UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 11-01573 JVS (MLGx)	Date	November 26, 2012
Title	Freddie Lee Smith v. Pathway Financial Management, Inc.		

Present: The Honorable	James V. Selna	
Karla J. Tunis		Not Present
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Not Present		Not Present

Proceedings: (IN CHAMBERS) Order GRANTING Plaintiff's Motion for Class Certification (Fld 8-6-12)

Plaintiffs Freddie Lee Smith and Lue Vail Smith (the "Smiths") move this Court for class certification. (Motion for Class Certification ("Mot."), Docket No. 32.) Defendant Pathway Financial Management, Inc. ("Pathway") filed its opposition.[1] (Opposition to Motion for Class Certification ("Def.'s Opp'n"), Docket No. 44.) The Smiths filed a reply. (Reply, Docket No. 57.) For the following reasons, the Court GRANTS the motion for class certification, as set forth below.

I. Background

The Smiths commenced this suit as a putative class action against Pathway, Pathway Marketing ("Pathway Marketing"), and Chau Phan aka Peter Poon ("Poon") for various violations of California and federal consumer protection laws related to its activities as a debt management service provider.[2] (See Second Amended Complaint ("SAC"), Docket No. 63.)

[1] Pathway failed to file its opposition in a timely manner. The Court continued the hearing on this motion to allow for the late filing of its opposition and to afford the Smiths an opportunity to reply. (Docket No. 52.)

[2] The Court granted the Smiths leave to amend their First Amended Complaint to add Pathway Marketing and Poon as defendants. (Docket No. 60.) The Smiths filed their SAC on November 9, 2012. (Docket No. 63.)

The causes of action under which the Smiths challenge Pathway's practices include unlawful, unfair, and fraudulent business practices under California's Uniform Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. The Smiths' UCL claims are based on violations of the California Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et seq., the California Credit Services Act, Cal. Civ. Code §§ 1789.10, et seq., federal laws relating to debt relief services, California statutes relating to businesses as proraters, laws relating to the unauthorized practice of law, and the Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679. (Id. ¶¶ 75–77.) The Smiths also claim breach of contract, common counts, and declaratory relief. (Id. ¶¶ 84–101.)

The Smiths sought Pathway's services to resolve over $28,000 in consumer debt that they incurred from credit card debts and medical bills. (Mot. Br. 3, Ex. 13.) They learned about Pathway through a television commercial that aired in Alabama. (SAC ¶ 17; Mot. Br. 2.) Pathway claimed that it could help customers eliminate personal consumer debts and end further calls from bill collectors. (SAC ¶ 16.) In November 2008, the Smiths entered into an agreement with Pathway in which Pathway agreed to help them settle their debt in exchange for 12 percent of their outstanding debt balance, an 8 percent contingency fee for any debt balance reduction, and a monthly $25 maintenance fee. (SAC ¶ 18.) According to the agreement, the Smiths were required to pay $408 per month for November 2008 and $431 per month thereafter. (Id.) Pathway allegedly represented that the Smiths' debt would be reduced by 45 percent and would only take three years to resolve. (Mot. Br. 4.) Despite their continued payment of these fees to Pathway, the Smiths now claim that Pathway has not dealt with their unpaid debt and they have since been sued by creditors. (SAC ¶¶ 19, 32, 33, 35; Mot., Penn Decl. ¶¶ 3–5, Docket No. 35.) The Smiths believe that putative class members have also not received benefits promised by Pathway despite paying upfront and maintenance fees. (SAC ¶ 19.) As an example of Pathway's inability to reduce debt, they allege that each of Pathway's customer service representatives was only able address client's debt-related issues for less than five minutes per client per week. (SAC ¶ 34; Mot. Br. 5.) Based on these actions, the Smiths claim that Pathway failed to provide services in breach of their customer contract.

The Smiths also allege that Pathway's business model centered around the unauthorized practice of law and actions of attorney misconduct. Specifically, Pathway represented in its form document that for their entire term, the Smiths' account would be handled by legal counsel when in fact, this representation was not true. (SAC ¶ 37.) The

Smiths signed a separate agreement with Richard A. Lenard ("Lenard"), who the Smiths claim represented to be an attorney but was not licensed to practice law in Alabama and is also not licensed to practice law in California. (Id. ¶ 38.) Also, Lenard only worked for Pathway until the summer of 2009, and when he did handle matters, he only spent ten to fifteen minutes reviewing each customer file. (Id. ¶ 48; Mot. Br. 6.)

