

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

NATIONAL FEDERATION OF
PROFESSIONAL TRAINERS, INC.,

Plaintiff,

v.

CARRINGTON COLLEGE, INC.,

Defendants.



Provided by:
[Overhauser Law Offices LLC](http://www.iniplaw.org)
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Case No.: 18-CV-47

JURY TRIAL DEMANDED

COMPLAINT

National Federation of Professional Trainers, Inc. (“NFPT”), by and through its undersigned attorneys, for their complaint against Carrington College, Inc. (“Carrington”), hereby alleges as follows:

NATURE OF LAWSUIT

1. This action involves claims for copyright infringement arising under the copyright laws of the United States, Title 17 of the United States Code, misappropriation of trade secrets under the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, et seq., breach of contract and fraud.

2. Plaintiff NFPT brings this action to prevent, and obtain damages for, Defendant Carrington’s unauthorized copying and distribution of NFPT’s proprietary Certified Personal Trainer (“CPT”) credentialing examinations. NFPT previously provided its proprietary CPT credentialing examinations for administration to Carrington students after the students had completed Carrington’s Physical Therapy Technology Program. After a comprehensive

investigation of irregularities that occurred during an NFPT accreditation exam at Carrington's Mesa, Arizona campus on December 10, 2015, NFPT learned that Carrington had made copies of multiple NFPT exams and distributed those exams to students in advance of their actual NFPT accreditation exams. As a result, NFPT's confidential and proprietary exams and test questions were compromised, causing financial and reputational damage to NFPT.

JURISDICTION AND VENUE

3. This Court has exclusive and original jurisdiction over NFPT's copyright claims under 28 U.S.C. § 1338(a), original jurisdiction over NFPT's trade secret claims under 18 U.S.C. § 1836(c), and supplemental jurisdiction over NFPT's breach of contract and fraud claims under 28 U.S.C. § 1367(a).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1400(a) because Defendant Carrington may be found in this District doing business with Plaintiff NFPT.

PARTIES

5. Plaintiff National Federation of Professional Trainers, Inc. ("NFPT") is a family-owned Indiana corporation located at 530 Main Street, Lafayette, Indiana 47901. NFPT provides educational and certification programs for personal fitness trainers.

6. Defendant Carrington College, Inc. ("Carrington") is an Arizona corporation with corporate headquarters located at 7801 Folsom Blvd., Ste. 210, Sacramento, California. Carrington operates for-profit educational institutions in California, Idaho, Arizona, New Mexico, Texas, Nevada, Oregon, and Washington, and also offers online educational services nationwide.

ALLEGATIONS COMMON TO ALL COUNTS

7. NFPT was founded in 1988 in Lafayette, Indiana by Ron Clark, a former United States Marine and Lafayette fireman. Mr. Clark was also the owner of a personal training studio, but was dissatisfied with the personal training certification programs at the time. Mr. Clark created an educational program to teach instructors how to develop physical fitness programs for specific individuals.

8. For the past thirty years, Mr. Clark and NFPT have continued to develop proprietary materials for the education of personal trainers, including independently researched educational materials on biology, physiology, anatomy, nutrition, muscle development and weight loss, among other topics.

9. NFPT also creates and administers comprehensive examinations for the certification of personal trainers—NFPT’s Certified Personal Trainer (“CPT”) examination. Since 2005, NFPT’s CPT programs have been accredited by the National Commission for Certifying Agencies, the industry’s gold standard for certification programs. Additional information regarding NFPT and its CPT programs can be found at www.nfpt.com.

10. NFPT markets its CPT programs online, through its website, and at selected colleges and universities, including Defendant Carrington.

11. Carrington incorporates NFPT’s CPT educational materials and credentialing as part of its Physical Therapy Technology Program.



Certificate of Achievement Program
PHYSICAL THERAPY TECHNOLOGY

About This Program

Helping patients recover from an injury or adapt to trauma or disability can be very rewarding. The Carrington College Physical Therapy Technology program combines classroom study, lab exercises and hands-on practice through our externship program. Graduates can sit for the National Federation of Professional Trainers (NFPT) exam*. This program culminates in a Certificate of Achievement.

