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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.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT THOMAS JEFFERSON SCHOOL OF LAW'S DEMURRER TO PLAINTIFFS' FOURTH AMENDED COMPLAINT

Date:	November 16, 2012
Time:	10:30 a.m.
Dept:	66
Judge:	Hon. Joel M. Pressman
Complaint Filed:	May 26, 2011
Trial Date:	None Set

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I.

INTRODUCTION

Plaintiffs Anna Alaburda, Jill Ballard, Daniela Loomis, and Nikki Nguyen, have sued Thomas Jefferson School of Law ("TJSL") demanding a refund of their law school tuition on the trendy new theory that they were "induced" to attend TJSL based on "false" and/or "misleading" employment statistics in *U.S. News & World Report* ("*U.S. News*"). Based on this assertion, plaintiffs have brought claims for unfair business practices, false advertising, intentional fraud, negligent misrepresentation, violation of the Consumer Legal Remedies Act ("CLRA"), and negligence.

Plaintiffs' claims fail as a matter of law. First, as courts have consistently found in similar cases, their damages claim is inherently speculative. There are myriad factors that shape why law school graduates do, or do not, find their desired employment, such as the state of the economy, the availability of legal jobs, the scope and persistence of the graduate's job search efforts, the graduate's academic record and employment history, and the graduate's personal characteristics. It is impossible to account for these many factors in arriving at some defensible measurement of damages. Indeed, two courts have already thrown out virtually identical lawsuits at the pleading stage for this very reason. (Request for Judicial Notice ["RJN"], Exh. 1 (*Gomez-Jimenez v. New York Law School*, Case No. 652226/11 (Schweitzer, March 21, 2012); RJN Exh. 2 (*Phillips v. DePaul University*, Case No. 12 CH 3523 (Cohen, September 11, 2012); see also RJN Exh. 3 (*MacDonald v. Thomas Cooley Law School* (W.D. Mich. July 20, 2012 __ F. Supp.2d __, 2012 WL 2994107 [dismissing nearly identical lawsuit at pleading stage.].) Additionally, a California appellate court upheld summary adjudication on this same issue in a similar case against another law school. (*Goerhring v. Chapman University* (2004) 121 Cal.App.4th 353.)

Second, plaintiffs' CLRA claim must be dismissed because the statute does not apply to claims regarding education. In accord with analogous California Supreme Court precedent, an education is not a "good" or "service," as is required for the CLRA to apply. Furthermore, the CLRA claim also fails because plaintiffs are not "consumers," as defined by the CLRA. Accordingly, plaintiffs' claims under the CLRA should be dismissed for this additional reason.

II.

STANDARD FOR DEMURRER

A demurrer tests the legal sufficiency of the plaintiff's complaint. (Code Civ. Proc. § 430.10(e); *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 637.) It is fundamental that each essential element of each cause of action is pled based on ultimate facts which establish liability. (*Berger v. Cal. Ins. Guarantee Ass'n* (2005) 128 Cal.App.4th 989, 1006 [allegations containing "a legal conclusion, rather than pleading facts," are considered "inadequate" and a demurrer will be sustained]; *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390.) Where no liability exists under substantive law, and plaintiff cannot successfully amend the complaint, the court should deny leave to amend. (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436.) The burden of showing a reasonable possibility of amendment "is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

III.

ANY RESTITUTION OR DAMAGES WOULD BE SPECULATIVE

It is axiomatic that a plaintiff cannot recover damages that are inherently speculative. (*Wells Fargo Bank, N.A. v. FSI, Financial Solutions, Inc.* (2011) 196 Cal.App.4th 1559, 1573-74 ["[I]t is fundamental that damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery."] (internal quotations omitted); *accord Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 989; *Page v. Bakersfield Uniform & Towel Supply Co.* (1966) 239 Cal.App.2d 762, 774 ["Damages cannot be recovered if the evidence leaves them uncertain, speculative, or remote."]; *Express, LLC v. Fetish Group, Inc.* (C.D. Cal. 2006) 464 F.Supp.2d 965, 980 [dismissing UCL claim where damages were "too attenuated and speculative."].) As both a California court, as well as courts in other jurisdictions have found in similar cases, the damages sought by plaintiffs are far too speculative to serve as a legal basis for recovery.[1]

