

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

DEBBI POTTS, a Colorado resident,

Plaintiff,

v.

**CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC., (FKA
COLLEGEAMERICA DENVER, INC.)**, an Indiana Corporation,

Defendant.

COMPLAINT

Plaintiff Debbi Potts, through her attorneys, Westerfield & Martin, LLC, and Parsons, Behle, & Latimer, complains as follows:

INTRODUCTION

1. Plaintiff Debbi Potts brings this action against Center for Excellence in Higher Education, Inc. (the “Center”), for retaliating against her for trying to stop the Center from violating the federal False Claims Act. In particular, the Center filed claims against Ms. Potts in the Larimer County court, under a provision of a contract the Center now admits is illegal, because Ms. Potts reported the Center for violating numerous accrediting standards.

2. In order to obtain tens of millions of dollars each year in federal student loans and grants under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq.

(“Title IV Funds”), the Center promises and continuously certifies to the United States Department of Education (the “Department”) that it is complying with the accreditation standards established by its accreditor, the Accrediting Commission of Career Schools and Colleges (“ACCSC”). 20 U.S.C. § 1094(a)(21).

3. By reporting to the ACCSC that the Center was deliberately violating numerous accreditation standards and actively deceiving ACCSC during accreditation visits, Ms. Potts was engaged in protected activity under the False Claims Act, 31 U.S.C. § 3730(h). The Center’s claims against Ms. Potts for reporting these violations to the ACCSC constitute illegal retaliation under the False Claims Act.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. §§ 3730(h)(2), 3732(a).

5. This Court has personal jurisdiction over the Center pursuant to 31 U.S.C. § 3732(a), which authorizes nationwide service of process, because the Center transacts business and is otherwise found in this District.

6. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a), and under 28 U.S.C. §§ 1391(b), because the Center transacts substantial business in this District and a substantial part of the events giving rise to the claim occurred in this District.

THE PARTIES

7. Plaintiff Debbi Potts is a resident of Colorado. Ms. Potts was an employee of the Center’s predecessor, CollegeAmerica Denver, Inc. (“CollegeAmerica”), from January 19, 2009 to July 16, 2012. Beginning on September 1, 2012, Ms. Potts became a contractor of the Center pursuant to an agreement executed by Ms. Potts and the Center on that date (the “Agreement”).

8. In late 2012, the Center acquired a number of for-profit colleges, including

CollegeAmerica. The Center currently operates a number of for-profit colleges throughout the western United States, including campuses in Colorado (Denver, Ft. Collins, Colorado Springs) and Wyoming (Cheyenne) under the “CollegeAmerica” trade name.

9. The Center has received hundreds of millions of dollars in Title IV Funds since Ms. Potts first became an employee in January 19, 2009. In order to receive Title IV Funds, the Center must promise the Department that it will comply with a variety of laws, regulations, and contractual obligations. Additionally, before the Department will make any payments of Title IV Funds to the Center, the Center must expressly certify that is complying with all such requirements. These promises and certifications, which are described further below, are subject to the federal False Claims Act, 31 U.S.C. §§ 3729-3733.

10. Managerial employees of the Center, in doing the acts and things described in this Complaint, were acting within the course and scope of their respective agencies and/or employment with the Center and with the knowledge and consent of the Center, unless otherwise indicated.

MS. POTTS’ EMPLOYMENT WITH THE CENTER

11. Ms. Potts was the campus director of the Center’s Cheyenne, Wyoming, campus from January 19, 2009 to July 16, 2012. During her employment with CollegeAmerica, the Center’s predecessor, Ms. Potts learned of numerous violations of ACCSC standards by the school.

12. Additionally, Ms. Potts learned of several examples of the school actively deceiving and deliberately withholding material information from ACCSC in order to obtain and maintain accreditation.

13. These practices, along with several other activities that Ms. Potts found to be unethical, led Ms. Potts and another high-ranking employee at the Cheyenne campus, Linda Carter, to resign their employment in July 2012.

14. Subsequently, Ms. Potts made a claim to the Labor Standards Office of the Wyoming Department of Workforce Services for unpaid wages, specifically for bonuses that she had previously earned from CollegeAmerica.

15. Ms. Potts also sought unemployment compensation benefits from the Wyoming Department of Workforce Services. On August 7, 2012, the Wyoming Department of Workforce Services allowed Ms. Potts' claim for unemployment compensation, even though she had resigned, because it found that she had "quit [her] job because [she was] directed by the employer to lie to accreditation agencies regarding business practices as well as lie to the general public regarding cease and desist of programs that were offered." As the Wyoming agency noted, "information was requested from the employer but never received." The Wyoming agency concluded that Ms. Potts' "reason for quitting constitutes good cause directly attributable to the employment."

