SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/13/17 | DEPT. 308

HONORABLE ANN I. JONES | JUDGE | M. MATA | DEPUTY CLERK

HONORABLE #5 | JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

C. CONCEPCION, C.A. | Deputy Sheriff | ALICIA DESMOND, PRO TEM CSR 13037 | Reporter

10:00 am BC526351

ROGER L CULBERSON II
VS
THE WALT DISNEY COMPANY

Complex-12-19-2013

Plaintiff Counsel: DEVIN FOK (X), V. ANDRE SHERMAN (X)

Defendant Counsel: PAUL GROSSMAN (X), FELICIA DAVIS (X)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFFS ROGER L. CULBERSON II, EDWARD JOSEPH III, AS INDIVIDUALS, AND ON BEHALF OF THE PUTATIVE CLASS FOR CLASS CERTIFICATION

The Stipulation and Order to Use Certified Shorthand Reporter appointing official Court reporter pro tempore in the current proceedings is signed and filed this date.

Matter is called for hearing.

Counsel have read a copy of the Court's tentative ruling.

Matter is argued.

The Court takes the matter under submission.

After review, the Court issues its ruling to grant the motion. The Court's ruling is filed and incorporated herein by reference.

Further Status Conference is set for October 4, 2017 at 10:00 a.m. in this department.

Joint status report is to be filed 5 court days prior to the hearing.

Notice is waived.

MINUTES ENTERED
07/13/17
COUNTY CLERK

CULBERSON, et al. v. WALT DISNEY PARKS AND RESORTS

MOTION FOR CLASS CERTIFICATION

Date of Hearing: **July 13, 2017**
Department: 308
Case No.: BC526351

RULING

The motion for class certification is GRANTED.

A Further Status Conference is set for October 4, 2017 at 10 a.m. A joint status conference report shall be filed five (5) court days prior. That report shall include a proposed discovery plan for any remaining discovery, a schedule for briefing and hearing for substantive motions for summary judgment or adjudication, and a proposed trial date sufficiently in advance of the November 1, 2018 5-year rule deadline.

BACKGROUND

This is a class action brought by Plaintiffs Roger Culberson II and Edward Joseph III (jointly, "Plaintiffs"), individually and on behalf of similarly situated consumers allegedly subjected to an adverse employment action based on information in consumer reports prepared at the request of Defendant Walt Disney Parks and Resorts ("Defendant").

The operative Second Amended Complaint ("SAC") asserts the following causes of action:

- Violation of the Fair Credit Reporting Act (15 U.S.C. §1681b(b)(3))
- Violation of the Fair Credit Reporting Act (15 U.S.C. §1681b(b)(2))

By this motion, Plaintiffs move for class certification of a Disneyland Resort, Anaheim, California-only class.[1]

APPLICABLE LAW

CCP §382 permits certification "when the question is of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." The plaintiff bears the burden of demonstrating that class certification under §382 is proper. See City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 460; Caro v. Procter & Gamble Co. (1993) 18 Cal.App.4th 644, 654. To do so, the plaintiff must "establish the existence of both an ascertainable class and a well-

[1] See Motion, FN1.

defined community of interest among the class members." See Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435. The community of interest requirement has three essential elements: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." Id. The plaintiff must also demonstrate that the class procedure is superior to other forms of adjudication. See Reese v. Wal-Mart Stores, Inc. (1999) 73 Cal.App.4th 1225, 1234.

DISCUSSION

(1) ASCERTAINABLE CLASS

Courts consider three factors when determining whether a class is ascertainable: "(1) the class definition, (2) the size of the class, and (3) the means available for identifying class members. [Citations.]" See Global Minerals & Metals Corp. v. Superior Court (2003) 113 Cal. App. 4th 836, 858.

