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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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CLERK

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by Jo Ann M.)
Uchida, as Executive Director of the)
Office of Consumer Protection,)
)
Plaintiff,)

CIVIL NO. 97-4540-11
(Other Civil Action)

COMPLAINT; SUMMONS

vs.)

PACWEST (HAWAII) CORPORATION,)
dba Pacific Western University)
(Hawaii), Inc; JOHN DOES 1-20; DOE)
CORPORATIONS 1-10; and DOE)
ENTITIES 1-10,)
)
Defendants.)

COMPLAINT

Plaintiff, for cause of action against the above-named Defendants,
avers and alleges that:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action brought by the Office of Consumer Protection
of the State of Hawaii pursuant to Hawaii Rev. Stat. Chapters 480 and 487

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)	
Defendants.)	
)	
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COMPLAINT

Plaintiff, for cause of action against the above-named Defendants, avers and alleges that:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action brought by the Office of Consumer Protection of the State of Hawaii pursuant to Hawaii Rev. Stat. Chapters 480 and 487 seeking to enjoin Defendants from engaging in certain acts or practices in violation of Hawaii's consumer protection laws and to obtain other and additional relief.

2. This court has subject matter jurisdiction over this case pursuant to Hawaii Rev. Stat. §§ 480-21 and 603-21.5.

3. Venue in the City and County of Honolulu, State of Hawaii, is proper under Hawaii Rev. Stat. §603-36 because the cause of action arose, in part, in the City and County of Honolulu, and the business and operations of Defendants is based primarily in the City and County of Honolulu.

4. Defendant Pacwest Corporation, dba Pacific Western University (Hawaii), Inc., hereinafter referred to as Pacific Western University, is a for profit Hawaii corporation with its principal offices at 1210 Auahi St., Suite 104, Honolulu, Hawaii.

5. Defendant Pacific Western University is an unaccredited degree granting institution, operating out of an adjoining section of the law office of James W. Tharp at 1210 Auahi St., Suite 104, Honolulu, Hawaii. Mr. Tharp is listed in numerous Pacific Western University publications as the academic advisor to Pacific Western University.

6. Other than occupying a small adjoining section of Mr. Tharp's law office, Defendant Pacific Western University has no physical presence in the State of Hawaii.

7. Defendants John Does 1-20, Doe Corporations 1-10, and Doe Entities 1-10 are Defendants who have engaged in and/or participated and/or aided and/or assisted in and/or furnished the means for the violations described herein,

and their true capacities, names and relationships with or responsibilities to or involvement with the named Defendants are unknown to Plaintiff at this time. Plaintiff has undertaken an investigation to determine the identities of the Defendants described in this paragraph, but at this time, said identities have not been discovered.

COUNT I

8. Defendant Pacific Western University is an "unaccredited institution" as that term is defined in Chapter 446E of the Haw. Rev. Stat. It is a degree granting institution which has not been accredited or provisionally accredited by at least one nationally recognized accrediting agency or association which is listed by the United States Secretary of Education.

9. As an "unaccredited institution" operating in the State of Hawaii, Defendant Pacific Western University must comply with all of the disclosure requirements of § 446E-2(a) of the Haw. Rev. Stat., including the requirement that it affirmatively disclose that it is not fully accredited by any nationally recognized accrediting agency or association listed by the United States Secretary of Education.

10. In an attempt to recruit students to pay it tuition Defendant Pacific Western University places advertisements in newspapers and magazines circulated throughout the United States, including USA Today, Forbes, and Business Week. These advertisements constitute promotional material pursuant to §446E-2 of the Haw. Rev. Stat.

11. The advertisements are devoid of the disclosures mandated by § 446E-2 of the Haw. Rev. Stat.

12. Each advertisement, without the proper disclosures, constitutes a separate and independent violation of § 480-2 of the Haw. Rev. Stat.

COUNT II

13. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 12 as though fully set forth herein.

14. In response to these promotional materials Defendant Pacific Western University receives inquiries from consumers interested in applying, attending or matriculating at Pacific Western University.

15. In response to these inquiries Defendant Pacific Western University disseminates catalogs, promotional materials and written contracts to consumers advocating the merits of pursuing a degree at Pacific Western University.

16. Many of the materials sent to consumers by Pacific Western fail to adequately disclose that Pacific Western University is not fully accredited, as mandated by § 446E-2(a) of the Haw. Rev. Stat. Included amongst the materials omitting the required disclosures are pamphlets and promotional letters/fact sheets.

17. Each document disseminated by Defendants to consumers without the requisite disclosure of § 446E-2 constitutes a separate and independent violation of §§ 446E-3 and 480-2 of the Haw. Rev. Stat.

COUNT III

18. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 17 as though fully set forth herein.

