

No. 1-12-3610

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JORIE JOHNSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 2012 CH 03494
)	
THE JOHN MARSHALL LAW SCHOOL,)	Honorable
and DOES 1-20,)	Mary Lane Mikva,
)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff brought a complaint alleging John Marshall Law School and certain unnamed Lawyer Defendants violated the Consumer Fraud Act and committed common-law fraud and negligent misrepresentation by giving misleading information in certain promotional materials regarding the likelihood of its graduates finding high-paying, full-time legal employment upon graduation. We affirmed the section 2-615 order dismissing the entirety of the complaint, finding plaintiff failed to adequately allege a deceptive act, proximate cause or damages.

¶ 2 Plaintiff, Jorie Johnson, graduated from John Marshall Law School (JMLS) in 2008 and obtained her law license, but she has had difficulty finding full-time, legal employment that pays a high enough salary so as to allow her to pay off her student loans. On May 24, 2012, plaintiff filed a first-amended class action complaint¹ against JMLS and certain unnamed "Lawyer

¹ A co-plaintiff, Erum Mohammed, did not file a notice of appeal and is no longer a party to this

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Defendants"² (collectively referred to as defendants) on behalf of herself and all others similarly situated, alleging that defendants violated the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2012)), and committed common-law fraud and negligent misrepresentation by publishing employment and salary statistics that deceptively overstated the percentage of recent JMLS graduates who had obtained full-time legal employment with salaries in excess of \$60,000. Plaintiff alleged she relied on these employment and salary statistics when deciding to enroll and remain enrolled at JMLS, and that as a consequence of such reliance, she "paid tens of thousands of dollars for the required tuition, and *** took out tuition loans that will burden [her] for many years." Also as a consequence of such reliance, plaintiff "graduated with a [*juris doctorate*] degree from JMLS with near-term and lifetime job prospects that are, statistically, less than they would have been had [she] obtained a degree from JMLS with the employment numbers JMLS claimed to represent." Plaintiff sought to recover as damages a percentage of her tuition payments as well as the additional lifetime income she would have earned had she obtained the employment and salary she expected based on the employment and salary statistics reported by defendants. JMLS filed a combined motion to dismiss (735 ILCS 5/2-619.1 (West 2012)), alleging that plaintiff's claims against all defendants should be dismissed pursuant to section 2-615 and 2-619 of the Code of Civil Procedure. The circuit court dismissed the first-amended class action complaint with prejudice in its entirety. Plaintiff appeals. We affirm.

¶ 3

I. Background Facts

¶ 4

A. Allegations Regarding Plaintiff

case.

² Also referred to in the first-amended class action complaint as Does 1-20.

¶ 5 In the first-amended class action complaint, plaintiff alleged she enrolled in JMLS in 2005, graduated with a *juris doctorate* (J.D.) degree in 2008, and was admitted to the Illinois bar on November 6, 2008. After graduation, she could not find full-time work as a lawyer and so she took a retail position selling handbags and shoes. In February 2010, she opened her own law firm "because it was her only viable employment option in the legal profession." Plaintiff's income is "far too low to service her student loan debt." Plaintiff did not plead the amount of her income or the amount of her student loan debt.

¶ 6 B. Allegations Regarding JMLS

¶ 7 Plaintiff alleged JMLS is a law school accredited by the American Bar Association (ABA). Section 509(a) of the ABA's Standards for Approval of Law Schools provides that an accredited law school must "publish basic consumer information" in a "fair and accurate manner reflective of actual practice." Pursuant thereto, JMLS prepares "Employment Information" purporting to set forth the employment and salary history of the previous year's graduates within the first nine months of graduation. The Employment information is based on surveys sent to the recent law school graduates. The return of the surveys is entirely voluntary.

¶ 8 Plaintiff alleged that for the class of 2004, JMLS provided employment Information to U.S. News & World Report stating that 89% of its graduates were employed within nine months of graduation, with 54% working with law firms, 21% working in business, and 17% working in government. JMLS stated that the median salary for the graduates employed in the private sector was \$65,000. Plaintiff did not specifically allege that JMLS published the employment Information for the class of 2004 on its website.

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¶ 9 Plaintiff alleged that on information and belief, for the class of 2005, JMLS published employment Information on its website. The employment information for the class of 2005 has "completely disappeared" from the JMLS website.

¶ 10 Plaintiff alleged that for the class of 2006, JMLS published employment Information on its website stating that 100% of the graduates who responded to the JMLS survey were employed within nine months of graduation. JMLS reported that 54% of those graduates were working in private practice, 30% were working in business, 18.1% were working in government, 3.5% were working in the public interest, 3.9% were working as judicial clerks, and 1.6% were working in academia. JMLS reported that the average salary for those in private practice was \$77,228 and that the median salary for those in private practice was \$65,000. JMLS also reported that the average salary for those in business was \$87,276 and that the median salary for those in business was \$80,000.

¶ 11 Plaintiff alleged that on information and belief, JMLS published employment Information for the classes of 2007 and 2008 on its website. The employment Information for the 2007 and 2008 classes has "completely disappeared" from the JMLS website.