A. CLASS DEFINITION

Plaintiffs seek to certify the following classes, which are narrower than the ones alleged in the SAC:[2]

> **Pre-Adverse Action Notice Class (Violation of 15 U.S.C. §1681b(b)(3))**
>
> All individuals residing in the United States who were the subject of a consumer report obtained by Disneyland Resort for employment purposes and who were the subject of a "No Hire" recommendation made on the basis of information disclosed in a consumer report prepared by Sterling Infosystems, Inc. between November 1, 2011 to Present.
>
> **Defective Disclosure Class (Violation of 15 U.S.C. §1681b(b)(2))**
>
> All individuals residing in the United States who were the subject of a consumer report obtained by Disneyland Resort for employment purposes between November 1, 2011 to Present and who executed a consent form identical to Exhibit 1 and 2 of the Declaration of Devin H. Fok.

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[2] See Motion, §II.

B. SIZE OF CLASS

"The class must be 'numerous' in size. But there is no fixed minimum or maximum number . . . The numerosity analysis is limited to how many individuals fall within the class *definition* and whether their joinder is impracticable, not how many 'net' class members there might be after considering affirmative defenses." See Weil & Brown, Cal. Practice Guide: Civ. Pro. Before Trial (The Rutter Group 2017) ¶ 14:21 (italics in original) (citing to Hendershot v. Ready to Roll Transp., Inc. (2014) 228 Cal.App.4th 1213, 1223); see also Rose v. City of Hayward (1981) 126 Cal.App.3d 926, 934 (stating that "[n]o set number is required as a matter of law for the maintenance of a class action" and citing examples wherein classes of as little as 10 [Bowles v. Superior Court (1955) 44 Cal.2d 574], 28 [Hebbard v. Colgrove (1972) 28 Cal.App.3d 1017], and 35 [Collins v. Rocha (1972) 7 Cal.3d 232] were upheld).

"A party seeking class certification bears the burden of satisfying the requirements of Code of Civil Procedure section 382, including numerosity, and the trial court is entitled to consider 'the totality of the evidence in making [the] determination' of whether a 'plaintiff has presented substantial evidence of the class action requisites.'" See Soderstedt v. CBIZ S. California, LLC (2011) 197 Cal.App.4th 133, 154.

To show numerosity, Plaintiffs point to Defendant's responses to special interrogatories stating that Defendant's Security Special Services ("SSS") Department made **715** "No Hire" recommendations (Pre-Adverse Action Notice Class) and procured **42,992** consumer reports (Defective Disclosure Class). See Motion, §V.B (citing to Fok Declaration, Exhibit 11, Nos. 16 and 17).

Defendant does not challenge numerosity.

C. MEANS FOR IDENTIFICATION OF CLASS MEMBERS

"Where . . . the class . . . describes a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description, and plaintiff has proposed an objective method for identifying class members when that identification becomes necessary, there exists an ascertainable class." See Aguirre v. Amscan Holdings, Inc. (2015) 234 Cal.App.4th 1290, 1306.

As to the Pre-Adverse Action Notice Class, Plaintiff states that class members can be ascertained based on any of Defendant's three systems for tracking the reason for an applicant's disqualification: (1) Defendant's applicant

tracking system; (2) Defendant's internal email; and (3) the Crush database maintained by Defendant's SSS Department. See Motion, 17:8-17.

As to the Defective Disclosure Class, Plaintiff states that class members can be ascertained from Defendant's applicant tracking system or payroll records of applicants whose employment offers had been revoked. Id., 17:18-23. Indeed, as set forth above in connection with numerosity, Defendant has identified potential class members.

Defendant does not challenge ascertainability.

(2) COMMUNITY OF INTEREST

"The community of interest requirement has three essential elements: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." See Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.

A. PREDOMINANT COMMON QUESTIONS

"To assess predominance, a court 'must examine the issues framed by the pleadings and the law applicable to the causes of action alleged.' It must determine whether the elements necessary to establish liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence." See Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1024.

"Plaintiffs seeking class certification may demonstrate common questions suitable for class treatment by showing defendant has a uniform policy or practice affecting the putative class members that results in violation of the law. Plaintiffs may not simply allege such a policy or practice, however. They must present substantial evidence that proving both the existence of the defendant's uniform policy or practice and the alleged illegal effects of that policy or practice could be accomplished efficiently and manageably within a class setting." See Cruz v. Sun World International, LLC (2015) 243 Cal.App.4th 367, 384, review denied (Mar. 30, 2016).

