

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ANITA TOLER,
individually
and on behalf of a class of similarly
situated persons,

Plaintiff,

Case No.

v.

GLOBAL COLLEGE OF
NATURAL MEDICINE INC.
and HEATHER JOHNSTONE,

Defendants.

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff Anita Toler, individually and on behalf of a class of similarly situated persons, by and through her attorneys, The Googasian Firm, P.C., alleges as follows:

Nature of Action

1. This is a class action seeking damages and other remedies for Plaintiff and a class of similarly situated individuals who were enrolled in programs of distance education through Defendant Global College of Natural Medicine Inc. (“GCNM”) in November 2012, when GCNM announced without warning that it was suddenly terminating its distance education programs sold to Plaintiff and others throughout the United States.

2. At the time of the sudden closure, GCNM and Defendant Heather Johnstone (collectively, “GCNM Defendants”) had collected and been entrusted with millions of dollars in advance tuition from Plaintiff and a class of similarly situated persons for programs that GCNM summarily stopped providing.

3. As a result of the sudden closure, Plaintiff and other members of the Class have been precluded from receiving and completing the distance education programs for which they had collectively submitted millions of dollars of tuition in advance and to which they had devoted considerable time and effort.

4. After the abrupt termination of GCNM's distance education programs, GCNM and Heather Johnstone have failed to refund tuition to Plaintiff and other members of the Class.

5. Plaintiff asserts breach of fiduciary duty, negligence, and other claims against GCNM Defendants and seeks compensation for the tuition amounts submitted for programs that are now not available and for Plaintiff's loss of time and opportunity, among other damages.

Parties, Jurisdiction and Venue

7. At all relevant times, Plaintiff Anita Toler was a citizen of Michigan.

8. At all relevant times, Defendant Global College of Natural Medicine Inc. ("GCNM") was a California corporation with its principal place of business located in Santa Cruz, California.

9. At all relevant times, Defendant Heather Johnstone was, on information and belief, a citizen of Illinois. Upon information and belief, Heather Johnstone served as director, chief executive officer, and chief operating officer of GCNM, and is the 100 percent owner and only board member of GCNM.

10. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1332(d).

11. Venue exists pursuant to 28 U.S.C. § 1391(a).

12. The amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

Class Action Allegations

13. Plaintiff hereby incorporates by reference the preceding allegations.

14. Plaintiff brings this lawsuit as a class action pursuant to Rules 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of a Class defined as:

All individuals who entrusted tuition in advance to GCNM and were active students in distance education programs of study through GCNM as of November 2012.

15. Plaintiff Anita Toler (“the Representative Plaintiff”) entrusted to GCNM more than \$3,000 for a distance education program of study in the natural health field.

16. The Class includes all students who, like Representative Plaintiff, entrusted tuition in advance for programs of distance education and were active students at GCNM prior to November 2012 when the school abruptly terminated its programs.

17. On information and belief, the Class includes thousands of similarly situated persons in states across the United States.

18. The Class is so numerous that joinder of all members is impracticable.

19. There are questions of law or fact common to the members of the Class that predominate over questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

20. The claims of Representative Plaintiff are typical of the claims of the other members of the Class.

21. The Representative Plaintiff will fairly and adequately assert and protect the interests of the Class.

22. The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

23. Prosecuting separate actions by individual class members would create a risk of adjudications that, as a practical matter, could substantially impair or impede the interests of other class members not parties to the proceedings.

General Allegations regarding GCNM

**GCNM Sold Natural Medicine Distance Education Programs
To Adults Across The United States**

24. Plaintiff hereby incorporates by reference the preceding allegations.

25. GCNM was licensed to operate by the State of California as a postsecondary school beginning in approximately 2004.

26. GCNM marketed and sold distance education programs in natural health fields of study to adults across the United States.

27. GCNM marketed and sold distance education programs that offered adults opportunities to earn certificates and diplomas in subjects including Nutritional Consultant, Master Herbalist, Holistic Health Practitioner and other subjects, as well as Bachelor of Science, Master of Science, and Ph.D. programs.