¶ 12 Plaintiff alleged that on information and belief, JMLS published employment Information for the classes of 2009 and 2010 on its website. We need not discuss the employment Information for the 2009 and 2010 classes, as plaintiff graduated in 2008 and, therefore, the employment Information for the 2009 and 2010 classes did not impact her decision to enroll and remain enrolled in JMLS and is not otherwise relevant.

¶ 13 Plaintiff alleged that JMLS's employment Information for the 2004 and 2006 classes was "incomplete, false [and] materially misleading" in that the employment rate of its graduates within nine months of graduation was "substantially overstated" because: "the jobs reported

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included *any* type of employment, including jobs that did not require or even prefer a J.D. degree"; "[t]he jobs reported included jobs that were part-time or were full-time but temporary short-term positions"; and "[t]he jobs reported included such as 'research assistant' or 'intern' or other 'make-work' positions-including some which JMLS provided to its own graduates while they were studying for the Bar exams and/or to tide them over until they found 'real jobs' requiring a J.D. degree." (Emphasis in original.)

Plaintiff alleged that [t]he salaries reported were substantially overstated, because JMLS, on [the] one hand, reported as employment numbers the numbers from *any* kind of employment (including temporary and part-time), but, on the other hand, reported salary information based *only* on full-time employment. Given that full-time employment generally pays significantly higher salaries than part-time or temporary employment, the published salary numbers were significantly distorted to show higher salaries than statistically warranted and, therefore, were inherently misleading." (Emphases in original.)

¶ 14 Plaintiff alleged "the data reported in the employment Information [for the 2004 and 2006 classes] implied a much stronger statistical basis than was fact and failed to show the material distinctions between graduates with full-time permanent positions as lawyers and other graduates."

¶ 15 Plaintiff alleged JMLS reported the employment Information for the 2004 class to U.S. News & World Report and reported the employment Information for the 2006 class "in its print and electronic marketing materials and to third parties, such as the ABA, the National Association for Law Placement ('NALP'), and U.S. News & World Report ('U.S. News')." "The cumulative effect of [JMLS's] touting its post-graduate employment placement record-whether in its own publications or in its reports to other organizations-was to imply to prospective students,

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and to induce prospective students to infer, that JMLS's employment statistics accurately reflected their likelihood of finding a permanent full-time job as a lawyer within nine months after graduation."

¶ 16 Plaintiff alleged she relied on the employment Information when choosing to apply to, enroll, and continue to be enrolled in JMLS.

¶ 17 Plaintiff alleged JMLS violated the Consumer Fraud Act and committed common-law fraud and negligent misrepresentation by providing the employment Information for the 2004 and 2006 classes containing the misleading employment and salary statistics which plaintiff relied upon when deciding to enroll and remain enrolled at JMLS and when taking out the loans "that will burden [her] for many years." As to damages, plaintiff alleged:

"JMLS inflated its employment statistics by a percentage to be determined in this litigation. ('X percent')

Those inflated statistics purported to be a reasonable projection by JMLS of [plaintiff's] post-graduate employment prospects if *** she enrolled at JMLS rather than elsewhere.

To the extent the statistics were inflated by X percent, the advantages to [plaintiff] and the value of the tuition and fees [she] paid to JMLS was reduced by X percent. Accordingly, JMLS charged for X, but [plaintiff] did not receive X.

Therefore, [plaintiff was] damaged at least in the amounts of:

(a) X percent of the amount [she] paid to JMLS, and

(b) a statistically determinable amount of the lifetime income [she] would have been expected to earn after graduating from JMLS if JMLS's post-graduation employment statistics had been those that JMLS had represented in the

Employment Information, *less* the statistically determinable amount of the lifetime income [she] would now be expected to earn, having graduated from JMLS, based upon JMLS's true post-graduation employment statistics."

(Emphasis in the original; paragraph numbers omitted).

¶ 18 C. Allegations Regarding the Lawyer Defendants

¶ 19 Plaintiff alleged that the Lawyer Defendants "either personally made or disseminated the false and misleading [employment Information for the 2004 and 2006 classes]" and, thus, violated the Consumer Fraud Act and committed common law fraud and negligent misrepresentation.

¶ 20 D. The Combined Motion to Dismiss

¶ 21 JMLS filed a combined motion to dismiss plaintiff's first-amended class action complaint. Pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), JMLS contended that plaintiff's Consumer Fraud Act claim against all defendants should be dismissed for failing to adequately plead the required elements of a deceptive act, causation or damages.

¶ 22 JMLS also contended that plaintiff's common-law fraud and negligent misrepresentation causes of action against all defendants should be dismissed pursuant to section 2-615 of the Code for failing to adequately plead the required elements of misrepresentation, reliance, causation or damages.

¶ 23 Pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012)), JMLS contended that plaintiff's Consumer Fraud Act claim against all defendants should also be dismissed because the so-called "safe harbor provision" of the Consumer Fraud Act exempts it from liability here. The safe harbor provision exempts conduct "specifically authorized by laws

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administered by any regulatory body or officer acting under statutory authority of this State or the United States." 815 ILCS 505/10b (West 2012). JMLS argued that the safe harbor provision defeats plaintiff's Consumer Fraud Act claim because the employment and salary statistics it reported in the employment Information for the 2004 and 2006 classes were authorized by a regulatory body, the ABA, acting under the statutory authority of the Higher Education Act (20 U.S.C. § 1001 *et seq.* (2006).

