DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: November 17, 2015 CASE NUMBER: 2014CV34530
Plaintiff: **State of Colorado** **v.** **Defendant:** **Center for Excellence in Higher Education, Inc. , et al.**	▲ **COURT USE ONLY** ▲ **Case Number:** **2014 CV 34530** **Courtroom: 275**
ORDER RE: DEFENDANTS' MOTIONS TO DISMISS FILED JANUARY 9, 2015	

THIS MATTER comes before the Court on Defendants' Center for Excellence in Higher Education, Inc., et. al (collectively "Defendants") motions to dismiss filed on January 9, 2015.

The Court, having reviewed the related pleadings and relevant portions of the Court's file, and being fully advised in the premises herein, Finds and Orders as follows:

FACTUAL BACKGROUND

Defendant Center for Excellence in Higher Education ("CEHE") is a corporation that runs for-profit colleges. Defendants CollegeAmerica Denver, CollegeAmerica Arizona, Stevens-Henager College, and CollegeAmerica Services merged into CEHE in December 2012. Defendant Carl Barney is the chairman and sole member of CEHE, as well as the sole trustee and beneficiary of the Carl Barney Living Trust, another defendant which was involved in the 2012 merger. Defendant Eric Juhlin serves as the Chief Executive Officer of CEHE.

The State of Colorado (the "State") filed this action on December 1, 2014, asserting seven claims against Defendants based on the Colorado Consumer Protection Act ("CCPA") and the Uniform Consumer Credit Code ("UCCC"). The Complaint describes allegedly fraudulent conduct by Defendants, specifically in their advertising practices. In general, the State alleges that Defendants market CollegeAmerica as a path to a brighter future, a step towards a better job and earning more money. The State contends that these are false and misleading representations, as CollegeAmerica graduates do not obtain better jobs or earn more money, and instead end up saddled with significant debt that they are unlikely to be able to pay off. Further,

the State avers that CEHE is well aware of CollegeAmerica's sub-par results, making its advertisements and other representations misleading and in violation of the CCPA.

On January 9, 2015, Defendants filed not one, but four, lengthy motions to dismiss: the Combined Motion to Dismiss Numerous Claims in Whole or in Part Because They are Impermissibly Premised on Claims for Educational Malpractice; the Combined Motion to Dismiss All Claims Against Defunct Entities and the Carl Barney Living Trust; the Combined Motion to Dismiss on the Grounds that Aspects of the State's Claims Attack Protected Speech or Otherwise Fail to Satisfy the Requirements of the CCPA; and the Combined Motion to Dismiss Pursuant to Rule 9(b) of the Colorado Rules of Civil.[1] The Court shall address each of these motions in turn.

STANDARD OF REVIEW

Motions to dismiss under C.R.C.P. 12 are generally viewed with disfavor. *Davidson v. Dill*, 503 P.2d 157 (Colo. 1972). The function of the complaint is to give the defendants notice of the transaction or occurrence that is the subject of plaintiff's lawsuit. *Public Service Co. of Colorado v. Van Wyk*, 27 P.3d 377, 385 (Colo. 2001). Courts must accept as true all averments of material fact and must view the allegations of the complaint in the light most favorable to the plaintiff. *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo.1996). A motion to dismiss should be granted only where the plaintiff's factual allegations do not, as a matter of law, support the claim for relief. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). In assessing the viability of a complaint, all doubts must be resolved against the defendants. *Walsenburg Sand & Gravel Co., Inc. v. City Council of Walsenburg*, 160 P.3d 297 (Colo. App. 2007). A motion to dismiss must be decided solely on the basis of allegations stated in the complaint. *Dillinger v. N. Sterling Irr. Dist.*, 308 P.2d 608, 609 (1957).

ANALYSIS

I. Defendants' motion to dismiss claims that are impermissibly premised on claims for educational malpractice is DENIED.

The CCPA and UCCC claims alleged by the State will not be dismissed based on Defendants' characterization of the State's claims as tort claims for educational malpractice.

A tort claim of "educational malpractice" is brought against an educational institution and alleges that the school failed to perform adequately a promised educational service, which requires an "inquiry in the nuances of educational processes and theories." *Alsides v. Brown Inst., Ltd.*, 592 N.W. 2d 468, 472 (Minn. Ct. App. 1999), citing *Ross v. Creighton Univ.*, 957 F.2d 410, 417 (7th Cir. 1992); *see CenCor v.*

[1] The page count for these four motions to dismiss is 99 pages (including captions, tables of contents, and certificates of service). This does not include the responses and replies. In the future, all parties are to note that "[m]otions or briefs in excess of 10 pages in length, exclusive of tables and appendices, are discouraged." C.R.C.P. 121 § 1-15(1)(a).

