

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JENNA DETMER, ASHLEY BARNETT, SAMANTHA BENNETT, & RIESHA TATE, on behalf of themselves and a class of similarly situated persons,	CASE NO. LACL147597
Plaintiffs,	
v.	
LA'JAMES COLLEGE OF HAIRSTYLING, INC. OF FORT DODGE, d/b/a LA'JAMES INTERNATIONAL COLLEGE, <i>et. al.</i>	ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
Defendants.	

I. Introduction

Before the Court is Plaintiffs' Motion for Class Certification. The Motion was heard January 5, 2021. Attorney Benjamin Arato appeared for Plaintiffs, and attorney Alexander Johnson appeared for Defendants. The Court has heard the arguments, reviewed Plaintiffs' motion and supporting documents, Defendants' resistance and supporting documents, and Plaintiffs' reply. The matter is fully submitted. The Court enters the following Order granting Plaintiffs' Motion for Class Certification.

II. Facts

La'James International College ("La'James") is a for-profit chain of health and beauty schools. It operates approximately 20 percent of the beauty schools in the state of Iowa with a current enrolment of approximately 150 students. La'James offers instruction in Cosmetology, Esthetics, Massage Therapy, Nail Technology, and Teacher Training.

Plaintiffs are former and current students of La'James. Plaintiffs require(d) financial assistance to pay for their tuition and other expenses in order to attend La'James. Plaintiffs were awarded financial aid and assert they were told by La'James that their financial aid disbursements and associated credit balance payments would be provided according to a disbursement schedule. Their financial aid disbursements and credit balance payments were not made in accordance with that schedule.

Defendants' financial aid practices have been investigated by both the U.S. Department of Education (the "Department") and the Iowa Attorney General. The Department placed La'James on restrictive monitoring and has found La'James not in compliance with financial aid regulations. The Iowa Attorney General has also taken action against La'James for its financial aid practices.

The Amended Petition in this matter was filed May 12, 2020. Plaintiffs assert claims of (1) unfair and deceptive practices under the Iowa Consumer Fraud Act; (2) fraudulent misrepresentation; (3) negligent misrepresentation; (4) fraudulent concealment; and (5) breach of contract. The lawsuit alleges that La'James has violated the Iowa Consumer Fraud Act by illegally withholding financial aid funds for living expenses, breaking the commitment it made to its students when they enrolled. The Plaintiffs seek repayment for affected students, damages for the consequences to students of the long delays in receiving disbursements, and injunctive relief to ensure La'James permanently stops its unlawful, misleading, and deceptive practices.

III. Standard of Review

The Iowa Rules of Civil Procedure governing class actions should be liberally construed and "the policy should favor the maintenance of class actions." *Comes v. Microsoft Corp.*, 696 N.W.2d 318, 320 (Iowa 2005), see also, *Lucas v. Pioneer, Inc.*, 256 N.W.2d 167, 176 (Iowa 1977) (citations omitted). The "representative party or the named plaintiff has the burden of proving all

the prerequisites” to certify a class. *Stone v. Pirelli Armstrong Tire Corp.*, 497 N.W.2d 843, 846 (Iowa 1993). “A failure of proof on any one of the prerequisites is fatal to a class action certification.” *Id.* “Except where the facts underlying the class are merely speculative, however, the proponent’s burden is light.” *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786,791 (Iowa 1994).

“Trial Courts are vested with broad discretion in the certification of class actions.” *Martin v. Raytheon Co.*, 497 N.W.2d 818, 819 (Iowa 1993) (citing *Kramersmeier v. R.G. Dickinson & Co.*, 440 N.W.2d 873, 875 (Iowa 1989); *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d 741,743-44 (Iowa 1985)). The Court possesses considerable discretion in assessing what weight, *if any*, is to be given to the class certification criteria as set in the Iowa Rules of Civil Procedure. *Varner v. Schwan’s Sales Enters., Inc.*, 433 N.W.2d 304, 305 (Iowa 1988) (citing *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 744) (emphasis added).

“The Plaintiffs have the burden of proving all the prerequisites” to certify a class. *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 744. “Certification of a class action, however, does not depend on a determination of whether the plaintiffs will ultimately prevail on the merits but whether or not the requirements of the rule governing class actions are met.” *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 745. Questions that go to the merits of a plaintiff’s claim do not have a direct bearing on the question of certification. *Id.*, citing, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177, 94 S.Ct. 2140, 2152–53, 40 L.Ed.2d 732, 748 (1974). Additionally “the fact that a potential class action involves individual damage questions does not preclude class action certification when issues of liability are common to the class. *Id.*”

IV. Analysis

The Plaintiffs ask the Court for an order certifying “all persons who were enrolled or remain enrolled at any Iowa campus of La’James who were awarded financial aid and provided with a financial aid disbursement schedule, and whose financial aid disbursements were not made in accordance with that schedule, either due to a delay in disbursement by La’James, or their failure to disburse, financial aid.” The Plaintiffs limit the proposed class to those students who have not received their final credit balance payment, who are still owed a balance that should have been paid to them, or who received their credit balance after a delay, after March 20, 2018. The Representative Plaintiffs also respectfully request that they be appointed as representatives of the Class and that their counsel be appointed as counsel for the class.