¶ 24 Pursuant to section 2-619, JMLS also argued that all of plaintiff's claims against defendants should be dismissed for lack of standing, as plaintiff's injury (*i.e.*, her failure to get the job and salary she wanted) is not fairly traceable to JMLS.

¶ 25 The circuit court granted JMLS's combined motion to dismiss. Pursuant to section 2-615, the circuit court found that plaintiff failed to adequately allege fraud, proximate cause or damages against defendants and, therefore, failed to state a cause of action for a Consumer Fraud Act violation, common-law fraud, or negligent misrepresentation. Pursuant to section 2-619(a)(9), the circuit court found that plaintiff's Consumer Fraud Act claim against defendants falls within the safe harbor provision of the Consumer Fraud Act. As to the Lawyer Defendants only, the circuit court also found it lacked subject matter jurisdiction to consider plaintiff's claims against them because the Lawyer Defendants are unknown or fictitious. See *Bogseth v. Emanuel*, 166 Ill. 2d 507, 513-14 (1995). The circuit court dismissed the entirety of the first-amended class action complaint with prejudice. Plaintiff appeals.

¶ 26 II. Analysis of the Section 2-615 Dismissal

¶ 27 "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. [Citation.] In ruling on a section 2-615 motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and

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judicial admissions in the record may be considered." *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). All well-pleaded facts must be taken as true. *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 68-69 (2004). However, "a court cannot accept as true mere conclusions unsupported by specific facts." *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Exhibits attached to the complaint are considered part of the pleadings. *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 431 (2004). We review an order granting a section 2-615 dismissal *de novo*. *McGinnis*, 238 Ill. 2d at 291.

¶ 28

A. Procedural Note

¶ 29 In her first-amended class action complaint, plaintiff pleaded certain facts regarding the contents of the employment Information for the 2004 class provided to U.S. News and the contents of the employment Information for the 2006 class published on JMLS's website and provided to third parties such as the ABA, NALP, and U.S. News. However, plaintiff failed to attach a copy of the U.S. News publication containing the employment Information for the 2004 class, and she only attached a partial copy of the employment Information containing the salary data (and not the jobs data) for the 2006 class. See 735 ILCS 5/2-606 (West 2012) ("If a claim or defense is founded upon a written instrument, a copy thereof *** must be attached to the pleading as an exhibit or recited therein ***. *** [T]he exhibit constitutes a part of the pleading for all purposes."). Accordingly, in our analysis of the section 2-615 dismissal order, we consider only plaintiff's well-pleaded allegations regarding the contents of the employment Information for the 2004 and 2006 classes, as well as the copy of the employment Information for the 2006 class containing the salary data; we do not consider any contents that were not pleaded or attached to the first-amended class action complaint. See *Gilmore v. Stanmar, Inc.*,

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261 Ill. App. 3d 651, 654 (1994) (we ordinarily do not consider the contents of documents outside the complaint when addressing a section 2-615 motion to dismiss).

¶ 30 B. Plaintiff's Consumer Fraud Act Count Against JMLS

¶ 31 Plaintiff alleged JMLS violated the Consumer Fraud Act by overstating its graduates' employment and salary statistics in the employment Information for the 2004 and 2006 classes.

¶ 32 "To state a claim under the [Consumer Fraud Act], a complaint must set forth specific facts showing: (1) a deceptive act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deception; (3) the deception occurred in the course of trade or commerce; and (4) the consumer fraud proximately caused the plaintiff's injury. [Citation.] To bring a civil suit for damages, the [Consumer Fraud Act] requires that the plaintiff suffer 'actual damages.' [Citation.] Plaintiff's reliance is not an element of statutory consumer fraud." *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 283 (2006).

¶ 33 1. Plaintiff Failed to Adequately Allege a Deceptive Act or Practice by JMLS

¶ 34 "A complaint stating a claim under the Consumer Fraud Act must state with particularity and specificity the deceptive [unfair] manner of defendant's acts or practices, and the failure to make such averments requires the dismissal of the complaint." (Internal quotation marks omitted.) *Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 20 (2009).

¶ 35 The Consumer Fraud Act defines deceptive acts or practices as: "including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact *** in the conduct of any trade or commerce." 815 ILCS 505/2 (West 2012).

¶ 36 Initially, we note that with respect to the element of a deceptive act or practice committed by JMLS, plaintiff alleged that the employment Information for the 2004 and 2006 classes containing employment and salary statistics for its graduates was "false." However, plaintiff pleaded no facts showing that the statistics listed therein regarding the percentages of graduates employed in the various employment categories, and their average or median salaries, were untrue. Plaintiff's unsupported, conclusory allegations regarding the falsity of the employment information were insufficient to assert any deceptive act or practice committed by JMLS. See *Floyd v. Rockford Park District*, 355 Ill. App. 3d 695, 703 (2005) (conclusory statements of fact do not suffice to state a cause of action).

