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## FOR-PROFIT COLLEGES PAY DEARLY FOR THEIR STUDENTS' DISCONTENT

BY TOM McNICHOL

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ANY OF THE MOST DRAMATIC LEGAL STORIES EVER TOLD PIT TENACIOUS trial lawyers against the makers of some of the world's most notorious consumer goods—things like cigarettes and asbestos insulation and breast implants. Lately, though, plaintiffs lawyers are laying siege to an industry that doesn't

manufacture much of anything at all—except perhaps for some fine French meals and a lot of underemployed graduates.

A class action suit filed four years ago underscores the potential for big payouts. In that case, the California Culinary Academy (CCA), a for-profit, educational institution based in San Francisco, agreed to a \$40 million settlement last November after plaintiffs accused the school of misrepresenting its job placement rates, exaggerating its prestige, and falsely suggesting that it had a selective qualifying process when, in fact, it required of its entrants no more than a high school diploma or its equivalent, an interest in cooking, and the ability to pay \$46,000 in tuition and fees for the twelve-month program (*Amador v. Calif. Culinary Acad.*, San Francisco Super. Ct., No. CGC-07-467710; *Adams v. Calif. Culinary Acad.*, San Francisco Super. Ct., No. CGC-08-473866).

"I feel this is analogous to where tobacco litigation was a few years ago," says Ray Gallo, lead counsel in the case.

"Tobacco companies won for a long time until someone figured out that they knew things about their product that they weren't telling everybody. And I think that's what these cases may turn out to be."

To be sure, providing a subpar education isn't, by itself, grounds for a lawsuit. But when a school actually starts to lie about what it's offering—that, of course, could be viewed as fraud.

Gallo, of San Rafael, is pressing ahead



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—RAY GALLO,  
LEAD COUNSEL FOR PLAINTIFFS

with two other class actions—both against Le Cordon Bleu College of Culinary Arts in Pasadena, which is owned by the same company that owns CCA: Career Education Corp. (*Vasquez v. Calif. School of Culinary Arts Inc.*, No. BC393129 Los Angeles Super. Ct. fourth amended complaint filed Apr.





motion to compel individual arbitration is pending. In Texas, the court denied class certification on the grounds that the named representative did not qualify under Rule 23 of the Federal Rules of Civil Procedure and then denied a motion to substitute a new representative; the plaintiffs have appealed to the Fifth Circuit.

The *Contreras* cross-complaint against Alta alleges that Westwood and its top executives “engage in unlawful, unfair, and fraudulent practices at every step of the process from recruitment to postgraduate job placement.” Admissions representatives, it continues, “are trained to provide uniform misrepresentations” about the cost of attending the college, school accreditation, and the transferability of credits. For signing up new students, admission staffers receive incentive bonuses such as trips to Cancún. One exhibit shows the company’s training materials, which urge admissions staffers to make 500 calls per week to develop new leads. “Remember, the beginning process is ... a numbers game!” reads one company handout.

It doesn’t hurt the plaintiffs’ case, either, that Westwood College’s campus in Dallas was one of the sites where GAO investigators uncovered shady recruitment practices. In one instance, when a GAO investigator posing as a student told a Westwood financial aid representative that he had \$250,000 in savings, the school’s representative reportedly stated that it was none of the government’s business how much money the applicant had in the bank.

According to Alta officials, Westwood has implemented several reforms over the past year, including doing away with incentive-based pay for admissions counselors, and they intend to add a third-party verification program to ensure that students are being given correct information. But that hasn’t stopped Alta from filing a defamation suit against one of the law firms representing plaintiffs in the case, Florida-based James, Hoyer, Newcomer & Smiljanich (*Westwood College Inc. v. Estes*, No. 2010CV2196 (Colo. Dist. Ct., Cnty. of Denver filed Mar. 17, 2010), action stayed by Colorado Supreme Court pending review of First Amendment issues, *Westwood College Inc. v. Estes*, No. 2011SA186 (Colo. Sup. Ct. order issued Jul. 19, 2011)).