General Education Coursework

Students in Carrington College's certificate programs complete technical coursework and participate in a career development seminar.

http://carrington.edu/program_guides/PTT.pdf

12. In conjunction with its use of NFPT's CPT educational materials, Carrington was authorized to administer NFPT's proprietary CPT credentialing examination. To insure the integrity and confidentiality of the examination, as well as NFPT's reputation as a respected credentialing organization, NFPT provided strict instructions for the handling, proctoring and return of the proprietary examination. These instructions were provided in NFPT's Test Proctor Training Manual ("Manual"), Exhibit 1, which is included with each shipment of examinations.

13. NFPT's Manual provides that the NFPT CPT exam, which is delivered via Federal Express approximately two days before a scheduled test date, must be administered within 48 business hours, and promptly returned via Federal Express personally by the test proctor. The Manual also mandates specific, standardized test conditions and procedures for the test proctor to follow before, during and after administering the examination.

14. NFPT's Manual requires that the test proctor maintain the confidentiality of the NFPT examination, and specifically provides that "DUPLICATION OF ANY NFPT EXAM IS NOT PERMITTED." Ex. 1 at 9. Test proctors are required to sign and return the Paper/Pencil

Proctor Information Document, Manual Appendix A, which certifies compliance with NFPT examination requirements, and the Confidential Disclosure Agreement, Manual Appendix B.

15. The Confidential Disclosure Agreement provides that, in the event of breach of the confidentiality agreement, NFPT “shall be entitled to recover reasonable attorney’s fees and costs, investigation fees and costs, litigation expenses, court costs, and any other related expenses associated in any action incurred to enforce this Agreement.” Manual Appendix B at ¶ 7.

16. On November 4, 2014, Carrington ordered twenty-six NFPT CPT examinations for an exam date on December 10, 2015. The exam materials were sent from Schroeder Measurement Technologies, Inc. (“SMT”), a third-party exam development and administration service, and were delivered to Mr. Phillip Schauer (“Schauer”), an employee of Carrington, and Director of Carrington’s Physical Therapy Technology Program, on December 7, 2015. In addition to receiving the Manual with the December 7, 2015 examinations, NFPT records show that Mr. Schauer had previously received the manual on several occasions.

17. Two versions of NFPT’s CPT examination were administered December 10, 2015. The examination was administered to twenty-six students by Schauer and another instructor, Ms. Jenn Marshall (“Marshall”), who each proctored a separate classroom. The completed examinations were returned to SMT for scanning and scoring, along with a student sign-in sheet and seating chart from each of the two classrooms.

18. Upon scoring the exams, SMT noted extensive abnormalities in the students’ test scores. Of the twenty-six candidates tested, SMT identified fifteen candidates who had identical or similar matching response strings. The remaining thirteen students’ response strings differed

by a maximum of four responses out of one hundred and twenty. All twenty-six students “passed” NFPT’s CPT examination.

19. Due to the extreme abnormalities identified by SMT, NFPT voided the results of all twenty-six test scores and required all candidates to retake a qualifying examination, with new questions, to receive NFPT certification. The re-test was conducted on August 26, 2016. Of the twenty-six candidates who took the December 10, 2015 test, only six elected to retake the test, and of those only two passed the test and became certified NFPT physical trainers.

20. NFPT commissioned an investigation into the circumstances of the December 10, 2015 CPT examination. In addition to reviewing the similarities in the candidates’ responses, the investigator interviewed Schauer, Marshall, and two students enrolled in Carrington’s program, Evan Aslanzaikandi (“Aslanzaikandi”) and Ramon Weaver (“Weaver”).

21. The investigator learned that Carrington had given students copies of confidential and proprietary NFPT examinations, and then quizzed students on the copied examination questions until students memorized the answers to each specific question.

22. The Manual charges the test proctor with direct responsibility for receiving and maintaining the security of NFPT’s CPT examinations, as well as with ensuring that administration of the examination comports with the requirements in The Manual and NFPT-CPT Exam Security and Delivery Policies and Procedures. Carrington delegated these responsibilities to Schauer by making him test proctor for the December 7, 2015 CPT Examination. As stated above, the examinations were shipped directly to Schauer, along with The Manual, which included an agreement that Schauer signed, agreeing to adhere to the stated guidelines.