[1] In an attempt to save their claims, Plaintiffs will likely point to recently denied demurrers brought by Golden Gate University and the University of San Francisco. Those decisions are inapposite, however, as (footnote continued on next page)

In *Gomez-Jimenez v. New York Law School*, Case No. 652226/11 (Schweitzer, March 21, 2012), the court dismissed a virtually identical lawsuit at the pleading stage, finding the alleged damages were too remote and speculative. (RJN, Exh. 1, p. 24.) In that case, nine graduates of New York Law School sued the school for allegedly publishing "misleading" job statistics that did not distinguish between full-time and part-time jobs, and those that required or did not require a J.D. degree. In dismissing the case, the court relied on precedent established in *Mihalakis v. Cabrini Medical Center* where a medical student alleged that a hospital misrepresented aspects of its internship program, making it appear better than it was. ((N.Y. App. Div. 1989) 151 A.D.2d 345, 346.) The court in *Mihalakis* rejected the claim, finding that damages:

> would have to be measured by the difference between the value of the internship program provided by defendants and the value of an internship program having the characteristics that defendants represented to plaintiff Cabrini had but did not. ***We think it evident that any such measurement must be rejected as speculative.***

(*Id.* [emphasis supplied].) Applying the reasoning from *Mihalakis*, the *Gomez-Jimenez* Court refused to endeavor to "measure the 'true value' of a NYLS degree," noting that the "starting point of any such measurement is beyond this court." (RJN, Exh. 1, p. 22.)

Recently, yet another court dismissed a nearly identical lawsuit at the pleading stage based on the speculative nature of damages. In *Phillips v. DePaul University*, Case No. 12 CH 3523 (Cohen, September 11, 2012), nine graduates of DePaul University Law School brought a statutory claim under Illinois' equivalent of California's CLRA, and common law claims for fraud and negligent misrepresentation. (RJN, Exh. 2.) Like here, the *Phillips* plaintiffs sought restitution of their law school tuition on the theory that they were misled by the law school's post-graduation employment statistics appearing in *U.S. News* and other publications. (*Id.* at 1-2.) Rejecting their claims, the court observed that, while plaintiffs "allege that their DePaul J.D. degrees are worth some unidentified percentage less than they would have been had DePaul's representations about their recent graduates' employment been true," the plaintiffs "identify no

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the argument that the damages sought are speculative was not raised in those demurrers and therefore was not addressed by that court.

mechanism by which such damages could ever be calculated." (*Id.* at 7-8.) The Phillips Court went on to list the many factors that render the calculation of damages impossible:

> Even assuming that the worth of a J.D. degree is based solely upon what the holder of the degree is able to earn as a lawyer, a highly dubious proposition, what a lawyer earns, upon graduation and over a lifetime, is based on a myriad of factors [including] the state of the economy, the overall availability of jobs in the legal profession, the overall academic record of the graduate, any practical experience of the graduate . . . , the efforts put into obtaining legal employment . . . the geographic area in which employment is sought. . . . [listing numerous other factors]. ***None of these factors can be determined with any kind of certainty and, therefore, the amount of damages, if any, sustained by Plaintiffs is wholly speculative.***

(*Id.* at 8 [emphasis supplied].)

California courts have reached the same conclusion on similar facts. In *Goerhring v. Chapman University* (2004) 121 Cal.App.4th 353, the plaintiff was a law student who alleged the law school induced him into enrolling by misrepresenting its chances for receiving State Bar accreditation. The court granted summary adjudication on his claims for intentional and negligent misrepresentation on the grounds that the jury "could reasonably conclude her claimed damages for graduating a year later than planned were merely speculative." (*Id.* at p. 367.) The court further rejected as "immaterial" the issue of whether damages were calculated as "benefit-of-the-bargain" or "out-of-pocket" expenses. (*Id.* at 366.)