28. GCNM marketed distance education programs that allowed adults from across the United States, including within this District, to pursue programs from their own homes. Upon information and belief, GCNM did not offer education in classroom buildings in California or anywhere else.

29. GCNM and Heather Johnstone interacted with prospective students and enrolled students in their home states via telephone, mail, e-mail, and an interactive website set up and maintained by GCNM Defendants.

30. GCNM and Heather Johnstone interacted with prospective students and enrolled

students in Michigan, including Plaintiff, via telephone, mail, e-mail and an interactive website set up and maintained by GCNM Defendants. In addition, Heather Johnstone has repeatedly visited Michigan in recent years to engage in natural health education activities.

31. Among other means of communication, GCNM and Heather Johnstone interacted with enrolled students, including Plaintiff, via an interactive website forum created to allow students and instructors to communicate with one another. GCNM and Heather Johnstone informed students, including Plaintiff, that participation in the interactive website forum was part of GCNM's evaluation and grading process for its students.

32. GCNM told students that its programs were self-paced, with completion times ranging from 12 months or more for certificate programs to 5 years or more for the Bachelor, Master and Ph.D. programs. GCNM stated, for example, on its website, "If you find yourself unable to complete the programs in the time listed below, please request an extension[.] There are no fees for the extension. The extension is required for you to remain in good standing as a student, if you do not complete the program's [sic] in the time frames' [sic] listed below."

33. GCNM told students that its distance education programs included close contact with GCNM employees via telephone, e-mail and interactive website. GCNM stated, for example, "You meet your own personal GCNM tutor in your 'Welcome Letter.'" GCNM students and tutors often develop a very close bond. It's comforting to know that help is only an e-mail or phone call away."

34. GCNM told students that its distance education programs included support and assistance from school employees via telephone, e-mail and interactive website. GCNM stated, for example, "You can ask your GCNM tutor as many questions as you like. Personal attention is extremely important when studying at a distance, which is why so many people choose GCNM. Our

tutors give you the time that you would normally only expect if you attended a full time college.”

35. GCNM told students that their education included interaction with other GCNM students. GCNM stated, for example, “Our Interactive Student Forum will help you stay in contact with other students and GCNM tutors. You can share ideas and study tips, make friends, meet study-buddies or arrange for study groups in your area.”

36. GCNM told students that its distance education programs were self-paced. GCNM stated, for example, “Learning through GCNM allows you to work and study at your own pace. We believe that our students should set their own goals.”

37. The cost of GCNM’s distance education programs ranged from approximately \$1,000 for its Nutritional Consultant and Master Herbalist programs to more than \$2,000 for the holistic Health Practitioner Program to more than \$10,000 for its combined Bachelor, Master and Ph.D. program.

**GCNM Collected Millions of Dollars
In Tuition In Advance From Thousands of Students
Enrolling In Distance Education Programs**

38. Students enrolling at GCNM, including Plaintiff and members of the Class, were required to pay tuition prior to commencing their distance education programs.

39. Plaintiff and other members of the Class were required to submit either the entirety of their tuition in advance or a substantial amount prior to starting, with the balance due soon thereafter.

40. Upon information and belief, a class of thousands of adults, including Plaintiff, collectively entrusted GCNM Defendants with millions of dollars in advance tuition for distance education programs that the students had not yet completed at the time of the school’s abrupt closure

in November 2012.

41. On information and belief, GCNM collected more than \$5 million in tuition from Plaintiff and members of the Class. Upon information and belief, a substantial amount of the millions of dollars had not yet been earned at time of GCNM's closure.

**Plaintiff and Class Members Submitted Tuition For And Were Pursuing
Distance Education Programs At GCNM**

42. Plaintiff and members of the Class entrusted substantial amounts of tuition in advance to GCNM Defendants in order to be eligible to pursue distance education programs at GCNM.

43. Beginning in 2010, Plaintiff entrusted GCNM Defendants with a total of approximately \$3,120 in connection with her enrollment in a self-paced bachelor of science program in holistic health.

44. Plaintiff had submitted her entire tuition amount at the time of the discontinuation of GCNM's distance education programs in November 2012.

45. Plaintiff was still pursuing her bachelor of science program in holistic health at the time of the discontinuation of GCNM's distance education programs in November 2012.

