UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH LAUBER, et al.,

Plaintiffs,

vs.

BELFORD HIGH SCHOOL, et al.,

Defendants.
_____/

Civil Action No.
09-CV-14345

HON. MARK A. GOLDSMITH

OPINION AND ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND FOR APPOINTMENT OF CLASS COUNSEL AND BIFURCATING THE ISSUES OF LIABILITY AND DAMAGES

I. INTRODUCTION AND BACKGROUND

This is a proposed class action involving claims for breach of contract, unjust enrichment, and Racketeer Influenced and Corrupt Organizations Act ("RICO"), among others. The named Plaintiffs are Elizabeth Lauber and Jaime Yanez (collectively, "Plaintiffs"). Plaintiffs sue Belford High School, Belford University, and their "managing coordinator," Salem Kureshi, among numerous others (collectively, "Belford"), alleging that Belford sells diplomas and university degrees through Internet websites on which Belford falsely represents that it is an accredited and legitimate high school and university, whose diplomas and degrees will be widely accepted by employers, professional associations, and universities. Plaintiffs are adults who obtained allegedly illegitimate high school diplomas or degrees through Belford's websites.

Of the numerous claims asserted by Plaintiffs in their third amended complaint, they seek class treatment with regard to only their breach of contract, unjust enrichment, and RICO claims. Plaintiffs wish to certify a class of plaintiffs defined as follows: "All persons who reside in the

United States and who have obtained a Belford High School diploma at any time from January 1, 2003 to the present." Belford vigorously resists class certification, principally arguing that class treatment is improper because some of the purported class members are themselves complicit in Belford's wrongdoing through their attempts to "pass off" their diplomas. The matter is fully briefed. The Court originally set the matter for oral argument; however, after reviewing the motion papers, the Court finds that oral argument would not aid the decisional process. See E.D. Mich. LR 7.1(f). For the reasons that follow, the Court will grant Plaintiffs' motion for class certification.

II. LEGAL STANDARD GOVERNING CLASS CERTIFICATION

Class actions are "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Califano v. Yamasaki, 442 U.S. 682, 700-701 (1979). The party seeking to certify a class bears the burden of showing that the requirements of Federal Rule of Civil Procedure 23 are satisfied. Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011); Golden v. City of Columbus, 404 F.3d 950, 965 (6th Cir. 2005). Although district courts must conduct a "rigorous analysis" to ensure that Rule 23's requirements are met, Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 161 (1982), they "maintain[] substantial discretion in determining whether to certify a class." Reeb v. Ohio Dep't of Rehab. & Corr., 435 F.3d 639, 643-644 (6th Cir. 2006). In determining the propriety of a class action, the inquiry is not whether the plaintiff will ultimately succeed on the merits; rather, scrutiny centers on whether the requirements of Rule 23 are satisfied. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974).

III. ANALYSIS

Rule 23(a) contains four certification prerequisites, commonly known by the monikers "numerosity," "commonality," "typicality," and "adequacy." In addition to satisfying these four

initial requirements, the proposed class must fall within one of three class types listed in Rule 23(b). Failure to satisfy either Rule 23(a) or (b) dooms the class. Pilgrim v. Universal Health Card, LLC, 660 F.3d 943, 946 (6th Cir. 2011).

A. Rule 23(a)

1. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Although "[t]here is no strict numerical test for determining impracticability of joinder," In re Am. Med. Sys., Inc., 75 F.3d 1069, 1079 (6th Cir. 1996), "[t]he numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations." Gen. Tel. Co. v. Equal Emp't Opportunity Comm'n, 446 U.S. 318, 330 (1980). "When class size reaches substantial proportions, . . . the impracticability requirement is usually satisfied by the numbers alone." In re Am. Med. Sys., Inc., 75 F.3d at 1079. Here, Belford does not contest Plaintiffs' ability to satisfy the numerosity requirement and, upon review, the Court agrees with Plaintiffs that the requirement is easily satisfied; the number of potential class members is in the thousands. See 1 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 3:5 (4th ed. 2002) ("Certainly, when the class is very large, for example, numbering in the hundreds, joinder will be impracticable.").