The Iowa Rules of Civil Procedure govern class actions. “One or more members of a class may sue or be sued as representative parties on behalf of all in a class action if both of the following occur: (1) The class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable. (2) There is a question of law or fact common to the class.” Iowa R. Civ. P. 1.261. “The court may certify an action as a class action if it finds all of the following: a. The requirements of rule 1.261 have been satisfied. b. A class action should be permitted for the fair and efficient adjudication of the controversy. c. The representative parties fairly and adequately will protect the interests of the class.” Iowa R. Civ. P. 1.262.

Iowa Rule of Civil Procedure 1.261

The Court must consider whether “the class is so numerous ...that joinder of all members, whether or not otherwise required or permitted, is impracticable” and determine if “there is a question of law or fact common to the class.” Iowa R. Civ. P. 1.261.

Numerosity

“The class is so numerous or so constituted that joinder of all members, whether or not otherwise required or permitted, is impracticable” Iowa R. Civ. P. 1.261. Iowa adopted the general rule “that if the class is large, numbers alone are dispositive to show impracticability.” *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 792 (Iowa, 1994), citing, *Martin v. Amana Refrigeration, Inc.*, 435 N.W.2d 364, 368 (Iowa, 1989). Iowa courts generally consider the existence of forty or more proposed class members alone to be dispositive on the numerosity requirement. *Id.* “Any doubts regarding joinder impracticability should be resolved in favor of upholding the class.” *Id.*

The Plaintiffs acknowledge that the precise number of putative class members is known only to La’James. However, La’James currently enrolls more than 150 students in Iowa and there is evidence that approximately 150 students had issues with receiving timely Title IV credit balance payments from La’James. The Plaintiff estimates the number of proposed class members to be in excess of 149.

The Court finds that Plaintiff has met the burden in establishing impracticability of joinder and accordingly that the size of the class supports certification.

Commonality

Is there “a question of law or fact common to the class.” Iowa R. Civ. P. 1.261. “It is not necessary that the individual claims be carbon copies of each other.” *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 745. Despite variations of individual claims, a class action may nevertheless proceed where the theories include common issues of fact and law. *Id.* “[W]hen one or more of the central issues in the action are common to the class and can be said to predominate, the [class]

action will be considered proper....” *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 745, citing, 7A Wright & Miller, *supra* § 1778, at 53–54.

Plaintiffs argue their theory of liability is based on a common nucleus of operative facts that has been the basis of actions by both the U.S. Department of Education (the “Department”) and the Iowa Attorney General. Plaintiffs allege that all members of the putative class have been “subject to and affected by a uniform course of conduct” by Defendants and that the Defendants made “misrepresentations regarding financial aid disbursement practices, the amount of credit balance payments, and when credit balance payments would be made.”

The Plaintiffs further argue there are several common questions of law and fact:

- Whether Defendants made misrepresentations to prospective and enrolled students regarding its financial aid disbursement practices;
- Whether Defendants made misrepresentations to prospective and enrolled students regarding their eligibility for financial aid;
- Whether Defendants made misrepresentations to prospective and enrolled students regarding their approval status for financial aid;
- Whether Defendants made misrepresentations to prospective and enrolled students regarding when credit balances would be paid to them and in what amounts;
- Whether Defendants continued to make misrepresentations to enrolled students when asked about the status of their credit balance payments;
- Whether Defendants delayed or failed to make the credit balance payments that they had promised to applicants who enrolled at La’James;
- Whether Defendants’ conduct constituted an “unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealments, suppression, or

omission” in violation of the Iowa Consumer Fraud Act, Iowa Code § 714H.3(1);

- Whether Defendants’ conduct related to a material fact or facts under the Iowa Consumer Fraud Act, Iowa Code § 714H.5(1);
- Whether Defendants’ statements constituted fraudulent misrepresentations in violation of common law;
- Whether Defendants’ statements constituted negligent misrepresentations in violation of common law;
- Whether Defendants’ statements resulted in fraudulent concealment in violation of common law; and
- Whether Defendants’ conduct resulted in an ascertainable loss of money and property, as well as other damages, to Representative Plaintiffs and the class.

Plaintiffs also allege a common theory of liability: the Defendants misrepresented that financial aid amounts would be disbursed within a fixed timeframe and Defendants intentionally did not make the distributions.