Here, plaintiffs invite the same impermissible speculation rejected in *Goerhring*. They seek a tuition refund in some unspecified amount because of the allegedly misleading statements regarding their employment prospects. However, they do not deny that they received a law school education from an accredited institution, and they do not deny either that they are capable of working as lawyers or that they are qualified to obtain legal work in the future. Rather, plaintiffs would have a fact-finder calculate damages based on some hypothetical difference between the value of their TJSL education—including the job opportunities it brings—and what they reasonably expected out of the job market when they enrolled. However, measuring this difference is inherently speculative.

Several examples illustrate this point. Consider, for example, the futility of assigning a monetary value to the *prospect* of finding full-time legal employment after obtaining a TJSL law degree. Are plaintiffs entitled to a full tuition refund even though they may secure a full-time lawyer position in the future? Additionally, how could a jury account for the varying levels of effort in seeking post-graduation work or the personal characteristics (e.g., interviewing skills, ambition, etc.) that so greatly impact any job search? Should a student who makes little effort to find a job receive the same amount of restitution as one who aggressively seeks work? How about a student who decides not to pursue legal employment at all, or to only pursue very limited opportunities? Likewise, how should a fact-finder weigh outside forces, such as the state of the economy or the availability of legal jobs in the market? (*See Gomez-Jimenez* ["[i]n these new and troubling times, the reasonable consumer of legal education must realize that these omnipresent realities of the market obviously trump any allegedly overly optimistic claims in their law school's marketing materials."].) (RJN, Exh. 1, p. 24.) Of course, these are only a few examples revealing the sheer impossibility of measuring damages in this case.

In sum, plaintiffs cannot, as a matter of law, devise any "formula" or "metric" for incorporating the many variables that shape a graduate's prospects for obtaining post-graduation employment. As such, the damages they seek are inherently speculative and, therefore, not recoverable as a matter of law.

IV.

PLAINTIFFS' CLRA CLAIM FAILS BECAUSE A LAW SCHOOL EDUCATION IS NEITHER A GOOD NOR A SERVICE

Plaintiffs' fifth cause of action alleges that TJSL violated the CLRA by "misrepresenting" its employment statistics. (Fourth Amended Complaint ("FAC") ¶ 133.) However, in order to sustain an actionable claim under the CLRA, plaintiffs must prove that they were victims of an unfair or deceptive act or practice that was undertaken by a person or entity engaged in the sale or lease of "goods or services." (Civ. Code § 1770 [limiting CLRA to deceptive acts or practices undertaken in the sale of goods or services].)

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Here, plaintiffs have not alleged that TJSL was engaged in the sale of "goods or services." Indeed, the plain language of the CLRA, recent Supreme Court precedent, and the legislative intent of the CLRA *all* lead to the conclusion that a law school education (or any education) is neither a "good" nor a "service" under the CLRA. Accordingly, this claim fails as a matter of law. (*Berry v. Am. Exp. Publ'g, Inc.* (2007) 147 Cal.App.4th 224, 226, 229 [affirming a demurrer, without leave to amend, that issuance of credit was not a service under the CLRA].)

A. Canons of Statutory Interpretation

In determining the meaning of a statute, the court must "first examine[ ] the words of the statute itself," attempting to give effect to the usual, ordinary import of the language. (*Bodell Construction Co. v. Trustees of the California State University* (1998) 62 Cal.App.4th 1508, 1515-16; *Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, 61.) The plain, common sense meaning of a word governs. (*Lungren v. Deukmajian* (1988) 45 Cal.3d 727, 735.) If the plain statutory language is clear and unambiguous, there is no need for further interpretation. (*Fairbanks*, 46 Cal.4th at 61.) Only if the plain language is ambiguous is there a need for further construction. (*People v. Coronado* (1995) 12 Cal.4th 145, 151.) Such further construction includes reviewing the objects and policies behind the statutes and selecting the interpretation that promotes the general purpose of the statute. (*Coronado,* 12 Cal.4th at 151.)

