSL as
16 a fourth-tier law school, which Alaburda acknowledges she considered before accepting
17 admission. (Alaburda 147:17-21.) *U.S. News* also listed the bar passage rates, which were
18 reported as 54 and 48 percent, respectively, in the 2004 and 2005 editions. (Alaburda 136:25-
19 137:5.) In the 2004 edition, *U.S. News* reported that 80.1 percent of TJSL graduates were
20 employed nine months after graduation, but this number dropped to 56.4 percent in the 2005
21 edition. (Exhs. 3 & 4.)⁴ Nevertheless, Alaburda claims she carefully compared the two editions
22 and viewed these as "solid stats" that supported her decision to attend TJSL. (Alaburda 93:19-
23 25.) Alaburda claims she also reviewed the 2006 edition, published in 2005, which reported a
24 47.2 percent bar passage and 77.0 percent employed nine months after graduation.⁵ (Exh. 5;
25

26 ⁴ It is common knowledge that one needs to pass the California bar examination in order to practice law in
27 this state, and *U.S. News* reports the bar passage rate in the column directly adjacent to the reported
"percentage employed nine months after graduation."

28 ⁵ Each edition of *U.S. News* is published in the year prior to the edition year. For example, the 2004
edition was published in 2003. (Exhs. 3-5; Alaburda 142:4-8.)

1 Alaburda 143:18-21; 149:6-14.)

2 Alaburda claims that in reviewing the *U.S. News* employment statistics, she just
3 “assumed” that the “percent employed” figure represented only full-time legal positions, never
4 considering that lawyers might work part-time.⁶ (Alaburda 129:12-131:11.) She made no effort
5 to determine what jobs law school graduates secured, or where those jobs were located.
6 (Alaburda 87:14-22.) Alaburda further testified that she relied on representations on TJSL’s
7 website and written materials regarding the quality of its education, but notably could not recall
8 anything at all about what she reviewed or what it said.⁷ (Alaburda 171:22-174:1.) Most
9 significantly, Alaburda could not recall ever reviewing *any* employment statistics on TJSL’s
10 website. (Alaburda 110:4-8.)

11 Alaburda admits that, ultimately, she decided to attend TJSL because she wanted to go to
12 law school, and TJSL was her only option. (Alaburda 92:18-93:6.) Notably, she was awarded a
13 \$10,000 per semester scholarship, which covered approximately two-thirds of her law school
14 tuition. (Alaburda 181:13-15, 23-25.) With the scholarship, Alaburda paid a total of only
15 \$32,745 in tuition for her entire three-year legal education at TJSL. (Alaburda 182:15-183:6;
16 Kransberger Decl. ¶ 4.)

17 **D. Alaburda Attends TJSL for Three Years Despite Her Alleged Misgivings**

18 Alaburda began attending TJSL in the Fall of 2005. By the end of her first year —*i.e.*,
19 Spring 2006—she testified that she believed that TJSL’s representations regarding the quality of
20 education were deceptive. (Alaburda 150:14-151:19; 153:11-15.) As a result, at the end of her
21 first year, Alaburda applied to transfer to UCLA. (Alaburda 82:8-10.) Despite her alleged
22

23 ⁶ Specifically, Alaburda testified as follows:

24 Q. Okay. So everything that you – the only basis for your understanding [that the “Employed at
Graduation” statistic meant working full time as a lawyer or in the legal field] in what that meant came
25 from what the title was at the top of the column; is that correct?

A. Yes.

26 ⁷ Indeed, the most “detail” Alaburda could recall on these representations was the following: “I mean,
they would just kind of go on about the school, you know, why it’s a good school, why I should go there.
27 But I can’t really say with like (sic) specificity. . . I know I talked about the writing program, and things
like that are salient in my memory, you know, quality of the student life. And like (sic), I think, the
28 teachers kind of being one on – not one on one, but more, you know, focused attention.” (Alaburda 174:5-
18.)

1 misgivings about TJSL, she did not apply for transfer to any other school. (Alaburda 152:13-25.)