Defendants argue that because fraud is alleged it is not suitable for class action treatment. They contend this matter is not suitable because there are material variations in the representations made and in the kinds or degrees of reliance by the putative class members. Or put another way, the misrepresentations are not uniform across the class and individualized proof of reliance is required.

Of course, the misrepresentations may vary in how they were phrased, but here the allegations support a common course of fraudulent conduct. Questions that go to the merits of a plaintiff’s claim do not have a direct bearing on the question of certification. *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 745., citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177, 94 S.Ct. 2140, 2152–53, 40 L.Ed.2d 732, 748 (1974).

The Defendant's also argue that the individual issues will also predominate on damages. The argument damages range is amount from \$659.00 to \$4,294.26. And, that while variance in damages is not fatal to class certification, here, when viewed in combination with the liability issues, class certification is not appropriate because individual issues will dominate. "[T]he fact that a potential class action involves individual damage questions does not preclude class action certification when issues of liability are common to the class. *Id.*

Because there are common questions, Court finds the Plaintiffs have demonstrated commonality.

Iowa Rule of Civil Procedure 1.262

Having found the requirements of numerosity and commonality have been satisfied, the Court must now determine whether the proposed class action would "provide for the fair and efficient adjudication of the case" and that the "representative parties fairly and adequately will protect the interests of the class." Iowa R. Civ. P. 1.262.

Fair and Efficient Adjudication

Providing for the "fair and efficient adjudication of the case," under Rule 1.262(2) centers on two broad considerations: "achieving judicial economy by encouraging class litigation while preserving, as much as possible, the rights of litigants—both those presently in court and those who are only potential litigants." *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d at 744 "The rule does not require the court, however, to assign weight to any of the specific criteria listed, thereby evidencing an intent to grant considerable discretion on this prerequisite." *Id.* The rule merely requires the court to weigh and consider the factors and come to a reasoned conclusion as to whether a class action should be permitted for fair adjudication of the controversy. *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 793 (Iowa 1994)

The factors are:

- a. Whether a joint or common interest exists among members of the class;
- b. Whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class;
- c. Whether adjudications with respect to individual members of a class as a practical matter would be dispositive of the interest of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- d. Whether a party opposing a class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole;
- e. Whether common questions of law or fact predominate over any questions affecting only individual members;
- f. Whether other means of adjudicating the claims and defenses are impracticable or inefficient;
- g. Whether a class action offers the most appropriate means of adjudicating the claims or defenses;
- h. Whether members who are not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions;
- i. Whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding;
- j. Whether it is desirable to bring the class action in another forum;
- k. Whether management of the class poses unusual difficulties;
- l. Whether any conflict of laws poses unusual difficulties; and
- m. Whether the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class.

Iowa R. Civ. P. 1.263(1).

The Defendants did not brief the factors set out in Rule 1.263(1). In presenting its argument, the Defendants did not address each factor found in the Rule. Defendants did, however, state that they resisted certification on “all grounds.”

The Court finds that certification of the proposed class supports both judicial economy and preservation of litigants’ rights.

The proposed class members have a common interest in recovering funds allegedly promised and owed by Defendants and funds for unnecessary costs they incurred as a result of Defendants’ alleged false deceptive practices. Defendants’ actions or omissions are generally applicable to the class, and the proposed class members seek the same remedies. The common questions of law and fact presented in the class predominate over any individual inquiries.

Prosecution of this case as a class action does not pose any unusual management difficulties. Representative Plaintiffs believe Defendants’ records, as well as Plaintiffs’ own records, will make it expeditious to identify class members, determine their economic damages, and prosecute this case.

This case involves a claim that has been the subject of a government action that demonstrates the appropriateness of class certification. Many of the claims are substantiated by actions taken by the Iowa Attorney General against La’James alleging violations of the Iowa Consumer Fraud Act. Further, the claims are bolstered by the consent judgment entered into by the Iowa Attorney General’s Office with La’James and other defendants to settle claims that they had engaged in “deceptive, omissive, and unfair practices in marketing, enrollment, and instruction.” And, La’James has violated that consent decree by continuing in the very conduct prohibited by the decree. Class certification is bolstered as the Iowa Attorney General has previously found La’James’ conduct to be violative of its students’ rights.

Requiring the class members to individually litigate their claims would be duplicitous and waste judicial resources. The income level of the proposed class members makes it unlikely that many of them would be able to individually prosecute an action due to the cost of litigation and the relatively small amounts of money at stake. A class action would be inclusive of all injured parties regardless of an ability to pursue a claim individually and would provide the benefits of a single adjudication, economies of scale and comprehensive supervision by a single court.

Having considered all relevant criteria listed in Iowa Rule of Civil Procedure 1.263(1), the Court finds that a class action would be a fair and efficient adjudication of the controversy. Certifying the class will save judicial resources without harming the rights of the individual litigants.