Tolman, 851 P.2d 203, 205 (Colo. App. 1992). Typically, an "educational malpractice" claim alleges a general failure to educate or a lack of quality education, without more. *Cavaliere v. Duff's Bus. Inst.*, 605 A.2d 397, 402-404 (Pa. Super. Ct. 1992).

The State's second, third, and seventh claims are properly brought under the CCPA and the UCCC. The State's second claim for relief alleges that Defendants knowingly misrepresented the outcomes and benefits of certain or all of their degree programs, the characteristics and benefits of their EduPlan loans and scholarships, and the sponsorship, approval or affiliation necessary to offer certain degree programs and certifications, in violation of C.R.S. § 6-1-105(1)(e). The State's third claim for relief alleges that the Defendants knew or should have known that they misrepresented the outcomes, value and quality of their various degree programs, in violation of C.R.S. § 6-1-105(1)(g). The State's seventh claim for relief alleges that Defendants conduct was fraudulent or unconscionable in inducing consumers to enter into EduPlan loans in violation of C.R.S. § 5-6-112.

The State's second, third, and seventh claims are premised on Defendants' advertising relating to enrollment in CollegeAmerica and EduPlan loans and scholarships, and not the quality of Defendants educational programs. As such, the claims alleged by the State will not be dismissed based on Defendants' characterization of the State's claims as educational malpractice. Accordingly, Defendants' motion is DENIED.

II. Defendants' motion to dismiss all claims against Defunct Entities and the Carl Barney Living Trust is GRANTED IN PART.

First, the State has named both the Carl Barney Living Trust (the "Trust"), and Carl Barney, the trustee of the Trust, in its complaint. The State expressly alleges that Carl Barney is the trustee and beneficiary of the Trust. A Trust cannot be sued directly as it is a legal relationship between parties, rather than an entity capable of independent action or ownership. *Colo. Springs Cablevision Inc. v. Lively*, 579 F. Supp. 252, 254 (D. Colo. 1984), *citing Carpenters & Millwrights Health Benefit Trust Fund v. Domestic Insulation Co.*, 387 F. Supp. 144 ,147 (D. Colo. 1975). This remains the law even though the legislature has provided that a trust is a "person" under Colorado law, but has not specifically provided that it has the capacity to sue or be sued. *See The 198 Trust Agreement v. CAAMS, LLC*, 2015 WL 1529274, at *3-5 (D. Colo. March 30, 2015). It is proper to name the trustee, as the title owner of the trust property, in a suit concerning the assets and liabilities of a trust. *Id.* at 255; *see also United States v. Boucher*, 735 F. Supp. 987, 990 (D. Colo. 1990). Accordingly, the Motion will be GRANTED with respect to the Carl Barney Living Trust.

Second, CEHE's acquisition of all liabilities of the for-profit companies that existed prior to the December 31, 2012 merger will not result in a dismissal of this action against CollegeAmerica Denver Inc., CollegeAmerica Arizona, Inc., Stevens-Henager College, Inc. and CollegeAmerica Services, Inc. (collectively hereinafter, the "For-Profit Corporations"). The Court is not required to dismiss claims against merged entities. *Liberty Mut. Fire Ins. Co. v. Human Res. Cos.*, 94 P.3d 1257, 1259 (Colo. App. 2004)(*quoting Luxliner P.L. Export, Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 71 (3d Cir. 1993)). Here, the alleged conduct giving rise to the action occurred prior to, during, and after the December 31, 2012

merger of CEHE and the For-Profit Corporations. Further Defendants have provided no argument as to how they would be prejudiced if the For-Profit Corporations remain in this case.

Accordingly, Defendants' motion is GRANTED IN PART with respect to the Carl Barney Living Trust, which shall be stricken from the caption in this case. The Motion is DENIED with respect to the For-Profit Corporations.

III. Defendants' motion to dismiss all claims that attack protected speech is DENIED.

The state's claims are not subject to dismissal based upon Defendant's claims that their advertisements are protected commercial speech under the First Amendment.

