

DISTRICT COURT, DENVER CITY AND
COUNTY, COLORADO
1437 Bannock Street
Denver, Colorado 80202

DATE FILED: December 1, 2014 5:46 PM

STATE OF COLORADO, ex rel. JOHN W.
SUTHERS, ATTORNEY GENERAL, AND JULIE
MEAD, ADMINISTRATOR, UNIFORM
CONSUMER CREDIT CODE,

Plaintiffs,

v.

CENTER FOR EXCELLENCE IN HIGHER
EDUCATION, INC., a not-for-profit company;
COLLEGEAMERICA DENVER, INC. and
COLLEGEAMERICA ARIZONA, INC., divisions
thereof, d/b/a COLLEGEAMERICA; STEVENS-
HENAGER COLLEGE, INC., a division thereof,
d/b/a STEVENS HENAGER COLLEGE;
COLLEGE AMERICA SERVICES, INC., a division
thereof; THE CARL BARNEY LIVING TRUST;
CARL BARNEY, Chairman; and ERIC JUHLIN,
Chief Executive Officer,

Defendants.

▲ COURT USE ONLY ▲

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Case No.:

**PLAINTIFF'S *EX PARTE* MOTION TO FILE COMPLAINT
SUPPRESSED FROM PUBLIC REVIEW, WITH REQUEST FOR
EXPEDITED RULING**

Plaintiffs, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, and Julie Meade, Administrator of the Uniform Consumer Credit Code, by and through undersigned counsel, hereby request that Plaintiffs' Complaint be temporarily and briefly suppressed from public view.

1. Under C.R.C.P. Rule 121, Section 1-5(2), the Court may limit access to court files "upon a finding that the harm to the privacy of a person in interest outweighs the public interest."

2. C.R.C.P. Rule 121, Section 1-5(4) provides that "an order limiting access may be reviewed by the court at any time on its own motion or upon the motion of any person."

3. Concurrent with the filing of this motion, Plaintiffs are filing a Complaint against the above-captioned Defendants under the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.* (2014) ("CCPA"), and the Colorado Uniform Consumer Code, §§ 5-1-101, *et seq.*, C.R.S. (2014) ("UCCC"), to enjoin and restrain Defendants from engaging in certain unlawful practices, for statutorily mandated civil penalties, disgorgement, consumer restitution, and other relief as provided in the CCPA and the UCCC.

4. Prior to bringing this action, Plaintiffs conducted an investigation of the Defendants. As part of this investigation, Plaintiffs served Civil Investigative Demands ("CIDs") upon Defendants, which required them to produce documents and information. *See* C.R.S. §§ 6-1-107 through 109, 5-6-104, and 5-6-106.

5. During the investigation, Defendants claimed that certain documents and information responsive to the CIDs contained trade secrets and/or proprietary information. The parties negotiated an agreement to address Defendants' confidentiality claims. The agreement, as memorialized in a January 8, 2013 letter, is attached hereto as **Exhibit A**.

6. Under the January 8, 2013 letter, the parties agreed,

In the event the Attorney General wishes to refer to or use documents or information marked "Confidential" or "Highly Confidential" in any enforcement proceeding, the Attorney General and CollegeAmerica will attempt in good faith to agree upon provisions to appropriately preserve the confidentiality to which such documents and information

may be entitled before such action is undertaken, including the filing of any complaint.

Exhibit A at p. 2.

7. As described in the affidavit of Senior Assistant Attorney General Olivia C. DeBlasio, attached hereto as **Exhibit B**, Defendants designated as “Confidential” or “Highly Confidential” a large number of documents that are central to Plaintiffs’ allegations and that will be critical evidence in the presentation of Plaintiffs’ case.

8. Plaintiffs have informed Defendants of the State’s intent to reference and attach in public filings information that Defendants designated as “Confidential” or “Highly Confidential,” and have attempted to confer with Defendants about their designations. On October 2, 2014, at Defendants’ request, Plaintiffs provided Defendants with a draft copy of the Complaint. This copy referenced many materials that Defendants designated as “Confidential” or “Highly Confidential.” On November 13, 2014, Plaintiffs provided Defendants with a specific list of documents that Plaintiffs intend to make public. *See Exhibit B.*

9. Despite the parties’ attempts to confer about this matter, Defendants continue to maintain that a large amount of information – evidence that is critical and central to Plaintiffs’ claims – is confidential and not subject to public disclosure.

10. Plaintiffs’ position is that the Complaint that is being filed today does **not** disclose any information that is subject to suppression from public viewing under C.R.C.P. Rule 121, Section 1-5, and that the Court should unseal the entire Complaint. Colorado courts recognize that there exists a “strong presumption in favor of public access to court records.” *Anderson v. Home Ins. Co.*, 924 P.2d 1123, 1127 (Colo. App. 1996). “Only in the rarest of cases is the sealing of documents appropriate – for example, cases involving intensely personal issues such as abortion or birth control, or cases pertaining to the welfare of abandoned or illegitimate children.” *Pappas v. Frank Azar & Assocs.*, 2007 U.S. Dist. LEXIS 38387, *19 (D. Colo. 2007) (copy attached as **Exhibit C**).

11. C.R.C.P. Rule 121, Section 1-5 “squarely places the burden upon the party seeking to limit access to a court file to overcome this presumption in favor of public accessibility by demonstrating that the harm to the privacy of a person in interest outweighs the public interest in the openness of court files.” *Anderson*, 924 P.2d at 1126.

12. In an abundance of caution, because Plaintiffs have not received sufficient assurances from Defendants about the public disclosure of the Complaint,

Plaintiffs have elected to request that the Complaint be temporarily suppressed from public view.

13. Plaintiffs allege that consumer harm is ongoing as a result of Defendants' business practices, and Plaintiffs intend to file, in the coming days, a motion for preliminary injunction, which refers to and attaches numerous documents marked by Defendants as "confidential." Therefore, Plaintiffs request that this matter be resolved at the earliest possible time.

WHEREFORE, Plaintiffs request the Court to order that the Complaint be suppressed from public view until December 8, 2014, or such other date as the Court may determine. Plaintiffs also request the Court to order Defendants to provide the legal basis for any challenge they may have to the public disclosure of information quoted, attached to, or referenced in the Complaint by December 5, 2014.

Respectfully submitted this 1st day of December, 2014.

JOHN W. SUTHERS
Attorney General

s/ Olivia C. DeBlasio-----
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