UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

QIUZI HU, et al.,

Plaintiffs,

v.

JOSE M. PLEHN-DUJOWICH, et al.,

Defendants.

Case No.18-cv-01791-EDL

ORDER GRANTING MOTION FOR CONDITIONAL CERTIFICATION OF COLLECTIVE ACTION AND CERTIFICATION OF CLASS ACTION

Re: Dkt. No. 60

Plaintiffs Quizi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (collectively, "Plaintiffs") move for conditional certification of a class under the Fair Labor Standards Act and certification of a class under Federal Rule 23. Defendant Powerlytics opposed the motion. It has since been dismissed by stipulation but it did not withdraw its opposition. The Court **GRANTS** Plaintiffs' motion.

I. FACTUAL BACKGROUND

Defendant Jose Plehn-Dujowich is a businessman and academic with connections to several major universities in the United States. First Amended Complaint ("FAC") ¶ 19. Plehn-Dujowich co-founded Defendant Powerlytics in 2011. FAC ¶ 20. He is its Board Chairman and Chief Research Officer. FAC ¶ 18. In or around 2013, Plehn-Dujowich founded Defendant BizQualify. FAC ¶ 21. He is its sole manager and Chief Executive Officer ("CEO"). FAC ¶ 17. BizQualify engages in the business of procuring and selling financial data and analysis, providing information about private companies in the United States that it gathers from those companies' filings with government regulatory agencies. FAC ¶ 17. Like BizQualify, Powerlytics engages in the business of procuring and selling financial data and analysis. FAC ¶ 18. Defendants maintain and sell access to databases that contain information about millions of businesses. FAC ¶ 1. In order to maintain the databases, individuals must retrieve information specific to each business

from several websites. FAC ¶ 1. This is a labor-intensive process. FAC ¶ 23.

In or around January 2014, Plehn-Dujowich joined U.C. Berkeley as a visiting professor. FAC ¶ 25. In 2015, he became a lecturer and Executive Director of the Center for Financial Reporting and Management at U.C. Berkeley's Haas School of Business. FAC ¶ 25. In 2016, Plehn-Dujowich was granted a transfer to UCLA's Anderson School of Management, where he became the Director of the Fink Center for Finance and Investments. FAC ¶ 25.

In 2016, Plehn-Dujowich, acting on his own behalf and on behalf of BizQualify and Powerlytics, established the Global Financial Data Project ("GFDP"), with Plehn-Dujowich acting as the project's Executive Director. FAC ¶ 28. According to promotional materials, GFDP is an online program composed of four phases: (1) learning; (2) data collection; (3) data analysis; and (4) presentations. FAC ¶ 32. Students were supposed to receive instruction from Plehn-Dujowich during the first phase. FAC ¶ 32. During the next two phases, they collected and analyzed the data and wrote a professional report summarizing their findings. FAC ¶ 32. Finally, they presented their findings for feedback and assessment. FAC ¶ 32.

Plaintiffs Quizi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei, collectively "Plaintiffs," paid a course fee ranging from $2,413 to $2,913[1] and were promised that they would receive meaningful educational instruction, a course certification from UC Berkeley or UCLA, and a letter of recommendation written by Plehn-Dujowich. FAC ¶ 33; Wenzhi Fei Decl. ¶¶ 3-4; Plaintiffs did not receive any of those benefits. FAC ¶ 33.

GFDP's advertisements falsely stated or implied that it was operated by U.C. Berkeley Haas School of Business and/or UCLA Anderson School of Management by:

1. referring to the GFDP as the "Berkeley Haas Global Financial Data Project" in various materials, including acceptance emails sent to students. FAC ¶ 34a, Ex. E;
2. disseminating flyers that displayed the U.C. Berkeley Haas School of Business and UCLA Anderson School of Management marks, FAC ¶ 34b, Ex. D;
3. disseminating flyers that displayed "Accounting@Berkeley: Center for Financial Reporting and Management, FAC ¶ 34c, Ex. D;

[1] Students who were recruited by third-parties were charged more to compensate for the third-parties' commissions. FAC ¶ 33.