For commercial speech to be protected under the First Amendment, it must be lawful and not misleading. *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980). The Supreme Court has distinguished between "inherently misleading" commercial speech, which may be prohibited in its entirety, and "potentially misleading" commercial speech. *In re R.M.J.*, 455 U.S. 191, 203 (1982); *Bioganic Safety Brands, Inc. v. Ament*, 174 F. Supp. 2d 1168, 1180 (D. Colo. 2001). The general phrase "not misleading" has been interpreted to mean "not inherently misleading." *Bioganic*, 174 F. Supp. 2d at 1180. Further, the state may not place an absolute ban on potentially misleading information if the advertisement can present the same information in a way that is not deceptive. *R.M.J.*, 455 U.S. at 203. Disclaimers or additional information can meet this requirement. *Id.*

Nevertheless, the state may place restrictions both on inherently misleading advertising, and "when experience has proved that in fact such advertising is subject to abuse." *Id.* Even if an advertisement is not misleading, restrictions may still be appropriate if the state asserts a substantial governmental interest in such regulation. *Central Hudson*, 447 U.S. at 566. The regulation will be upheld if it directly advances the government's asserted interest and is "not more extensive than is necessary to serve that interest." *Id.*

The State's second and third claims for relief are based on alleged misrepresentations in Defendants' advertising related to the outcomes and availability of their programs and the nature of CEHE's EduPlan financing. Defendants assert that their advertisements are only "potentially misleading," and the disclaimers they provide negate any misleading information. However, the essence of the State's claims is that the advertisements are subject to abuse and manipulation by Defendants; the Complaint also questions the effectiveness of Defendant's disclosures. *See* Complaint ¶¶ 55-57, 134-135, 206-211, 214-217. Taken in the light most favorable to the State, the advertisements are misleading, and the disclosures fail to present the information in a way that is not deceptive.

Even if the advertisements were found not to be misleading at all, the State's entire Complaint is premised on protecting consumers against fraud. The State alleges that Defendants "deceived, misled, and financially injured consumers in Colorado," rendering the proceedings "necessary to safeguard citizens from Defendants' unlawful business activities." Complaint ¶ 29. Protecting consumers against harmful advertising, particularly when they may have already been injured, is a substantial interest,

affording the State the opportunity to regulate Defendants' advertisements. The State requests a declaratory judgment that Defendants' advertisements violate the CCPA and UCCC, as well as an injunction preventing Defendants from engaging in other deceptive trade practices through their advertising and any other appropriate orders. The requested relief is designed to directly advance the State's asserted interest by prohibiting any misleading advertising by Defendants. Given the breadth of the alleged misleading advertising, and taking the facts in the light most favorable to the Plaintiff, the requested relief is not more extensive than necessary to serve the State's interest in protecting consumers against Defendants' allegedly harmful and misleading advertising.

Accordingly, Defendants' Motion is DENIED to the extent that it asserts its advertisements are protected commercial speech under the First Amendment.

IV. Defendants' motion to dismiss claims based on puffery are DENIED.

Defendants argue that the State's allegations do not state a cause of action under the CCPA because their advertisements are mere puffery, and they did not fail to make appropriate disclosures.

"The term *puffery* is used to characterize those vague generalities that no reasonable person would rely on as assertions of particular facts." *Alpine Bank v. Hubbell*, 555 F.3d 1097, 1106 (10th Cir. 2009). Although exactly what constitutes puffery is unclear, the Colorado Court of Appeals recently noted a "distinction between general statements of opinion and specific representations of fact." *Park Rise Homeowners Assoc., Inc. v. Resource Construction Co.*, 155 P.3d 427, 435 (Colo. App. 2006). Statements expressing a broad opinion are not actionable, while "statements of existing facts or specific attributes" may be. *Id.* at 435-36. An expression which is "not a specific representation of fact subject to measure or calibration" is mere puffery. *Id.* at 436. Further, "context matters" in analyzing whether a particular statement is puffery, *Alpine Bank*, 555 F.3d at 1106, and "any statements of value or of quality may be made with the purpose of having them accepted as of fact, and if so should be treated as representations of fact." *Park Rise*, 155 P.3d at 435 (internal quotations omitted).

Defendants' advertisements include statements such as "You can make more money," "[W]ith the right degree you could get out of that dead end job . . . On average college graduates make $1400 more per month than people without a degree," and "the right college degree can lead to a higher paying job." Compl. ¶¶ 52-55. Statements like "more money" or "a higher paying job" are subject to measure and calibration. Because "context matters," the statement that "college graduates make $1400 more per month" juxtaposed next to the phrase "You can make more money" offers a level of specificity distinguishable from the broad statements at issue in *Alpine Bank* and *Park Rise*. For these reasons, the Court cannot find that the Defendants' advertisements are mere puffery as a matter of law, and the motion to dismiss based on puffery is therefore DENIED.