16. As further described below, following her joint resignation with Ms. Potts, Ms. Carter also requested unemployment compensation benefits from the Wyoming Department of Workforce Services.

MS. POTTS' CONTRACT WITH THE CENTER

17. The Center's Chief Executive Officer, Eric Juhlin, contacted Ms. Potts and Ms. Carter in late August 2012 about entering into contracts relating to their unpaid wages and unemployment compensation claims, as well as several matters related to their employment.

18. Initially, Ms. Potts and Ms. Carter declined to enter into contracts with the Center.

19. However, in response to Mr. Juhlin's insistence, Ms. Potts and Ms. Carter negotiated with Mr. Juhlin regarding possible contracts to resolve their outstanding wage and benefit claims and to address other matters requested by CollegeAmerica.

20. Ultimately, Ms. Potts and CollegeAmerica executed the one-page Agreement on September 1, 2012.

21. Pertinent to this Complaint, the Agreement contains the following provisions:
 - a. CollegeAmerica paid Ms. Potts \$7,000.00;
 - b. Ms. Potts agreed to “refrain from personally (or through the use of any third party) contacting any governmental or regulatory agency with the purpose of filing any complaint or grievance”; and
 - c. Ms. Potts agreed, on an ongoing basis, to “direct any complaints or issues against CollegeAmerica Denver, Inc. or its related entities that may arise with disgruntled staff, students, or the public at large to CollegeAmerica’s toll free compliant [sic] number 1-877-402-0954.”

MS. POTTS’ COMPLAINT TO ACCSC

22. On February 27, 2013, Ms. Potts submitted a complaint to ACCSC describing numerous violations of accrediting standards committed by CollegeAmerica, as well as numerous instances of CollegeAmerica’s management directing employees to provide false information to ACCSC.

23. For example, Ms. Potts’ complaint to ACCSC explained that she was instructed by CollegeAmerica’s Chief Operating Officer (COO) to deceive ACCSC during an accreditation visit by hiding the bookroom from ACCSC personnel and by removing brochures, usually available to the public, advertising CollegeAmerica’s “free” GED program. The COO told Ms. Potts that if ACCSC found out about the bookroom or the brochures, ACCSC would want to investigate those aspects of the school’s operations and that CollegeAmerica did not want that. Ms. Potts’ complaint to ACCSC explained that she was upset during the ACCSC visit because although she wanted to deal honestly with ACCSC, she was sure she would be fired for doing so.

24. Ms. Potts’ complaint to ACCSC also identified numerous examples of CollegeAmerica failing to maintain working and up-to-date instructional equipment, including

centrifuges, electrocardiogram machines, basic graphic arts supplies, and essential computer software, even though ACCSC's Standards of Accreditation require schools to have equipment and supplies that are properly maintained, current, and similar to what is used in the associated occupational fields.

25. Ms. Potts's complaint to ACCSC further disclosed that CollegeAmerica placed advertisements in the "Help Wanted" section of local newspapers, even though ACCSC's Standards of Accreditation expressly forbade CollegeAmerica from doing so. When confronted about the violation of the Standards of Accreditation, CollegeAmerica's management, which is the same as the Center's current management, said they would do whatever they wanted regardless of the Standards of Accreditation and "ask for forgiveness later."

26. In another example, Ms. Pott's complaint explained that CollegeAmerica's management silenced her when she raised questions about whether CollegeAmerica's offering of "free" certified nurse assistant (CNA) courses complied with the Standards of Accreditation. Indeed, ACCSC later required CollegeAmerica to cease offering those courses.

27. As another example, Ms. Potts' complaint revealed that CollegeAmerica provided misleading information to prospective students about the likelihood that they would have to take some of their classes online (aka "distance education"). Although CollegeAmerica told prospective students that it was merely possible that they would have to take some of their classes online, CollegeAmerica's actual practice was to use distance education courses whenever possible to save money. Indeed, CollegeAmerica instituted a policy of reducing the number of on-campus instructors so that it could shift more students to online courses. ACCSC's Standards of Accreditation required CollegeAmerica to be scrupulously honest with prospective students when describing the school and its offerings.

28. Similarly, Ms. Potts' complaint to ACCSC also disclosed concerns about the nature of CollegeAmerica's advertising for its scholarship program. Just three weeks earlier, CollegeAmerica and the Colorado Department of Private Occupational Schools Board entered into a stipulated agreement after the Board had found that CollegeAmerica's advertising campaign inappropriately used student aid as an inducement to enroll in violation of the deceptive sales and trade provision of the Board rules. The Standards of Accreditation required CollegeAmerica's advertisements to be entirely honest and forthright.