2 After being denied admittance to UCLA, Alaburda decided to remain enrolled at TJSL.
3 (Alaburda 185:14-17.) She testified that by her second year of law school (May 16, 2007), she
4 was openly concerned about her employment prospects. (Alaburda 159:22-162:4; Kransberger
5 Dec. ¶ 5.) She complained to classmates and was discouraged by the options available.
6 (Alaburda 160:9-161:23, 166:14-167:11.) Nevertheless, she never complained to anyone in TJSL
7 Career Services, requested to withdraw from TJSL, or demanded a tuition refund. Rather, she
8 chose to remain enrolled. (Alaburda 180:5-10.)

9 **E. Alaburda Makes Almost No Effort to Obtain Post-Graduate Employment**

10 While proclaiming the importance of finding a job, Alaburda made little effort to do so.
11 TJSL provides numerous avenues for students to find post-graduation employment and students
12 are strongly urged to seek a summer position after their second year of law school. (Kransberger
13 Dec. ¶ 6.) The school encourages students to cast a wide net and submit many applications to
14 various employers. (*Id.*) Heeding this advice, students frequently submit anywhere from 50 to
15 several hundred applications. (*Id.*) Yet, despite this recommendation, Alaburda admits she
16 submitted only between *two* and *four* applications for a summer position during her entire second
17 year of law school. (*Id.* ¶ 5; Alaburda 197:14-17.) From this effort, she received one call back
18 interview, but was not successful in landing the position. (Alaburda 197:19-20; 202:17-18.)

19 Alaburda made even less effort to find post-graduate employment during her third year of
20 law school, submitting just *one* application for employment. (Alaburda 203:8-14; 206:18-24.)
21 She was selected for an interview, and then was invited back for more interviews. (Alaburda
22 203:17-204:9.) However, *she withdrew her application* because she “did not know how
23 passionate [she] was” about the one position she had applied for. (Alaburda 205:8-12.)⁸

24 After graduating from TJSL and passing the California bar examination, Alaburda
25 interviewed with five to seven employers. (Alaburda 220:25-221:25.) Based on these interviews,

26
27 ⁸ 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 *Alaburda was offered a full-time lawyer position making \$60,000 per year, plus benefits*, by a
2 Southern California law firm. (Alaburda 222:2-6; 223:4-8.) She initially accepted the position,
3 and her employment was to begin in February 2009—within nine months of graduation.
4 (Alaburda 222:2-6, 12-16.) Remarkably, however, she rescinded her acceptance because the firm
5 would not pay for her bar dues and required her to travel to San Bernardino for one month of
6 training. (Alaburda 222:7-223:3.) Despite successfully obtaining a full-time attorney position
7 within nine months of graduation, Alaburda now alleges that she received “no value” from her
8 degree because she was “misled” about her ability to secure a full-time attorney job (even though
9 it is undisputed that she did). (Alaburda 185:18-20.)

10 **F. The Allegedly “Misleading” Data Published by TJSL**

11 Alaburda claims that TJSL “has adopted a practice of misrepresenting its post-graduation
12 employment statistics” in its annual submissions to *U.S. News*. (FAC at ¶¶ 3 & 10.) Specifically,
13 she alleges that TJSL publishes employment figures that are misleading because they do not
14 differentiate between full- and part-time positions and between legal and non-legal jobs. (*Id.* ¶ 7.)
15 She further alleges that TJSL does not report employment data for all of its graduates. (*Id.* ¶ 8.)

16 The fallacy of these allegations is immediately apparent when considering the process by
17 which TJSL obtains data from graduating students and alumni, and the method by which it is
18 required to report data to *U.S. News*. In fact, at all times, TJSL calculated its employment
19 statistics in full compliance with the ABA’s reporting guidelines for law schools and the
20 requirements of *U.S. News*. (Kransberger Decl. ¶ 7.)