1. Pre-Adverse Action Notice Class

With respect to this class, Plaintiffs allege violations of the FCRA's pre-adverse action procedure set forth in 15 U.S.C. §1681b(b)(3). That statute provides in part:

> Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates—
>
> **(i)** a copy of the report; and
> **(ii)** a description in writing of the rights of the consumer under this subchapter, as prescribed by the Bureau under section 1681g(c)(3) of this title.

The term "adverse action," in turn, is defined to include "a denial of employment *or any other decision for employment purposes that adversely affects any current or prospective employee*." See 15 U.S.C.A. §1681a(k)(1)(B)(ii).

Plaintiffs present evidence that Defendant had a uniform practice of sending a "Pre-Adverse Action Notice" (including a copy of the Sterling consumer report and a copy of consumer rights under the FCRA) *after* rendering a "No Hire" adjudication. Defendant's PMK, Deanna De La Bretonne ("De La Bretonne"), testified that following a "No Hire" adjudication, it was the "normal protocol" to notify Casting/HR of the recommendation and "to check the box in [Sterling Direct[3]] to request the preadverse action letter and summary of rights be sent to the candidate." See De La Bretonne Depo. (attached to Fok Declaration as Exhibit 4), 93:18-24, 95:1-5; see also Depo. Exhibit 10 ("DLR/Aulani Background Review Process" flowchart showing that after a "No Hire" determination, "SSS checks the reviewed box in [Sterling Direct]. Updates Crush & HB with denial recommendation and initiates adverse action letter process via [Sterling Direct]. Casting/HR is advised of recommendation," and afterwards, "Candidate receives adverse action letter via mail from Sterling").

According to Plaintiffs, the common questions with respect to the Pre-Adverse Action Notice Class are: (1) whether Defendant's sending of a "Pre-Adverse Action Notice" including a copy of the report *after* rendering a "no hire" adjudication violated §1681b(b)(3); and (2) if so, whether such violation was willful. See Motion, 18:21-24. Citing primarily to Manuel v. Wells Fargo Bank, Nat. Ass'n (E.D. Va. Aug. 19, 2015, No. 3:14CV238) 2015 WL 4994549, Plaintiffs argue that "Courts have found commonality in identical factual scenarios." See Motion, 18:25-19:22.

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[3] This is the name of Sterling's web portal.

Similar to here, in Manuel, the defendant sent out a letter called "Pre-Adverse Action" notice only after it determined that an applicant was "rejected for employment" (i.e., coded in the database as "ineligible for hire"). See Manuel, *supra*, 2015 WL 4994549 at *2 to *3. The plaintiffs identified two common issues—i.e., "(a) whether [the defendant's] form and procedure violated ... § 1681b(b)(3) because Defendant does not send the required report and disclosures until after it has made and communicated its hiring decision; and (b) whether these violations are willful." Id. at *10. The district court found that commonality was satisfied, explaining: "[The defendant] engaged in a standardized practice whereby it coded an employee 'ineligible for hire' and then had its background check service issue a letter that was meant to comply with § 1681b(b)(3)(A). All class members will have been subjected to this practice. Thus, whether § 1681b(b)(3)(A) was violated as to each class member will be answered through one analysis of the practice as issue." Id. at *12. The district court also found that common issues predominated, rejecting the defendant's arguments that individualized inquiries were necessary regarding "the timing, existence, and rationale for any 'adverse employment action,'" "the totality of the circumstances involved in each consumer's interaction with [the defendant] in connection to [the] willfulness inquiry," and statutory damages. Id. at *16.

In opposition, Defendant contends that "[a]t least five individualized issues bar certification" of the Pre-Adverse Action Notice Class. See Opposition, §III.C. According to Defendant, individualized proof is necessary to determine: (1) whether a class member was told that his/her employment application had been finally rejected prior to his/her receipt of the "Pre-Adverse Action Notice;" (2) whether a class member understood the "Pre-Adverse Action Notice" to be a final rejection; (3) whether a class member appealed, and if so, how Sterling responded; (4) whether a class member's consumer report was inaccurate; and (5) whether the inaccuracy in the class member's consumer report caused him/her not to be hired. Id., §§III.C.1 and III.C.4.