29. In her complaint to the ACCSC, Ms. Potts correctly predicted that the Center would retaliate against her for making the complaint, explaining to ACCSC that others with knowledge of violations are "in fear of coming forward" because of the "propensity for [CollegeAmerica's] owner to litigate anyone who dare speaks the truth."

30. Ms. Carter has corroborated many of the statements in Ms. Potts' complaint to ACCSC on numerous prior occasions, including in testimony given under oath to the Colorado Attorney General.

31. For example, as explained above, Ms. Carter applied for unemployment compensation benefits from the Wyoming Department of Workforce Services, which CollegeAmerica opposed.

32. The Wyoming Department of Workforce Services' Division of Appeals held a hearing on Ms. Carter's claim for unemployment compensation benefits on September 4, 2012, during which Ms. Potts provided testimony.

33. The Division of Appeals ruled in favor of Ms. Carter, finding that

- a. "In April 2012, while the campus, of which the claimant was the dean of, was being inspected by an accreditation team, the employer's operations

officer gave the claimant and the employer's Cheyenne college director some instructions”;

- b. “The operations officer, who supervised the college director told the claimant and the director to keep pertinent information from the accreditation team”;
- c. “In April 2012, the claimant was made aware some information that was told to her by the employer's corporate personnel, and which she certified was true was, in fact, not true”;
- d. “The claimant left her employment with the employer because the claimant was being asked to conceal information from an accreditation team and because the employer seemed to be misrepresenting its advertisement”;
- e. “The claimant proved, by a preponderance of the evidence, the employer's customary working conditions involved deceit on the part of the employer.”

THE CENTER'S LAWSUIT AGAINST MS. POTTS FOR HER ACCSC COMPLAINT

34. On March 25, 2013, the Center filed a complaint against Ms. Potts in Larimer County Court over alleged violations of the non-disparagement provision of the Agreement.

35. On December 13, 2013, the Center filed a Motion for Leave to Amend the Complaint, seeking to add additional claims and allegations against Ms. Potts.

36. In its motion, the Center explained its reason for seeking to amend the Complaint:

4. During the course of discovery, other specific instances of Ms. Potts' violation of the contract have become apparent, including a violation of the contract's provision in which Ms. Potts agreed that “Commencing on September 1, 2012, to refrain from personally (or through the use of any third party) contacting any governmental or regulatory agency with the purpose of filing any complaint or grievance

that shall bring harm to CollegeAmerica, Denver Inc. and any of its related companies.”

5. Specifically, on November 13, 2013, Ms. Potts provided her sworn Supplemental Interrogatory responses, wherein she admitted to filing a complaint with the Accrediting Commission of Career Schools and Colleges (“ACCSC”), the agency responsible for accreditation of the College.

(Motion for Leave to Amend Complaint 2 (citations omitted).) Ms. Potts opposed the motion.

37. The county court granted the Center’s motion, and on February 4, 2014, the Center filed its Amended Complaint. In that Amended Complaint, the Center alleged that “Ms. Potts . . . violated the contract by filing a complaint with the ACCSC.” (Amended Complaint ¶ 4.d.)

38. Beginning with the Motion for Leave to Amend the Complaint, the Center litigated the ACCSC claim against Ms. Potts, who was representing herself pro se because she could not afford an attorney, for months—and to within just a few days of trial—before the county court case was stayed due to the United States Equal Employment Opportunity Commission’s suit against the Center alleging that the Center had brought the original complaint against Ms. Potts in retaliation for Ms. Potts’ protected activity under the Age Discrimination in Employment Act.

39. The Center has subsequently conceded that the provision of the Agreement attempting to prevent Ms. Potts from making complaints to governmental agencies is illegal, but the Center has failed and refused to dismiss the claim asserting that Ms. Potts violated that provision of the Agreement by submitting her complaint to ACCSC. To this day, the Center continues to prosecute the claim against Ms. Potts.

THE FEDERAL FALSE CLAIMS ACT

40. The federal False Claims Act is the primary legal mechanism by which the federal government prevents fraud on the federal fisc and through which the federal government recovers

funds that have been fraudulently obtained from various government programs.

41. Recipients of Title IV Funds are subject to the requirements and obligations of the False Claims Act, as described further below. Indeed, the Center is currently the subject of an ongoing lawsuit under the False Claims Act by the United States Department of Justice and others relating to their claims for Title IV Funds.

42. In addition, the False Claims Act contains an anti-retaliation provision that protects individuals who undertake “efforts to stop 1 or more violations” of the False Claims Act or who participate in actions under the False Claims Act. 31 U.S.C. § 3730(h)(1).

TITLE IV AND ACCREDITATION STANDARDS

43. As a condition to receiving Title IV Funds, the Center must “meet the requirements established by . . . accrediting agencies or associations.” 20 U.S.C. § 1094(a)(21).