23. Carrington hired Schauer and delegated responsibilities for administering NFPT's CPT examination to him with constructive knowledge of his criminal history, which includes a previous arrested on September 6, 2007, for making a false statement to obtain benefits, committing a fraudulent scheme, and committing theft by misrepresentation, as well another prior arrest on July 29, 2004, for writing a bad check. These arrests were easily discovered by the investigator in conducting a standard background check on Schauer.

24. Mr. Schauer informed NFPT's investigator that he started proctoring NFPT credentialing examinations in June of 2006. In addition to describing the educational material used in the course, Mr. Schauer stated that, during the course, students were given "the quizzes and the tests that are right out of the manual." Mr. Schauer stated that students "answer 100 questions, kind of just getting them used to the testing scenarios that they will have on the day of the final." Mr. Schauer also stated that questions "are taken right off the quizzes and the tests that are provided from NFPT and also questions are taken right off the NFPT website, as well as the Quizlet and the other locations online."

25. NFPT does not provide sample tests nor quizzes with its educational materials, and does not provide sample test questions on the NFPT website.

26. Aslanzaikandi informed NFPT's investigator that Carrington simply provided students with photocopies of NFPT's credentialing examination with instructions to memorize the correct answers.

27. Aslanzaikandi stated that Schauer told students it was his job to make sure they passed NFPT's CPT examination, and that two classes each week were devoted to taking "practice exams," which Aslanzaikandi stated were very clearly photocopies.

28. Aslanzaikandi stated that he recognized the questions on the May 14, 2015 test “word for word,” and that he did not have to read more than the first three to four words of each question before he could recall the correct answer from memory. This is corroborated by Schauer’s statement that most of the students he proctored finished NFPT’s four-hour-long CPT examination in less than one hour.

29. Aslanzaikandi stated that Carrington provided “practice tests” that students were allowed to take home with them. Aslanzaikandi provided two of these tests to NFPT’s investigator. One of the so-called “practice tests” contained 100 questions that exactly matched questions 1 through 100 of NFPT’s test code/form 921103-0241.

30. Based on NFPT’s investigation, Carrington made unauthorized copies of NFPT’s proprietary and confidential examinations, and provided these copies to Carrington students.

31. NFPT’s investigation revealed that at least four of NFPT’s proprietary and confidential CPT examinations, each containing one hundred twenty (120) questions, had been compromised by Carrington.

32. As a result of determining that hundreds of exam questions had been compromised and were no longer valid to be used on a standardized credentialing exam, NFPT requested that SMT’s Assessment and Psychometric Services Department implement an item/question redevelopment plan to replace the compromised items, in accordance with the National Commission for Certifying Agencies (“NCCA”) exam development standards.

33. NFPT’s Certified Personal Trainer Credentialing Program has been accredited by the NCCA since 2005. NCCA accreditations help ensure the health, welfare, and safety of the public through the accreditation of a variety of certification programs/organizations that assess professional competence. Certification programs that receive NCCA accreditation must

demonstrate compliance with the NCCA's Standards for the Accreditation of Certification Programs, which were the first standards for professional certification programs implemented by the fitness training industry.

34. On September 12, 2017, NFPT informed Carrington that it would no longer supply any further education or testing materials to Carrington, nor facilitate any NFPT accreditation through Carrington College. Exhibit 2 at 7. NFPT also demanded that Carrington collect any existing NFPT educational and/or testing material at all Carrington college campuses and return them to NFPT, and confirm, in writing, that all such material had been returned. Id. Carrington did not respond to NFPT's demand.

COUNT I

COPYRIGHT INFRINGEMENT

35. NFPT realleges and incorporates by reference the allegations of Paragraphs 1-34.

36. On April 11, 2018, NFPT filed for copyright protection on NFPT Certified Personal Trainer Examination No. 921103 0241 ("NFPT 0241 Exam"). Exhibit 3. The United States Copyright Office registered NFPT 0241 Exam, Registration No. TX 8-515-798, effective April 11, 2018. Exhibit 4.

37. Carrington has made unauthorized copies of the copyrighted NFPT 0241 Exam in violation of 17 U.S.C. § 106(1).

38. Carrington has distributed copies of the copyrighted NFPT 0241 Exam without permission of NFPT in violation of 17 U.S.C. § 106(3).