Plaintiff further alleged JMLS committed a deceptive act or practice by failing to disclose that its employment information for the 2004 and 2006 classes, which indicated that almost all of its graduates for those years were employed within nine months of graduation, included temporary, part-time, and nonlegal jobs. Plaintiff alleged: "The context of the Employment Information made it reasonably appear to the public, and especially to [plaintiff] and other prospective law students, that the jobs reported represented full-time permanent employment in attorney positions where bar passage was required."

¶ 37 More specifically, plaintiff alleged:

"The Employment Information omitted and concealed material information that was necessary for recipients to properly evaluate the data contained, particularly:

(i) the term 'business' jobs did not mean jobs working as lawyers in an entity other than a law firm, but included jobs that any college graduate (or even non-graduate) could obtain, such as waiter, delivery person, barista or store clerk.

(ii) the data was obtained only through surveys voluntarily returned.

(iii) only a small percentage of surveys had been returned. ***

(iv) the respective numbers or percentages of graduates reporting employment who were employed (1) in the legal profession in a position requiring a J.D. degree, or (2) in a non-legal profession in a position preferring a J.D. degree, or (3) in a related profession, or (4) in a position not requiring a J.D. degree.

(v) the respective numbers or percentages of graduates in each category of employment and whether employed in a full time or part time or temporary positions.

(vi) the data in the Employment Information had not been audited or otherwise verified by an independent agent."

¶ 38 Plaintiff further alleged: "As a result, the data reported in the employment Information implied a much stronger statistical basis than was fact and failed to show the material distinctions between graduates with full-time permanent positions as lawyers and other graduates."

¶ 39 We find that plaintiff failed to adequately plead any omission or misrepresentation by JMLS constituting a deceptive act or practice. As to the allegations that JMLS committed a deceptive act or practice by failing to inform plaintiff that the employment Information for the 2004 and 2006 classes was based on voluntary surveys as opposed to audited data, plaintiff expressly acknowledged in her first-amended class action complaint that she was aware "[t]he employment Information was based upon surveys sent to the recent JMLS graduates [and] the return of the surveys was entirely voluntary." Thus, as plaintiff admittedly was aware of the

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basis for the data contained in the employment Information, her claims of deception regarding JMLS's failure to inform her of this basis necessarily fail.

¶ 40 As to her allegation that JMLS committed a deceptive act or practice by failing to inform her that "only a small percentage" of surveys had been returned, plaintiff failed to plead any facts showing the *actual* percentage of surveys returned. In the absence of any facts pleaded regarding the actual percentage of surveys returned, plaintiff's allegation that "only a small percentage" of surveys had been returned is conclusory, may not be accepted as true and is insufficient to withstand a section 2-615 motion to dismiss. *Id.*; *Patrick Engineering*, 2012 IL 113148, ¶ 31.

¶ 41 As to plaintiff's allegations that JMLS committed a deceptive act or practice by failing to inform her of the percentages of graduates employed in nonlegal and/or part-time positions, causing plaintiff to believe that the data reported in the employment Information for the 2004 and 2006 classes related only to full-time legal employment, we note no allegations by plaintiff that JMLS ever expressly indicated that its employment Information referred only to full-time, legal employment requiring a J.D. degree. As pleaded by plaintiff, the employment Information for the 2004 and 2006 classes expressly provided the percentage of JMLS's graduates employed within the first nine months after graduation; this is a generalized employment statistic which does not differentiate among legal and nonlegal and full-time and part-time positions. Plaintiff's interpretation of this generalized employment statistic as including only full-time legal positions has been found to be unreasonable as a matter of law by courts in other jurisdictions which have considered the same issue. See *e.g.*, *Bevelacqua v. Brooklyn Law School*, No. 500175/2012, 2013 WL 1761504 (N.Y. Supp. Apr. 22, 2013) (citing *Gomez-Jimenez v. New York Law School*, 103 A.D.3d 13, 17 (N.Y. App. Div. 2012)). The court in *Gomez-Jimenez* recognized that although similar employment information published by New York Law School likely left "an incomplete,

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if not false impression of the school's job placement success," that fact, standing alone, did not give rise to an actionable claim. *Gomez-Jimenez v. New York Law School*, 103 A.D.3d at 17. Similarly, while the information published by JMLS could certainly have been more specific about the types of employment included in the reported percentage of employed graduates, plaintiff has indentified no affirmative misrepresentation by JMLS of those figures. The gloss placed by plaintiff on that information, *i.e.*, that it represented the percentage of graduates employed within nine months in jobs for which a law degree was either required or preferred, does not give rise to a cognizable claim. Plaintiff's conclusory allegation that JMLS deceptively indicated that the generalized employment statistics reported in the employment information for the 2004 and 2006 classes represented only full-time, legal employment may not be accepted as true in the absence of any claimed affirmative misstatement and is, thus, insufficient to withstand a section 2-615 motion to dismiss. *Floyd*, 355 Ill. App. 3d at 703; *Patrick Engineering*, 2012 IL 113148, ¶ 31.

