

<p>COUNTY COURT, LARIMER COUNTY, COLORADO</p> <p>Larimer County Justice Center 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100</p>	<p style="text-align: right;">DATE FILED: December 13, 2013 3:16 PM</p>
<p>Plaintiffs:</p> <p>COLLEGEAMERICA DENVER, INC. n/k/a CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC. d/b/a COLLEGEAMERICA,</p> <p>v.</p> <p>Defendant:</p> <p>DEBBI POTTS.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. 13C31608</p> <p>Division: 5D</p>
<p><i>Attorneys for Plaintiff:</i></p> <p>Raymond W. Martin (Atty. Reg. #8055) Thomas E.M. Werge (Atty. Reg. #42726) Wheeler Trigg O'Donnell LLP 370 Seventeenth Street, Suite 4500 Denver, Colorado 80202-4647 (303) 244-1800 (303) 244-1879 Facsimile martin@wtotrial.com werge@wtotrial.com</p>	
<p>MOTION FOR LEAVE TO AMEND COMPLAINT</p>	

Plaintiff CollegeAmerica (the “College”) respectfully files this motion and states:

1. During its December 3, 2013 hearing, the Court authorized the College to file this motion for leave to amend its Complaint by today, December 13, 2013.
2. Pursuant to C.R.C.P. 15(a), leave to amend a complaint “shall be freely granted when justice so requires.”
3. The Complaint alleges that Ms. Potts breached her one-page contract with the College. The contract is attached to the Complaint. It currently states that “Defendant Potts accepted the \$7,000.00 payment, but did not perform under the contract. Specifically, Defendant Potts violated the Disparagement Clause when she published written statements to a former employee of Plaintiff.” (Compl., attached as Exhibit A, ¶ 4(d).)

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." (Ex. 1 to Compl., attached as Exhibit A.)

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. (*See* Debbi Potts' Supp. Discovery Responses, Answer to ROG 3, attached as Exhibit B.)

6. Based on this information and given the Court's further ruling at the December 3 hearing that the relevance of allegations not specifically stated in the pleadings shall be strictly construed, the College seeks to clarify its existing complaint with two very limited amendments:

- a. Paragraph (4)(d) – "Defendant Potts accepted the \$7,000.00 payment, but did not perform under the contract. Specifically, Defendant Potts violated the Disparagement Clause when she published written statements to a former employee of Plaintiff. Ms. Potts also violated the contract by filing a complaint with the ACCSC;" and
- b. Paragraph (4)(g) – "Plaintiff seeks damages for breach of contract, or in the alternative for promissory estoppel or unjust enrichment."

7. Amendments of complaints should be allowed unless the opposing party can "establish some prejudice other than merely that the case will be resolved on its merits." *See J.E.S. v. F.F.*, 762 P.2d 703, 705 (Colo. App. 1988).

8. The limited amendments sought by the College will not prejudice Ms. Potts in any way, as she has been aware of the College's allegations of her failure to abide by the one-page contract since the inception of this case. To this end, she has also responded to discovery requests related to the "governmental or regulatory agency" provision of the contract. Likewise, because Ms. Potts has been on notice that the College seeks equitable relief as an alternative to damages since the time this case was filed, the clarification as to the specific bases for equitable relief are also not prejudicial.

9. The granting of this motion will also not prejudice the Court, as the trial date remains nearly six months away on May 5, 2014, no further discovery has been authorized by the

Court, and the parties remain on track to mediate this case in March, and if necessary, try it on May 5, 2014 based on the specific allegations in the pleadings.¹

WHEREFORE, CollegeAmerica respectfully requests that the Court grant this Motion for Leave to Amend the Complaint and accept the attached Amended Complaint as duly filed.

Dated: December 13, 2013

Respectfully submitted,

s/ Thomas E.M. Werge

Thomas E.M. Werge

Counsel for Plaintiff CollegeAmerica

¹ Following the Court's ruling on this Motion, at this time the College does not anticipate the need to seek additional Court involvement with further motions or other issues ahead of trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION FOR LEAVE TO AMEND COMPLAINT** was served in the manner indicated below this 13th day of December, 2013 to the following:

Debbi Potts
1406 Osprey Court
Fort Collins, CO 80525
potts-deb@comcast.net

- First Class Mail
- Hand Delivery
- Facsimile
- Overnight Delivery
- ICCES
- E-Mail

s/ Jerri E. Wheatley

Jerri E. Wheatley