A similar analysis applies to Plaintiff's Third Claim for Relief. This claim is based on § 6-1-105(1)(g), C.R.S., which makes it a deceptive trade practice if a party "[r]epresents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another." Plaintiff alleges that Defendants violated

this section of the CCPA because they "knew or should have known that they misrepresented the outcomes, value and quality of their various degree programs." Compl. ¶ 237.

The statements at issue here include those previously mentioned, as well as an advertisement that "with the right degree from CollegeAmerica you could get a better job"; representations by admissions counselors that CollegeAmerica's programs are "high value" presented alongside data regarding higher salaries of college graduates; statements by recruiters that certain programs at CollegeAmerica are "more valuable" than other programs; advertisements that CollegeAmerica provides training and education desired by employers; and advertisements that a program is the "right degree" because it provides "preparation for certifications." Compl. ¶¶ 54, 61-62; 108, 110, 115. These, too, are more specific than general representations about "quality," and accordingly, the motion to dismiss as it pertains to the Third Claim for Relief is DENIED.

V. Defendants' motion to dismiss based on failure to disclose is DENIED.

Defendants argue that "aspects" of the second, third, and fifth claims for relief should be dismissed because they allege a failure to disclose, and Defendants in fact made appropriate disclosures. As a preliminary matter, the Court notes that only the fifth claim asserts a failure to disclose. Both the second and third claims allege that Defendants made affirmative misrepresentations. Dismissing these claims based on Defendants' disclosures is therefore inappropriate. This is particularly true because the effectiveness of the disclosures is disputed, as described in more detail below.

Regarding the fifth claim for relief, Defendants group disclosures into three categories: disclosures that textbooks are loaned to students (the "textbook disclosures"); disclosures that credits earned at CEHE will likely not transfer to other schools (the "credit transfer disclosures"); and disclosures that a criminal record can impact future employment (the "criminal history" disclosures).[2]

Although "[d]isclosure *may* eliminate an otherwise deceptive trade practice," whether a representation taken as a whole is deceptive is a question of fact for the jury. *State v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 15 (Colo. App. 2009) (emphasis added). Further, "[d]isclaimers can be ineffective and may be disregarded by a consumer who is confused by the disclosure." *May Dep't Stores Co. v. State*, 863 P.2d 967, 979 (Colo. 1993).

The State alleges that Defendants failed to "meaningfully" disclose that tuition did not cover students' ownership of textbooks, and that credits would likely not transfer to other schools. Compl. ¶¶ 243(b), (e). The Complaint also pleads facts that Defendants fail to adequately provide this information

[2] The fifth claim for relief expressly refers to the "textbook" and "credit transfer" failures to disclose. Compl. ¶¶ 243(b), (e). Although it does not expressly refer to the "criminal history" failure to disclose, these assertions are contained in the four corners of the Complaint and appropriately incorporated into the fifth claim for relief. *See* Compl. ¶¶ 149-153, 242.

by burying it in a detailed enrollment agreement and lengthy course catalog. Compl. ¶¶ 207-211, 215-216.

Regarding the criminal history disclosures, the Complaint sets forth facts that Defendants did not inform students in the Medical Specialties and Healthcare Administration programs that a criminal history could affect their ability to obtain externships or jobs. Defendants refer to the enrollment agreement and Exhibit 8 (identified as a disclosure) to rebut these allegations, stating that those documents include the appropriate disclosures.

In analyzing a motion to dismiss, a court may consider "only those matters stated in the complaint." *Yadon v. Lowry*, 126 P.3d 332, 335 (Colo. App. 2005). A document referred to in the complaint is not considered a matter outside the pleading; therefore "if a document is referred to in the complaint and is central to the plaintiff's claim, the defendant may submit an authentic copy to the court to be considered on a motion to dismiss." *Id.* at 336 (quoting Moore's Federal Practice). Even accepting that Exhibit 8 is central to the State's claims, it is not referred to in the Complaint or authenticated. Consequently, Exhibit 8 is not appropriate for the Court to consider at this time.

Therefore, when examining the entirety of the Complaint, the State pleads facts indicating that Defendants failed to disclose the impact of a criminal history on obtaining externships or jobs in health care. Compl. ¶¶ 149-153. To the extent that the enrollment agreement includes the relevant disclosures, the Complaint contains allegations that challenge the adequacy of those disclosures. *See* Compl. ¶¶ 207-211, 215-216.

