UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	5:14-CV-2554-SVW-SP	Date	July 9, 2015
Title	Ashley Paredes v. The University of Phoenix, et al.		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: IN CHAMBERS ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

Ashley Paredes sued the University of Phoenix and its parent corporation, Apollo Education Group, on a theory of fraudulent misrepresentation and nondisclosure. Her claims center on a meeting she had with a University of Phoenix admissions officer. During that meeting, Paredes alleges that the admissions counselor lied to her, promising that she could carry her completed units with her if she transferred to a state university, she could credit those units toward the state licensing exam's prerequisites, and she would obtain a job in the psychology field upon graduation. Paredes also complains that the admissions counselor failed to tell her about the extent of loans she would incur, the interest attendant to those loans, and the percentage of University of Phoenix students who default on their loans.

Defendants moved to dismiss the claim on a variety of grounds. For the reasons discussed below, the Court grants in part and denies in part that motion.

BACKGROUND

Ashley Paredes is a young woman hoping to become a certified psychologist, therapist, or counselor. To do so, she must complete a college degree and pass a licensing test. Paredes attended a college sometime prior to 2012, but she found out the units she was earning there were untransferable. She therefore decided to look for a new school — where her units could count toward her future goal — during the summer of 2012.

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On July 17, 2012, Paredes met with an admissions representative named Terry Eubanks from the University of Phoenix, a for-profit institution operated by the Apollo Education Group. The two chatted for about thirty minutes. Paredes, conscientious of her last stint as a college student, told the counselor that she harbored concern about the transferability of her credits because she intended to obtain a bachelors or masters degree at another institution within the California state university system in order to become a licensed psychologist, therapist, or counselor. Eubanks allayed her apprehension: the university offered the transferable credit Paredes needed, and she could expect gainful employment upon graduation. He did not mention the scope of federal loans Paredes would need, the loans' interest, and the number of University of Phoenix students that default on their educational loans.

Paredes was evidently sold, and Eubanks helped her complete enrollment and student-loan applications. Contrary to what Eubanks had told Paredes, the third paragraph on the second page of enrollment agreement stated, "[t]ransferability of credit is at the discretion of the accepting institution. It is the student's responsibility to confirm whether another institution will accept credits earned at University of Phoenix."[1]

Paredes spent the next eight or nine months at the University of Phoenix. In April 2013, however, she realized she had been misled. When she contacted Patton State Hospital to inquire about an open "Psychiatric Technician Assistant" position, somebody at the hospital told her that her units did not qualify her because the state licensing exam did not count units earned at the University of Phoenix. When she contacted the California Board of Behavioral Sciences, somebody there told her the same thing. And when she contacted Pasadena City College, a counselor told her that the college could not accept her units. The University of Phoenix then refused to refund Paredes' tuition, so she sued on behalf of a putative class.

On March 23, 2015, the Court dismissed Paredes's First Amended Complaint. Her breach of fiduciary duty claim and request for damages under California's Consumer Legal Remedies Act failed as a matter of law, so the Court dismissed them with prejudice. The remainder of her complaint did not meet Federal Rule of Civil Procedure 9(b)'s heightened pleading standard, so the Court dismissed it with leave to amend. She filed her Second Amended Complaint a month later, and Defendants' Motion

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[1] The Court takes judicial notice of Paredes's Enrollment Application because it was mentioned in the Second Amended Complaint and no party has questioned its authenticity. *See* Fed. R. Evid. 201. The court declines to take judicial notice of all other exhibits because they were not mentioned in the operative complaint. *See id.*

To Dismiss followed soon after.

LEGAL STANDARD

A motion to dismiss tests the legal sufficiency of a complaint. *See* Fed. R. Civ. P. 12(b)(6). In general, a plaintiff need only allege "a short and plain statement of the claim." Fed. R. Civ. P. 8(a). A plaintiff advancing claims sounding in fraud, however, must meet a higher standard: such allegations must be pled "with particularity." Fed. R. Civ. P. 9(b). At a minimum, this requires the complaint to identify "the who, what, when, where, and how" of the alleged fraud. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)); *see also In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994) (en banc) ("The plaintiff must set forth what is false or misleading about a statement, and why it is false."). With these pleading benchmarks in mind, a court then must determine whether the complaint contains sufficient factual matter, accepted as true and construed in favor of the plaintiff, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

DISCUSSION

I. Federal Rule of Civil Procedure 9(b)

To satisfy Federal Rule of Civil Procedure Rule 9(b), a plaintiff must, among other things, "set forth what is false or misleading about a statement, and why it is false." *In re GlenFed, Inc. Sec. Litig*, 42 F.3d at 1548.[2] Paredes met that requirement. She alleged that Eubanks's representations were actually false: he said that the units would transfer to other institutions and count toward the state licensing exam, but they did not. She then specified how she obtained that information: she spoke with people at Patton State Hospital, the California Board of Behavioral Sciences, and Pasadena City College who informed her that her units were not transferable and would not count toward the state licensing exam. Nothing more is required at the pleading stage. *See id.*; *TransFresh Corp. v. Ganzerla & Assoc., Inc.*, 862 F. Supp. 2d 1009, 1018-19 (N.D. Cal. 2012).