4. disseminating flyers that displayed a website address that contained the name "Haas," FAC ¶ 34d;
5. entering into contracts with third-party advertisers on behalf of UC Berkeley, UCLA or entities under those universities' control, FAC ¶ 34e; and
6. promising that students would receive a certificate of completion bearing the marks from UC Berkeley and/or UCLA, FAC ¶ 34f, Ex. G.[2]

In fact, GFDP was never operated, sponsored, endorsed, approved by, or affiliated with, U.C. Berkeley or UCLA. FAC ¶ 36. When Berkeley became aware of the unauthorized use of its trademarks by GFDP, it successfully demanded cessation of the use of its name, referred the matter for criminal investigation, and advised anyone who believed they had been defrauded to contact the University of California Police Department. FAC ¶ 36.

Defendants also promised that students would receive a letter of recommendation written personally by the Executive Director and that the course would prepare students for a career or graduate program in finance, accounting, business, or economics. FAC ¶ 34. Defendants concealed that they would be profiting from the work students performed. FAC ¶ 34q. For at least 22 students, Defendants prepared certification letters that bore either UC Berkeley's "Accounting@Berkeley," "BerkeleyHaas," or UCLA's "UCLA Anderson School of Management" insignia. FAC ¶ 38, Ex. N. Another student received a certification letter on Powerlytics letterhead. FAC ¶ 38.

GFDP operated between July 2016 and May 2017. FAC ¶ 39. Approximately 240 individuals, including Plaintiffs, enrolled in the program and paid the course fees. FAC ¶ 40. They learned of GFDP through the false and misleading advertisements described above. FAC ¶ 41. When Plaintiffs first joined GFDP, Plehn-Dujowich provided basic instruction on the format of the class and method for accessing BizQualify's financial data, but he did not provide any meaningful instruction in the areas of finance, economics, accounting, or business. FAC ¶ 42. Instead, Plaintiffs received instruction from either Ningrui Zhang, then a student at UC Berkeley, or Danwei Chen, then a student at UCLA. FAC ¶ 43. Zhang was eventually given the title

[2] Plaintiffs allege numerous other ways that Defendants held GDFP out as being associated with UC Berkeley or UCLA. See FAC ¶ 34g-p.

"Assistant Director" of GFDP and Chen was given the title "Managing Director." FAC ¶ 43. On March 27, 2017, Powerlytics offered Zhang a position as an unpaid Data Analyst. FAC Ex. A. Plehn-Dujowich signed the offer letter he sent to Zhang as the "Chairman & Chief Data Officer" of Powerlytics. FAC Ex. A. Zhang was told that she would work 20 hours a week from her home and that her responsibilities would include collecting financial data and online metrics on U.S. and Chinese companies, cleaning the data and preparing it for ingestion into Powerlytics' databases, and analyzing the data. FAC Ex. A. Plehn-Dujowich stated that he would be her direct supervisor. FAC Ex. A.

Defendants directed the students to download a batch of data from BizQualify in the form of an excel spreadsheet. FAC ¶ 46. They were then instructed to add several columns to the spreadsheet and populate those columns with relevant information on each of the businesses pulled from the database. FAC ¶ 46. After they finished, they would return the spreadsheets with the new data to GFDP. FAC ¶ 46. They were required to obtain the information from specified online sources and return the data to Defendants in a specified manner and by specified deadlines. FAC ¶ 48. Plehn-Dujowich set the GFDP course schedule, determined what instruction should be given, and set deadlines for the students. FAC ¶ 50. The data were of the exact nature maintained and sold in the course of Defendants' businesses. FAC ¶ 51.

Plaintiffs spent approximately three to five hours per week collecting and analyzing BizQualify's data for Defendants. FAC ¶ 49. The instruction Plaintiffs received was not comparable to that proved in a bona fide educational program. FAC ¶ 52. They understood that they would be compensated for this work in the form of meaningful educational instruction, a course certification, and a letter of recommendation. FAC ¶ 54. None of them would have enrolled in the program had they not been misled by the false advertisements. FAC ¶ 54.