¶ 42 We also note that as pleaded by plaintiff, the employment Information for the 2004 class broke down the employment data into three categories, including private practice, business, and government; the employment Information for the 2006 class broke down the employment data into six employment categories, including, private practice, business, government, public interest, judicial clerkships, and academia. As to plaintiff's allegation that JMLS committed a deceptive act or practice in its employment Information for the 2004 and 2006 classes by failing to inform her that the jobs listed in the business category included nonlegal employment, causing her to reasonably believe that the persons listed therein had all been employed as lawyers, we again note no allegation by plaintiff that JMLS ever expressly indicated that the business category referred only to legal employment requiring a J.D. degree. Plaintiff's conclusory

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allegation that JMLS deceptively indicated that the business category of the employment Information for the 2004 and 2006 classes referred only to legal employment may not be accepted as true and is insufficient to withstand a section 2-615 motion to dismiss. *Id.*

¶ 43 Further, with the exception of the listed employment category of private practice in the employment Information for the 2004 class, and the listed employment categories of private practice and judicial clerkships in the employment Information for the 2006 class, for which a J.D. degree would presumably be required or preferred, none of the other employment categories listed in the employment Information for the 2004 and 2006 classes necessarily excludes nonattorneys on its face. See *Bevelacqua*, No. 500175/2012, 2013 WL 1761504 at *6-7 ("it has long been conventional wisdom that a law degree affords its owner much greater flexibility than most other graduate degrees and that many people pursue a law degree without ever intending to practice law, a consideration for which plaintiffs' narrow interpretation of the aggregated statistic makes no allowance"). According to the employment Information for the 2004 class as pleaded by plaintiff, these other employment categories (business and government), for which a J.D. degree is not necessarily required, constituted 38% of JMLS's employed graduates for the class of 2004; according to the employment Information for the 2006 class as pleaded by plaintiff, these other employment categories (business, government, public interest, and academia), for which a J.D. degree is not necessarily required, constituted 53.2% of JMLS's employed graduates for the class of 2006. Additionally, none of the employment categories listed in the employment Information for the 2004 and 2006 classes necessarily excludes part-time employees.

¶ 44 Thus, as pleaded by plaintiff, the employment Information for the 2004 and 2006 classes, which indicate that over 33% of JMLS's graduates for the 2004 class and over 50% of JMLS's graduates for the 2006 class obtained employment in fields that do not necessarily require a J.D.

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degree or exclude part-time workers, do not deceptively misrepresent its employment data as applying only to full-time, legal positions.

¶ 45 In conclusion, plaintiff failed to adequately plead that JMLS committed a deceptive act or practice by misrepresenting its employment Information for the 2004 and 2006 classes as applying only to full-time, legal positions.

¶ 46 Next, we consider plaintiff's allegation that JMLS committed a deceptive act or practice in the employment Information for the 2004 and 2006 classes by only reporting the salaries of its graduates who obtained full-time employment. Plaintiff alleged that "[t]he salaries reported were substantially overstated, because JMLS, on [the] one hand, reported as employment numbers the numbers from *any* kind of employment (including temporary and part-time), but, on the other hand, reported salary information based *only* on full-time employment. Given that full-time employment generally pays significantly higher salaries than part-time or temporary employment, the published salary numbers were significantly distorted to show higher salaries than statistically warranted and, therefore, were inherently misleading." (Emphases in original.)

¶ 47 Plaintiff failed to adequately allege deception by JMLS in the salary disclosures contained in the employment Information for the 2004 and 2006 classes. First, plaintiff never alleged she did not realize that the salaries listed in the employment information for the 2004 and 2006 classes were full-time salaries. Further, the salary reported in the employment information for the 2004 class was the median salary and the salaries reported in the 2006 class were the average and median salaries, meaning that some of the graduates earned more than the average or median, while others earned less. Plaintiff did not allege that any promises were made to her that she would earn at or above the average or median salaries listed in the employment information for the 2004 and 2006 classes. Also, we note that the employment information for

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enrolled in JMLS, pay the inflated tuition, take out loans, and graduate with disappointing job prospects.

¶ 51 The element of proximate cause contains two requirements: the cause-in-fact and the legal cause. *Bell v. Bakus*, 2014 IL App (1st) 131043, ¶ 23. In the context of a fraud claim, cause-in-fact is "but for" cause. *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 269 (2005). "That is, the relevant inquiry is whether the harm would have occurred absent the defendant's conduct." *Id.* Legal cause requires that the alleged injury be a foreseeable consequence of the alleged misrepresentation. *City of Chicago v. Michigan Beach Housing Cooperative*, 297 Ill. App. 3d 317, 326 (1998).

¶ 52 Plaintiff has failed to adequately allege cause-in-fact, *i.e.*, that "but for" JMLS's allegedly misleading employment information for the 2004 and 2006 classes, causing her to enroll and remain enrolled in JMLS as opposed to some unidentified other law school, she would have obtained the high-paying legal job she now wants years later. Initially, we note plaintiff did not allege she even applied to (much less was accepted by) any other law schools, nor did she allege that other potential law schools yielded better actual employment and salary statistics relating to the 2008 graduating class. Thus, plaintiff failed to adequately allege that but for the employment information for the 2004 and 2006 classes she would have enrolled in another law school and realized her desired job and lifetime earnings upon graduation.