B. Education is Not a Good Under the CLRA

The plain language of the CLRA does not include education within the definition of "goods." Specifically, "goods" are defined as:

> . . .tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(Civ. Code § 1761(a).)

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The CLRA does not define "chattel," but the common definition clearly does not include education.[2] More significantly, the California Supreme Court has held that providing an insurance policy is not a "good" under the CLRA because it is not a "tangible chattel." (*Fairbanks*, 46 Cal.4th at 61; *see also*, *Berry*, 147 Cal.App.4th at 229 [finding extension of credit is not a tangible chattel].) The same analysis applies equally to education.

C. Education is Not a Service Under the CLRA

The plain language of the CLRA also omits the word "education" from its definition of services. Based on the omission, this Court should find that education is not a service under the CLRA. In any event, even if this Court probes beyond the plain language of the statute, the legislative history reveals a clear intent to omit education from the definition of "services."

1. The Plain Language of the CLRA Does Not Include Education

The CLRA defines services as "work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods." (Civ. Code § 1761(b).) The definition does not include any reference to education, nor is there any published California authority holding, or suggesting, that providing higher education is a service under the CLRA. This Court should not apply a more liberal interpretation than authorized by the plain language of the statute. (*Wofford v. Apple Inc.* (S.D. Cal. 2011) 2011 WL 5445054.)

Plaintiffs may contend that the omission of the word "education" was unintentional, and the Legislature could not have been expected to include all possible activities that might fit within the definition of "service." However, the Supreme Court has specifically rejected this argument in a nearly identical situation, holding that the omission of certain words in defining services ("insurance" specifically, and "education" by implication) was intentional and an unequivocal signal of legislative intent. (*Fairbanks*, 46 Cal.4th at 61.) In *Fairbanks*, the Court confronted the issue of whether the sale of life insurance policies constituted a service under the CLRA. In

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[2] "Chattel" is defined by Merriam-Webster Dictionary as "an item of tangible movable or immovable property except real estate and things (as buildings) connected with real property." (*Chattel Definition*, MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/chattel (last visited September 12, 2012.)

finding that the sale of these policies was not a service, the Court found that the CLRA was adapted almost entirely from a model law, the National Consumer Act ("NCA"). (*Fairbanks*, 46 Cal.4th at 61.) Importantly, the NCA originally defined "services" as follows:

> (a) work, labor, and other personal services,
>
> (b) privileges with respect to transportation, hotel and restaurant accommodations, ***education***, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and
>
> (c) ***insurance.***

(*Id.* [emphasis supplied], citing RJN Exh. 4, p. 23 [National Consumer Act].)

As the Supreme Court noted, the model law specifically included insurance in the definition of services, but the CLRA did not. (*Fairbanks*, 46 Cal.4th at 61-62.) This affirmative diversion from the language of the NCA was intentional and reflected a legislative decision to exclude insurance from the CLRA. (*Ibid.*)[3]

This case demands the same conclusion. The NCA included "education" in the definition of services, while the CLRA does not. In short, the Legislature *affirmatively removed* education from the definition of services from the NCA, just as it did with insurance. Accordingly, this Court should reach the same conclusion as in *Fairbanks* because the situation is identical.[4]

2. The Legislative History of the CLRA Confirms that Education was Never Intended as Part of the Definition of Services

In addition, the legislative history of the CLRA makes it evident that it was targeted

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[3] This holding is consistent with California's rule that if a statute is modeled after another law, any deviation from the model law is considered intentional. (*Hughes Electronics Corp. v. Citibank Delaware* (2004) 120 Cal.App.4th 251, 268; *Berry*, 147 Cal.App.4th at 230-31; *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 604.)