On March 15, 2017, UCLA suspended Plehn-Dujowich pending an investigation into his misuse of university assets. FAC ¶ 56, Ex. P. By mid-April 2017, Plehn-Dujowich withdrew his limited involvement in GFDP without warning and stopped responding to inquiries from students, Chen, or Zhang. FAC ¶ 58. On May 4, 2017, Zhang emailed Plaintiffs to explain that she had not been in contact with Plehn-Dujowich for several weeks and that the project would have to be

discontinued until Plehn-Dujowich "show[ed] up." FAC ¶ 59, Ex. Q. On May 5, 2017, Zhang emailed the enrollees to inform them that she had learned that UCLA was no longer endorsing the project. FAC ¶ 63. Several students had already reached out to UCLA about the program, only to learn that neither UCLA nor UCLA Fink Center had ever authorized GFDP. FAC ¶¶ 60-63. On May 5, 2017, Plehn-Dujowich emailed Zhang and all students, stating that he had been traveling extensively, that he was leaving UCLA for MIT, and that the next online session for the course would be held the week of May 12, 2017. FAC ¶ 64, Ex. U. Plehn-Dujowich did not work for MIT. FAC ¶ 65. After completing a diligent search, MIT was unable to locate any records suggesting that Plehn-Dujowich was ever considered for employment. FAC ¶ 65.

II. PROCEDURAL HISTORY

On March 22, 2018, Plaintiffs filed their original complaint against Plehn-Dujowich and BizQualify, alleging fourteen claims. On April 8, 2018, counsel for Plehn-Dujowich and BizQualify appeared. The parties stipulated three times to allow Plehn-Dujowich and BizQualify extra time to respond to Plaintiffs' complaint. On June 25, 2018, the Court issued a case management and pretrial order, setting a schedule in this case.

On June 29, 2018, Plehn-Dujowich and BizQualify moved to dismiss Plaintiffs' claims. On July 31, 2018, Plaintiffs filed a first amended complaint, asserting claims against Plehn-Dujowich, BizQualify, and Powerlytics on a class basis. The first amended complaint contains thirteen claims: (1) failure to pay minimum wage under the Fair Labor Standards Act ("FLSA"); (2) failure to pay minimum wage California's Labor Code; (3) failure to provide accurate wage statements California's Labor Code; (4) failure to reimburse business expenses under California's Labor Code; (5) failure to pay wages earned upon discharge California's Labor Code; (6) false advertising in violation of California's Unfair Competition Law ("UCL"); (7) unfair competition in violation of California's UCL; (8) violation of California's Consumer Legal Remedies Act ("CLRA"); (9) fraud; (10) negligent misrepresentation; (11) breach of implied contract; (12) quantum meruit; and (13) civil theft.

On August 2, 2018, Plehn-Dujowich and BizQualify withdrew their motion to dismiss. On August 10, 2018, counsel for Plehn-Dujowich and BizQualify filed an emergency motion to

withdraw, which the Court granted on August 13, 2018.

Plaintiffs and Powerlytics stipulated three times to allow Powerlytics extra time to respond to Plaintiffs' first amended complaint. On September 12, 2018, Plaintiffs moved for entry of default against Plehn-Dujowich and BizQualify, which the clerk entered on September 13, 2018.

On September 27, 2018, Powerlytics moved to dismiss Plaintiffs' claims for lack of personal jurisdiction and failure to state a claim. The Court granted in part and denied in part that motion, holding that Plaintiffs had adequately alleged that Plehn-Dujowich was acting as Powerlytics' agent, but had not adequately alleged conspiracy.

On November 6, 2018, before the Court's hearing on Powerlytics' motion, Plaintiffs filed this motion for class certification. On November 16, 2018, the Court granted the parties' stipulation to continue the hearing and extend the briefing deadlines. On December 5, 2018, the Court granted a second stipulation extending the briefing deadlines and continuing the hearing to February 19, 2019. Powerlytics opposed Plaintiffs' motion. The parties stipulated to dismiss Plaintiffs' individual and class claims against Powerlytics without prejudice on February 16, 2019.