Furthermore, the Smiths allege that Pathway was as a prorater as defined by the California Financial Code, but failed to have a prorater license. (SAC ¶¶ 50–52.) Additionally, Pathway's fees charged to putative class members violated the limits set forth in California's prorater statutes. (Id. ¶ 55; Mot. Br. 9.)

Lastly, the Smiths claim that Pathway's conduct shows that it operated as a "credit repair organization" as defined by the CROA. They allege that Pathway used television, radio, and mail to provide a service for the return for the payment of money to improve its customers' credit record, credit history, or credit rating, or to give advice on those issues. (SAC ¶ 103; Mot. Br. 10.) And as a credit repair organization, Pathway was not allowed to make untrue or misleading representations about its services or charge an up-front 12 percent fee for its services. (SAC ¶ 105–07; Mot. Br. 11.)

The Smiths now seek to certify a class pursuant to Federal Rule of Civil Procedure 23. The proposed class would consist of "all citizens of the United States who have entered into an agreement with Pathway between January 1, 2008 and the present ('the Class Period') for Pathway to provide debt settlement relief services." (Mot. Br. 1.)

II. **Legal Standard**

A motion for class certification involves a two-part analysis. First, a plaintiff must demonstrate that the proposed class satisfies the requirements of Rule 23(a): (1) the members of the proposed class must be so numerous that joinder of all claims would be impracticable; (2) there must be questions of law and fact common to the class; (3) the claims or defenses of the representative parties must be typical of the claims or defenses of absent class members; and (4) the representative parties must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

Second, a plaintiff must meet the requirements for at least one of the three subsections in Rule 23(b). The Smiths assert that the Class meets the requirements for

Rule 23(b)(3), which provides that a class may be maintained where common questions of law and fact predominate over questions affecting individual members and where a class action is superior to other means to adjudicate the controversy.

Plaintiffs bear the burden of demonstrating that Rules 23(a) and (b)(3) are satisfied. See Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1186 (9th Cir. 2001), amended by 273 F.3d 1266 (9th Cir. 2001). The Court must rigorously analyze whether the prerequisites of Rule 23 are met. Gen. Tel. Co. v. Falcon, 457 U.S. 147, 161 (1982). Rule 23 confers on the district court "broad discretion to determine whether a class should be certified, and to revisit that certification throughout the legal proceedings before the court." Armstrong v. Davis, 275 F.3d 849, 872, n. 28 (9th Cir. 2001).

The district court need only form a "reasonable judgment" on each certification requirement "[b]ecause the early resolution of the class certification question requires some degree of speculation." Gable v. Land Rover N. Am., Inc., 2011 WL 3563097, at *3 (C.D. Cal. July 25, 2011) (quoting In re Citric Acid Antitrust Litigation, 1996 WL 655791, at *2 (N.D. Cal. Oct. 1996)); see also Blackie v. Barrack, 524 F.2d 891, 901 n.17 (9th Cir. 1975). Moreover, the Court cannot inquire into the merits of a suit to determine whether it may be maintained as a class action. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177 (1974). But see Wal-Mart Stores, Inc. v. Dukes, --- U.S. ----, 131 S. Ct. 2541, 2251–52 (2011) (suggesting the Rule 23 analysis may be inextricable from some judgments on the merits in particular cases).

III. Discussion

Because predominance is the key factor in the Court's analysis, the Court first considers the certification requirements under Rule 23(b)(3) and its predominance requirement, and then turns to the requirements under Rule 23(a).

A. Rule 23(b) Requirements

The Court finds that the class action may be certified under Rule 23(b)(3). Because the Smiths need only meet the requirements of one of the three subsections in Rule 23(b), the Court need not address the remaining subsections.

"Subdivision (b)(3) encompasses those cases in which a class action would achieve

economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." Kamm v. Cal. City Dev. Co., 509 F.2d 205, 211 (9th Cir. 1975) (quoting Committee notes). A class may be certified under this subdivision where common questions of law and fact predominate over questions affecting individual members, and where a class action is superior to other means to adjudicate the controversy. Fed. R. Civ. Proc. 23(b)(3).