Defendants offer some counterarguments, but they are unpersuasive. First, Defendants direct the

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[2] The Court already found Paredes met Federal Rule of Civil Procedure 9(b)'s other requirements. Order, ECF No. 25.

Court to various websites to argue that the Paredes did not obtain information about the right licensing exam. But the complaint only mentions one licensing exam, and the Court cannot consider extrinsic evidence at the pleading stage. Defendants also identify a number of questions left open, but a complaint need only plead with enough specificity so that "the defendant can prepare an adequate answer from the allegations." *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993) (quoting *Gottreich v. San Francisco Investment Corp.*, 552 F.2d 866, 866 (9th Cir. 1977)). The complaint here suffices. And Defendants' last argument — that Paredes's conversations with the hospital, board, and college are too vague to establish reliability — is inapposite as that rule applies to the *sui generis* "strong inference of scienter" requirement in securities fraud cases. *See, e.g.*, *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 932-42 & n.20 (9th Cir. 2003).

II. Sufficiency of Paredes's Legal Theory

Defendants challenge Paredes's theory of fraud on two grounds. First, they contend that Eubanks's statements were unactionable promises of future event. Second, they assert that Paredes failed to plead justifiable reliance.

A. Statements of Fact

As a general rule, only misrepresentations of existing facts are actionable. *California Pub. Employees' Ret. Sys. v. Moody's Investors Serv., Inc.*, 226 Cal. App. 4th 643, 662 (Cal. Ct. App. 2014). There are three exceptions to that rule: (1) where a party holds himself out to be specially qualified and the other party is so situated that he may reasonably rely upon the former's superior knowledge; (2) where the opinion is by a fiduciary or other trusted person; and (3) where a party states his opinion as an existing fact or as implying facts which justify a belief in the truth of the opinion. *Cohen v. S & S Constr. Co.*, 151 Cal. App. 3d 941, 946 (Cal. Ct. App. 1983).

At least one of these exceptions could plausibly apply. The first exception applies where "where assumed knowledge possessed by the party expressing the fraudulent opinion is a motivation to the other to enter into the transaction, or where the defendant has held himself out as particularly knowledgeable." *Pacesetter Homes, Inc. v. Brodkin*, 5 Cal. App. 3d 206, 212 (Cal. Ct. App. 1970). Paredes alleged that Eubanks's statements about transferability and licensing credit motivated her to enroll. She also alleged that Eubanks held himself out as "very knowledgeable about the educational

system and the job market." Again, this suffices.[3]

Defendants' contrary argument fails to persuade. They contend that Eubanks did not represent himself as an expert on the transferability of units for outbound transfer students. The degree of expertise need not be confined so narrowly though. *See, e.g.*, *S. Cal. etc. Assembles of God v. Shepherd of Hills etc. Church*, 77 Cal. App. 3d 951, 959 (Cal. Ct. App. 1978); *Cooper v. Jevne*, 56 Cal. App. 3d 860, 866 (Cal. Ct. App. 1976). It is instead plausible that one with expert knowledge about college admissions would have special knowledge about transferring units to other institutions and crediting them toward licensing exams.[4]

B. Justifiable Reliance

Paredes alleged that she reasonably relied on the Eubanks's representations. Defendants object, arguing that the enrollment agreement and common sense preclude reasonable reliance.

Defendants first contend that the enrollment agreement, which stated that "[t]ransferability of credit is at the discretion of the accepting institution," renders Paredes's reliance (if any) unjustifiable. As a general rule, reasonable reliance cannot be shown when written documents contradict alleged oral misrepresentations. *E.g.*, *Yau v. Duetsche Bank Nat. Trust Co. Americas*, No. SACV 11-00006-JVS, 2011 WL 8327957, at *9 (C.D. Cal. May 9, 2011). But another "general rule in California is that even in the absence of a fiduciary relationship plaintiff's failure to read a contract is excusable where reliance is placed on the misrepresentations of the other party." *Lynch v. Cruttenden & Co.*, 18 Cal. App. 4th 802, 807 (Cal. Ct. App. 1993) (citing 1 Wikin, Summary of Cal. Law Contracts, § 407 p. 366 (9th ed. 1987)). The Court therefore cannot hold, as a matter of law from the pleadings, that the enrollment

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[3] In *Bernstein v. Apollo Grp., Inc.*, the United States District Court for the Northern District of California dismissed a similar lawsuit because, *inter alia*, the similar promise that "*other* leaning institutions *would* accept [the plaintiff's] criminal justice credits from [the University of Phoenix]," was an unactionable prediction. No. 13-cv-01701-LHK, 2014 WL 4352309, at *5 (N.D. Cal. Sept. 2, 2014). However, the plaintiff there failed to argue or plead facts supporting any of the aforementioned exceptions. *Id.* Therefore, *Bernstein* is inapposite here.