It is not the situation here that "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Dunlap v. Colo. Springs Cablevision, Inc.*, 829 P.2d 1286, 1291 (Colo. 1992) (internal quotations omitted). The State has pled facts showing that Defendants failed to make appropriate disclosures in these three areas, and any disclosures that were made were inadequate. Whether these disclosures (or the failures thereof) made Defendants' advertisements deceptive as a whole is a question of fact for the jury. *See Mandatory Poster*, 260 P.3d at 15. Therefore, Defendants' motion to dismiss the State's claims based on failure to disclose is DENIED.

VI. Defendants' motion to dismiss the Fourth Claim for Relief for Failure to State a Claim under § 6-1-105(1)(n) is GRANTED IN PART.

Section 6-1-105(1)(n), C.R.S., makes it illegal to use "bait and switch" advertising, which is defined as "advertising accompanied by an effort to sell goods, services, or property other than those advertised and which is also accompanied by . . . refusal . . . to offer the services advertised [or] [d]isparagement in any respect of the advertised goods, property, or services. § 6-1-105(1)(n)(I)-(II), C.R.S. "The 'switch' must occur at the point of sale, causing the consumer to walk away with something other than what he sought." *Gen. Steel Domestic Sales, LLC v. Hogan & Hartson, LLP*, 230 P.3d 1275, 1283 (Colo. App. 2010).

The Fourth Claim for Relief alleges that Defendants violated the CCPA by enrolling students in an associate's degree program, and subsequently disparaging the program to promote and enroll students in a bachelor's degree program. The parties agree that this does not meet the requirement that a bait and switch occur at the point of sale.

However, the Fourth Claim for Relief also incorporates other allegations, such as that Defendants advertised sonography and Emergency Medical Technician ("EMT") programs in their course catalogues, when those courses were not in fact offered. *See* Compl. ¶¶ 186-198. Defendants then enrolled interested students in other programs, such as Healthcare Administration, stating that the credits earned would transfer to the desired programs. *Id.* In other words, Defendants advertised two particular programs, then refused to offer them and enrolled students in an entirely separate course of study. Based on the Complaint, the switch occurred when the students attempted to enroll in the sonography or EMT programs. *Id.* ¶¶ 190, 198. This sequence of events falls directly within the definition of "bait and switch" advertising set forth in § 6-1-105(1)(n)(I), C.R.S.

Accordingly, the Fourth Claim for Relief is DISMISSED WITHOUT PREJUDICE to the extent that it asserts a "bait and switch" claim based on the Defendants' disparagement of associate degree programs, but otherwise the Defendant's Motion is DENIED with respect to the Fourth Claim.

VII. Defendants' motion to dismiss based on C.R.C.P. 9(b) is DENIED.

C.R.C.P. 9(b) requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The State argues, first and foremost, that Rule 9(b) does not apply to consumer protection actions brought by the Attorney General's office.[3] The court need not reach this issue because it finds that the Complaint satisfies the particularity requirements of Rule 9(b).

Colorado appellate courts have interpreted Rule 9(b) to require that "the complaint must at least state the main facts or incidents which constitute the fraud so that the defendant is provided with sufficient information to frame a responsive pleading and defend against the claim." *State Farm Mut. Auto. Ins. v. Parrish*, 899 P.2d 285, 289 (Colo. App. 1994). This includes a specific description of the fraudulent conduct or statements, as well as the time and place the statements were made and the identity of those who made the statements. *Id.* at 288 (quoting Wright & Miller, *Federal Practice & Procedure* § 1297 (1990)). Although particularity is required, "it is sufficient to state the main facts constituting the fraud." *Heller*, 809 P.2d at 1022; *see also Mandatory Poster*, 260 P.3d at 13 (complaint alleging specific information about defendants' solicitations satisfied the requirements of Rule 9(b)).

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[3] On at least two occasions, the Colorado Court of Appeals has declined to decide whether Rule 9(b) applies to CCPA actions. *See Mandatory Poster*, 260 P.3d at 13 ("We need not decide whether complaints alleging a CCPA violation require pleading with particularity under Rule 9(b) because we conclude the state's complaint satisfied the rule's more stringent pleading requirements."); *Heller v. Lexton-Ancira Real Estate Fund, Ltd.*, 809 P.2d 1016, 1022 (Colo. App. 1990) (holding that a complaint asserting CCPA claims satisfied the requirements of Rule 9(b)).