[4] While the legislative history does not specifically explain why the word education was dropped from the definition of services, the lack of explanation is of no consequence. Indeed, the CLRA's final wording "was the product of intense negotiations between consumer and business groups, and represented a compromise between the two." (*Fairbanks*, 46 Cal.4th at 62-63, citing *Berry*, 147 Cal.App.4th at 230.) The dispositive issue was the exclusion of the word insurance from the final version of the CLRA, not the reason why it was omitted. (*Fairbanks*, 46 Cal.4th at 62-63.) Similarly, the reason that education was omitted from the final bill is irrelevant; all that matters is that it was, in fact, omitted by the Legislature.

toward deceptive "merchants," not educational institutions. Moreover, parallel enactments of the Civil Code have defined services to include "courses of instruction," yet the Legislature has not amended the CLRA, despite passing several recent amendments.

a. The CLRA was Intended to Target "Merchants," Not Schools

The CLRA's legislative history shows it was intended to target unscrupulous "merchants," not educational institutions. Indeed, the CLRA was clearly designed to protect against merchants who use deceptive practices to sell to "low income or ghetto consumers," not to benefit college graduates who are considering whether to pursue a law school education. (RJN Exhs. 5, 6.)[5]

Because the CLRA does not provide a definition of "merchant," this Court must rely on the word's common definition. The Merriam-Webster Dictionary defines merchant as "a buyer and seller of commodities for profit: trader; the operator of a retail business: storekeeper." In short, the Legislature's use of the term "merchant" evidenced a desire to enforce the statute against those that bought or sold property or provided related tangible services — *i.e.*, shopkeepers, store owners and vendors. A law school education is intangible, is not property, and cannot be sold or transferred by a merchant. (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 766; *In re Marriage of Aufmuth* (1979) 89 Cal.App.3d 446, 461.) In fact, Defendant is a non-profit educational organization; it is certainly not a merchant and sits firmly outside of the scope and intent of the CLRA.[6]

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[5] According to the Assembly Committee on Judiciary for A.B. 292 (the bill containing the CLRA), "the proposed Act is meant to provide consumers with remedies as against merchants employing various deceptive practices in connection with the sale of goods or services," was drafted to "most" benefit "low income or ghetto consumers," in order to curtail the "resentment against the establishment found in ghetto areas [that] is generated by unconscionable practices of merchants in business there." (RJN Exh. 5.) Drafter James A. Hayes' correspondence to Governor Reagan, seeking final approval of AB 292, also indicates that the CLRA was "designed to reach only those types of shady practices engaged in by merchants trying to get a fast buck by deceiving the unknowing public." (RJN Exh. 6.)

[6] Notably, federal courts applying the CLRA have consistently refused to include such intangible, non-retail or non-merchant driven services within the definition of "services" under the CLRA. (*Bottoni v. Sallie Mae, Inc.* (N.D. Cal. 2011) 2011 WL 635272 [student loan is not a service under the CLRA]; *Wofford v. Apple Inc.* (S.D. Cal. 2011) 2011 WL 5445054 [software agreement is not a service under the CLRA]; *Hernandez v. Hilltop Financial Mortg., Inc.* (N.D. Cal. 2007) 622 F.Supp.2d 842, 849-51 [mortgage loan is not a service]; *Mejia v. EMC Mortg. Corp.* (C.D. Cal. 2012) 2012 WL 367364, *5 [same]; *Hofstetter v. Chase Home Finance, LLC* (N.D. Cal. 2010) 2010 WL 3259773 [flood insurance is not a "service"]; *Becker v. Wells Fargo Bank, N.A.* (E.D. Cal. 2011) 2011 WL 3319577 [loan modification is not a service]; *Holland v. TD Ameritrade, Inc.* (E.D. Cal. 2011) 2011 WL 346204 [CLRA
(footnote continued on next page)

b. The Legislature has Not Amended the CLRA to Include Education

The definition of the same word across parallel statutory provisions is persuasive authority in determining legislative intent. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307; *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597.) It is presumed that the Legislature is aware of other statutory provisions when it enacts new provisions, and that the new provisions are passed with former ones in mind. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7; *In re T.M.* (2009) 175 Cal.App.4th 1166, 1172.) The use of "differing language in otherwise parallel provisions supports an inference that a difference in meaning was intended." (*Fairbanks*, 46 Cal. 4th at 62; *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 896.)