21 **1. TJSL’s Data Collection Efforts**

22 Gathering employment data starts at the beginning of each graduate’s final term.
23 (Kransberger Decl. ¶ 8.) TJSL obtains each student’s non-law school e-mail address, home
24 address, relocation plans and parents’ contact information. (*Id.*) Students who have petitioned to
25 graduate are required to complete the exit interview process prior to graduation, and may not
26 participate in graduation ceremonies until they do so, which includes disclosing known post-
27 graduate employment information. (*Id.*) At graduation, all graduates are asked to complete a card
28 with parental contact and employment information. (*Id.*)

1 The exit interview and graduation card data are recorded in an Excel worksheet. Career
2 Services then attempts to obtain any missing data by contacting students via phone or e-mail, or
3 by using a variety of other resources, such as Facebook, LinkedIn and independently-published
4 materials (e.g., Martindale Hubbell, state bar sites, employer websites). (*Id.* ¶ 9.) If a graduate
5 does not report any employment, Career Services will continue to follow up, even contacting
6 parents or key faculty members to obtain information. (*Id.*)

7 In October or November, Career Services sends a post-graduate survey to each member of
8 the previous academic year's graduating class. (*Id.* ¶ 10.) This survey is generally then sent again
9 in December or January to graduates who did not respond in the Fall and, in some years, is sent a
10 third time. (*Id.*) The survey requests detailed information regarding employment, including the
11 name and location of the employer, type of job (e.g., law firm, business or industry, academic,
12 government, public interest/non-profit, and judicial clerkship), and whether a J.D. is required,
13 preferred, or neither for that job. (*Id.*)

14 After compiling the information obtained from these efforts, Career Services then follows
15 up on any missing data by phone, e-mail, reminder postcards, or online resources. (*Id.* ¶ 11.) The
16 information obtained is entered into a spreadsheet or database. (*Id.* ¶ 12.)

17 **2. Data Provided by TJSL to Third Parties**

18 After collecting the data, TJSL responds to the requests for information from *U.S. News*,
19 the ABA, and the National Association for Law Placement ("NALP"). (Kransberger Decl. ¶ 12.)
20 TJSL provides the available data gathered from students regarding the industry in which they are
21 employed, including distinguishing between law firms, legal positions within business and
22 industry, non-legal positions within business and industry, government and other categories. (*Id.*
23 ¶ 13.) The school also reports to *U.S. News* the percentages of jobs for which bar admission is
24 required, a J.D. is preferred (but not required), and for which a J.D. is neither required nor
25 preferred. (*Id.*) Finally, TJSL provides a breakdown of the number of graduates whose
26 employment status is known versus unknown. (*Id.*) Thus, far from "deliberately" concealing
27 information, TJSL provides detailed information regarding its post-graduate employment
28 statistics.

1

2

9

10

11

20

23

1 (Alaburda 152:4-12.) She then concedes that based on her experience at TJSL, she was
2 concerned about her job prospects before the end of her second year (May 16, 2007). (Alaburda
3 166:14-167:6; Kransberger Dec. ¶ 5.) Indeed, she even complained to other students during her
4 second year that she feared she would not receive the type of employment opportunities that she
5 hoped to achieve. (Alaburda 160:9-161:23, 166:14-167:11.) Thus, based on her own testimony,
6 Alaburda discovered the alleged “deceptiveness” of TJSL’s reported job statistics prior to the
7 conclusion of her second year of law school on May 16, 2007. Therefore, the very latest date that
8 Alaburda could have timely filed this lawsuit was May 16, 2011. Accordingly, her filing on May
9 26, 2011 was untimely as a matter of law.