The individualized issues identified by Defendant do not defeat certification for the following reasons:[4]

First, Defendant mischaracterizes Plaintiffs' "Pre-Adverse Action Notice" claim as being based on telephone conversations with a Disneyland representative telling each of them that their employment applications

[4] See Reply, §§III.B(a) to III.B(c).

were finally rejected. See Opposition, 19:13-14. However, as Plaintiffs point out (and as the definition of the "Pre-Adverse Action Notice" Class confirms), the claim is based on common facts. Specifically, all members of this class "were the subject of a consumer report obtained by Disneyland Resort for employment purposes" and "were the subject of a 'No Hire' recommendation made on the basis of information disclosed in a consumer report prepared by Sterling Infosystems, Inc. between November 1, 2011 to Present." See Definition of "Pre-Adverse Action Notice" Class; see also Manuel, 2015 WL 4994549 at *17 (stating that "[n]o individualized inquiry is necessary to determine whether a class member suffered an adverse action" because class members, by definition, were "rejected for employment," and "[t]hus, all class members share the same adverse action").

Second, whether an applicant understood the "Pre-Adverse Action Notice" to be a final rejection is not necessary to state a §1681b(b)(3) violation. Indeed, as Plaintiffs persuasively argue, the "Pre-Adverse Action Notice" is not required under the statute; rather, the statute requires only a copy of the consumer report and a summary of consumer rights. Thus, the trier of fact need not inquire into an applicant's subjective understanding of the effect of the "Pre-Adverse Action Notice."

Third, whether an applicant appealed the "No Hire" adjudication, and if so, the outcome of such appeal are irrelevant to Plaintiffs' position that the "No Hire" adjudication is the adverse action. See Motion, 1:15-17 ("This 'no hire' adjudication communicates to Disney employees that the applicant 'will not be showing up for orientation' and is therefore a decision that 'adversely affects' the applicant."); see also Reply, 8:18-24 (arguing that "the 'no hire' adjudication was a final decision and an adverse action within the meaning of the FCRA because Defendant was comfortable adhering to it without further review unless an applicant appeals."). Whether the "No Hire" adjudication is indeed an "adverse action" within the meaning of the FCRA is a common question capable of classwide resolution.

Finally, whether proof of an inaccurate consumer report as in the cases cited by Defendant[5] is a prerequisite to FCRA recovery in state court is also a common question capable of classwide resolution.

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[5] See Opposition, §III.C.4 (citing to Dutta v. State Farm Mutual Automobile Insurance Company (N.D. Cal. Nov. 3, 2016, No. 3:14-CV-04292-CRB) 2016 WL 6524390 and Tyus v. United States Postal Service (E.D. Wis. Jan. 4, 2017, No. 15-CV-1467) 2017 WL 52609).

2. Defective Disclosure Class

With respect to this class, Plaintiffs allege violations of the FCRA's "standalone disclosure requirement" set forth in 15 U.S.C. §1681b(b)(2). That statute provides in part:

> Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—
>
> **(i)** a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists *solely of the disclosure, that a consumer report may be obtained for employment purposes* . . . .

According to Plaintiffs, Defendant's "Consent to Request Consumer Report & Investigative Consumer Report Information" forms[6] contained extraneous information such as the following implied liability waiver:

> In order to verify my identity for the purposes of Report preparation, I am voluntarily releasing my date of birth, social security number, and the other information and *fully understand that all employment decisions are based on legitimate non-discriminatory reasons.*

Whether the subject "Consent to Request Consumer Report & Investigative Consumer Report Information" forms are compliant with the FCRA's "standalone disclosure requirement" is a common question capable of classwide resolution. See Criddell v. Premier Healthcare Servs., LLC (C.D. Cal. Feb. 9, 2017, No. CV 16-5842-R) 2017 WL 2079653, at *2 ("[A] determination of the compliance of such a form with the FCRA would generate a common answer likely to drive the resolution of this litigation.").

Further, Defendant's arguments do not defeat certification.