2. Commonality

Rule 23(a)(2) requires there to be "questions of law or fact common to the class." The United States Supreme Court has recently cautioned that this language is "easy to misread," because "[a]ny competently crafted class complaint literally raises common 'questions.'" Dukes, 131 S. Ct. at 2551 (quoting Richard A. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U. L. Rev. 97, 131-132 (2009)). Thus, the commonality inquiry is not whether

class members share certain characteristics in common; rather, "[class] claims must depend upon a common contention . . . . of such a nature that [they are] capable of classwide resolution – which means that determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, 131 S. Ct. at 2551. In short:

> "What matters to class certification . . . is not the raising of common 'questions' – even in droves – but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers."

Id. (emphasis in original) (quoting Nagareda at 132).

The Court finds the commonality requirement easily satisfied here. Again, Plaintiffs seek class certification with respect to their breach of contract, unjust enrichment, and RICO claims.[1] As previously detailed in an earlier opinion of this Court, see McCluskey v. Belford High School, 795 F. Supp. 2d 608, 612-615 (E.D. Mich. 2010), Belford is alleged to have mailed its diplomas to paying customers after representing that they are legitimate and routinely accepted by colleges and employers across the country. That conduct is materially uniform among the purported victims.

[1] "To state a breach of contract claim under Michigan law, a plaintiff must first establish the elements of a valid contract. The elements of a valid contract in Michigan are 1) parties competent to contract, 2) a proper subject matter, 3) a legal consideration, 4) mutuality of agreement, and 5) mutuality of obligation. Once a valid contract has been established, a plaintiff seeking to recover on a breach of contract theory must then prove by a preponderance of the evidence the terms of the contract, that the defendant breached the terms of the contract, and that the breach[] caused the plaintiff's injury." Eastland Partners Ltd. Partners v. Village Green Mgmt. Co., 342 F.3d 620, 628 (6th Cir. 2003) (internal quotations and citations omitted).

The elements of unjust enrichment under Michigan law are: (1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant. Belle Isle Grill Corp. v. City of Detroit, 666 N.W.2d 271, 280 (Mich. Ct. App. 2003).

The elements of a civil RICO claim are: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496 (1985).

In addition, the legitimacy of Belford itself, its accrediting agencies, and, ultimately, the diplomas it sells, are all common questions that impact resolution of the class claims. The claims for breach of contract, unjust enrichment, and violation of RICO all are premised on the allegedly sham accreditation and illegitimacy of Belford. Because Belford's standardized conduct is an issue common to all members of the purported class, and because Plaintiffs argue that Belford's standardized conduct gives rise to liability for breach of contract or unjust enrichment, and civil RICO, the Court finds the commonality requirement satisfied. See Gilkey v. Central Clearing Co., 202 F.R.D. 515, 521 (E.D. Mich. 2001) ("When the legality of the defendant's standardized conduct is at issue, the commonality factor is normally met."); Keele v. Wexler, 149 F.3d 589, 594 (7th Cir. 1998) ("Common nuclei of fact are typically manifest where . . . the defendants have engaged in standardized conduct towards members of the proposed class by mailing to them allegedly illegal form letters or documents."). As stated in a respected treatise on class actions:

> When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.

1 Newberg on Class Actions § 3:10. Indeed, Newberg recognizes that, "[i]n RICO cases, commonality is frequently satisfied." Id.

Belford insists that the commonality requirement is unsatisfied. Belford asserts that the "state of mind" of each individual plaintiff is at issue, requiring an individualized inquiry into each plaintiff's respective beliefs regarding his or her Belford diploma:

> Plaintiffs' argument that the commonality prong is satisfied centers around their assertion that Belford is a sham. As in Wal-Mart Stores, Inc., the mere existence of one or more common "issues" does not—without more—permit class certification. The existence of these issues does not "advance the litigation" in the absence of determinations, including whether each putative class member believed that Belford was a sham, whether each understood the nature of Belford diplomas, or whether each was complicit in the alleged scam.