39. Unless enjoined by this Court, Carrington will continue to make unauthorized copies and distribute copies of the NFPT 0241 Exam without permission of NFPT.

40. Carrington's actions infringe NFPT's exclusive rights under the Copyright Act.

41. Carrington's actions in copying and distributing NFPT's copyrighted NFPT 0241 Exam have been willful, intentional and in disregard of NFPT's rights, with the intent to cause harm to NFPT.

42. NFPT has been damaged by Carrington's copyright infringement by being forced to retire test questions compromised by Carrington and to incur expenses and costs to create new test questions in accordance with NCCA standards, so as not to lose its accreditation as a certifying organization.

43. NFPT has been damaged by Carrington's copyright infringement by being forced to incur the costs of investigating Carrington's misconduct.

44. NFPT is entitled to damages and all profits made by Carrington from the unauthorized copying and distribution of NFPT's copyrighted material pursuant to 17 U.S.C. § 504, and attorney's fees and costs pursuant to 17 U.S.C. § 505.

45. NFPT is entitled to injunctive relief to prevent further copying of NFPT's copyrighted material and an order that Carrington return or destroy all copies of NFPT's copyrighted materials pursuant to 17 U.S.C. §§ 502 and 503.

COUNT II

MISAPPROIATION OF TRADE SECRETS

46. NFPT realleges and incorporates by reference the allegations in Paragraphs 1-34.

47. In order to create proprietary materials for the education and certification of potential personal trainers, NFPT conducts independent research into biology, physiology, anatomy, nutrition, muscle development, and weight-loss, and other topics. These materials are not readily available to the public, and derive independent economic value from being generally not known or readily ascertainable.

48. As detailed above, NFPT takes extreme measures to maintain the secrecy of CPT examination questions and materials. Proctors must read a training manual (the aforementioned Manual) and sign a confidentiality agreement contained therein, and follow strict protocols before, during, and after the examination, or else all test scores are voided and an investigation will be initiated, as in the instant case. Proctors must request the exact number of exams needed weeks in advance of the test, but NFPT does not mail the sealed tests until approximately two business days before the exam. The proctor then has forty-eight hours to administer the exam, account for all booklets, and personally ship them back. Unsealed exam booklets are only allowed out of the possession of the NFPT for the duration of the examination, and proctors are strictly instructed not to open or view the exam booklets. Proctors are also instructed to maintain sign-in sheets and seating charts, which correspond to examinees' booklet numbers. As noted above, NFPT also employs a third-party to grade and review the answer keys for inconsistencies and initiated an investigation immediately upon learning of the aforementioned inconsistencies. Finally, each CPT examination notes that the examination is protected by copyright. NFPT has been absolutely vigilant in maintaining the secrecy of its trade secrets.

49. Carrington breached NFPT's confidentiality provisions by photocopying multiple versions of NFPT's CPT examination and distributing these proprietary materials to students. Carrington additionally allowed students to use and retain NFPT's proprietary materials outside of monitored examination protocols.

50. Due to the public distribution of their trade secrets by Carrington, hundreds of examination questions, which were independently developed by NFPT over several years, were no longer an effective means of testing the minimum competency of examinees, jeopardizing

NFPT's livelihood, reputation, and NCAA accreditation. As a result, NFPT has suffered significant damages.

51. NFPT seeks an injunction and damages for misappropriation of their trade secrets, and, due to the willful and malicious nature of the misappropriation, exemplary damages and attorneys' fees.

COUNT III

BREACH OF CONTRACT

52. NFPT realleges and incorporates by reference the allegations in Paragraphs 1-34.

53. NFPT required Carrington to sign and adhere to the Confidential Disclosure Agreement, Exhibit 1 Appendix B, in exchange for the right to administer NFPT's CPT examination. The Confidential Disclosure Agreement constitutes a legal contract.

54. The Confidential Disclosure Agreement provides that NFPT's certification examination is Confidential Information, which Carrington had a duty to protect and use only for its clear and intended purpose.