III. FAIR LABOR STANDARDS ACT

A. Legal Standard

The Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b) allows workers to sue their employees for unpaid wages on behalf of themselves and other similarly situated employees. Courts within the Ninth Circuit use a two-tiered approach to determine whether the employees are similarly situated: (1) an initial determination of whether plaintiffs are similarly situated, determining whether a collective action should be certified for purposes of sending notice to class members; and (2) a more stringent determination of whether plaintiffs are similarly situated made at the conclusion of discovery, usually on a motion for decertification. Tremblay v. Chevron Stations Inc., No. C-07-06009 EDL, 2008 WL 2020514, at *1 (N.D. Cal. May 8, 2008). Notice is provided early to potential class members because collective actions under the FLSA require employees to opt-in by filing written consent. Id.

At this stage, "the court requires little more than substantial allegations, supported by declarations or discovery, that 'the putative class members were together the victims of a single

decision, policy, or plan.'" Gerlach v. Wells Fargo & Co., No. C 05-0585 CW, 2006 WL 824652, at *2 (N.D. Cal. Mar. 28, 2006) (quoting Thiessen v. Gen. Elec. Capital Corp., 267 F.3d 1095, 1102 (10th Cir. 2001)). The Court does not resolve factual disputes or decide substantive issues going to the merits of the case at the notice stage. Saleh v. Valbin Corp., 297 F. Supp. 3d 1025, 1034 (N.D. Cal. 2017).

B. Analysis

Plaintiffs seek to certify a collective action consisting of:

> All persons who enrolled in the Global Financial Data Project ["GFDP"] while residing in, or who performed work for the project in, the United States or any territory of possession of the United States.

Plaintiffs have not included a time limitation in their class description because GFDP only operated from July 2016 to May 2017, less than three years before Plaintiff filed this motion. The FLSA typically has a two-year statute of limitations but it may be extended to three years if the employer's violation is deemed willful. Flores v. City of San Gabriel, 824 F.3d 890, 906 (9th Cir. 2016) (citing § 255(a)). Plaintiffs have alleged that the conduct was willful.

Plaintiffs argue that they are similarly situated to other class members because they uniformly paid to enroll in GFDP believing that they would receive meaningful instruction but were tricked and uniformly required to perform the tasks to financially benefit Defendants without compensation. They have provided declarations from each of the proposed named Plaintiffs to that effect. Fei Decl. ¶¶ 3-12; Hu Decl. ¶¶ 3-12; Ramirez Decl. ¶¶ 3-12; Ronceria Decl. ¶¶ 3-12. They also provided a declaration from Ningrui Zhang, who was the Assistant Director of GFDP. She stated that the various flyers GFDP used to advertise its program had slight modifications, such as different course start dates for each session, but that each flyer contained the same or substantially similar information. Zhang Decl. ¶ 7. She and Plehn-Dujowich provided instruction to the students online and the communication was uniform for all participants in GFDP. Zhang Decl. ¶ 8. Zhang estimates, based on spreadsheets of enrollees maintained by GFDP, that there were 230 enrollees. Zhang Decl. ¶ 12.

Based on Plaintiffs' allegations, it seems likely that determination of employment status will be uniform across the class. Because Plaintiffs have adequately alleged that are similarly

situated to other GFDP enrollees because they were all victims of Defendants' fraud, and supported those allegations with declarations, the Court conditionally certifies a class for FLSA purposes.

IV. RULE 23

A. Legal Standard

Class certification under Federal Rule 23 is more stringent than under the FLSA. Plaintiffs seeking to represent a class must satisfy the threshold requirements of Rule 23(a) as well as the requirements for certification under one of the subsections of Rule 23(b). Rule 23(a) provides that a case is appropriate for certification as a class action if:

> (1) the class is so numerous that joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ("typicality"); and (4) the representative parties will fairly and adequately protect the interests of the class ("adequacy").

Fed. R. Civ. P. 23(a). Plaintiff seeks class certification under Rule 23(b)(3), which provide that a case may be certified as a class action if:

> (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
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> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b).

