

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

NICOLE M. ENZINNA, AMY L.
BORYNSKI-KURTZ and HEATHER L.
MAHLEY,

Plaintiffs,

-v-

D'YOUVILLE COLLEGE

Defendant.

COMPLAINT

Index No. _____

Plaintiffs, NICOLE M. ENZINNA, AMY L. BORYNSKI-KURTZ and HEATHER L. MAHLEY, by and through their attorneys, Lipsitz Green Scime Cambria LLP, as and for their Complaint against Defendant D'Youville College, herein allege as follows:

1. At all times relevant hereto, Plaintiff NICOLE M. ENZINNA (Plaintiff "Enzinna"), was and is a resident of the State of New York, residing in Erie County.
2. At all times relevant hereto, Plaintiff AMY L. BORYNSKI-KURTZ (Plaintiff "Kurtz"), was a resident of Erie County, New York, and resides in Erie County.
3. At all times relevant hereto, Plaintiff HEATHER L. MAHLEY (Plaintiff "Mahley"), was and is a resident of the State of New York, residing in Niagara County.
4. Upon information and belief, at all times relevant hereto, Defendant D'Youville College (the "College"), was and is a domestic not-for-profit corporation offering undergraduate and graduate courses and degrees.

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FACTS COMMON TO ALL CAUSES OF ACTION

5. Upon information and belief, in or about 2004, the College began offering a Doctor of Chiropractic Program (the "Program") to eligible members of the consuming general public who had obtained the requisite academic credentials for enrollment as determined by the College.

6. Plaintiff Enzinna was accepted and enrolled in the Program in 2005, successfully completed the Program, and graduated with a Doctor of Chiropractic degree in 2009.

7. Plaintiff Kurtz was accepted and enrolled in the Program in 2004, successfully completed the Program, and graduated with a Doctor of Chiropractic degree in 2008.

8. Plaintiff Mahley was accepted and enrolled in the Program in 2004, successfully completed the Program, and graduated with a Doctor of Chiropractic degree in 2009.

9. Upon information and belief, at the time the Program was first offered, the College had not yet received formal accreditation for the Program.

10. Upon information and belief, it was not until July 2007 when the Program was fully accredited by The Council on Chiropractic Education, the agency recognized by the U.S. Secretary of Education for accreditation of programs and institutions offering the doctor of chiropractic degree.

11. Upon information and belief, at the time the Program was accredited, the College was one of only fifteen institutions offering an accredited Doctorate in Chiropractic medicine.

12. Beginning in or about 2004, the College began advertising and representing to the general public that individuals who successfully completed the Program would be, among other things, eligible for licensure in "all states, Washington D.C., Puerto Rico, the U.S. Virgin

Islands, all Canadian provinces and many foreign countries.” A true and correct copy of one such advertisement is attached hereto as **Exhibit A**.

13. Upon information and belief, at all times relevant hereto, the College was aware that its representation that graduates from the Program would be eligible for licensure in “all states” was false, and that in fact the Program was not recognized by a significant number of state licensing boards throughout the United States, including, but not limited to, California and North Carolina.

14. Despite the knowledge that a degree from the Program was not accepted for licensure purposes in all states, the College failed and refused to notify students in the Program of this fact, and thereby prevented said students from making an informed decision on whether to remain in the Program, or to transfer to a different institution offering a Doctorate of Chiropractic degree recognized for licensure in states that did not recognize the Doctor of Chiropractic degree granted by the College.

15. Upon information and belief, the tuition paid by Plaintiffs to attend the College and graduate with a degree from the Program was significantly more than they would have paid at most, if not all, of the other fourteen (14) schools offering a Doctorate of Chiropractic degree.

16. In reliance upon the false and deceptive representations made by the College and the failure of the College to notify students of the deficiencies in the acceptance of its Doctorate of Chiropractic degree in “all states”, Plaintiffs completed the Program and paid Defendant College at least \$105,000 each in tuition, and at least \$5,000 in related expenses.

**AS AND FOR A FIRST CAUSE OF ACTION
(Violation of NY General Business Law § 350)**

17. Plaintiffs repeat and reallege paragraphs 1 through 16 with the same force and effect as if fully alleged herein at length.

18. By falsely advertising that the Program was accepted in “all states”, Defendant College is in violation off NY General Business Law § 350

19. By reason of the foregoing, Plaintiffs have each been damaged in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon.

20. Defendant College should also be permanently enjoined and restrained from engaging in such false advertising.

**AS AND FOR A SECOND CAUSE OF ACTION
(Violation of NY General Business Law § 349)**

21. Plaintiffs repeat and reallege paragraphs 1 through 16 with the same force and effect as if fully alleged herein at length.