55. Carrington violated the terms of the Confidential Disclosure Agreement by copying and distributing NFPT's CPT examination to students in advance of the students taking the actual NFPT credentialing examination, thus making NFPT's Confidential Information publicly available.

56. NFPT's Confidential Disclosure Agreement provides that, in the event the agreement is breached, NFPT "shall be entitled to recover reasonable attorney's fees and costs, investigation fees and costs, litigation expenses, court costs, and any other related expenses in any action incurred to enforce this Agreement."

57. Carrington's breach of the confidentiality agreement was material and has caused significant damages to NFPT.

58. NFPT is entitled to damages and remedies as provided by the Confidential Disclosure Agreement.

COUNT IV

FRAUD

59. NFPT realleges and incorporates by reference the allegations in Paragraphs 1-34.

60. Carrington represented to NFPT, its students and the public that it taught and educated students on the subjects necessary to pass NFPT's credentialing examination and receive accreditation as a certified NFPT personal trainer, including anatomy and physiology, pathologies, medical terminology and therapeutic exercises.

61. Carrington represented to NFPT, its students and the public that the Carrington educational program included classroom lectures, laboratory exercises and practical and clinical training in an off-campus professional environment.

62. Carrington's representations were false. Carrington did not teach students on the subjects necessary to pass NFPT's credentialing examination, and instead provided unauthorized copies of NFPT's examinations to students with instructions to simply memorize the answers to examination questions.

63. Carrington represented to students that NFPT's CPT certification would allow them to legally perform massage therapy.

64. Carrington's representation was false. NFPT's CPT certification does not allow students to legally perform massage therapy, which requires a separate license, at least in Arizona.

65. Carrington's misrepresentations were material because they induced students to take Carrington's courses for the purpose of receiving NFPT certification, and induced NFPT to provide certifications to Carrington students who had not actually learned the material required for NFPT certification.

66. Carrington knew that its representations were false because Carrington was not, in fact, teaching students on the subjects necessary to pass NFPT's credentialing examination, and was instead providing unauthorized copies of examinations to students with instructions to simply memorize the answers to examination questions.

67. Carrington misrepresented that it taught students the subjects necessary to pass NFPT's credentialing examination with the intent that students would act on this representation and pay Carrington to take the NFPT course.

68. Carrington misrepresented that it taught students the subjects necessary to pass NFPT's credentialing examination with the intent that NFPT would continue to provide educational and testing material to Carrington for use in its program.

69. Carrington's students and NFPT did not know that Carrington's statements were false.

70. Carrington's students relied on Carrington's false statements when deciding to take a Carrington course that lead to NFPT accreditation.

71. NFPT relied on Carrington's false statements when deciding to continue supplying Carrington with proprietary educational and testing materials.

72. Carrington's students and NFPT had a right to rely on Carrington's false statements, believing them to be true.

73. Carrington's students have been injured by Carrington's false statements in that they are not actually educated on the subjects necessary to be an effective personal trainer.

74. NFPT has been injured by Carrington's false statements in that it supplied its proprietary testing materials to Carrington, which were compromised by Carrington's false and fraudulent scheme, requiring NFPT to incur costs, expenses, damages and attorney fees investigating Carrington's misconduct, creating new test questions and bringing this legal action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NFPT asks this Court to enter judgment against the Defendants, and against their subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. An award of damages sufficient to compensate NFPT for the unauthorized copying and distribution of its copyrighted and proprietary testing examinations;
- B. An award of damages sufficient to compensate NFPT for Carrington's breach of its confidentiality agreement with NFPT;
- C. An award of damages sufficient to compensate NFPT for Carrington's fraud;
- D. An award of exemplary damages for Carrington's misappropriation of trade secrets and fraud to deter further misconduct by Carrington and others;
- E. An award of Carrington's profits received from the unauthorized copying and distribution of NFPT's copyrighted and proprietary testing examinations;
- F. An award of NFPT's reasonable attorney fees, costs and expenses incurred in bringing this action;
- G. Equitable and injunctive relief to prevent further infringement and misappropriation of NFPT's proprietary examination materials;

H. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff NFPT demands trial by jury on all issues presented in this Complaint.

Date: **July 2, 2018**

Respectfully submitted,

/s/ Anthony E. Dowell

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