Fair and Adequate Representation

In determining “representative parties fairly and adequately will protect the interest of the class” under Rule 1.262(2), the Court must find that:

- a. The attorney for the representative parties will adequately represent the interests of the class;
- b. The representative parties do not have a conflict of interest in the maintenance of the class action; and
- c. The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed.

Iowa R. Civ. P. 1.263(2).

Attorneys for the representative parties will adequately represent the interests of the class

Representative Plaintiffs’ local counsel is experienced in prosecuting class actions and complex consumer litigation, including the successful negotiation and management of class

actions in Iowa on both a state and federal level. Counsel provided the Court with relevant cases he has litigated.¹

Representative Plaintiffs' lead counsel is comprised of attorneys from the National Student Legal Defense Network (Student Defense), a not-for-profit organization, recognized by the Internal Revenue Service as tax exempt under section 501(c)(3) of the Internal Revenue Code, that provides legal advice and representation to student loan borrowers to ensure that higher education provides a launching point to economic mobility. Student Defense's attorneys have extensive experience in education law and class action litigation.²

Counsel is well-qualified, experienced, and able to conduct the proposed litigation. Further, there is nothing to suggest the attorneys have interests that are antagonistic to the class. The Court finds the attorneys for the representative parties will adequately represent the interests of the class.

Representative parties do not have a conflict of interest in the maintenance of the class action

Nothing in the record suggests that the Representative Plaintiffs have a conflict of interest in maintaining the class action. The interests of the Representative Plaintiffs are consistent with and not antagonistic to the interests of the class. Their claims are typical of the claims of the class as a whole.

¹ *Residents of Elsie Mason Manor and Ligutti Tower v. First Baptist Elderly Housing Foundation d/b/a Elsie Mason Manor, et al.*, Polk County Case No. CVCV008116; *see also Residents of Royal View Manor et al. v. Des Moines Municipal Housing Agency*, Polk County Case No. CVCV048749; *Residents and Tenants of Central Iowa Shelter and Services, et al. v. Central Iowa Shelter and Services, Inc.*, Polk County Case No. LA CL134297; *David M. Swinton, et al. v. Squaretrade, Inc.*, U.S. District Court for the Southern District of Iowa Case No. 4:18-cv-00144

² *Barber v. DeVos*, No. 1:20-cv-1137 (CJN) (D.D.C. filed on April 30, 2020); *Passut v. DeVos*, No. 1:19-cv-1606 (RBW) (D.D.C. filed on June 3, 2019); *Infusino v. DeVos*, No. 1:19-cv-3162 (D.D.C. filed on Oct. 22, 2019); *Blanchette v. DeVos*, No. 1:19-cv-1775 (D.D.C. filed on June 18, 2019); and *Dunagan v. Illinois Institute of Art-Chicago, LLC*, No. 1:19-cv-00809 (N.D. Ill. filed Dec. 6, 2018); and represent individual borrowers in *Armour v. DeVos*, No. 1:19-cv-2556 (D.D.C. filed on Aug. 23, 2019) and *Gold v. DeVos*, No. 1:18-cv-2706 (D.D.C. filed on Nov. 11, 2018).

Representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed

Representative Plaintiffs assert that they “have or can acquire adequate financial resources to ensure that the interests of the class will not be harmed.” Under Rule 1.276(2), “[u]pon a determination that the costs and litigation expenses of the action cannot reasonably and fairly be defrayed by the representative parties or by other available sources, the court by order may authorize and control . . . advances by the attorneys . . . *subject to reimbursement from any recovery obtained for the class.*” *Comes v. Microsoft Corp.*, 696 N.W.2d 318 at 326 (citing Iowa R. Civ. P. 1.276(2)) (emphasis in original).

Representative Plaintiffs’ counsel asserts that have the resources to litigate this matter and have agreed to advance money for costs and litigation expenses. Here, the Plaintiffs’ attorneys have requested and expressed their willingness to advance all costs in Plaintiffs’ Statement of Attorney Financial Arrangement, filed concurrently with this motion, in accordance with Iowa R. Civ. P. 1.276(1).

The Court finds that Representative Plaintiffs have shown their ability to provide financial resources.

V. Order

IT IS THE ORDER OF THE COURT that Plaintiffs’ Motion for Class Certification is **GRANTED**. Plaintiffs’ counsel shall prepare an appropriate order for the Court’s execution certifying the class for notice purposes.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
LAACL147597 JENNA DETMER ET VS LAJAMES COLLEGE ET AL

So Ordered

A handwritten signature in black ink, appearing to read 'Paul D. Scott', written over a horizontal line.

Paul D. Scott, District Court Judge,
Fifth Judicial District of Iowa