On its website Westwood calls James Hoyer a “predatory law firm.” And lawyers for the college are particularly steamed by how aggressively James Hoyer has used social media to publicize its lawsuits against the for-profit institution. They cite, for example, a Facebook group page that the firm created entitled “Warnings about Westwood College!” that has drawn nearly 400 members. The firm also maintains a website, <http://westwoodscammed.me/>, on which Westwood students and former employees can share their stories with the firm. Westwood officials even accuse the firm of having an attorney send out unsolicited tweets to damage the college’s reputation and help pressure the school into a settlement.





"Lawyers have ethical prohibitions against making unsolicited contacts with individuals, and that should apply to Twitter as well," says Alta's Bill Ojile. "We just thought that was over-the-top offensive."

James Hoyer's lawyers deny that they did anything unethical. "We weren't soliciting clients," says senior partner Chris Hoyer. "We already had clients. We're looking for victims and witnesses and employees. That's what lawyers are supposed to do. You're supposed to find as many people as you can with information. Courts go crazy if you bring fraud cases without particularity."



IF EVER THERE WERE ANY LINGERING doubts about the allure of the for-profit college sector, they should have been eliminated six years ago when real estate mogul turned reality TV

star Donald Trump created Trump University—an enterprise that promised to impart a lifetime of business savvy to any student willing to pay up to \$35,000. With characteristic bravado, Trump assured prospective students that his handpicked team of instructors would "teach you better than the best business school."

The classes at Trump University aren't stuffy lectures led by pipe-smoking academics. Rather, they're freewheeling real estate seminars held in hotel meeting rooms that take on the flavor of a high school pep rally. The sessions feature Chairman Mao-size banners of The Don-

ald prominently displayed at the front of the room, blaring motivational music like the O'Jays song "For the Love of Money," and chanted sales slogans.

But according to a class action filed in San Diego in April 2010, Trump University is a fraud, with promised one-year apprenticeships that are little more than three-day seminars, and mentorships that take students on field trips to places like Home Depot (*Makaeff v. Trump University*, No. 10-CV0940 (S.D. Cal. complaint filed Apr. 30, 2010)).

"Trump University definitely preyed on people who are unemployed or who are gullible," says lead plaintiffs attorney Amber Eck of the San Diego law firm Zeldes & Haeggquist. "I've talked to clients in this case who have lost their house or their savings over paying for the courses. It's affected their health and emotional status. A lot of them tell me over and over again, 'I don't know how Donald Trump sleeps at night.'"

The court did not seem overly concerned about Mr. Trump's sleeping habits. His motion to be relieved from personally appearing at a court-ordered early neutral evaluation conference was denied. The magistrate judge overseeing the ADR process, hopeful that the case could be resolved at an early stage, ordered Trump to appear along with all four of the named plaintiffs.

The class action isn't the only serious problem Trump University has right now. In fact, the school faces a string of consumer complaints, reprimands from state regula-







tors and the Better Business Bureau (which gave Trump University a D-minus rating), and an investigation launched by the New York attorney general's office into possible illegal business practices. The school, which is not accredited and offers no degrees or college credits, changed its name to the Trump Entrepreneur Initiative in May 2010 in response to complaints by New York education officials that it was misleading—if not illegal—for the institution to call itself a university.

Of course, the lawyers defending Trump are aggressively disputing these allegations. “As one lawyer who’s working for us said to me, ‘Anyone with \$350 and a typewriter can file a complaint,’” says George Sorial, managing director and assistant general counsel for The Trump Organization. “The case has absolutely no merit. None of the allegations in the complaint are rooted in fact ... and, quite frankly, they’re absolutely ridiculous. I’m absolutely confident that we will prevail in this matter.”