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997) (citation omitted). The Court must rest its examination on the legal or factual questions of the individual class members. Hanlon, 150 F.3d at 1022. "To determine whether common issues predominate, this Court must first examine the substantive issues raised by Plaintiffs and second inquire into the proof relevant to each issue." Jimenez v. Domino's Pizza, Inc., 238 F.R.D. 241, 251 (C.D. Cal. 2006) (citation omitted); see Dukes, 131 S. Ct. at 2552 n.6 (using a securities fraud class action as an example of how the predominance inquiry involves examining the substantive issues raised and the common proof relevant to those issues).

"There is no definitive test for determining whether common issues predominate, however, in general, predominance is met when there exists generalized evidence which proves or disproves an [issue or] element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class members' individual position." Withers v. eHarmony, Inc., CV 09-2266-GHK (RCx), Order Denying Mot. to Cert. Class, Docket No. 13, June 2, 2010 (quoting In re Vitamins Antitrust Litig., 209 F.R.D. 251, 262 (D.D.C. 2002) (internal quotation marks omitted)). If the applicable law in a case derives from the laws of numerous states, differences in those laws will "compound the disparities" among the putative class members from different states. Gianino v. Alacer Corp., 846 F. Supp. 2d 1096, 1099 (C.D. Cal. 2012) (quoting Zinser, 253 F.3d at 1189). Indeed, certifying a class in which numerous state laws govern can create a formidable obstacle to fair, efficient adjudication. Id. "Variations in state law can swamp any common issues and interject a multitude of different legal standards governing a particular claim." Id.

i. Predominance of Common Factual Questions

The Smiths argue that its UCL claims based on violations of the CLRA, CROA, and California's prorater laws and its breach of contract claim are each susceptible to common proof because each claim focuses on Pathway's business practices and representations. (Mot. Br. 17–20.) They argue that each of the claims do not require individualized showings from class members; the inquiries under each claim look almost exclusively at Pathway's conduct. (Id.)

a. *Common Issues Predominate the UCL Claims*

The UCL prohibits any "unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. The UCL "borrows violations of other laws and treats them as unlawful practices that the UCL makes independently actionable." Hale v. Sharp Healthcare, 108 Cal. Rptr. 3d 669, 676–77 (Ct. App. 2010). The Smiths argue that Pathway violated the UCL by committing unlawful acts prohibited by the CLRA, California's prorater laws, and the CROA.

The Smiths' CLRA claim requires no individualized showing of reliance for each class member so long as the Smiths can show their actual reliance. The CLRA makes it unlawful to use "unfair methods of competition and unfair or deceptive acts or practices" in the sale of goods or services to a consumer. Cal. Civ. Code § 1770(a). With respect to the Smiths' CLRA, claim, the primary issue is whether Pathway engaged in an "unfair or deceptive act or practice" through misrepresentations about its debt settlement practice. Such acts, if established, would show that Pathway violated CLRA sections 1770(a)(9) ("advertising services with intent not to sell them as advertised"), (a)(14) ("representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve which are prohibited by law"), and (a)(16) ("representing that the subject of a transaction has been supplied in accordance with previous representation when it has not"). A showing that Pathway's conduct was deceptive and that the deception caused the class representative harm gives rise to "the inference of common reliance" as to absent class members in a CLRA claim. Mass. Mut. Life Ins. Co. v. Superior Court, 97 Cal. App. 4th 1282, 1292–93 (2002). Taking allegations in the SAC as true, the Smiths can demonstrate actual reliance on Pathway's misrepresentations. (See SAC.) After

viewing a Pathway television advertisement that claims it could help customers "eliminate their personal consumer debts, end further calls from bill collectors, and become stress-free," the Smiths engaged Pathway's services, reasonably believing that Pathway could help them reduce their debt and improve their credit. (Id. ¶ 17.)

Similarly, the Smiths' claims based on California's prorater laws and the federal CROA do not necessitate burdensome individualized inquiries because the allegations do not require any evidence of the individual plaintiffs' states of mind or Pathway's intent. Whether Pathway acted as an unlicensed prorater in violation of the California prorater statutes or acted in violation of the CROA's statutory requirements are questions focusing on Pathway's conduct, and they are common questions among the class members.