46. Following GCNM's sudden closure, Plaintiff demanded a refund, but GCNM did not provide one.

GCNM Did Not Exist As A Separate Corporation

47. On information and belief, GCNM shared such a unity of interest and ownership with Heather Johnstone that its separate status as a corporation did not exist or ceased to exist.

48. On information and belief, GCNM is and was a mere instrumentality or a device to avoid legal obligations of Heather Johnstone.

49. On information and belief, GCNM had a single shareholder, Heather Johnstone.

50. On information and belief, GCNM had a single board member, Heather Johnstone.

51. On information and belief, Heather Johnstone served as GCNM's only director, as well as its chief executive officer and its chief operating officer.

52. On information and belief, GCNM never had regular board meetings.

53. On information and belief, Heather Johnstone controlled all aspects of GCNM. In particular, her activities included, but were not limited to, overseeing the entire operations of the school, managing the faculty and administrative support staff, developing marketing materials, developing and reviewing academic and teaching materials, and overseeing the process of awarding credentials to students who completed their programs.

**Heather Johnstone and GCNM Knew That
GCNM Had Received Millions In Advance
From Students Pursing Distance Education Programs**

54. At all relevant times, GCNM and Heather Johnstone knew or should have known that GCNM had received millions of dollars in advance tuition from thousands of adults – including Plaintiff – who had paid in advance for distance education programs that they had not yet completed.

55. At all relevant times, Heather Johnstone knew or should have known that GCNM had been entrusted with millions of tuition dollars from thousands of adults – including Plaintiff – to pay in advance for distance education programs that the students had not yet completed.

56. At all relevant times, on information and belief, Heather Johnstone knew or should have known that GCNM treated money received from thousands of adults – including Plaintiff – as income in the year that it was received, even though the income had not yet been earned because the programs for which the tuition was submitted had not been completed.

**Heather Johnstone and GCNM
Knew That GCNM Was In Financial and Regulatory Difficulty,
But Failed To Take Appropriate Steps To Provide Programs Paid For In Advance**

57. Heather Johnstone and GCNM knew or should have known that for years prior to GCNM's closing that GCNM was experiencing significant financial and regulatory difficulty.

58. With GCNM facing significant financial and regulatory difficulty, Heather Johnstone and GCNM failed to take appropriate steps to ensure that the educational programs for which students, including Plaintiff, had paid in advance would be available to students.

59. With GCNM facing significant financial and regulatory difficulty, Heather Johnstone and GCNM failed to take appropriate steps to ensure that the funds entrusted by students, including Plaintiff, would be available to provide the educational programs for which students had paid in advance.

**Heather Johnstone and GCNM Terminated GCNM's
Distance Education Programs
Despite Having Received and Been Entrusted With
Millions of Dollars For Completion Of Such Programs**

60. In or about November 2012, Heather Johnstone made the decision to close GCNM.

61. At the time of the decision to close GCNM, Heather Johnstone and GCNM knew that students had entrusted millions of dollars in tuition and that a substantial amount of this tuition had not been earned.

62. At the time of the decision to close GCNM, Heather Johnstone and GCNM knew that students would no longer have available the programs and services for which they had already paid tuition.

63. Heather Johnstone and GCNM took the steps to close GCNM knowing that GCNM Defendants had received millions of dollars in tuition entrusted by Plaintiff and other members of

the Class for distance education programs and services that the abrupt closure would make it impossible to complete.

64. Heather Johnstone and GCNM took no steps to protect or recover the millions of dollars in tuition entrusted by students that had been transferred to others even though the tuition had not been earned.

65. Prior to the sudden termination of GCNM's programs in November 2012, Heather Johnstone and GCNM gave no indication to students or to the State of California that GCNM might be closing.

66. To the contrary, Heather Johnstone and GCNM continued to enroll new students for GCNM's distance education programs shortly before the closure of GCNM.

67. Since the closing, Heather Johnstone and GCNM have failed to return millions of dollars entrusted by Plaintiff and members of the Class for prepaid distance education programs that it is now impossible to complete and that were not earned.