The Chapter of the Civil Code immediately preceding the CLRA – Division 3, Part 2, Title 5, Chapter 2, section 1689.24 (enacted in 1989), defines "services" as:

> ...work, labor and services, including, but not limited to, services furnished in connection with the repair, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, ***and courses of instruction, regardless of the purpose for which they are taken...***

(Civ. Code § 1689.24(d) [emphasis supplied].)

Tellingly, the definition of services in section 1689.24 includes "courses of instruction," even though the Legislature specifically removed "education" from the definition of services under the CLRA. Such anomalies are not considered accidental; rather, they are deemed significant. (*Fairbanks*, 46 Cal.4th at 62; *Miklosy*, 44 Cal.4th at 896.)

Moreover, the Legislature has had ample opportunity to amend the CLRA with similar language. Indeed, since section 1689.24 was drafted in 1989 and included "courses of instruction" within the definition of services, the CLRA has been amended eleven times. (*See*, RJN, ¶ 7.) More tellingly, section 1761 has been specifically amended three times during the same period without any effort to include "education" or "courses of instruction." (*Id.*) This evinces a legislative intent to exclude higher education as a qualifying "service" under the CLRA.

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does not apply to the sales of securities]; *Townsend v. National Arbitration Forum, Inc.* (C.D. Cal. 2012) 2012 WL 12736 [contractual obligation to arbitrate is not a service under CLRA].)

V.

PLAINTIFFS' CLRA CLAIM FAILS BECAUSE THEY ARE NOT "CONSUMERS"

Just as education is not a "good or service" under the CLRA, neither are law school students "consumers" under that statute. The Act defines a "consumer" as "an individual who seeks or acquires by purchase or lease, any goods or services for personal, family, or household purposes." (Civ. Code § 1760(d); *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 142.) Here, the very premise of this lawsuit is that plaintiffs *invested* in a TJSL education in reliance on TJSL's post-graduation job statistics. (FAC ¶ 4 ["Plaintiffs would not have enrolled in or attended TJSL if they had known the truth about TJSL's graduate employment rates."]; ¶ 10 ["Many TJSL graduates will never be offered work as attorneys or otherwise be in a position to *profit* from their law school education."]; ¶¶ 14, 20, 31, 38 [plaintiffs "believed that [their] law degree[s] from TJSL would be *marketable* . . . ."](emphasis supplied).)

In *MacDonald v. Thomas Cooley Law School* (W.D. Mich. July 20, 2012 __ F. Supp.2d __, 2012 WL 2994107), the Court analyzed a nearly identical lawsuit under Michigan's Consumer Protection Act ("MCPA") which, like the CLRA, protects only "goods, property, or service *primarily for personal, family, or household purpose*." (RJN, Exh. 3, at *8, citing M.C.L. §§ 445.903(1), 445.902(1)(g)[emphasis supplied].) In distinguishing a law school education from protected "consumer" activity, the Court observed:

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

(*Id.* at *8-9 [emphasis supplied].)

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The same reasoning applies here. A law school education is not a "consumer" item intended for "personal, family, or household purposes," like toothpaste or automobiles. It is, as plaintiffs themselves allege, an investment. The CLRA is simply not designed to afford protection to such investments.

VI.

CONCLUSION

For the foregoing reasons, TJSL respectfully requests that this Court sustain its demurrer to plaintiffs' Fourth Amended Complaint. Additionally, because no liability exists under substantive law, and plaintiffs cannot successfully amend their complaint to state a valid claim, the Court should deny leave to amend. (*Lawrence v. Bank of America,* 163 Cal.App.3d 431, 436 (1985).)

Dated: September 20, 2012

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

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