> For example, the resolution of Plaintiffs' unjust enrichment claims will necessarily require testimony from each putative class member to determine whether it would be "inequitable to allow [Belford] to retain these benefits granted to them by Plaintiffs."

Belford Br. at 8 (citations omitted). Belford believes that the state of mind of each class member is relevant to the issue of whether Belford will be able to assert two defenses, unclean hands and voluntary payment.[2]

Belford's argument is unpersuasive because even assuming, as Belford argues, that subjective state of mind is relevant to the ultimate ability of a purported class member to recover damages under one or more of the three purported class claims, neither Rule 23(a)(2), nor the Supreme Court's most recent interpretation thereof in Dukes, requires that all aspects of the proposed class claim be identical. Rather, the law requires that the purported class share a common issue that is "central to the validity" of the claim, the resolution of which will drive the resolution of the litigation. Dukes, 131 S. Ct. at 2551. Here, a vitally important common issue is the conduct of Belford in allegedly acting in the same manner toward each member of the purported class, along with issues surrounding the validity of Belford and its diplomas. See 1 Newberg on Class Actions § 3:10 ("An alleged scheme to defraud which affects a class of people is a common question of law and/or fact, regardless of the characteristics of the scheme's intended victims."). The Court finds that Belford's alleged generalized conduct is alone enough to satisfy

[2] The Michigan Supreme Court has described the unclean hands doctrine as: "[A] self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." Stachnik v. Winkel, 230 N.W.2d 529, 532 (Mich. 1975).

Under the voluntary payment doctrine, "where money has been voluntarily paid with full knowledge of the facts, it cannot be recovered on the ground that the payment was made under a misapprehension of the legal rights and obligations of the person paying." Montgomery Ward & Co. v. Williams, 47 N.W.2d 607, 611-612 (Mich. 1951) (quoting authority).

the commonality requirement.

3. Typicality

Rule 23(a)(3) provides that a class action may be maintained only if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." "Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature of the challenged conduct." 1 Newberg on Class Actions § 3:13. A plaintiff's claim is deemed typical "if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." Id. See also 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1764 (3d ed. 2005) ("[M]any courts have found typicality if the claims . . . of the representatives and the members of the class stem from a single event or a unitary course of conduct."). Thus,

> [w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patters which underlie individual claims.

1 Newberg on Class Actions § 3:13.

Belford argues that the typicality requirement is not satisfied in this case. Belford advances two arguments in support of its position. First, Belford contends, as it did with regard to commonality, that class action treatment is inappropriate because, while some class members may genuinely have been duped or misled, others understood the exact nature of the "life experience" diploma they were receiving, but nonetheless attempted to "pass it off." See Resp. at 13 ("While some class members will deny that they ever knew any of the materials they received from Belford were allegedly 'fake,' certainly many knew what they were getting before they agreed to purchase

the diploma."). Belford states that it possesses defenses against some class members – those who were "complicit" in any fraud perpetrated by Belford – but not against any unsuspecting victims. Belford contends that it would have to examine each class member individually to determine the applicability of these defenses, precluding a typicality finding.

The Court rejects this argument for two reasons, each of which the Court finds independently sufficient. First, the argument ignores the following law:

> [D]efenses asserted against a class representative should not make his or her claims atypical.
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> * * * *
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> The existence of defenses unique to the named plaintiff does not automatically preclude a finding of typicality, . . . because Rule 23(a)(3) mandates the typicality of the named plaintiffs' claims – not defenses. It is only when a unique defense will consume the merits of a case that a class should not be certified.
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> * * * *
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> Defenses may affect the individual's ultimate right to recover, but they do not affect the presentation of the case on the liability issues for the plaintiff class. This view is supported by the principle that the class representative need not show a probability of individual success on the merits, and by the use of the disjunctive in Rule 23, which refers to "claims or defenses." A reasonable reading of this language would be, "claims of a plaintiff in relation to the plaintiff's class, or defenses of a defendant in relation to the defendant's class."