A plaintiff seeking class certification bears the burden of demonstrating that each element of Rule 23 is satisfied, and a district court may certify a class only if it determines that the plaintiff has met its burden. See General Tel. Co. v. Falcon, 457 U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1308 (9th Cir. 1977). Rule 23 is not a "mere pleading standard." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). Rather, a party seeking class certification must be prepared to prove the existence of the Rule 23(a) criteria. Id. The court need not accept conclusory or generic allegations regarding the suitability of the litigation for

resolution through class action. Id. at 350-51 (noting that "'[s]ometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question'" (quoting Gen. Telephone Co. of Sw. v. Falcon, 457 U.S. 147, 160 (1982))); see also Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144, 152 (N.D. Cal. 1991). In addition, the court may consider supplemental evidentiary submissions of the parties. See In re Methionine Antitrust Litig., 204 F.R.D. 161, 163 (N.D. Cal. 2001); see also Moore v. Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir. 1983) (noting that "some inquiry into the substance of a case may be necessary to ascertain satisfaction of the commonality and typicality requirements of Rule 23(a)"; however, "it is improper to advance a decision on the merits at the class certification stage"). Ultimately, it is in the Court's discretion whether a class should be certified. See Molski v. Gleich, 318 F.3d 937, 946 (9th Cir. 2003); Burkhalter, 141 F.R.D. at 152.

B. Analysis

Plaintiffs seek to certify a class and a subclass under Federal Rule 23:

> **Class:** All persons who enrolled in the [GFDP]. Excluded from the Class are Defendants' officers and directors and the immediate families of the Defendants' officers and directors. Also excluded from the Class are the Defendants' legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or have had a controlling interest.
>
> **California Subclass:** All members of the Class who resided in California during any portion of their participation in the [GFDP], and/or who performed work in California for the [GFDP], at any point.

Plaintiffs Hu, Ramirez, Ronceria, and Fei propose acting as representatives of the Class. Plaintiffs Hu, Ramirez, and Fei also propose acting as representatives of the California Subclass.

1. Numerosity

The key issue for evaluating numerosity is whether the class is too large to make joinder practicable. Celano v. Marriott Int'l, Inc., 242 F.R.D. 544, 549 (N.D. Cal. 2007). Courts generally find that this factor is satisfied if the proposed class contains approximately forty or more members. Id. Plaintiffs argue that both classes meet the numerosity requirement. Defendants have disclosed the existence of 146 invoices identifying 146 unique enrollees and Plaintiffs' counsel has identified an additional 93 enrollees by reviewing Defendants' spreadsheets

of names and email addresses. Dhillon Decl. ¶¶ 7-11, Ex. 5; Zhang Decl. ¶ 12. The combined total is 239 enrollees. Accordingly, Plaintiffs have satisfied this requirement for the Class.

Because Defendants did not collect home or mailing addresses of GFDP enrollees, Plaintiffs do not yet have accurate data on where putative class members live. See Zhang Decl. ¶ 13. Instead, Plaintiffs have estimated the number of members of the California Subclass in two ways. First, they estimated that there are sixty-one members of the California Subclass based on the email addresses of the GFDP enrollees. Plaintiffs are counting enrollees whose email addresses contained an identifiable California university domain name, e.g. "@berkeley.edu," as members of the California Subclass. Dhillon Decl. ¶ 13.

Plaintiffs also provided a declaration from Edwin Ramirez, one of the current Plaintiffs, in which he stated that he had requested that the approximately 240 enrollees report their physical addresses to him. Ramirez Decl. ¶ 2. As of January 29, 2019, sixty-one of the enrollees had provided their addresses. Id. Twenty-two of those enrollees provided address in California, twenty-two provided addresses from other states, and seventeen provided addresses outside the United States. Id. Plaintiffs ask the Court to extrapolate from these numbers and determine that about seventy-six, or one third of the GFDP enrollees, live in California.

Because Plaintiffs have provided evidence that the California Subclass has at least twenty-two members, and likely more than forty members, even if not as many as seventy-six. At this stage, Plaintiffs have satisfied the numerosity requirement for the California Subclass as well.