Even so, at this writing the school has stopped accepting new students and suspended the seminars, although the online and one-to-one mentoring programs continue, according to Sorial.

When Trump University’s traveling real estate seminars blew into a town they made plenty of noise. Newspaper and direct mail ads and email solicitations touted the seminars weeks in advance, with big headlines asking: “Are you interested in being mentored by Donald Trump?” One ad, written in Trump’s voice, told prospective students

that his school was home to “some of the finest instructors in the world, professors from great universities, the finest business schools and also friends of mine from the world of business.”

But that was blatantly false, according to the class action complaint.

“He says these are his hand-picked experts, and we allege that they’re not,” says Eck. “In many cases, Donald Trump didn’t even know who these people are, and he definitely did not pick them. And in a lot of cases, they were not even real estate experts, they were just commissioned salespeople who were hired for [their] ability to make sales.

“The three-day session really was a joke,” she adds. “They drive around with students and look at properties, but it’s nothing more than what a real estate agent would do with you for free. They’ll say, ‘Oh, here’s a house, looks like you could fix it up, here’s another house.’ They do that for two days. And then on the third day they take you to a Home Depot and show you very general things like where the kitchen aisle is if you want to do a remodel. It’s ludicrous.”

Perhaps. But in Trump’s defense Sorial points to student surveys that he says show extremely high approval ratings for the school. “We’re talking about numbers in the 97 to 98 percent range of those that filled out our survey. You go to any school,” he adds, “whether it’s Harvard, Yale, MIT, or Stanford, and you interview 11,000 students, you’re inevitably going to have a handful who were not happy with the quality of their education or can’t





get the job they want after graduation. I challenge any academic institution to beat a 97 or 98 percent customer satisfaction rate."

Indeed, even one of the students listed in Eck's class action—a woman named Tarla Makaëff who is now the target of a defamation countersuit by the school—described her experience with Trump U. as "amazing" and rated all ten facets of the program "excellent" on an evaluation form after her three-day mentorship. "Her own words speak for themselves," says Sorial.

As contentious as this litigation is, though, both sides can at least agree that the Trump name has everything to do with what's happened here. On the plaintiffs' side, Eck says her clients put aside misgivings about laying down so much money because they trusted what Trump stood for. And on Trump's side the lawyers say it's the name that's made the school such a juicy target.

"Let's be honest," says Sorial. "This is purely a shakedown."



FOR ALL THE COMPLAINTS about for-profit colleges in recent years, they hardly come into court defenseless. And, even when trial lawyers win

big, it's only after a long, hard slog.

The first students to lend their names to a class action against Trump University now understand this as well as anyone. Since they attended the seminars, Donald

Trump has hosted seven seasons of *The Apprentice* and *The Celebrity Apprentice*, put his resort company into bankruptcy, acquired a star on the Hollywood Walk of Fame, hinted that he'd run for president, announced that he wouldn't run for president, and then declared he wouldn't rule out a presidential bid sometime in the future. And discovery in the case hasn't even begun.

"Smart class action attorneys have been turning down these kinds of cases for years," says Gallo, attorney for the culinary students in San Francisco. "When an experienced class action lawyer looks at these cases, he thinks, 'There are too many ways I can fail to get class certification. ... We did \$5 million worth of work to get the settlement we got in the CCA case.'" And if it's approved, he adds, the plaintiffs will have waited eight years for a payout.

Gallo continues: "I've gotten calls from people saying, 'Is there going to be any money anytime soon? I'm about to be homeless.' You can't get an apartment if your credit's shot, unless you have cash. And they don't have credit because they can't service their loans."

Doubtless, rich educational experiences can be had at for-profit colleges—but not always in the way their students could have imagined. 🍷

**Correction:** In an earlier version of this article, Thomas Jefferson School of Law in San Diego was incorrectly listed among several for-profit institutions. TJSL is nonprofit and fully accredited by the ABA. California Lawyer regrets the error.