1 Newberg on Class Actions § 3:16 (footnotes omitted). Here, a major focus of this litigation has been – and will undoubtedly continue to be – the legitimacy or illegitimacy of the Belford entity, its accrediting agencies and faculty and, ultimately, the diplomas and degrees received by Belford customers. These issues all involve uniform considerations that are relevant to the claims of each and every individual who has bought a diploma or degree from Belford. Even assuming Belford's ability to assert defenses against some but not all of the class members, there is no reason to believe that the assertion of such defenses "will consume the merits" in light of the abundance of

common issues surrounding the liability question – issues that must be fully resolved before assessing the ultimate right of the class members to recover.[3]

Second, Belford's argument that there are material differences among the class members (i.e., that some customers were innocent victims while others were complicit in the supposed fraud) is unsupported by the record; thus, Belford's assertion that it has defenses against some but not all of the class members is speculative. Belford argues that Jamie Yanez is an example of a Belford customer who was complicit in any fraud, since he "attempted to pass . . . off [his diploma] when applying for acceptance at another school," Resp. at 12, despite the fact that he knew that he had never taken any of the classes listed on the academic transcript accompanying his Belford diploma. See Yanez Dep. at 58-59.[4] However, there is nothing to suggest that Yanez acted

[3] In any event, as discussed in more detail below, the Court will bifurcate the issues of liability and damages, and reserve the right to revisit the question of whether class treatment is feasible with regard to the damages phase of these proceedings.

[4] Yanez testified, in part, as follows:

> Q: Second semester it [Yanez's transcript] says Calculus I. Did you ever take Calculus I?
>
> A. No.
>
> Q: You ever received an A in Calculus I?
>
> A: No.
>
> Q: You knew – did you believe that that was a false statement when you received it?
>
> A: Yes.
>
> Q: Were you concerned that you received this?
>
> A: Yeah.

differently than any other Belford customer. Thus, Belford's argument that differences among purported class members preclude a typicality finding is unpersuasive, because there is no indication that any differences even exist.

The one case on which Belford relies in support of its argument on typicality – Boca Raton Community Hospital, Inc. v. Tenet Healthcare Corporation, 238 F.R.D. 679 (S.D. Fla. 2006) – is inapposite. The Boca Raton court was asked to certify a plaintiff class of over 3,000 acute care hospitals that allegedly suffered diminished Medicare reimbursements due to an alleged scheme by the defendant, a health care provider network, to increase its own reimbursements through a questionable charging practice called "turbocharging." Id. at 681. The court found the typicality requirement unsatisfied because some of the hospitals in the putative class, including the class

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Q: Did you contact Belford about this?

A: No.

Q: But you took the diploma and you still used it to apply with the Culinary Institute?

A: Correct.

Q: At the point in time that you saw this, you suspected that the documents as you say were false?

A: I didn't suspect anything. I didn't think about it.

Q: You were concerned about it?

A: Yes.

Q: Why were you concerned?

A: I just figured it was – I didn't take those classes. I didn't think too much thought [sic] about it.

Yanez Dep. at 58-59.

representative, actually engaged in the same questionable charging practice as did the defendant, thus "undermin[ing] class cohesiveness," "expos[ing] serious class conflicts," and opening the door to the likely assertion of an unclean hands defense that would "distract[] focus from the common issues." Id. at 681, 692, 694. Under these circumstances, the court found typicality lacking.

The present case bears little resemblance to Boca Raton because, as explained above, there is no indication in the present case of varying actions or conduct among putative class members and/or class representatives. This is in sharp contrast to Boca Raton, where it was established that some – but not all – class members engaged in the very conduct of which the defendant was accused. Thus, the concerns that defeated typicality in Boca Raton are not present here.