44. Additionally, in order to become eligible to receive Title IV Funds under programs such as the Federal Pell Grant Program and the Federal Direct Loan Program, the Center must first enter into a program participation agreement (“PPA”) with the Department. 20 U.S.C. § 1094(a); 34 C.F.R. § 668.14.

45. In the PPAs that the Center has executed with the Department in order to receive Title IV Funds, the Center has explicitly promised the Department that it “will meet the requirements established . . . by . . . nationally recognized accrediting agencies.” 34 C.F.R. § 668.14(b)(23). This promise is independent of any potential remedies that ACCSC may impose on the Center for violating accreditation standards. In other words, in its PPAs, the Center promised the Department that it would comply with ACCSC’s standards and requirements, even if ACCSC would not necessarily decertify the Center for any particular violation.

46. The accreditation process ensures that in exchange for the Center receiving tens of millions of dollars in Title IV Funds each year, the Center delivers effective educational programs

and meets high standards of quality. Accrediting agencies, by rigorously investigating schools and their educational programs and determining whether they meet the Department's and the agencies' standards, help guarantee that the federal government, the Department, and taxpayers are receiving a valuable educational product in exchange for Title IV Funds.

47. “[F]or purposes of student assistance programs,” the HEA defines “proprietary institution of higher education,” which is the category to which the Center belongs, as a school that, among other things, “is accredited by a nationally recognized accrediting agency or association recognized by the Secretary.” 20 U.S.C. § 1002(b)(1).

48. In order to be recognized by the Secretary of Education as an accrediting agency, an agency must establish “sufficiently rigorous” “standards for accreditation.” 34 C.F.R. § 602.16(a).

49. Before accrediting a school or program, an accrediting agency must “[c]onduct[] at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency’s standards.” 34 C.F.R. § 602.17(c).

50. According to the Center and CollegeAmerica, ACCSC is a “quasi-governmental body recognized by the United States Secretary of Education.” The Center and CollegeAmerica have explained that ACCSC’s “quasi-governmental” status derives from the “oversight authority granted through its recognition by the United States Secretary of Education.”

51. Indeed, ACCSC is the Department’s “eyes and ears” with respect to whether the Center is providing a quality education to students whose schooling is being paid for with Title IV Funds. ACCSC must “provide written notice of its accrediting decisions to the Secretary” of the Department, including about “[a] decision to renew an institution’s or program’s accreditation.”

34 C.F.R. § 602.26.

52. Providing false information or records to an accrediting agency, either knowingly, recklessly, or with deliberate ignorance, in order to obtain or maintain accreditation and receive Title IV Funds, is a violation of federal False Claims Act.

53. Similarly, failing to comply with the accreditation requirements imposed by an accrediting agency, either knowingly, recklessly, or with deliberate ignorance, while simultaneously requesting and accepting Title IV Funds, is also a violation of the federal False Claims Act.

**FIRST CLAIM FOR RELIEF
RETALIATION UNDER THE FALSE CLAIMS ACT**

54. Ms. Potts incorporates paragraphs 1 through 53, as if fully set forth herein.

55. Ms. Potts engaged in protected activity when she filed her complaint in good faith with ACCSC because the complaint disclosed numerous deliberate violations of accreditation standards by the Center, as well as deception the Center perpetrated against ACCSC during accreditation visits used to determine whether the Center was, in fact, complying with the accreditation requirements. Because these disclosures likewise describe violations of the federal False Claims Act, Ms. Potts' complaint to ACCSC, the quasi-governmental regulatory authority mostly likely to stop the violations, Ms. Potts complaint was protected activity under the federal False Claims Act's anti-retaliation provision.

56. The Center's claims and litigation against Ms. Potts for engaging in protected activity violates the federal False Claims Act's anti-retaliation provision, which prohibits, among other things, threatening or harassing an employee or contractor for engaging in protected activity.
31 U.S.C. §3730(h).

57. Ms. Potts has suffered damages as a direct and proximate result of the Center's

violations of the anti-retaliation provision, including, but not limited to, damages for emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Ms. Potts demands and prays that judgment be entered in her favor against the Center, as follows:

58. For compensation for the special damages sustained, together with the costs of this action;

59. For an injunction mandating that the Center (1) dismiss any legal claims brought in violation of the law, (2) refrain from filing or otherwise asserting any claims relating to Ms. Potts' protected activity, and (3) refrain from otherwise harassing or threatening Ms. Potts relating to her protected activity;

60. For an award of all reasonable attorneys' fees and costs, pursuant to 31 U.S.C. § 3730(h)(2); and

61. For all other relief that the Court deems just and reasonable.

JURY TRIAL DEMAND

62. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Ms. Potts demands a jury trial.

Dated 7/12/2016.

/s/ Logan R. Martin
/s/ Zachary S. Westerfield
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