2. Commonality

"[C]ommonality requires that the class members' claims "depend upon a common contention" such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke.'" Mazza v. Am. Honda Motor Co., 666 F.3d 581, 588 (9th Cir. 2012) (quoting Wal–Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011)). Plaintiffs Hu, Ramirez, and Fei assert claims two through five, the California wage and hour law claims, on behalf of themselves and the California Subclass. Plaintiffs assert claims six through thirteen on behalf of themselves and the Class. Those claims include violations of California law for false advertising, unfair competition, violation of the Consumer Legal Remedies Act, fraud, negligent

misrepresentation, breach of implied contract, quantum meruit, and civil theft.

Plaintiffs argue that there are several common questions of fact, including:

- Whether Defendants formed a conspiracy to establish and operate GFDP;
- Whether Defendants falsely advertised GFDP in violation of California law;
- Whether the California Subclass are employees under California law; and
- If California Subclass members are employees, whether Defendants violated various California wage and hour laws.

Plaintiffs argue that the Class meets the commonality requirement because their claims for fraudulent misrepresentation will depend on the same representations and the same proofs of falsehood. For example, Zhang stated in her declaration that all the flyers GFDP used were contained the same or substantially similar information, even if they had slight variations, such as different dates for the start of courses. Zhang Decl. ¶ 7. Under California law, reliance may be inferred on a class-wide basis when the class members received the same misrepresentations. Knapp v. AT&T Wireless Servs., Inc., 195 Cal. App. 4th 932, 945-46 (2011) (citing Kaldenbach v. Mut. of Omaha Life Ins. Co., 178 Cal. App. 4th 830, 851 (2009)). Based on this and numerous other issues, Plaintiffs have satisfied the commonality requirement for the Class.

Plaintiffs allege that Defendants fraudulently misled them into forming an employment relationship in a way that will be susceptible of common proof. Since employment status is the key issue for the California Subclass's claims, the Court finds that Plaintiffs have satisfied the commonality requirement for the Subclass.

3. Typicality

"Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). Plaintiffs argue persuasively that their claims are typical of the Class and California Subclass because they suffered the same injuries and assert the same legal theories.

4. Adequacy of Representation

The determination of whether the class will be adequately represented requires the resolution of two questions: "(1) do the named plaintiffs and their counsel have any conflicts of

interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020. "[C]onflict will only bar certification where the conflict is serious and irreconcilable." Mateo v. M/S KISO, 805 F. Supp. 761, 772 (N.D. Cal. 1991).

Plaintiffs assert that neither they nor their attorneys, Dhillon Law Group, Inc. have any conflicts of interest with the Class or California Subclass. The fact that Plaintiffs' counsel are also representing Zhang, who was helping run GFDP, may present a potential conflict of interest. For example, one of the named Plaintiffs stated in his depositions that some of the other enrollees had raised questions about Zhang due to her role. Fitzgerald Decl., Ex. A, Ramirez Deposition Trans. at 74-75. Zhang states in her declaration that she was completely unaware that GFDP was not a UC Berkeley or UCLA sanctioned program and that her work for GFDP was unpaid. Zhang Decl. ¶ 6. It does not appear that anyone is currently asserting claims against Zhang or stating that she should be liable for her actions. The Court finds that there is no conflict at this time.

As to the second question, there does not appear to be any dispute that the named representatives and their counsel will vigorously prosecute the action on behalf of the Class and California Subclass. Proposed class counsel have experience in class and collective actions and have the resources to prosecute this action on behalf of the Class and Subclass. Dhillon Decl. ¶¶ 15-19. "Absent a basis for questioning the competence of counsel, the named plaintiffs' choice of counsel will not be disturbed, and plaintiffs' bear no affirmative burden to allege facts establishing the competence of counsel in the complaint." Mateo, 805 F. Supp. at 771.

Plaintiffs and their counsel are adequate representatives.