¶ 53 Even if plaintiff *had* alleged she was accepted to, and would have enrolled in, another law school with better actual employment and salary statistics, if not for the employment information for the 2004 and 2006 classes, these allegations still would not have been sufficient to allege cause-in-fact. As aptly noted by JMLS, a law school graduate's success in obtaining the job and lifetime salary she desires is the result of a multitude of factors, including but not limited

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to: "the student's academic record in college; academic record in law school; prestige of the law school; other degrees and credentials; type of work being sought; geographic area they want to work in; economic conditions locally, nationally and globally; salary requirements; scope of the job search; application, interview, communication and presentation skills; number of applicants for the same position; familial or other connections to the prospective employer; prior employment history; other relevant experience; number of available positions; timing; and plain old good luck."

¶ 54 Given the myriad factors that go into a successful job search and career earnings, we cannot say that "but for" the employment information for the 2004 and 2006 classes that plaintiff would have obtained her desired job/salary even upon graduation from a different law school. Accordingly, plaintiff failed to adequately plead cause-in-fact.

¶ 55 Further, plaintiff failed to adequately plead legal causation, as we cannot say that plaintiff's failure to secure the job/salary she desired upon graduation was a foreseeable consequence of her decision to enroll and remain enrolled in JMLS in reliance on the employment information for the 2004 and 2006 classes. At the time of plaintiff's enrollment in JMLS, one could not foresee her subsequent academic record while at JMLS, the geographic areas in which she would seek employment, the scope of her job search, her interview and presentation skills, and the economic climate and overall availability of jobs during the period of her job search, all of which would impact her job search and salary. As plaintiff's injuries (*i.e.*, her disappointing post-graduate job and income) were not foreseeable consequences of her decision to enroll and remain enrolled in JMLS in reliance on the employment information for the 2004 and 2006 classes, plaintiff failed to adequately plead legal causation.

¶ 56 3. Plaintiff Failed to Adequately Plead Damages

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¶ 57 To sufficiently plead a cause of action under the Consumer Fraud Act, plaintiff must plead actual damages. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 353 (2009). Damages may not be predicated on mere speculation, hypothesis, conjecture or whim. *Petty v. Chrysler Corp.*, 343 Ill. App. 3d 815, 823 (2003).

¶ 58 Plaintiff sought to recover as damages: (1) the difference between what she paid in tuition based on the alleged misrepresentations regarding jobs and salary data in the employment information for the 2004 and 2006 classes, and what she should have paid in tuition based on the "true" value of a JMLS degree; and (2) the additional lifetime income she would have been expected to earn had the jobs and salary data contained in the employment information for the 2004 and 2006 classes been true.

¶ 59 As discussed earlier in this order, though, plaintiff failed to adequately allege any misrepresentations by JMLS in its employment information for the 2004 and 2006 classes, *i.e.*, plaintiff received exactly what she paid for (the J.D. degree) and, thus, has failed to show any actual damages.

¶ 60 Even if plaintiff *had* adequately pleaded misrepresentation by JMLS in its employment information, she failed to plead any reliable mechanism for calculating the "true" value of her law degree because of the alleged misrepresentation. With respect to the calculation thereof, plaintiff alleged that JMLS "inflated its employment statistics by a percentage to be determined in this litigation. ('X percent') Those inflated statistics purported to be a reasonable projection by JMLS of [plaintiff's] post-graduate employment prospects if *** she enrolled at JMLS rather than elsewhere. To the extent the statistics were inflated by X percent, the advantages to [plaintiff] and the value of the tuition and fees [she] paid to JMLS was reduced by X percent. Accordingly, JMLS charged for X, but [plaintiff] did not receive X. Therefore, [plaintiff was]

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damaged at least in the amount[] of *** X percent of the amount [she] paid to JMLS." (Internal paragraph numbers omitted.)

¶ 61 However, the employment statistics listed in the employment information for the 2004 and 2006 classes were only generalized, historical averages *for the members of those particular classes*, and they did *not* explicitly promise or project that those averages would be the same for individuals (such as plaintiff) graduating years later. Thus, even assuming, for the sake of argument only, that those generalized, historical averages for the 2004 and 2006 graduating classes were inflated by "X percent," plaintiff has still failed to plead how she was damaged thereby, given that these averages did not constitute any kind of promise to the individual plaintiff here that she could expect employment at the same rate. See also *Bevelacqua*, No. 500175/2012, 2013 WL 1761504, and *Gomez-Jimenez*, 103 A.D. 3d 13 (holding that a damages calculation based on the difference between what graduates paid in tuition based on alleged misrepresentations and the true value of the degrees was speculative and required dismissal).

¶ 62 Plaintiff also alleged she was damaged in the amount of: "a statistically determinable amount of the lifetime income [she] would have been expected to earn after graduating from JMLS if JMLS's post-graduation employment statistics had been those that JMLS had represented in the employment information, *less* the statistically determinable amount of the lifetime income [she] would now be expected to earn, having graduated from JMLS, based upon JMLS's true post-graduation employment statistics." (Emphasis in the original.)

