UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TASHELIA BOBBITT, MISTY LATURNUS,
SONYA PARKER, KIMBERLY DAVIS,
TERRIE BUCHANAN, SHERITA FRAZIER,
NICOLE ROSSITER, LONJA ALLEN, and
DIANE POHL, on behalf of themselves and
a class of all those similarly situated,

Plaintiffs,

v.

Case Number 07-10742
Honorable David M. Lawson

ACADEMY OF COURT REPORTING, INC.,
and DELTA CAREER EDUCATION CORP.,

Defendants.
______________________________________/

ORDER DENYING MOTION FOR RECONSIDERATION AND AMENDING CLASS DEFINITION

This matter is before the Court on the defendants' motion requesting reconsideration of the decision to certify this case as a class action. The Court certified this matter as a class action on May 21, 2008 pursuant to Federal Rule of Civil Procedure 23(b)(3). The Court certified the following class on the plaintiffs' counts for fraud, negligent misrepresentation, promissory estoppel, and equitable estoppel and for violation of the Michigan Consumer Protection Act (MCPA) and the Michigan Authentic Credentials in Education Act (MACEA):

> A class of all individuals who (a) started or continued in a paralegal, court reporting, or private investigation program requiring completion of more than 100 credits at the Academy of Court Reporting in Michigan at any time from 2000 to present, and (b) were told by Academy officials prior to enrollment that they could earn a Michigan associate's degree.

Op. and Order re Class Cert. [dkt # 92] at 32. The Court chose to certify the case due in part to its determination that the oral representations were of the same basic nature, although they may have varied in minor ways from time to time and person to person. The defendants argue for

reconsideration on the grounds that new evidence shows the Academy did not engage in a consistent pattern of misrepresentation.

Motions for reconsideration may be granted pursuant to Local Rule 7.1(g) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(g)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). "Generally . . . the court will not grant motions for . . . reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication." E.D. Mich. LR 7.1(g)(3).

The defendants in this case have not shown a palpable defect. The new evidence upon which they rely, deposition testimony from Kimberly Garbey, the Academy's Director of Admissions, may cast some doubt on the degree to which the representations to students were common, but it does not show that the Court's decision was in error. Garbey testified that when she spoke with students prior to enrollment, she only informed them of the associate's degree option when they specifically asked about it, which was approximately 1% of the time. This evidence tends to show that Garbey made few misrepresentations to students, but it says nothing of the representations made by other Academy officials. As the Court discussed in its previous opinion, there is significant evidence that other officials discussed the associate's degree option with prospective students, and did so in an essentially uniform way. Garbey's testimony notwithstanding, the evidence on the whole remains sufficient to "properly attribute a collective nature to the challenged conduct." *See Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000). The new evidence offered by the defendants at most raises a fact issue that is more appropriately addressed after the completion of discovery through a

motion for decertification. *See Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982) ("Even after a certification order is entered, the judge remains free to modify it in light of subsequent developments in the litigation."); *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1176 (9th Cir. 2007) ("Rule 23 provides district courts with broad discretion to determine whether a class should be certified, and to revisit that certification throughout the legal proceedings before the court. If later evidence disproves Plaintiffs' contentions that common issues predominate, the district court can at that stage modify or decertify the class.") (internal citations omitted).

In their motion for reconsideration, the defendants also ask the Court to clarify that it did not intend to certify the MACEA claim. This the Court will not do. The Court certified the case as to the MACEA claim, and it intended as much. On the other hand, the defendants raise a fair point about the deficiency of the class definition in light of the MACEA claim. An institution violates MACEA when it "knowingly issue[s] or manufacture[s] a false academic credential in this state." Mich. Comp. Law § 390.1603. An action for violation of this Act therefore requires the issuance of a degree, albeit a false one. Because the present class definition does not reflect this requirement, the Court will amend the definition.

Accordingly, it is **ORDERED** that the defendants' motion for reconsideration [dkt # 97] is **DENIED**.

It is further **ORDERED** that the class definition is **AMENDED**. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the following class is certified in this cause:

> A class of all individuals who started or continued in a paralegal, court reporting, or private investigation program requiring completion of more than 100 credits at the Academy of Court Reporting in Michigan at any time from 2000 to present, and who either (a) were told by Academy officials prior to enrollment that they could earn a Michigan associate's degree, or (b) were presented with a purported associate's degree by the Academy.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 22, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 22, 2008.

s/Felicia M. Moses
FELICIA M. MOSES