5. Rule 23(b)

a. Predominance – Choice of Law

In California, the class action proponent bears the initial burden to show that the application of California law would be constitutional, which it does by showing that California has "significant contact or significant aggregation of contacts" to the claims of each class member. Mazza v. Am. Honda Motor Co., 666 F.3d 581, 589-90 (9th Cir. 2012) (quoting Wash. Mut. Bank v. Superior Court, 24 Cal.4th 906, 921(2001)). The burden then shifts to the other side to

demonstrate "that foreign law, rather than California law, should apply to class claims." Id. at 590 (quoting Wash. Mut. Bank, 24 Cal. 4th at 921). A federal district court sitting in California applies California's choice of law rules when determining which substantive law should apply to plaintiffs' claims. Id. at 589.

> To determine whether the interests of other states outweigh California's interest, the court looks to a three-step governmental interest test:
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> First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different.
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> Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists.
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> Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state, and then ultimately applies the law of the state whose interest would be more impaired if its law were not applied.

Id. (quoting McCann v. Foster Wheeler LLC, 48 Cal.4th 68, 81–82 (2010)).

Because Plaintiffs do not know currently know where each of the putative class members live, it is not possible to determine the law for each potentially relevant jurisdiction. The evidence adduced so far establishes that Ronceria resides in Florida and Hu resided in Arizona for most of the relevant time period. There are some material differences between Florida and California law for the claims asserted. First, California's unfair competition law requires a showing of reliance but the comparable law in Florida does not. See Mazza, 666 F.3d at 591. Second, a plaintiff asserting intentional misrepresentation must show that his reliance on the misrepresentation was reasonable under California law but not under Florida law. See Graham v. Bank of Am., N.A., 226 Cal. App. 4th 594, 606 (2014); Butler v. Yusem, 44 So. 3d 102, 105 (Fla. 2010). Third, a plaintiff asserting a quantum meruit claim under California law must show that the defendant either expressly or impliedly requested that the plaintiff perform services but a plaintiff asserting a quantum meruit claim under Florida law must show merely that the defendant assented to receiving the services. See Ochs v. PacifiCare of California, 115 Cal. App. 4th 782, 794 (2004); W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc., 728 So. 2d 297, 305 (Fla. Dist. Ct. App. 1999).

Plaintiffs argue that the differences in the law do not predominate over shared claims. See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1023 (9th Cir. 1998). However, in Mazza, the Ninth Circuit pointed to the difference between Florida's and California's consumer protection laws as an example of material differences that made a choice of law analysis necessary. See 666 F.3d at 591. Moreover, because it is currently not known where the other putative class members reside, there may be additional material variations in the applicable laws.

Each state "has an interest in balancing the range of products and prices offered to consumers with the legal protections afforded to them" and "an interest in 'being able to assure individuals and commercial entities operating within its territory that applicable limitations on liability set forth in the jurisdiction's law will be available to those individuals and businesses in the event they are faced with litigation in the future.'" Id. at 592. (quoting McCann v. Foster Wheeler LLC, 48 Cal. 4th 68, 97-98 (2010)). In each of these examples, Florida's law affords the consumer more protection. In that sense, there is a difference between California's and Florida's interests.

California has an interest in setting reasonable expectations for businesses operating in California. Plehn-Dujowich operated GFDP out of California. Plaintiffs allege that Plehn-Dujowich, who operated GFDP out of California, was acting as the agent for BizQualify.

Because California's interest competes with at least Florida's, the Court must weigh the strengths and justifications of each state's interests and determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state. Plaintiffs argue that California's interests are superior because Defendants perpetuated their fraud from within California, exploited the reputation of California's public universities, and used those universities' assets to further their fraud.

Most significantly, under California law, the "place of the wrong" has the predominate interest with respect to "regulating or affecting conduct within its borders." Mazza, 666 F.3d at 593 (citing Hernandez v. Burger, 102 Cal.App.3d 795, 802 (1980)). The place of the wrong is the state where the last event necessary to make the actor liable occurred. Id. Defendants' alleged failure to provide promised letters of recommendation and meaningful education are the final acts

that would make Defendants liable for the breach of contract and breach of implied contract claim. Defendants' alleged acceptance of services and benefitting from those services are the final acts that would make Defendants' liable on the quantum meruit claims. Defendants' alleged acceptance of Plaintiffs' enrollment fees under false pretenses are the last acts necessary to make Defendants liable for the civil theft claim. All of these omissions occurred in California. Accordingly, California's interest would be more impaired by applying any other forum's laws to these disputes than would the interests of any other forum if California law is applied. Accordingly, the Court determines that California law should apply to these disputes and, therefore, it is appropriate to certify a nationwide class.