Count I
Breach of Fiduciary Duty

68. Plaintiff hereby incorporates by reference the preceding allegations.

69. Heather Johnstone and GCNM each owed Plaintiff and the Class a fiduciary duty.

70. Heather Johnstone and GCNM each knew that Plaintiff and others in the Class had entrusted tuition that had not yet been earned.

71. Heather Johnstone and GCNM each knew that tuition entrusted by Plaintiff and others in the Class had been transferred to others even though it had not yet been earned, including transfers made to Heather Johnstone.

72. Plaintiff and the Class reposed trust in Heather Johnstone and GCNM with regard

to the tuition entrusted in advance for distance education programs as well as with regard to the information and advice that Heather Johnstone and GCNM provided regarding their distance education programs.

73. A relationship existed in which Heather Johnstone and GCNM provided advice and counsel to Plaintiff and the Class regarding the advance submission of tuition and the availability of distance education programs and services, which inspired confidence and trust in Plaintiff and the Class that Heather Johnstone and GCNM would act in good faith to provide the programs and services for which Plaintiff and the Class were required to entrust money in advance.

74. A relationship existed between Plaintiff and the Class, on the one hand, and Heather Johnstone and GCNM, on the other, as a result of the transfer to Heather Johnstone and GCNM of tuition amounts entrusted by students for distance education programs that could be completed at students' own pace.

75. The fiduciary duty owed by Heather Johnstone and GCNM extended to substantial amounts of tuition received from and entrusted by Plaintiff and the Class that had not yet been earned for distance education programs that had not yet been completed.

76. Heather Johnstone and GCNM breached their fiduciary duty to Plaintiff and the Class by, among other things, receiving tuition and then failing to take steps to safeguard the funds, failing to ensure that tuition entrusted by students for education programs was utilized for such programs, failing to properly manage and protect tuition funds, failing to reveal to students that the school was in financial and regulatory difficulty, failing to reveal to students that appropriate steps had not been taken to provide the education programs they were selling, and transferring and permitting the transfer of tuition that had been entrusted by students and not yet earned.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count II
Negligence

77. Plaintiff hereby incorporates by reference the preceding allegations.

78. Heather Johnstone and GCNM owed Plaintiff and the Class a duty of due care in all aspects of the operation of their school that affected students' opportunity to pursue and complete distance education programs for which they had been required to submit tuition in advance.

79. The duty of due care owed by Heather Johnstone and GCNM extended to Plaintiff and the Class, who had collectively entrusted millions of dollars for prepaid distance education programs that they had not yet completed in November 2012.

80. Heather Johnstone and GCNM breached their duty of due care to Plaintiff and the Class in numerous ways, including but not limited to, receiving tuition and then failing to take steps to safeguard the funds, failing to ensure that tuition entrusted by students for education programs was utilized for such programs, failing to properly manage and protect tuition funds, failing to reveal to students that the school was in financial and regulatory difficulty, failing to reveal to students that appropriate steps had not been taken to provide the education programs they were selling, and transferring and permitting the transfer of tuition that had been entrusted by students and not yet earned.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter

judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count III
Bailment

81. Plaintiff hereby incorporates by reference the preceding allegations.

82. Plaintiff and the Class delivered property to Heather Johnstone and GCNM for a specific purpose to allow them to pursue and complete distance education programs.

83. Plaintiff and the Class delivered this property to Heather Johnstone and GCNM with the express or implied agreement that it would be duly accounted for to allow Plaintiff to pursue and complete distance education programs.

84. Heather Johnstone and GCNM wrongfully used or lost the property.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count IV
Innocent, Negligent and/or Fraudulent Concealment and Omission

85. Plaintiff hereby incorporates by reference the preceding allegations.

86. Heather Johnstone and GCNM made one or more innocent, negligent, reckless or intentional misrepresentations by omissions of fact to Plaintiff and the Class, including but not

limited to, failing to disclose to students that the GCNM Defendants were spending tuition money submitted in advance even though the tuition had not yet been earned, failing to disclose that no provisions were being made to ensure that the programs for which students had submitted tuition in advance would actually be available for students to complete, failing to disclose that tuition money received for years-long programs was being used to pay expenses in the year in which it was received, and failing to disclose that tuition money that had been entrusted and not yet earned was being transferred to others as salaries, bonuses and other compensation for personal use.

