

<p>DISTRICT 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>▲ COURT USE ONLY ▲</p>
<p>Plaintiffs:</p> <p>COLLEGEAMERICA DENVER, INC. n/k/a CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC. d/b/a COLLEGEAMERICA,</p> <p>Defendant:</p> <p>DEBBI POTTS</p>	<p>Case No.: F13C31608</p> <p>Division: 4D</p>
<p>Brandon J. Mark admitted pro hac vice Parsons Behle & Latimer 201 South Main Street, Suite 1800 Salt Lake City, Utah 84111 Phone Number: (801) 536-6958 FAX Number: (801) 536-6111 E-mail: bmark@parsonsbehle.com Atty. Reg. #: Utah 10439</p> <p>Zachary S. Westerfield 600 17th St. Ste. 2800 S. Tower Denver, Colorado 80202 Phone Number: (303) 748-3444 FAX Number: (303) 260-6401 E-mail: zach@westerfieldlaw.com Atty. Reg. #: 38690</p>	
<p style="text-align: center;">DEFENDANT'S STATEMENT OF THE CASE</p>	

Defendant Debbi Potts (“Ms. Potts”), through undersigned counsel, respectfully submits this Statement of the Case.

Ms. Potts was the campus director of Plaintiff CollegeAmerica’s Cheyenne, Wyoming, campus from January 19, 2009 to July 16, 2012, when she resigned because she was asked to

participate in and conceal numerous violations of legal requirements and accrediting standards by the school. Ms. Potts witnessed various forms of consumer fraud, and she learned about several examples of the school actively deceiving and deliberately withholding material information from its accreditor, Accrediting Commission of Career Schools and Colleges (“ACCSC”), in order to obtain and maintain accreditation. Because of this, she and another high-ranking employee (Linda Carter) resigned.

After she resigned, 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 but that had been wrongfully withheld.

During the summer of 2012, after her resignation, Ms. Potts became a witness for the Colorado and Wyoming Attorney Generals’ offices as part of those law enforcement agencies’ investigations of CollegeAmerica. Indeed, in August 2012—before she entered into any negotiations over the severance agreement with CollegeAmerica—Ms. Potts executed an affidavit for the Wyoming Attorney General that contained all of the same factual statements about CollegeAmerica that CollegeAmerica now complains about.

With Ms. Potts’ bonus claim and Ms. Carter’s unemployment claim pending and requiring a response from CollegeAmerica, in late August 2012, CollegeAmerica’s Chief Executive Officer, Eric Juhlin, contacted Ms. Potts and Ms. Carter about resolving their pending claims. After negotiating the specific terms over the course of the Labor Day weekend—without the involvement of any attorneys—on September 1, 2012, Ms. Potts and Mr. Juhlin executed a release agreement. As part of that agreement, CollegeAmerica agreed to pay Ms. Potts \$7,000.00—exactly the amount of her pending bonus wage claim in Wyoming. Ms. Potts agreed to refrain from making intentionally untruthful statements about CollegeAmerica with “malicious intent”—she did not promise to refrain from making truthful statements about the company.

Although the severance agreement contained another provision supposedly preventing Ms. Potts from contacting law enforcement and other government agencies, CollegeAmerica has since admitted that the provision is illegal. The United States Equal Employment Opportunity Commission (EEOC) has sued CollegeAmerica over the severance agreement because it is illegal and unenforceable. During part of that case, which is still going on, CollegeAmerica’s CEO, Mr. Juhlin, admitted that part of the agreement was illegal and that he knew it was illegal.

Ms. Potts also realized it was illegal after researching it. So, Ms. Potts continued to assist the Colorado Attorney General with its investigation—answering questions, providing background information, and responding to inquiries. Ms. Potts contacted Mr. Barnhart in early December 2012 because she learned he had been terminated and realized he might have information important to the Attorney General due to his position in the company. Only after Mr. Barnhart sent Ms. Potts a lengthy email criticizing CollegeAmerica and its management did Ms. Potts tell him about the Colorado Attorney General’s investigation. As she said in her first email mirroring back Mr. Barnhart’s negative comments about CollegeAmerica, Ms. Potts “hesitated telling [Mr. Barnhart about the investigation] until I saw your email.”

In February 2013, Ms. Potts exercised the rights she bargained for under the severance agreement and filed a lengthy and truthful complaint with ACCSC.

CollegeAmerica's claims should be rejected because:

1. ***The contract is illegal.*** CollegeAmerica cannot legally force Ms. Potts to refrain from contact with government agencies, nor can it legally require that she first direct such complaints to the college or claim that truthful complaints about its illegal conduct, including to other agencies, is "disparagement."
2. ***Ms. Potts did not breach the contract.*** Ms. Potts' truthful statements are not "disparagement." To prevail on its claim, CollegeAmerica must prove that Ms. Potts said something untrue, and it cannot. Even if CollegeAmerica could establish Ms. Potts said something untrue, it must also establish that she acted "intentionally with malicious intent." That means proving that not only that she made false statements, but that she subjectively knew the statements were false but made them anyways to hurt the company. There is no evidence of this either. Additionally, Ms. Potts' comments about specific *people* are not disparagement of CollegeAmerica, an *entity*.
3. ***The college was not damaged.*** To prevail on its claim, CollegeAmerica also has to prove it was damaged by the alleged breach. But it cannot prove it lost a single cent as a result of Ms. Potts' statements. CollegeAmerica owed Ms. Potts the \$7,000 for bonuses earned.

This suit is, and has always been, a classic strike suit brought to harass and intimidate the highest-ranking official to ever blow the whistle on CollegeAmerica. There is no other explanation for a company with tens of millions of dollars in annual revenues to drag on a lawsuit for over six years over \$7,000.

Respectfully submitted on the 26th day of March 2019.

/s/ Brandon Mark
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 26th day of March 2019, served the foregoing via () first-class U.S. Mail, postage prepaid, () email, (X) the Court's electronic case management system, on the following:

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