10 IV.

11 ALABURDA SUFFERED NO INJURY AS A MATTER OF LAW

12 Alaburda’s claims all require that she prove some form of injury. (Bus. & Prof. Code, §§
13 17204 (unfair competition) and 17535 (false advertising); *Krauss v. Strop* (1941) 47 Cal.App.2d
14 452, 455 [“...where fraud has been committed and no injury has been sustained by the party
15 complaining, no action can be maintained...”].); *Creative Ventures, LLC v. Jim Ward &*
16 *Associates* (2011) 195 Cal.App.4th 1430, 1444 [to recover for fraud or negligent
17 misrepresentation, “plaintiffs had to prove that the alleged misrepresentation resulted in a loss.
18 Deception without loss is not actionable.”]; Civ. Code, §1770(a) (CLRA); *Bower v. AT&T*
19 *Mobility* (2011) 196 Cal.App.4th 1545, 1556 [“An individual seeking to recover damages under
20 the CLRA based on a misrepresentation must prove, among other things, actual injury.”];
21 *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463 [negligence].) To show that she was
22 injured, Alaburda must establish that she suffered some detriment by receiving a law school
23 degree, which resulted in a \$60,000 per year job, based on the total of \$32,745 she paid in tuition.
24 In other words, to recover *anything*, Alaburda must be able to prove that her law degree is worth
25 less than the \$32,745 she paid. To recover full restitution, as she is seeking, she must prove that
26 her law degree has no value. For two independent reasons, she cannot.

27 ///

28 ///

1 **A. Alaburda Suffered No Injury Because She Successfully Obtained a Full-Time**
2 **Lawyer Position After Graduating from TJSL.**

3 The entire premise of Alaburda's lawsuit hinges on her allegation that TJSL overstated the
4 percentages of its graduates who secure full-time lawyer positions. Thus, Alaburda argues that
5 she paid her \$32,745 in tuition under the mistaken belief that she, too, could obtain such a
6 position. However, Alaburda was offered precisely that—a full-time lawyer position paying
7 \$60,000 per year, plus benefits—which she turned down. This fact alone destroys any claim that
8 Alaburda was “injured” by TJSL’s allegedly deceptive practices.

9 A similar scenario was considered in *Hall v. Time Inc.* (2008) 158 Cal.App.4th 847.
10 There, the plaintiff sued a book seller, alleging that the seller unlawfully induced consumers to
11 purchase books by offering a “free preview period,” but then sent invoices prior to the expiration
12 of that period which asked for full payment. (*Id.* at 850.) The plaintiff alleged that the book seller
13 fooled customers into thinking that, despite the so-called “free” trial period, they were
14 automatically under the obligation to pay for the book. (*Id.* at 851.) Thus, the plaintiff ultimately
15 purchased the book after the preview period expired. In finding no injury, the Court held that the
16 buyer obtained the benefit of the bargain because he ultimately received what he paid for—the
17 book. (*Id.* at 855 [“Hall did not allege he suffered an injury in fact – he expended the money by
18 paying Time \$29.51 – but he received a book in exchange.”].)

19 *Peterson v. Cellico Partnership* (2008) 164 Cal.App.4th 1583 is also on point. There, the
20 plaintiffs purchased cell phones and insurance from a company that was not licensed to sell
21 insurance. (*Id.* at 1586-87.) The plaintiffs sought restitution of the insurance commissions
22 charged by the company, which are available only to licensed insurers. (*Id.* at 1587.) The Court
23 rejected this claim, noting that the plaintiffs did not allege they could have bought the same
24 insurance for a lower price from a licensed agent. (*Id.* at 1591.) Thus, they were not injured
25 because “they received the benefit of their bargain, having obtained the bargained for insurance at
26 the bargained for price.” (*Id.*)

27 Here, as in *Hall* and *Peterson*, Alaburda received the full benefit of the bargain. She
28 alleges she attended TJSL based on her belief that she could receive a full-time, lawyer position

1 upon graduating, and that is precisely what she received. Because, she got exactly what she
2 claims she paid for (i.e., a legal education resulting in a job offer as a full time attorney), she
3 cannot demonstrate “injury” as a matter of law.