87. Plaintiff and the Class detrimentally relied on one or more omissions of fact made by Heather Johnstone and GCNM.

88. Plaintiff and the Class suffered injury as a result of their reliance on the misrepresentations and omissions by Heather Johnstone and GCNM.

89. Plaintiff's and the Class's justifiable reliance was such that the injury they suffered inured to the benefit of Heather Johnstone and GCNM.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count V
Promissory Estoppel

90. Plaintiff hereby incorporates by reference the preceding allegations.

91. Heather Johnstone and GCNM made promises alleged above to Plaintiff and the Class, including, but not limited to, that the schools would provide students with the entire programs

for which they had submitted tuition in advance.

92. The promises were definite and clear.

93. Heather Johnstone and GCNM should have reasonably expected to induce action of a definite and substantial character on the part of Plaintiff and the Class.

94. Plaintiff and the Class acted in reliance on the promises as outlined above, including by applying for admission, enrolling, submitting advance tuition, and taking other actions all in the manner Heather Johnstone and GCNM expected.

95. Heather Johnstone and GCNM retained the benefit of these promises, in the form of tuition received and other benefits.

96. The promises must be enforced if injustice is to be avoided.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count VI
Unjust Enrichment/Breach of Quasi-Contract

97. Plaintiff hereby incorporates by reference the preceding allegations.

98. Heather Johnstone and GCNM have received benefits from Plaintiff and the Class in the form of tuition and fees, among other benefits.

99. It is inequitable to allow Heather Johnstone and GCNM to retain these benefits granted to them by Plaintiff and the Class.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter

judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count VII
Equitable Estoppel

100. Plaintiff hereby incorporates by reference the preceding allegations.

101. Heather Johnstone and GCNM, by representations, admissions or silence intentionally or negligently induced Plaintiff and the Class to believe facts alleged above, including but not limited to the facts that the schools would provide the education promised to students, and that GCNM would remain open for business to permit students to complete their education.

102. Plaintiff and the Class justifiably relied on and acted in belief of those facts.

103. Plaintiff and the Class were prejudiced as a result of their belief in those facts.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

Count VIII
Breach of Contract

104. Plaintiff hereby incorporates by reference the preceding allegations.

105. Heather Johnstone and GCNM entered into express or implied contracts with Plaintiff and the Class under which they agreed to provide education programs to permit them to

complete the programs for which they had submitted tuition in advance.

106. Heather Johnstone and GCNM breached their obligations under these contracts because GCNM closed while students were enrolled and before GCNM provided the education for which they had paid in advance.

107. Plaintiff and the Class have been damaged as a proximate result of these actions by Heather Johnstone and GCNM because, among other reasons, they neither have the tuition they entrusted nor the education they were promised or for which they had entrusted tuition in advance.

WHEREFORE, Plaintiff, on behalf of herself and the Class, requests that this Court enter judgment in their favor, and against the Defendants for whatever damages Plaintiff and the Class and the Class are found to be entitled to recover, plus interest, costs and attorney's fees, including, but not limited to, direct damages, incidental damages, consequential damages, exemplary damages, punitive damages, and any other or further relief the Court deems just.

THE GOOGASIAN FIRM, P.C.

By /s/ Thomas H. Howlett
Thomas H. Howlett (P57346)
Dean M. Googasian (P53995)
Debra S. Janicki (P70697)
The Googasian Firm, P.C.
Attorneys for Plaintiff
6895 Telegraph Road
Bloomfield Hills, MI 48301-3138
248/540-3333

Date: February 4, 2013

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JURY DEMAND

Plaintiff hereby demands a trial by jury in this action

THE GOOGASIAN FIRM, P.C.

By /s/ Thomas H. Howlett

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Dean M. Googasian (P53995)

Debra S. Janicki (P70697)

The Googasian Firm, P.C.

Attorneys for Plaintiff

6895 Telegraph Road

Bloomfield Hills, MI 48301-3138

248/540-3333

E-mail: thowlett@googasian.com

Dated: February 4, 2013