¶ 63 In other words, plaintiff seeks the difference between her annual earnings and what she expected to annually earn based on the employment information for the 2004 and 2006 classes. As we just discussed, though, the employment and salary statistics listed in the employment information for the 2004 and 2006 classes consisted of generalized, historical averages of the

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first jobs and starting salaries for those particular classes and did not constitute any type of promise or projection for the individual plaintiff here; thus, even assuming for the sake of argument that the employment information for the 2004 and 2006 classes did not recite JMLS's "true" post-graduation employment statistics for those classes, plaintiff has failed to adequately plead how she was damaged as a result given that these statistics did not apply to plaintiff or make any promises or projections regarding her future employment and salary prospects.

¶ 64 Further, we note there are no allegations in the first-amended class action complaint regarding the actual salary earned by plaintiff. In the absence of such salary information, plaintiff's damages claims, which are predicated on the difference between her actual salary and what she expected to earn based on the average or median salaries listed in the employment information for the 2004 and 2006 classes, are undeterminable and, thus, not adequately pleaded.

¶ 65 Plaintiff argues that any ruling on damages is "premature" as she has not had the opportunity for document discovery. We disagree. See *Yu v. International Business Machines Corp.*, 314 Ill. App. 3d 892, 897 (2000) (affirming the section 2-615 dismissal of plaintiff's claims of consumer fraud, deceptive trade practices and negligence, where plaintiff failed to adequately plead damages).

¶ 66 4. Conclusion

¶ 67 In conclusion, as plaintiff failed to adequately plead a deceptive act or practice by JMLS, proximate cause, or actual damages, her Consumer Fraud Act claim against JMLS failed to state a cause of action. We affirm the dismissal of plaintiffs' Consumer Fraud Act count against JMLS.

¶ 68 C. Plaintiff's Common-Law Fraud Claim Against JMLS

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¶ 69 Plaintiff alleged JMLS committed common-law fraud by overstating its graduates' employment and salary statistics in the employment information for the 2004 and 2006 classes.

¶ 70 "To state a cause of action for common-law fraud, a plaintiff must plead: (1) a false statement of material fact; (2) knowledge or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15.

¶ 71 With respect to the first two elements of common-law fraud, that defendant knowingly made a false statement of material fact, plaintiff alleged JMLS knowingly made incomplete, false and materially misleading statements in the employment information for the 2004 and 2006 classes regarding the number of graduates employed as full-time attorneys within nine months of graduation, as well as the size of their salaries. However, as discussed in detail earlier in this order, we find that plaintiff failed to adequately allege any incomplete, false or misleading statements by JMLS in its employment information for the 2004 and 2006 classes regarding the employment or salaries of its graduates for those years.

¶ 72 With respect to the reasonable reliance element, plaintiff alleged she enrolled and remained enrolled in JMLS after reasonably relying on the employment information for the 2004 and 2006 classes as reflecting the likelihood she would find high-paying, full-time legal employment within nine months of graduation. However, we find plaintiff failed to adequately plead the reasonableness of her reliance on the employment information for the 2004 and 2006 classes as being indicative she would find such high-paying, full-time legal employment, given that the employment and salary data contained in the reported employment information: (1) consisted of historical averages of first jobs and starting salaries for persons who graduated two

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to four years prior to plaintiff; (2) did not reflect the economic climate and availability of jobs at the time of plaintiff's job search; and (3) and did not constitute any type of promise or projection regarding plaintiff's individual job/salary prospects either with regard to her first job and salary or her jobs and salaries over her lifetime.

¶ 73 Also, as discussed earlier in this order, plaintiff failed to adequately allege proximate cause and damages. Accordingly, plaintiff's claim of common-law fraud against JMLS failed to state a cause of action.

¶ 74 Plaintiff argues that *In re Enron Corp. Securities, Derivative & ERISA Litigation*, 235 F. Supp. 2d 549 (S.D. Tex. 2002), compels a different result. Plaintiff argues that Enron (a New York Stock Exchange-listed public company in the energy business) engaged in fraud by manipulating its books and records to make it appear more profitable than it actually was. After the fraud came to light and Enron went bankrupt and the stock lost its value, investors were able to recover from many defendants, including the Enron directors. Plaintiff argues that JMLS similarly "created a fictional track record of employment that made JMLS' track record look far better than it actually was." Plaintiff argues that, similar to the investors in Enron, she should be allowed to recover the reduced value of her J.D. degree and any lost earnings caused by JMLS's fraud in connection with its false and misleading employment and salary statistics contained in the employment information for the 2004 and 2006 classes.

¶ 75 First, we note plaintiff waived review of this argument by failing to cite to the relevant portions of the 150-page *Enron* opinion upon which she relies. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Waiver aside, *Enron* is inapposite because, unlike in *Enron*, plaintiff here failed to adequately allege any false or misleading statements/statistics in the employment information

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for the 2004 and 2006 classes, nor did she adequately allege reasonable reliance, proximate cause or damages.

¶ 76 Accordingly, for all the foregoing reasons, we affirm the dismissal of plaintiff's common-law fraud count against JMLS.

¶ 77 D. Plaintiff's Fraudulent Concealment Claim as Part of Common-Law Fraud

¶ 78 The circuit court determined that plaintiff's first-amended class action complaint also sought recovery for fraudulent concealment under her common-law fraud claim, but that it failed to state a cause of action. Plaintiff contends on appeal that she stated a claim against JMLS for fraudulent concealment.