b. *Breach of Contract Claim*

The Court finds that the common issues do not predominate the Smiths' breach of contract claim to the extent it is based on (1) the unauthorized practice of law, and (2) Pathway's failure to settle class members' debts.[3] As to the unauthorized practice of law claim, the Smiths' claim is based entirely on interactions between Lenard and named plaintiffs. (See SAC ¶¶ 37–48; Mot. Br. 6–8.) The Smiths have not sufficiently established that it was standard practice for Pathway to require representation through legal counsel, nor that Pathway commonly enrolled persons unauthorized to practice law to represent its clients. This claim would require individualized inquiries. If Pathway did not arrange for a client to be represented by persons unauthorized to practice law,

[3] The bases of the Smiths' breach of contract claim is unclear. The SAC, in the relevant breach of contract paragraphs, references Lenard's unauthorized practice of law (SAC ¶ 97) and "illegal and unconscionable provisions . . . that violated state and federal law" rendering the contracts void (SAC ¶ 100.) However, in the Smiths' motion for class certification, the Smiths state that, for the breach of contract claim, they

> can show that all Class members accepted Pathway's offer to provide debt management services Pathway did not fully provide, using legal counsel (or their own staff) that was not authorized to act on their behalf, and that under the express provisions of both state and federal law, such contracts are illegal and therefore void and unenforceable.

(Mot. Br. 20.) To the extent that the breach of contract claim is based on the unauthorized practice of law and the failure to fully provide debt management services, common issues do not predominate. However, if the breach of contract claim is based on fraudulent and illegal practices in violation of the CLRA, CROA, and California's prorater laws, common issues predominate, as previously discussed.

Pathway would not be liable to that client. Therefore, that Pathway breached its contracts because it engaged in the unauthorized practice of law is not a common issue as to all class members.

Similarly, for the breach of contract claim for failure to settle debt,[4] individual showings from class members are necessary. The issue here, unlike for the UCL claims, is not based solely on Pathway's conduct. To establish the UCL claims, the conduct in question surrounds Pathway's representations, i.e., whether Pathway could represent that it could settle debt when, in fact, it was not licensed to engage in debt settlement, and its fees and surcharges were improperly imposed on class members in violation of the law. Those claims do not require an inquiry into whether Pathway actually provided the debt settlement services promised. However, to establish the claim that Pathway breached its promise to reduce the debts of its clients, individualized factual questions are necessary. For instance, factual questions include (1) the amount of debt reduction Pathway promised to the class member;[5] (2) the amount of that class members' individual outstanding debt balance; and (3) the amount, if any, of Pathway's successful efforts to reduce the class member's debt. If Pathway did reduce the class member's debt by the amount or percentage it promised, it would not be liable to that class member under this claim. Therefore, common questions do not predominate the individual questions with respect to Pathway's debt settlement efforts.

In sum, the Smiths have not established that common issues predominate its breach of contract claim to the extent it is based on the unauthorized practice of law or Pathway's failure to settle debts. Thus, the Court cannot certify a class for those causes of action.

ii. Choice of Law

[4] Currently, the only allegations of this claim are details about Pathway's failure to resolve the Smiths' debt and allegations that Pathway was severely understaffed and thus unable to address its clients' debts. (See SAC ¶¶ 33–34; Mot. Br. 4–5.)

[5] During oral argument of this motion on November 19, 2012, the Smiths' counsel argued that Pathway uniformly represented that it would reduce debt by 40 percent. But even if Pathway made this uniform representation to its clients, other individual factual questions remain.

The Smiths urge the Court to apply the California law to the claims of all class members. (Mot. Br. 20–21.) Pathway opposes classwide application of California law, arguing that application would conflict with California's choice-of-law rules because differences between other states' consumer protection laws and those of California would render the case unmanageable and not raise predominant common questions.[6] (Def.'s Opp'n Br. 13–19.)

To determine whether the Court may apply California law across the class, the Court must analyze California's choice of law rules. Zinser, 253 F.3d at 1187 (holding that a federal court sitting in diversity must look to forum state's choice of law rules for controlling substantive law). For parties who have contractually agreed to be bound by the law of a certain jurisdiction, California courts apply the analysis set forth in Nedlloyd Lines B.V. v. Superior Court, 3 Cal. 4th 459 (1992) to evaluate if the disputed class action claims are subject to enforceable choice of law agreements.[7] Wash. Mut. Bank v. Superior Court, 24 Cal. 4th 906, 915–16 (2001). Here, the client agreement signed by the Smiths contains a choice of law provision stating that "Client and Pathway agree that this Agreement shall be governed by and interpreted under the laws of the State of California." (Mansfield Decl., Ex. 13, at 7, Docket No. 33-13.) Accordingly, the Court applies the analysis set forth in Nedlloyd.