[4] Defendants also argue that Paredes could have known about the transferability issue because her enrollment application put her on notice of the actual conditions of transferability. That issue is addressed as part of the justifiable reliance analysis, *infra*.

agreement foreclosed justifiable reliance. Eubanks "guided" Paredes through the application in a short amount of time. Drawing all reasonable inferences in favor of Paredes, it is plausible that Eubanks's statements and representations deprived Paredes of a reasonable opportunity to read the document and induced reliance. The issue ought to be revisited at summary judgment where the Court can consider the specific evidence about Eubanks and Paredes's interaction. *See Toscano v. Ameriquest Mortgage Co.*, No. CIV-F-07-0957AWIDLB, 2007 WL 3125023, at *5 (E.D. Cal. Oct. 24, 2007).

Defendants next assert that an ordinary member of the public would not have relied on Eubanks's representations. Under California law, a plaintiff must allege facts indicating that the misrepresentations are likely to deceive a reasonable consumer. *McKinnis v. Kellogg USA*, No. CV07-2611ABC(RCX), 2007 WL 4766060, at *3 (C.D. Cal. Sept. 19, 2007). The issue is generally a question of fact. *Yung Kim v. Gen. Motors, LLC*, No. CV 11-06459 GAF MRWX, 2015 WL 1668366, at *9 (C.D. Cal. Mar. 9, 2015). And it is in this case. It is plausible that it is probable that an ordinary consumer would not know anything about unit transferability or licensing exams and therefore accept an admissions counselor's representations on those issues.[5] Evidence may prove the contrary, but the issue must be reserved for summary judgment.

III. Sufficiency of the UCL Claims

Defendants bring three challenges to Paredes's UCL claims. First, they contend she lacks statutory standing. Second, they contend she does not meet the law's prerequisites for pursuing injunctive relief. Third, they contend she cannot obtain damages under the UCL.

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[5] Defendants' citations to cases involving college admissions are distinguishable. *E.g.*, *Mangle v. Brown Univ.*, 135 F.3d 80 (1st Cir. 1998). A reasonable consumer would know much less about unit transferability and credentialing than college admissions. After all, the general notion of how college admissions work — one applies, the application is reviewed, and a committee issues acceptances — is somewhat familiar to most. The same cannot be said for unit transferability, which most people have no experience with and no reason to investigate. It is therefore plausible, on a bare pleading, that an ordinary consumer would accept an admission counselor's representations about unit transferability and unit applicability to licensing exams. Evidence submitted alongside a motion for summary judgment may show that this inference is untenable; since the Court lacks any such evidence at the pleading stage, it cannot dismiss the claim at this juncture.

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A. Statutory Standing

"As amended by Proposition 64, section 17204 [of California's Business and Professions Code] now states that a private person has standing to sue for relief under the UCL only if he or she has suffered injury in fact and has lost money or property as a result of the unfair competition." *Safeco Ins. Co. of Am. v. Superior Court*, 173 Cal. App. 4th 814, 827 (Cal. Ct. App. 2009) (internal quotation marks omitted).

According to Defendants, Paredes failed to allege any injury that was caused by Eubanks's alleged misrepresentations. Paredes responds that she incurred loan debt due to the representations. Because Defendants offer no rebuttal to that argument, the Court declines to dismiss the UCL claim for lack of standing.

B. Injunctive Relief

Defendants also argue that Paredes cannot pursue injunctive relief under the UCL because she is no longer a student at the University of Phoenix. "Generally, once a student graduates, he no longer has a live case or controversy justifying declaratory and injunctive relief against a school's action or policy." *Flint v. Dennison*, 488 F.3d 816, 824 (9th Cir. 2007). Paredes's only argument against the general rule is that the Court can order disgorgement of profits; such an order, however, would not be in the form of an injunction or declaration. The Court therefore dismisses Paredes's third cause of action with prejudice. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend not required where amendment would be futile).

C. Damages

Defendants also contend that Paredes cannot recover compensatory damages under the UCL. That is correct, and Paredes offers no response. Therefore, Paredes's UCL claim is dismissed with prejudice to the extent it seeks money damages beyond restitution. *Vasconcellos v. Sara Lee Bakery*, No. C 13-2685 SI, 2013 WL 6139781, at *5 (N.D. Cal. Nov. 21, 2013).

CONCLUSION

For the foregoing reasons, the Court:

1. Dismisses Plaintiff's first cause of action with prejudice to the extent it seeks money damages beyond restitution.

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UNITED STATES DISTRICT COURT
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2. Dismisses Plaintiff's third cause of action with prejudice.
3. Denies Defendants' motion in all other respects.[6]

[6] Defendants are reminded that reply briefs cannot exceed 12 pages. *See* New Case Order, 2:8-11, ECF No. 9.

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