¶ 79 "To prove fraudulent concealment, a plaintiff must establish that (1) the defendant concealed a material fact under circumstances that created a duty to speak; (2) the defendant intended to induce a false belief; (3) the plaintiff could not have discovered the truth through reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and justifiably relied upon the defendant's silence as a representation that the fact did not exist; (4) the concealed information was such that the plaintiff would have acted differently had he or she been aware of it; and (5) the plaintiff's reliance resulted in damages." *Bauer v. Giannis*, 359 Ill. App. 3d 897, 902-03 (2005).

¶ 80 To assert a claim for fraudulent concealment, plaintiff must establish the existence of a special or fiduciary relationship, which in turn gives rise to a duty to speak. *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 345 (2011).

¶ 81 The parties here dispute whether such a special or fiduciary relationship existed between plaintiff and JMLS, giving rise to a duty to speak. We need not resolve this issue, though, because even assuming for the sake of argument that such a duty existed, plaintiff still failed to

adequately plead all the required elements to state a cause of action for fraudulent concealment. Specifically, the material fact alleged to have been concealed is that JMLS deceptively overstated its graduates' employment and salary data in its employment information for the 2004 and 2006 classes. As discussed earlier in this order, though, plaintiff failed to adequately plead that JMLS committed any such deceptive overstatement in the employment information for the 2004 and 2006 classes; accordingly, plaintiff's claim of fraudulent concealment based on this claimed overstatement necessarily fails. Also as discussed earlier in this order, plaintiff failed to adequately allege reasonable reliance, proximate cause and damages. Therefore, we affirm the circuit court's dismissal of plaintiff's fraudulent concealment count against JMLS.

¶ 82 E. Plaintiff's Negligent Misrepresentation Claim Against JMLS

¶ 83 Plaintiff alleged JMLS committed negligent misrepresentation by overstating the employment and salary data in the employment information for the 2004 and 2006 classes. To state a cause of action for negligent misrepresentation, plaintiff must allege: (1) a false statement of material fact; (2) defendant's carelessness or negligence in ascertaining the truth of the statement; (3) an intention to induce plaintiff to act; (4) reasonable reliance on the truth of the statement by plaintiff; and (5) damage to plaintiff resulting from this reliance. *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15. Further, to plead a cause of action for negligent misrepresentation, plaintiff must also allege defendant owes a duty to her to communicate accurate information. *Id.*

¶ 84 Plaintiff's claim of negligent misrepresentation, like her claims for violation of the Consumer Fraud Act, common-law fraud and fraudulent concealment, alleged that the employment information for the 2004 and 2006 classes contained incomplete, false and misleading information regarding its graduates' employment and salaries for those years and that

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plaintiff relied on this information when choosing to enroll and remain enrolled at JMLS. However, as we have discussed repeatedly in this order, plaintiff has failed to adequately allege that JMLS made any incomplete, false or misleading statements in its employment information for the 2004 and 2006 classes regarding its graduates' employment and salaries for those years, nor has she adequately alleged reasonable reliance, proximate cause or damages. Accordingly, plaintiff failed to state a cause of action for negligent misrepresentation. We affirm the dismissal of plaintiff's negligent misrepresentation claim against JMLS.

¶ 85 F. Plaintiff's Claims Against The Lawyer Defendants

¶ 86 Plaintiff contends the circuit court erred in dismissing her claims against the unnamed Lawyer Defendants for violation of the Consumer Fraud Act, common-law fraud, and negligent misrepresentation. The circuit court correctly dismissed the claims against the Lawyer Defendants for lack of subject matter jurisdiction. See *Bogseth v. Emanuel*, 166 Ill. 2d 507, 514 (1995) ("Illinois courts have historically and uniformly held that suits brought against fictitious parties are void *ab initio*"). Further, even if plaintiff *had* identified the Lawyer Defendants, we would affirm the dismissal of the Consumer Fraud Act, common-law fraud, and negligent misrepresentation counts against them for the same reasons we affirm the dismissal of these same counts against JMLS.

¶ 87 G. The Dismissal With Prejudice

¶ 88 Plaintiff contends the circuit court erred in dismissing the entirety of her first-amended class action complaint with prejudice. Plaintiff requests we remand the case so as to provide her with the opportunity to amend her pleadings. "No absolute right exists for a plaintiff to amend a pleading. [Citation.] The decision whether to grant or deny an amendment rests within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion."

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Matanky Realty Group, Inc. v. Katris, 367 Ill. App. 3d 839, 844 (2006). Plaintiff here never sought leave to amend her first-amended class action complaint and, accordingly, the circuit court committed no abuse of discretion in dismissing it with prejudice. *Id.* (holding that the circuit court committed no abuse of discretion in dismissing plaintiff's complaint with prejudice "where no exercise of that discretion was requested because the record demonstrates that plaintiff never sought leave to amend its complaint"). For the foregoing reasons, we affirm the section 2-615 dismissal order. As a result of our disposition of this case, we need not address the section 2-619 dismissal or the other arguments regarding the section 2-615 dismissal.

¶ 89 Affirmed.