b. Predominance - Damages

To show predominance, Plaintiffs must be able to determine damages on a classwide basis. See Comcast Corp. v. Behrend, 569 U.S. 27, 34-35 (2013). The Ninth Circuit has interpreted the Supreme Court's decision in Comcast to "mean that 'plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability.'" Vaquero v. Ashley Furniture Indus., Inc., 824 F.3d 1150, 1154 (9th Cir. 2016) (quoting Pulaski & Middleman, LLC v. Google, Inc., 802 F.3d 979, 987–88 (9th Cir. 2015)).

Powerlytics argued that Plaintiffs would not be able to determine damages on a classwide basis for their employment-related claims. If Plaintiffs show that they were employees, they will be able to show that their damages stemmed from Defendants' conduct. All work Plaintiffs performed for Defendants was work they performed without compensation due to Defendants' alleged misconduct. Plaintiffs do not appear to suggest a way of determining exactly how many hours each GFDP enrollee worked within that range on a classwide basis, but the requirement of individualized findings for damages does not defeat class certification. See Vaquero, 824 F.3d at 1155. Under these circumstances, any issue with regard to the calculation of damages is insufficient to defeat predominance. The main issues for all of Plaintiffs' claims will center on Defendants' conduct, which will be identical or nearly identical for all class members. Accordingly, common issues predominate for both the Class and the California Subclass.

c. Superiority

When determining whether a class action is superior to other methods of adjudication, the court should consider: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D).

Plaintiffs argue that a class action is superior to other methods. Individual class members' interests in controlling their own litigation is limited because of the relatively small monetary damages at stake. Plaintiffs do not believe there is any other litigation concerning the same conduct already underway. Concentrating the litigation in one forum will contribute to judicial economy and prevent inconsistent outcomes. Managing the class action would not be unduly difficult because nearly all of the issues will be susceptible to common proof. The Court agrees that a class action is superior.

Because Plaintiffs have satisfied the requirements of Rule 23(a) and Rule 23(b)(3), the Court certifies both the Class and the California Subclass.

V. NOTICE

District courts have broad discretion concerning the details of notice for FLSA collective actions. Saleh v. Valbin Corp., 297 F. Supp. 3d 1025, 1036 (N.D. Cal. 2017). Rule 23 requires that the notice provided to class members be "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). The notice must contain numerous items, including the nature of the action, the definition of the certified class, information about exclusion, etc. Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii). Electronic notice as a supplement or when other methods of notice is not available has been approved in some cases. See Lewis v. Wells Fargo & Co., 669 F. Supp. 2d 1124, 1129 (N.D. Cal. 2009) (approving notice by a combination of first class mail and email, noting that the potential class members in that case, who were technical support workers, were "likely to be particularly comfortable communicating by email and thus this form of communication is just as, if not more, likely to effectuate notice than first class mail").

Plaintiffs have proposed giving putative class members notice via email and WeChat, a Chinese messaging and social media platform, because that is how Defendants communicated with GFDP enrollees. Plaintiffs also offer to provide notice by physical mail to all putative class members with a known mailing address, which the Court requires them to do. They propose permitting class members sixty days to return the FLSA opt-in forms from the date of mailing.

The Court approves the form and content of Plaintiffs' proposed notices for the FLSA collective action and the Rule 23 class action, with the following exception. Plaintiffs' proposed notices repeatedly refer to Defendant Powerlytics. Dhillon Decl. Exs. 1 & 2. Plaintiffs should amend their notices to accurately reflect the status of all parties. Plaintiffs must file an amended notice by March 4, 2019.

IT IS SO ORDERED.

Dated: February 25, 2019

ELIZABETH D. LAPORTE
United States Magistrate Judge

United States District Court
Northern District of California