In *Schwartz v. Celestial Seasonings, Inc.*, 124 F.3d 1246 (10th Cir. 1997), the Tenth Circuit discussed whether a complaint for securities fraud met the requirements of Fed. R. Civ. P. 9(b), which is identical to C.R.C.P. 9(b). The district court dismissed a complaint as failing to meet the particularity requirements, even though the complaint contained "detailed facts in the first eighty paragraphs." *Id.* at 1250 (quoting the district court decision). As grounds for dismissal, the district court held that the complaint did not sufficiently identify "the time, place and contents" of the fraudulent statements or "the identity of the party" making the fraudulent statements. *Id.*

The Tenth Circuit reversed. *Id.* at 1255. It noted that the complaint identified each defendant and described their role in the alleged fraudulent conduct, and it quoted specific fraudulent statements. *Id.* at 1250-51. Further, it identified marketing materials, press releases, stockholder reports, and other documents released by the defendants which contained the fraudulent statements. *Id.* at 1251. Because the complaint identified (and even quoted) the specific materials and communications containing the alleged fraudulent statements, the Tenth Circuit held that the complaint sufficiently established the time, place, and content particularity required by Rule 9(b). *Id.* at 1252-53.

With regard to attributing claims to particular defendants, the Tenth Circuit noted that Rule 9(b) "requires that a complaint set forth the identity of the party making the false statements, that is, which statements were allegedly made by whom." *Id.* at 1253. However, it "does not require that a complaint set forth detailed evidentiary matter as to why particular defendants are responsible for particular statements." *Id.* The complaint in *Schwartz* identified the individual defendants' involvement in making or developing the fraudulent statements, and the Tenth Circuit also noted that "[i]dentifying the individual sources of statements is unnecessary when the fraud allegations arise from misstatements or omissions in group-published documents . . . which presumably involve collective actions of corporate directors or officers." *Id.* at 1253-54. Thus, the Tenth Circuit held that the complaint also complied with Rule 9(b)'s requirement that the defendants be identified with particularity. *Id.* at 1254.

This is distinguishable from the situation in *Koch v. Koch Indus., Inc.*, 203 F.3d 1202, 1237 (10th Cir. 2000), where the Tenth Circuit held that a complaint failed to meet the requirements of Rule 9(b). In *Koch*, the complaint included only general allegations that "during 1982 and continuing to the present time, defendants planned and acted" to carry out a fraudulent scheme. *Id.* at 1236. It did not identify specific statements or content, nor did it identify any defendant's role in the alleged fraud. *Id.* at 1237. As a result, the complaint did not meet Rule 9(b)'s particularity requirements. *Id.*

Here, the Complaint is far more akin to that in *Schwartz* than the one in *Koch*. The Complaint contains no fewer than 229 paragraphs of detailed factual allegations, including, without limitation: quotations from specific print, radio, and television advertisements; time frames indicating a long and continuing course of conduct by Defendants; and a description of the roles the individual defendants, Carl Barney and Eric Juhlin, played in developing and marketing the allegedly fraudulent advertisements. This is strikingly similar to the scenario in *Schwartz*, where a description of materials released by the defendants was held to satisfy the time, place and content particularity requirements. Given the description of Defendant Barney's and Juhlin's role in developing and marketing the advertisements, as

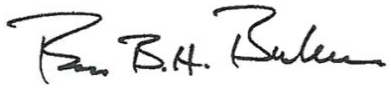
well as the "group-published" nature of those advertisements, the Complaint here sufficiently identifies the defendants, as well. For these reasons, the Complaint meets Rule 9(b)'s particularity requirement, and the motion to dismiss is DENIED.

CONCLUSION

For the above reasons, the Combined Motion to Dismiss Numerous Claims in Whole or in Part Because They are Impermissibly Premised on Claims for Educational Malpractice and the Combined Motion to Dismiss Pursuant to Rule 9(b) of the Colorado Rules of Civil Procedure are DENIED in their entirety. The Combined Motion to Dismiss All Claims Against Defunct Entities and the Carl Barney Living Trust and the Combined Motion to Dismiss on the Grounds that Aspects of the State's Claims Attack Protected Speech or Otherwise Fail to Satisfy the Requirements of the CCPA are GRANTED IN PART, as set forth above.

DATED this 17th day of November, 2015.

BY THE COURT.



Ross B.H. Buchanan
Denver District Court Judge