4 **B. Alaburda Failed to Mitigate Her Damages By Making Little Effort to Secure Post-**
5 **Graduation Work**

6 To the extent that Alaburda did not land her “dream job” after graduation, TJSL cannot be
7 held liable. Alaburda admits she submitted only a handful of applications for legal jobs
8 throughout her three years at TJSL. (Alaburda 197:14-17.) She was offered the opportunity to
9 participate in the school’s “On Campus Interview” program, but chose to submit only two to four
10 applications during her second year, and only *one* application during her third year. (Alaburda
11 198:2-8.) Alaburda now attributes her failure to find a job to TJSL, when she did little more than
12 sit back and wait for a job to come to her. Courts have routinely rejected fraud-based claims
13 under such circumstances. (*Lewis v. Superior Court* (1978) 77 Cal.App.3d 844, 853
14 [“...defendant is not required to compensate for damages avoidable by reasonable effort.”]
15 (citations omitted); *Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 41 [“A plaintiff . . . has a duty to
16 take reasonable steps to mitigate those damages and will not be able to recover for any losses
17 which could have been thus avoided.”]; *State Dept. of Health Services v. Superior Court* (2003)
18 31 Cal.4th 1026, 1043 [same].)

19 In short, Alaburda was in a position to exercise significant control over her post-
20 graduation fate. Her decision to expend little effort towards this end illustrates a fundamental
21 problem with this lawsuit (and why it can never proceed as a class action)—TJSL simply cannot
22 be held responsible for securing a post-graduate legal position for every student who does little to
23 advance his or her own chances of success.

24 **V.**

25 **ALABURDA’S CLRA CLAIM FAILS BECAUSE SHE IS NOT A “CONSUMER”**
26 **WITHIN THE MEANING OF THAT STATUTE**

27 Alaburda is not a “consumer” for purposes of the CLRA. The Act defines a “consumer”
28 as “an individual who seeks or acquires by purchase or lease, any goods or services for personal,

1 family, or household purposes.” (Civ. Code § 1760(d); *Lazar v. Hertz Corp.* (1983) 143
2 Cal.App.3d 128, 142.) Here, it is undisputed that Alaburda did not purchase her legal education
3 for “personal, family or household purposes.” In fact, she testified that she purchased it following
4 a “cost-benefit analysis” in which the “most important factor was getting a job.” (Alaburda
5 53:17-54:6; 85:1-7.) Indeed, the very premise of Alaburda’s lawsuit is that she invested in a TJSL
6 education in reliance on TJSL’s post-graduation job statistics.

7 In *MacDonald v. Thomas Cooley Law School* (W.D. Mich. July 20, 2012 __ F. Supp.2d
8 __, 2012 WL 2994107, the Court analyzed a nearly identical lawsuit under Michigan’s Consumer
9 Protection Act (“MCPA”) which, like the CLRA, protects only “goods, property, or service
10 primarily for personal, family, or household purpose.” (RJN, Exh. 1, at *8, citing M.C.L. §§
11 445.903(1), 445.902(1)(g)[emphasis added].) In distinguishing a law school education from
12 protected “consumer” activity, the Court observed:

13 Plaintiffs did not purchase a Cooley legal education so that they could leisurely
14 read and understand Supreme Court reports, or to provide legal services for
15 themselves or family members. Rather, Plaintiffs purchased a legal education in
16 order to make money as lawyers so that they could live a lifestyle that they
17 believed (perhaps naively) would be more pleasing to them. This is not a business
18 purpose. . . . Plaintiffs ‘intended’ their legal employment to subsequently better
19 their personal circumstances, these better ‘personal circumstances’ would be
20 attained through their work as lawyers, *i.e.*, a business.

21 *Id.* at *8-9.

22 The same reasoning applies here. A law school education is not a “consumer” item
23 intended for “personal, family, or household purposes,” like toothpaste or automobiles. It is, as
24 Alaburda herself alleges, an investment. The CLRA is simply not designed to afford protection to
25 such investments.

26 ///

27 ///

28 ///

///

///

VI.

CONCLUSION

Given the untimeliness of Alaburda's lawsuit, her lack of injury, and her non-"consumer" status under the CLRA, Thomas Jefferson School of Law respectfully submits that summary judgment must be granted in this action as to plaintiff Anna Alaburda.

Dated: August 30, 2012

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

By:  

MICHAEL C. SULLIVAN
KARIN K. SHERR
NOAM GLICK
Attorneys for Defendant
THOMAS JEFFERSON SCHOOL OF
LAW