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[6] See Fok Declaration, Exhibits 1 (form signed by Plaintiff Culberson in 2011) and 2 (form signed by Plaintiff Joseph in 2013). Defendant's PMK, De La Bretonne, testified that for the relevant class period, Disneyland used the same "Consent to Request Consumer Report & Investigative Consumer Report Information" form from at least 2011. See De La Bretonne Depo. (attached to Fok Declaration as Exhibit 4), 109:23-111:4. The form signed by Plaintiff Joseph contains an additional disclosure, which, according to Plaintiffs (and is unrefuted by Defendant) was added in response to certain legislation effective 1/1/12. See Motion, 13:10-14:1.

First, Defendant points to another form[7] (attached to and referred to in the Opposition as "Exhibit 2") that it claims to have used to supplement the disclosures provided to applicants. See Opposition, §II.B.3. Defendant contends that Exhibit 2 is "clearly compliant," "bulletproof," and unlike the disclosure in Syed v. M-I, LLC (9th Cir. 2017) 853 F.3d 492,[8] does not contain a liability waiver. See Opposition, §III.B.1. These are all merits arguments.[9] " 'The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." ' A class certification motion is not a license for a free-floating inquiry into the validity of the complaint's allegations; rather, resolution of disputes over the merits of a case generally must be postponed until after class certification has been, with the court assuming for purposes of the certification motion that any claims have merit. See Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1023.

Second, whether a violation of §1681b(b)(2) requires class members to show that they did not understand the disclosures, or that they would not have consented to the background check had the disclosures been compliant as in the post-Spokeo[10] cases cited by Defendant[11] are common questions capable of classwide resolution.

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[7] This form is entitled "Re: Notice—Consumer Report, Consumer Credit Report and Investigative and Consumer Report."

[8] The parties' papers (motion, opposition, and reply) cite to 846 F.3d 1034. That opinion has since been amended and superseded on denial of rehearing by this subsequent Syed opinion.

Defendant did later bring the second Syed opinion to the Court's attention via its "Notice of Supplemental Authorities" filed on 7/5/17.

[9] In addition, on 6/30/17, Defendant filed a "Notice of New Authority Supporting its Opposition to Plaintiffs' Motion for Class Certification," quoting from Dyson v. Sky Chefs, Inc. (N.D. Tex. June 16, 2017, 3:16-CV-3155-B) 2017 WL 2618946 and Microsoft Corp. v. Baker (2017) 137 S.Ct. 1702. Neither case assists Defendant. First, Defendant appears to be relying on Dyson for the proposition that it did not violate the FCRA's "standalone disclosure requirement" because Plaintiffs have alleged mere procedural violations of that requirement. Again, this is a merits argument. Second, Defendant quotes dicta in Microsoft Corp. v. Baker (2017) 137 S. Ct. 1702 stating that class certification may have the effect of causing a defendant to settle simply to avoid the risk of a large liability. The holding in Microsoft has nothing to do with this case; it pertained to whether a voluntary dismissal of individual claims qualifies as a "final decision" for purposes of appellate jurisdiction under 15 U.S.C. §1291.

[10] This refers to Spokeo, Inc. v. Robins (2016) 136 S.Ct. 1540. The issue in Spokeo was "whether [the respondent] has standing to maintain an action in federal court against [the petitioner] under the Fair Credit Reporting Act of 1970 (FCRA or Act), 84 Stat. 1127, as amended, 15 U.S.C. § 1681 *et seq.*" See Spokeo, *supra*, 136 S.Ct. at 1544. According to the U.S. Supreme Court, to demonstrate "injury in fact," which is the "[f]irst and foremost" of standing's three elements," "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" Id. at 1547-1548. The high court then proceeded to distinguish between particularization and concreteness, explaining that "[f]or an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way,'" and that "[a] 'concrete' injury must be '*de facto*'; that is, it must actually exist." Id. at 1548. And "[b]ecause the Ninth Circuit

B. TYPICALITY

The purpose of the typicality requirement "is to assure that the interest of the named representative aligns with the interests of the class. ' "Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." ' The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" See Seastrom v. Neways, Inc. (2007) 149 Cal.App.4th 1496, 1502.

The typicality test has been met. Plaintiffs, like the class members they seek to represent, were subjected to the same hiring and background screening processes. See Motion, §V.D.