Finally, Belford argues that a typicality finding is improper because a class representative, Jamie Yanez, and a putative class member, Annette Anderson, have differing expectations for damages. Yanez testified that he is not "looking to recover any money from Belford," Yanez Dep. at 77 (Dkt. 162-11), while Anderson testified that Belford "owe[s]" her "an apology and [her] money back." Anderson Dep. at 39 (Dkt. 162-12). This argument is unpersuasive for two reasons. First, Anderson was not asked what legal damages she would seek; she was asked, more informally: "What do they [Belford] owe you?" The cited testimony does not suggest that Yanez and Anderson disagree on the amount of legal damages to which they are entitled. Second, and in any event, differences in the amount of damages sought do not generally render claims atypical. See 1 Newberg on Class Actions § 3:16 ("While some courts have suggested that differences in the amount of damages claimed will make a plaintiff's claim atypical, most courts have declined even to consider that argument, and nearly all of those that have ruled on it have rejected it outright."); 7A Federal Practice & Procedure § 1764 ("[T]he [typicality] requirement may be satisfied even

though . . . there is a disparity in the damages claimed by the representative parties and the other class members.").

4. Adequacy

Rule 23(a)(4) provides that a class action can be maintained only if "the representative parties will fairly and adequately protect the interests of the class." The two criteria for determining adequacy are as follows:

> First, the representatives must not possess interests which are antagonistic to the interests of the class. Second, the representatives' counsel must be qualified, experienced, and generally able to conduct the litigation.

1 Newberg on Class Actions § 3:21. See also Senter v. General Motors Corp., 532 F.2d 511, 524-525 (6th Cir. 1976) ("There are two criteria for determining whether the representation of the class will be adequate: 1) The representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.").

Here, Belford does not dispute that Plaintiffs' counsel are qualified to represent the class. Upon careful review and consideration of the factors outlined in Federal Rule of Civil Procedure 23(g), the Court finds the Googasian Firm, P.C., and its counsel, namely, Dean M. Googasian and Thomas H. Howlett, to be well qualified to handle this matter. The Court's conclusion is based on the declarations of Googasian and Howlett, attached as exhibits 14 and 15, respectively, to the present motion. The matters stated therein are uncontested, and the Court has no reason to doubt their accuracy.

Belford does, however, argue that the class representatives and class members have antagonistic interests. The argument, as framed by Belford, is as follows:

> Plaintiffs essentially seek a Judgment that Belford is a sham and its diplomas are

> fake. This type of ruling will unavoidably irreparably harm the unnamed members of the class who continue to rely on their Belford diplomas in pursuing academic and career opportunities in this highly competitive economic environment. To be sure, certification is particularly antagonistic to the interests of several of the very individuals who have been specifically identified by Plaintiffs in this case – many of whom continue to proudly display their Belford credentials on their personal Internet web pages. Worse, there is a very real and substantial risk that some individuals may even be fired if widespread class notices are circulated to thousands of individuals, thus revealing to their current employers that these employees knowingly submitted qualifications that, as Plaintiffs allege, are false.

Resp. at 18 (citation omitted). In support of its argument that many people openly boast their Belford credentials, Belford attaches the Facebook profiles of hundreds of individuals, all of whom list Belford in their profiles as their alma mater.

Plaintiffs respond to Belford's antagonistic interests argument by suggesting that "[t]here is no conflict in the truth coming out" and, in any event, any conflict can be resolved through opt-out procedures. Plaintiffs write: "This Nation's justice system will not allow a party to sell thousands of fake diplomas and then defeat class certification by arguing that those to whom it sold fake diplomas would somehow be harmed by litigation arising from the scam." Reply at 5.

The Court agrees with Plaintiffs. As an initial matter, Belford's conclusion that unsuspecting individuals currently relying on and/or boasting their Belford credentials would not want the truth to emerge, or would not support the present litigation, is speculative. While Belford has sufficiently demonstrated that many individuals boast their Belford credentials, it has failed to offer any evidence suggesting that those individuals would oppose this action. The Court will not deny class certification on the chance that some class members will choose to remain victims of fraud. See 1 Newberg on Class Actions § 3:30 ("Courts are careful not to deny class certification when support or nonsupport for the suit is not clear.").