19. Defendants disseminate material via the mail and the internet asserting that "Pacific Western University is registered in the State of Hawaii to confer Bachelor's, Master's and Doctoral degrees on students who have met the

graduation requirements of the University".

20. The only registration that Pacific Western University has with the State of Hawaii is the filing of its articles of incorporation and its general excise tax license with the Business Registration Division of the State of Hawaii Department of Commerce and Consumer Affairs.

21. Defendants' assertions that it is registered in the State of Hawaii to confer degrees is grossly misleading to consumers by implying that the State of Hawaii somehow licenses, approves, or regulates its operations.

22. Defendants' misleading statements relating to its assertions of registration is an unfair or deceptive trade practice in violation of §§ 480-2 and 481A-3(2)(5) of the Haw. Rev. Stat.

23. Each misleading statement constitutes a separate and independent violation of § 480-2 of the Haw. Rev. Stat.

COUNT IV

24. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 23 as though fully set forth herein.

25. Defendants market the benefits of attending Pacific Western University throughout the world, including Japan.

26. In furtherance of its marketing program Defendants have falsely characterized Pacific Western University to Japanese nationals, by both direct mail solicitations and Japanese newspaper and magazine advertisements, that Pacific Western University is a university, officially authorized by the State of Hawaii as a full correspondence course university that can legitimately award academic degrees.

27. Defendants characterize Pacific Western University in this

manner to try to mislead prospective students to believe that it is somehow accredited or approved by the State of Hawaii to award academic degrees.

28. Defendants' misleading statements relating to its' so called recognition by the State of Hawaii constitutes an unfair or deceptive trade practice in violation of § 480-2 of the Haw. Rev. Stat.

29. Each misleading statement constitutes a separate and independent violation of § 480-2 of the Haw. Rev. Stat.

COUNT V

30. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 29 as though fully set forth herein.

31. Defendants John Does 1-20 are directors, officers, or agents of Defendants Pacific Western who authorized, ordered, or done any of the acts constituting the unfair or deceptive acts and practices in violation of Haw. Rev. Stat. § 480-2 complained of herein.

32. Defendants John Does 1-20 are persons who aided, abetted, assisted and participated in the unfair or deceptive acts and practices in violation of Haw. Rev. Stat. § 480-2 complained of herein.

33. Pursuant to Haw. Rev. Stat. §§ 480-2 and 480-17, Defendants John Does 1-20 are as liable as the named Defendants for the unfair and deceptive acts or practices in violation of Haw. Rev. Stat. § 480-2 complained of herein.

COUNT VI

34. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 33 as though fully set forth herein.

35. Defendants Doe Corporations 1-10 and Doe Entities 1-10 are entities that engaged in and/or participated and/or aided and/or assisted in and/or

furnished the means for the unfair or deceptive acts and practices described herein.

36. By engaging in said acts and practices, Defendants Doe Corporations 1-10 and Doe Entities 1-10 engaged in unfair or deceptive acts and practices and violated Haw. Rev. Stat. § 480-2.

COUNT VII

37. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 36 as though fully set forth herein.

38. Unless Defendants are enjoined from further engaging in the acts and/or practices complained of herein, Defendants will continue to engage in such activities in violation of Chapters 480 and 481A of the Haw. Rev. Stat.

39. Unless Defendants are enjoined from further engaging in the acts and/or practices complained of herein, Defendants will continue to engage in said activities and the continued activities of Defendants will result in a multiplicity of lawsuits, irreparable injury, and loss and damage to consumers who continue to deal with Defendants.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Issue a preliminary and permanent injunction enjoining and restraining Defendants, and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from failing to provide all disclosures mandated by Chapter 446E of the Haw. Rev. Stat. and from misleading consumers by asserting that Pacific Western University is registered with the State of Hawaii.

2. Order Defendants to provide restitution to each and every

consumer who was injured as a result of the unlawful acts or practices complained of herein and as may be proven herein at trial pursuant to Haw. Rev. Stat.

§ 487-14.

3. Order Defendants to pay the State of Hawaii a civil penalty of \$10,000 (ten thousand dollars) for each violation, pursuant to Haw. Rev. Stat. § 480-3.1.

4. Order Defendants to reimburse the Office of Consumer Protection for the costs of investigation and for reasonable attorney fees.

5. Order any other relief the Court deems just and proper.

DATED: Honolulu, Hawaii, _____.


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Attorney for Plaintiff

3. Order Defendants to pay the State of Hawaii a civil penalty of \$10,000 (ten thousand dollars) for each violation, pursuant to Haw. Rev. Stat. § 480-3.1.

4. Order Defendants to reimburse the Office of Consumer Protection for the costs of investigation and for reasonable attorney fees.

5. Order any other relief the Court deems just and proper.

DATED: Honolulu, Hawaii, NOV 04 1997.



STEPHEN H. LEVINS
Attorney for Plaintiff