While couched as an adequacy challenge, Defendant appears to be challenging Plaintiff Joseph's typicality.[12] See Opposition, §IV. According to Defendant, there are issues unique to Plaintiff Joseph that could detract attention from class claims. Specifically, Defendant intends to bring up the fact that Plaintiff Joseph failed to timely appeal after receiving the "Pre-Adverse Action Notice" and to follow up on his alleged[13] appeal. Id.; see also §II.F.2.

In Fireside Bank v. Superior Court (2007) 40 Cal.4th 1069, the California Supreme Court stated: "[A] defendant's raising of unique defenses against a proposed class representative does not automatically render the proposed representative atypical . . . The risk posed by such defenses is the possibility they may distract the class representative from common issues; hence, the relevant inquiry is whether, and to what extent, the proffered defenses are '*likely to become a major focus of the litigation*.'" See Fireside Bank, *supra*, 40 Cal.4th at 1091 (italics supplied).

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failed to fully appreciate the distinction between concreteness and particularization, its standing analysis was incomplete," and thus, the high court reversed and remanded. Id. at 1550.

[11] See Opposition, §§III.B.2 and III.B.3 (citing to Nokchan v. Lyft, Inc. (N.D. Cal. Oct. 5, 2016, No. 15-CV-03008-JCS) 2016 WL 5815287, Shoots v. iQor Holdings US Inc. (D. Minn. Oct. 18, 2016, No. 15-CV-563 (SRN/SER)) 2016 WL 6090723, Gunther v. DSW Inc. (E.D. Wis. Nov. 3, 2016, No. 15-C-1461) 2016 WL 6537975, and Case v. Hertz Corp. (N.D. Cal. Nov. 21, 2016, No. 15-CV-02707-BLF) 2016 WL 6835086).

[12] The Court recognizes that adequacy and typicality are related concepts. As the case cited by Defendant states, "a class representative's lack of typicality raises concerns about his adequacy, since he may have different incentives and interests from other class members." See Cox v. TeleTech@Home, Inc. (N.D. Ohio Feb. 5, 2015, No. 1:14-CV-00993) 2015 WL 500593, at *7.

[13] It is Defendant's position that Plaintiff Joseph never sent an appeal at all. See Opposition, 26:6-11.

No such concern exists here. As explained above re: "Predominant Common Questions," Plaintiffs' position is that the "No Hire" adjudication is the adverse action. Thus, what Plaintiff Joseph did or did not do after receiving the "Pre-Adverse Action Notice" is irrelevant to the §1681b(b)(3) claim.

C. ADEQUACY

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." See McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450.

"The party seeking class certification has the burden of proving the adequacy of its representation." See Soderstedt, *supra*, 197 Cal.App.4th at 155.

Here, Defendant challenges Plaintiff Joseph's adequacy only.

The adequacy requirement has been met. As discussed above re: "Typicality," Defendant's challenge to Plaintiff Joseph's adequacy is based on the unique defenses as to him. However, as also discussed above, there is no concern that those defenses are "likely to become a major focus of the litigation" and to create a conflict between Plaintiff Joseph and the class. In addition, Plaintiffs' counsel is qualified to represent the class,[14] and there is no indication that Plaintiffs' interests are antagonistic to those of the class.

D. SUPERIORITY/MANAGEABILITY

According to the California Supreme Court: "In certifying a class action, the court must also conclude that litigation of individual issues, including those arising from affirmative defenses, can be managed fairly and efficiently." See Duran v. U.S. Bank Nat. Assn. (2014) 59 Cal. 4th 1, 28-29. "Trial courts must pay careful attention to manageability when deciding whether to certify a class action. In considering whether a class action is a superior device for resolving a controversy, the manageability of individual issues is just as important as the existence of common questions uniting the proposed class." Id. at 29.

Plaintiffs did not submit a written trial plan. However, at oral argument, Plaintiffs' counsel described how they intended to try the case using common evidence. To the extent that experts are required, these would be limited to damages. The Court finds that trial will be manageable.

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[14] See Fok Declaration, ¶¶2-16.

In sum, as all of the requirements have been satisfied, the motion for class certification is GRANTED.