In addition, the Court adopts the view that "opposition to the suit . . . is not relevant to the

class determination." Id. Thus, "the class member who wishes to remain a victim or unlawful conduct does not have a legally cognizable conflict with the class representative." Id. See also Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968) (discussed by Newberg at 1 Newberg on Class Actions § 3:30); Jacobi v. Bache & Co., Inc., No. 70-3152, 1972 WL 560 (S.D.N.Y. Feb. 8, 1972) (same).

Nevertheless, the Court recognizes the potential that some putative class members could oppose this lawsuit for the reasons advanced by Belford. The Court addresses this potential issue by invoking the notice and opt-out procedures of Rule 23(c)(2). The law is clear that this approach is an acceptable way to address the potential existence of dissident class members:

> [T]he opt-out provision of Rule 23(c)(2) is an important method for determining whether alleged conflicts are real or speculative. It avoids class certification denial for conflicts that are merely conjectural and, if conflicts do exist, resolves them by allowing dissident class members to exclude themselves from the action.

1 Newberg on Class Actions § 3:30. See also Bobbitt v. Academy of Court Reporting, Inc., 252 F.R.D. 327, 342 (E.D. Mich. 2008) (differences in opinion among class members regarding the propriety of the lawsuit can be addressed through opt-out procedures).

Belford advances two additional arguments in support of its position on adequacy. First, it contends that Elizabeth Lauber is an inadequate class representative because she is not knowledgeable about the case and has a busy schedule, thereby impairing her ability to attend court events. Second, Belford argues that the class representatives are financially incapable of paying the costs of litigation. The Court rejects both arguments.

With regard to the first issue, the Court finds Lauber suitable because she did not testify that she could not attend court events; rather, she testified that it was "a little" difficult for her to take time off to attend her deposition but, in her words, "it's okay." Lauber Dep. at 15 (Dkt.

162-12). Moreover, the law is clear that a plaintiff's ignorance of facts or legal theories does not render a class representative unsuitable. See 1 Newberg on Class Actions § 3:34 (plaintiff's ignorance of facts or legal theories no bar). With regard to Belford's second argument concerning Lauber's financial ability to pay the costs of litigation, any inability of Lauber to finance the litigation is irrelevant because it appears that counsel is advancing the costs of litigation. Yanez Dep. at 103. See Kamens v. Horizon Corp., 81 F.R.D. 444, 446 (S.D.N.Y. 1979).

B. Rule 23(b)

As stated earlier, in order to maintain a class action, the action must fall within one of the three categories of classes outlined in Rule 23(b), in addition to meeting the four prerequisites of Rule 23(a). Plaintiffs contend that the case qualifies under subsections (b)(2) and (b)(3). For the reasons that follow, the Court finds certification under subsection (b)(3) appropriate.

Certification under Rule 23(b)(3) is appropriate when "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."[5] Thus, there are two general requirements: Common questions must "predominate" over individualized issues, and the class action device must be "superior" to other means of adjudicating the controversy. Belford contends that certification under Rule 23(b)(3) is improper because Plaintiffs can establish neither predominance nor superiority. The Court addresses each requirement, in turn.

[5] The rule is designed to "'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.'" Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23 Advisory Committee Notes).

1. Predominance

"The predominance test expressly directs the court to make a comparison between the common and individual questions involved in order to reach a determination of such predominance of common questions in a class action context." 2 Newberg on Class Actions § 4:23. To satisfy the predominance requirement, "a plaintiff must establish that 'the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof.'" In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124, 136 (2d Cir. 2001) (quoting Rutstein v. Avis Rent-A-Car Sys., Inc., 211 F.3d 1228, 1233 (11th Cir. 2000) (internal quotation marks omitted)). However, "the fact that a defense 'may arise and may affect different class members differently does not compel a finding that individual issues predominate over common ones,'" id. at 138 (quoting Waste Mgmt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 296 (1st Cir. 2000)), and "[c]ommon issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues." Id. at 139.