First, a trial court must determine whether the advocate of the choice of law clause

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[6] As the Smiths correctly point out, this argument is irrelevant as to their federal CROA claim. (Reply Br. 11.)

[7] Alternatively, when there is no advance agreement on applicable law, but the action involves the claims of residents from outside California, the court conducts a "governmental interests" test. Wash. Mut. Bank, 24 Cal. 4th at 914–15. First, the class action proponent bears the initial burden of showing that California has "significant contact or significant aggregation of contacts to the claims of each class member such that application of the forum law is not arbitrary or unfair." Id. at 921 (internal quotation marks omitted). This showing is necessary to ensure that application of California law is constitutional. Mazza v. Am. Honda Motor Co., 666 F.3d 581, 589–90 (9th Cir. 2012); see also In re Toyota Motor Corp. Unintended Acceleration Mktg., 785 F. Supp. 2d 925, 927 (C.D. Cal. 2011). Next, if the contacts are sufficient, the burden shifts to the defendant to show "that foreign law, rather than California law, should apply to class claims." Mazza, 666 F.3d at 590 (quoting Wash. Mut. Bank, 24 Cal. 4th at 921). California law may be applied on a class wide basis only if "the interests of other states are not found to outweigh California's interest in having its law applied." Id. (quoting Wash. Mut. Bank, 24 Cal. 4th at 921).

has met its burden of establishing that the various claims of putative class members fall within its scope. Wash. Mut. Bank, 24 Cal. 4th at 916. In California, scope is interpreted broadly and it is generally presumed that "[w]hen a rational businessperson enters into an agreement establishing a transaction or relationship and provides that disputes arising from the agreement shall be governed by the law of an identified jurisdiction, the logical conclusion is that he or she intended that law to apply to all disputes arising out of the transaction or relationship." Nedlloyd, 3 Cal. 4th at 469. Furthermore, this analysis is properly applied in the context of consumer adhesion contracts. Wash. Mut. Bank, 24 Cal. 4th at 918.

Here, the Smiths' UCL claims arise out of the class members' contractual relationships with Pathway. For the California prorater and CROA violations, the dispute is whether the contractual relationships were based on illegal business practices. And for the underlying CLRA claim, the dispute is based on Pathway's fraudulent misrepresentations that induced class members to enter into contracts with Pathway.

Next, the trial court evaluates the clause's enforceability under Restatement (Second) of Conflicts of Law § 187(2), which provides:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Wash. Mut. Bank, 24 Cal. 4th at 916–17 (citing Nedlloyd, 3 Cal. 4th at 466). Under subpart (a), the chosen state of California has a substantial relationship to the parties because Pathway is headquartered in California and conducts all of its operations within California. Furthermore, under section 188 of the Restatement, the state whose law would apply in the absence of an effective choice of law is the state with the most significant relationship to the transaction and parties. Given that Pathway's headquarters

are located in California, its employees conduct operations from within California, and a significant portion of its clients are located in California, the Court finds that, in the absence of an effective choice of law clause, California law would govern the dispute. Thus, under subpart (b), the application of California law is obviously not contrary to the fundamental policy of California. See Estrella v. Freedom Fin. Network, LLC, 2010 WL 2231790, at *10 (N.D. Cal. June 2, 2010) (finding that a California choice-of-law clause in a contract was enforceable because the defendant debt settlement company negotiated with creditors and operated out of California). Accordingly, the choice-of-law clause in Pathway's contracts is enforceable and California law applies across the class.[8]

In sum, the predominance requirement is satisfied for the putative class members' UCL claims. However, predominance is not met with respect to the Smiths' breach of contract claim to the extent it is based on Pathway's unauthorized practice of law, or its failure to fully provide debt settlement services.

2. Superiority

Finally, the Court considers whether a class action would be superior to individual suits. Amchem, 521 U.S. at 615. "A class action is the superior method for managing litigation if no realistic alternative exists." Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234–35 (9th Cir. 1996). This superiority inquiry requires a comparative evaluation of alternative mechanisms of dispute resolution. Hanlon, 150 F.3d at 1023. Rule 23(b)(3) provides a non-exhaustive list of factors relevant to the superiority analysis that includes "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

The Court finds that examination of the relevant 23(b)(3) factors favor class certification. Rule 23(b)(3)'s non exclusive factors are: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the

[8] Because the choice of law provision is enforceable, the Court does not perform California's governmental interests analysis. See Wash. Mut. Bank, 24 Cal. 4th at 921. However, the Court notes that even in the absence of an effective choice of law provision, Pathway does not meet its burden to show that foreign laws should apply for the UCL claim based on California's prorater laws. See footnote 7, supra.

litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action.

i. Factors (A) and (C): Interest of Members and Desirability of Concentrating the Litigation

In this case, there is no indication that the class members would have a strong interest in individual litigation. In fact, class member's damages will be relatively low, given that paid customer fees amount to about a few thousand dollars per class member, thus giving class members little incentive to pursue their claims individually. In re Universal Serv. Funding Tel. Billing Practices Litig., 219 F.R.D. 661, 679 (D. Kan. 2004) (holding that a class action was superior to individual claims because the claims involved "relatively insubstantial amounts of money such that a class action is perhaps the only feasible way for plaintiffs to pursue those claims").

Further, because common issues predominate on the claims in this case, presentation of the evidence in one consolidated action will reduce unnecessarily duplicative litigation and promote judicial economy. The determination of liability under the claims asserted requires evidence of Pathway's conduct and few individualized inquiries into class members' conduct. While the determination of damages will necessitate some individualized inquiries, this alone does not render the class action unmanageable or inferior to individual actions. Eliot v. ITT Corp., 150 F.R.D. 569, 575 (N.D. Ill. 1992).

ii. Factor (B): Pending Litigation

The Court is not aware of any other pending litigation that could interfere with the claims of putative class members in this case.

iii. Factor (D): Case Management and a Workable Trial Plan

The Smiths have presented a workable trial plan that proposes methods for reducing individualized inquiries among the class members. The Smiths represent that they will prove the claims relying "almost exclusively on the documents and testimony that have been and will be provided by Pathway." (Mansfield Decl. ¶ 27.) They assert that they will demonstrate that Pathway uniformly operates using form agreements and

that fees that are automatically deducted are uniformly set by Pathway. (Id.) The Smiths also assert that they will obtain, through discovery, exemplars of Pathway's advertisement and the direct mailing piece it used. (Id.) Next, the Smiths propose that they will present testimony to show how Pathway's operations, fees, and charges do not comply with California and federal law, thus proving violations of the UCL. (Id. ¶ 28.) Likewise, the Smiths will show how similar evidence violates the CLRA's provisions regarding representations and advertising. (Id. ¶ 29.)

Because the witness testimony and evidence put forth in this trial plan applies to each of the individual class members' claims, it would be duplicative and a waste of judicial resources to try these claims individually. Moreover, the limited number of individualized inquiries required to determine Pathway's liability with respect to each of the individual class members further supports trying this case as a class action.[9]

In sum, the requirements under Rule 23(b)(3) are satisfied. The Court now proceeds to the Rule 23(a) query.

B. Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that a class be sufficiently numerous that it would be impracticable to join all members individually. In this case, the Smiths allege that Pathway has had 4,483 clients throughout the United States during the Class Period, whose names and addresses can be found in a database. (Mansfield Decl. ¶ 10, Docket No. 33.) Pathway does not contend that the proposed class is numerous and thus numerosity is satisfied.

[9] As the Court discussed, the breach of contract claim based on Pathway's failure to settle debt does not satisfy the predominance requirement. The trial plan references the taking of a "limited but statistically significant sampling of customer data maintained by Pathway to show that consumer debts were not in fact reduced by the amount Pathway claims on Class-wide basis." (Mansfield Decl. ¶ 30.) Such a survey would be helpful to the extent it relates to Pathway's misrepresentations about its practices, but a general survey would not cure the deficiencies noted in the predominance analysis, i.e., the individual showings necessary to prove Pathway failed to provide debt settlement services for the class.

2. Commonality

Rule 23(a)(2) requires that questions of law or fact be common to the class. "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon v. Chrysler Corp., 140 F.3d 1011, 1019 (9th Cir. 1998). As the Supreme Court recently held, a common question "must be of such a nature that it is capable of classwide resolution—which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." Dukes, 131 S. Ct. at 2551.