22. By reason of Defendant College’s false and deceptive representations and its failure to notify students of the deficiencies in the acceptance of its Doctorate of Chiropractic degree in all states, Defendant College has engaged in false and deceptive business practices in conducting its business, which is in violation of NY General Business Law § 349.

23. By reason of the foregoing, Plaintiffs have each been damaged in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon.

24. Defendant College should also be permanently enjoined and restrained from engaging in such false and deceptive business practices which have caused Plaintiffs irreparable harm for which they have no adequate remedy at law.

**AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Contract)**

25. Plaintiffs repeat and reallege paragraphs 1 through 16 with the same force and effect as if fully alleged herein at length.

26. Defendant College represented to each Plaintiff that if they chose to become enrolled in the Program, that upon their successful completion of same, each Plaintiff would receive a degree that would have portability to all states in the United States.

27. In reliance upon Defendant College's representations concerning the nature and wide-spread acceptability of the Program, each Plaintiff accepted enrollment with Defendant College with the expectation that upon successful completion of the Program they would each receive a degree accepted for licensure in all states.

28. In exchange for enrolling in the Program, each Plaintiff paid Defendant College approximately \$105,000 each in tuition, and \$5,000 in related expenses.

29. Plaintiffs duly completed the requirements for, and received their respective Doctor of Chiropractic degree from the College, but never received the benefit of their bargain.

30. By failing to disclose to Plaintiffs at anytime prior to graduation that Defendant College's representations about the acceptability of the Program were false and misleading, Plaintiffs have received a degree worth substantially less than the degree they were promised.

31. By reason of the foregoing, Defendant College is in breach of its contract with Plaintiffs.

32. By reason of said breach, Plaintiffs have each been damaged in an amount to be proven at trial, but believed to be in excess of \$100,000 per Plaintiff, plus lawful interest thereon.

**AS AND FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)**

33. Plaintiffs repeat and reallege paragraphs 1 through 16 with the same force and effect as if fully alleged herein at length.

34. In paying Defendant College tuition, Plaintiffs did so in reliance that they would be receiving a valuable degree accepted for licensure in all states as advertised by the College.

35. By accepting tuition from Plaintiffs, Defendant College received a benefit from Plaintiffs having a reasonable value of at least \$100,000 per Plaintiff.

36. In failing to provide a Doctor of Chiropractic degree accepted for licensure in all states, Defendant College has been unjustly enriched.

37. Equity and good conscience dictate that Defendant College not be allowed to retain the benefit of the tuition paid by each Plaintiff in reliance upon the false and deceptive representations of Defendant College, and its actions and/or inaction in failing to disclose the non-recognition of the Program by various states, as set forth above.

38. By reason of the foregoing, Plaintiffs are entitled to judgment against Defendant College in an amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon.

**AS AND FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel)**

39. Plaintiffs repeat and reallege paragraphs 1 through 16 with the same force and effect as if fully alleged herein at length.

40. Defendant College promised to each Plaintiff that upon successful completion of the Program they would each receive a valuable degree accepted in all states.

41. Plaintiffs reasonably and foreseeably relied upon the aforesaid representation of Defendant College in agreeing to enter into the Program.

42. In receiving a degree that was not accepted in all states, each Plaintiff has been damaged in an amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon.

WHEREFORE, Plaintiffs demand judgment against Defendant College as follows:

1. On Plaintiffs' First Cause of Action, damages in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon, and a permanent injunction enjoining and restraining Defendant D'Youville College from engaging in false advertising in violation of NY General Business Law § 350 in the advertising and marketing of its Doctor of Chiropractic program;

2. On Plaintiffs' Second Cause of Action, damages in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon, and a permanent injunction enjoining and restraining Defendant D'Youville College from engaging in false and deceptive business practices in violation of NY General Business Law § 349 in the advertising and marketing of its Doctor of Chiropractic program;

3. On Plaintiffs' Third Cause of Action, damages in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon;

4. On Plaintiffs' Fourth Cause of Action, damages in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon;

5. On Plaintiffs' Fifth Cause of Action, damages in amount to be determined at trial, but believed to be in excess of \$100,000 per Plaintiff, together with lawful interest thereon;
6. Plaintiffs' reasonable attorneys' fees;
7. Plaintiffs' costs and disbursements in this action; and
8. Such other and further relief that the Court deems just and proper.

DATED: February 12, 2010

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 

Jeffrey F. Reina, Esq.

Joseph J. Manna, Esq.

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