Belford advances two arguments in support of its position on predominance. First, it contends that individualized issues – and not issues common to the class – are at the heart of the case, and therefore predominate (i.e., whether each individual plaintiff understood the nature of the diploma he or she was purchasing).[6] Second, Belford argues that Plaintiffs' breach and contract and unjust enrichment claims cannot be certified because Plaintiffs have failed to show that the law regarding these causes of action is materially uniform from one state to another. Belford cites authority for the proposition that the law surrounding breach of contract and unjust enrichment

[6] This argument overlaps with the Court's discussion relating to the "commonality" and "typicality" prerequisites, above.

claims differs widely from state to state. In particular, Belford points out that, because Plaintiffs seek certification of a class reaching back to January 1, 2003, claims brought by some – but not all – members of the class are likely time-barred depending on where they live (since the various states employ varying limitations periods) and when they purchased their diplomas (since this event, or an event occurring around the time of this event, is likely to trigger commencement of the limitations period).

The Court rejects both arguments. As to the first argument, as the Court has already noted, the "individualized issues" emphasized by Belford relate, not to liability, but to the applicability of defenses and the ultimate ability of individual class members to recover. As such, even assuming individualized issues exist, they do not serve to defeat class certification. See 2 Newberg on Class Actions § 4:25 ("Common issues may predominate when liability can be determined on a classwide basis, even when there are some individualized damage issues."). And in any event, the Court has bifurcated the issues of liability and damages, and has reserved the right to revisit the issue of whether class treatment of Plaintiffs' claims is proper in the event the liability question is resolved in favor of Plaintiffs. If, at that time, the Court concludes that the damages phase of the litigation cannot be adjudicated in a single class proceeding, the Court has options at its disposal to address that situation, and will reserve the right to invoke those options, as needed to ensure the orderly and efficient adjudication of the case. See id. ("When damages cannot be proved on a classwide basis, . . . the court should consider appointing a special master or limiting the class action to the liability issues" (footnotes omitted)).

Belford also argues that the predominance requirement is unsatisfied because state law

differs with regard to two or the three class claims, breach of contract and unjust enrichment.[7] Belford relies on cases saying as much. See, e.g., Marino v. Home Depot U.S.A., Inc., 245 F.R.D. 729, 735 (S.D. Fla. 2007) ("Contract law in the fifty states is nuanced and varies in more than just the elements of a claim."); In re Sears, Roebuck & Co. Tools Mktg. & Sales Practices Litig., Nos. 05-C-4742, 05-C- 2623, 2007 WL 4287511, at *9 n.7 (N.D. Ill. Dec. 4, 2007) ("It is clear just from our review of Illinois law that unjust enrichment is a tricky type of claim that can have varying interpretations even by courts within the same state, let alone amongst the fifty states.").

The Court acknowledges Belford's argument; however, as Plaintiffs note, the alleged conduct of Belford is "so egregious as to meet any definition of breach of contract or unjust enrichment." Pls. Reply at 3. In essence, Plaintiffs allege in their complaint that Belford is liable for breach of contract or (alternatively) unjust enrichment because it sold each of the class members a fake and worthless diploma. If this allegation is proven, the Court cannot imagine a situation in which Belford would be liable under one state's laws but not under another state's laws. Preliminarily, the Court agrees with Plaintiffs that any state law variances relating to liability are not relevant for the present purposes. To the extent any material variances later become apparent, the Court will entertain reassessment of certification at that time.

Belford makes much of the fact that different states employ differing limitation periods with regard to contract claims. However, the law is settled that "[t]he existence of a statute of limitations issue does not compel a finding that individual issues predominate over common ones." Williams v. Sinclair, 529 F.2d 1383, 1388 (9th Cir. 1975). See also In re Energy Sys. Equip. Leasing Sec. Litig., 642 F. Supp. 718, 752-753 (E.D.N.Y. 1986) ("Courts have been nearly

[7] Belford has not asserted – and could not persuasively assert – this argument with respect to Plaintiffs' civil RICO claim, as that claim arises under federal law and is not subject to varying state interpretations or nuances.

unanimous . . . in holding that possible differences in the application of a statute of limitations to individual class members, including the named plaintiffs, does not preclude certification of a class action so long as the necessary commonality and, in a 23(b)(3) class action, predominance, are otherwise present."); 2 Newberg on Class Actions § 4:26 ("Challenges based on the statute of limitations . . . often are rejected and will not bar predominance satisfaction because those issues go to the right of a class member to recover, in contrast to underlying common issues of the defendant's liability.").