In this case, the Smiths argue that commonality is satisfied because "the claims at issue are admittedly based on standardized practices, policies and materials." (Mot. Br. 13.) Furthermore, the common questions include: (1) whether Pathway performed the services it promised, and (2) whether Pathway's conduct violated California and federal law, making it illegal for Pathway to collect or retain any fees obtained from its practices. (Id. at 14.) Pathway disputes that commonality is met because putative class members had "significantly different experiences," such as viewing different advertisements and signing different customer contracts. (Def.'s Opp'n Br. 23.) Also, they argue that the Smiths have not shown that other class members signed an agreement with Lenard, or whether the contracts they signed required the use of an attorney. (Id. at 24.)

For the reasons set forth under the "predominance" analysis of Rule 23(b)(3), the Court finds that the commonality requirement is met as to all claims except the breach of contract claim if it is based on (1) the unauthorized practice of law, or (2) Pathway's failure to settle the Smiths' debts.

As to the other claims of putative class members, they are all based on a "common core" of facts and issues, such as whether Pathway made engaged in conduct violating California's prorater laws and the CROA statutes or whether Pathway made misrepresentations about its business practices. The fact that there may be individual inquiries regarding the various representations made by Pathway does not defeat the commonality of the factual questions. Thus, the commonality requirement is met.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Under the "permissive standards" of this Rule, "representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020. To meet the typicality requirement, Plaintiffs must show that: (1) "other members have the same or similar injury"; (2) "the action is based on conduct which is not unique to the named plaintiffs"; and (3) "other class members have been injured by the same course of conduct." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011).

Here, the Smiths allege the same injury as that allegedly suffered by other class members: paying fees despite Pathway's misrepresentations about its illegal and fraudulent business practices. Pathway's argument against typicality is that the Smiths provide no declarations or facts supporting their individual claims, but only allege injury through their attorney. (Def.'s Opp'n Br. 24–25.) Furthermore, it argues that the Smiths' claims are not typical because they claim they received promises of increased credit, which differs from the claims of putative class members. (Id.)

Plaintiffs can satisfy their burden of showing typicality through pleadings, affidavits, or other evidence. See Lewis v. First Am. Title Ins. Co., 265 F.R.D. 536, 556 (D. Idaho 2010). Here, the Smiths present interrogatories detailing their claims, including their exposure to Pathway's advertisements and their interactions with Pathway representatives. (Mansfield Decl., Ex. 7, Docket No. 33-7.) Also, the Smiths claims are "reasonably co-extensive" despite the fact that the Smiths and class members may have been exposed to different representations made by Pathway. See Hanlon, 150 F.3d at 1020. Because the Smiths' claims and potential remedies are the same as the absent class members, the typicality prong is satisfied.

4. Adequacy

Rule 23(a)(4) requires that the representative party "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This requirement is grounded in constitutional due process concerns: 'absent class members must be afforded adequate representation before entry of a judgment which binds them.'" Evans v. IAC/Interactive Corp., 244 F.R.D. 568, 578 (C.D. Cal. 2007) (quoting Hanlon, 150 F.3d at 1020). Representation is adequate if (1) the named plaintiffs and their counsel are able to

prosecute the action vigorously and (2) the named plaintiffs do not have conflicting interests with the unnamed class members. Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978).

The Court is not aware of any evidence that suggests a material conflict between the interests of the Smiths and the absent class members. The Smiths have been actively involved in this case since the filing of the action and have responded to discovery. Furthermore, Pathway does not dispute the adequacy of the Smiths' counsel, whose qualifications establish that they have extensive experience litigating this type of class action. (See Mansfield Decl., Ex. 25; Declaration of Thomas D. Mauriello, Ex. A, Docket No. 34; Declaration of Joe R. Whatley, Jr., Ex. 1, Docket No. 38.) Thus, the adequacy prong is satisfied.

Because the Smiths have demonstrated the numerosity, commonality, typicality, and adequacy requirements, they have satisfied the Rule 23(a) analysis.

IV. Conclusion

For the foregoing reasons, the Court GRANTS the Smiths' motion for class certification and certifies the following class: "all citizens of the United States who have entered into an agreement with Pathway between January 1, 2008 and the present ('the Class Period') for Pathway to provide debt settlement relief services." However, the Court declines to certify a class for the breach of contract claim to the extent it is based on Pathway's unauthorized practice of law or Pathway's failure to provide debt settlement services.

IT IS SO ORDERED.

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