2. Superiority

To determine whether a class action is the superior method for fair and efficient adjudication, the district court should (1) consider the difficulties of managing a class action, (2) compare other means of disposing of the suit to determine if a class action is sufficiently effective to justify the expenditure of the judicial time and energy that is necessary to adjudicate a class action and to assume the risk of prejudice to the rights of those who are not directly before the court, and (3) consider the value of individual damage awards, as small awards weigh in favor of class suits. Pipefitters Local 636 Ins. Fund v. Blue Cross Blue Shield of Mich., 654 F.3d 618, 630-631 (6th Cir. 2011) (citing authority).

Having considered these factors, the Court finds the superiority requirement of Rule 23(b)(3) satisfied. The second and third factors are easily satisfied for reasons discussed above. Importantly, the main issue surrounding the question of Belford's liability relates to the legality of its standardized conduct as against thousands of individuals who paid a relatively small amount (a few hundred dollars) for diplomas that are allegedly fake. The class action device was created to cover cases such as this one.

The first factor – the difficulty in managing the class action – is also satisfied. As explained above, the main issue relating to liability concerns the standardized conduct of Belford. The Court anticipates no difficulties in the management of the case through the liability stage. With regard to the damages phase, the Court recognizes the potential for complications, as described by Belford; however, the Court believes that any issues that arise will be easily resolvable through various options, available at the Court's discretion, such as the creation of subclasses or the appointment of a special master to preside over the damages phase of the litigation. Thus, in the event a jury finds Belford liable, the Court will revisit, if the parties or the Court deem necessary, whether class treatment of damages issues is appropriate. Authority authorizing this approach is found in In re Industrial Diamonds Antitrust Litigation, 167 F.R.D. 374, 386 (S.D.N.Y 1996), a case that is discussed favorably in a respected treatise. See 2 Newberg on Class Actions § 4:32. In that case, the court wrote:

> In the event that the jury finds defendants liable, we will revisit the question of whether class treatment of the damage issues is feasible. At that point, we will have a number of options, including utilizing a formula to calculate damages, referring the damage issues to a special master or trying these issues, perhaps after certifying appropriate subclasses. If no manageable method of resolving the damage issues is available, we would also have the option of decertifying the class insofar as those issues are concerned and permitting each class member to proceed individually if it elects to do so.

167 F.R.D. at 386 (citations omitted).

Belford advances two arguments in support of its position that Plaintiffs have failed to establish that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. First, Belford contends that the interests of class members are antagonistic because some class members are satisfied with their diploma while others are not. Second, Belford argues that the superiority requirement is not satisfied because adjudication of

Plaintiffs' purported class claims would involve individualized inquiries into the state of mind of each class member. Both of these arguments have already been addressed and rejected by the Court; the Court does not repeat its analysis of these arguments here.

IV. CONCLUSION

For the reasons stated above, Plaintiffs' motion for class certification and for appointment of class counsel (Dkt. 140) is granted. The class is certified pursuant to Rule 23(b)(3) and defined as follows: "All persons who reside in the United States and who have obtained a Belford High School diploma at any time from January 1, 2003 to the present." The Googasian Firm, P.C. is appointed class counsel. There are three class claims: breach of contract, unjust enrichment, and civil RICO. Notice must be given to all class members pursuant to Rule 23(c)(2)(B). As the matter proceeds, the Court reserves the right to create subclasses, appoint a special master, limit class treatment, and/or decertify the class, as the Court and/or the parties deem appropriate to facilitate the orderly and efficient adjudication of the case. Finally, the issues of liability and damages are bifurcated, with liability to be tried first.

SO ORDERED.

Dated: January 23, 2012

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 23, 2012.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager