UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 8:18-cv-02085-SB (DFMx)	Date: February 5, 2021

Title: *Michell T. Franklin, et al. v. Midwest Recovery Systems, LLC, et al.*

Present: The Honorable	**STANLEY BLUMENFELD, JR., U.S. District Judge**
Victor Cruz Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CLASS CERTIFICATION (DKT. NO. 46)**

Before the Court is the Motion for Class Certification filed by Plaintiffs Michell T. Franklin, Kara Sampson, and Cybele A. Munson on behalf of themselves and all persons similarly situated. (Mot., Dkt. No. 46.) Defendants Midwest Recovery Systems, LLC (Midwest), Brandon Tumber, Joseph Smith, and Kenny Conway oppose. (Opp., Dkt. No. 70.) Plaintiffs have replied. (Reply, Dkt. No. 71.) For the reasons set forth below, the Court **GRANTS in part and DENIES in part** the Motion.

I. BACKGROUND

Plaintiffs allege that payday loan companies made "tens of thousands of loans to California residents" between 2009 and 2014 that were illegal and void. (Third Amended Complaint (TAC) ¶¶ 22-23 (Dkt. No. 59).) In 2011 and 2012, Plaintiffs obtained payday loans from two companies, and the resulting debt was ultimately transferred to Cooper Financial, LLC. (*Id.*) Mark Gray, the owner and

sole manager of Cooper Financial, LLC, , hired Midwest to collect the debt "using whatever means were necessary. . . ." (*Id.*)

Plaintiffs further allege that Defendants implemented a scheme to extort money from borrowers whose debt was not legally valid. (*Id.* ¶ 28.) Defendants used "the leverage of credit-reporting" to collect the debt by furnishing Plaintiffs' information to credit reporting agencies, including Equifax, Experian, and TransUnion. (*Id.* ¶¶ 29-30.) As a result, Plaintiffs and similarly situated individuals were forced to pay otherwise uncollectible debt to remove negative information from their credit reports or suffer damage to their creditworthiness. (*Id.* ¶¶ 31-39.)

In the TAC, Plaintiffs assert claims for violations of the California Consumer Credit Reporting Agencies Act (CCRAA), Cal. Civ. Code §§ 1785.1 *et seq.*, and the California Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200. and seek class certification. Plaintiffs also seek: (1) declaratory relief that Defendants cannot furnish information to consumer credit reporting agencies about the payday loan debt; (2) preliminary and permanent injunctive relief pursuant to Civil Code § 1785.31(b) and Business and Professions Code § 17203; (3) actual damages on the first cause of action; (4) punitive damages on the first cause of action; (5) restitution on the second cause of action; (6) interest on the money awarded as damages or restitution; (7) reasonable attorney's fees; (8) costs; and (9) other relief the Court deems proper. (TAC, Prayer for Relief.)

II. LEGAL STANDARD

A class action is the exception to the rule requiring a lawsuit to be individually prosecuted. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). To justify a departure from the rule, the moving party must satisfy a two-part test. First, the plaintiffs must demonstrate through facts rather than allegations that the proposed class satisfies the requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation by the class representatives and class counsel. Fed. R. Civ. P. 23(a); *see Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977) (mere allegations insufficient). Second, the plaintiffs must meet at least one of the three requirements of Rule 23(b). Under Rule 23(b)(3), relevant here, a class may be maintained if "questions of law or fact common to class members *predominate* over any questions affecting only individual members," and if "a class action is *superior* to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3) (emphasis added). The moving party bears the burden of showing Rule

23 is satisfied, *see Marlo v. U.P.S.*, 639 F.3d 942, 947 (9th Cir. 2011); and the reviewing court must rigorously analyze whether that burden has been satisfied, including consideration of the merits when they overlap with the procedural requirements, *Dukes*, 564 U.S. at 350-51.

III. DISCUSSION

Plaintiffs ask the Court to certify the following class: "All California residents whose SUBJECT LOAN DEBT INFORMATION[1] was furnished by Defendant Midwest to consumer credit reporting agencies during the past two years from filing of the original complaint" (the "Main Class"). (TAC ¶ 14.) Plaintiffs also seek certification of a "Restitution Subclass" comprised of "[a]ll members of the Main Class who paid money to Defendant Midwest after Midwest furnished the SUBJECT LOAN DEBT INFORMATION to consumer reporting agencies." (*Id.* ¶ 15.)[2]

A. Rule 23(a)

Defendants mention the requirements of Rule 23(a), but make no argument that Plaintiffs fail to satisfy subdivisions (1)-(3). Nevertheless, the Court must consider these requirements as part of its rigorous analysis.

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[1] SUBJECT LOAN DEBT INFORMATION is defined as "information that a debt was allegedly owed to any of the following original creditors: VIP PDL Services, LLC, a/k/a VIP Loan Shop; SCS Processing, LLC, a/k/a Everest Cash Advance; Action PDL Services, LLC, a/k/a Action Payday; BD PDL Services, LLC, a/k/a Bottom Dollar Payday, Integrity PDL Services, LLC, a/k/a Integrity Payday Loans, a/k/a IPL Today; My Quick Funds d/b/a Sierra Financial, LLC; Fast EFunds a/k/a FastEfunds.com." (TAC ¶ 14.)

[2] Defendants contend that that the payday loan agreements contain arbitration provisions, and that the existence of such agreements suggest that a class cannot be certified. However, Defendants do not intend to bring a motion to compel arbitration (Dkt. No. 78), and they have not cited any authority to suggest that the mere claim of an arbitration agreement precludes class certification.

1. Numerosity

Rule 23(a)(1) requires that a class be sufficiently numerous such that it would be impracticable to join all members individually. In determining whether a proposed class is sufficiently numerous to sustain a class action, the court must examine the specific facts because the numerosity requirement "imposes no absolute limitations." *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 330 (1980). "[A] reasonable estimate of the number of purported class members satisfies the numerosity requirement." *In re Badger Mountain Irrigation Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 1992). A proposed class of at least forty members generally satisfies the numerosity requirement. *See Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds by County of Los Angeles v. Jordan*, 459 U.S. 810 (1982).

Based on documents produced in discovery, Plaintiffs claim the Main Class contains approximately 11,000 members. (Mot. at 4, 8; Declaration of Jeffrey Wilens ("Wilens Decl."), Dkt. No. 41, ¶¶ 2-4, Ex. 1.) Plaintiffs believe the Restitution Subclass consists of 189 members. (*Id.*; Wilens Decl. ¶ 5.) Plaintiffs likewise argue the Main Class and Restitution Subclass are ascertainable because they sufficiently identify the names and addresses of the putative class members that would enable class administration. Defendants do not dispute the size or ascertainability of the proposed classes.

2. Commonality

Rule 23(a)(2) requires that questions of law or fact be common to the class. There must be at least "a single common question" to satisfy the commonality requirement. *Wang*, 709 F.3d at 834. The 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*, 564 U.S. at 350. "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.*, 150 F.3d 1011, 1019 (9th Cir. 1998). In this case, all putative class members undisputedly share a common legal issue: the legality of Defendants' furnishing of debt information to credit bureaus. (Mot. at 10-11.)

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." Fed. R. Civ. P. 23(a)(3). The 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). Typical does not mean identical; rather, the representative claims must be "reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. Plaintiffs can satisfy their burden through pleadings, affidavits, or other evidence. *See Lewis v. First Am. Title Ins. Co.*, 265 F.R.D. 536, 556 (D. Idaho 2010). Plaintiffs have undisputedly done so here, demonstrating that "many thousands of other consumers" had their debt information furnished to credit bureaus, and some had to pay to remove that information from their credit report. (Mot. at 11-12.)

4. Fair and Adequate Representation

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, 577 (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; and (3) the attorney representing the class is qualified and competent. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

Plaintiffs contend that their claims are coextensive with those of other class members and that even though Plaintiff Franklin does not have a restitution claim, Plaintiffs Sampson and Munson do, enabling them to protect the interests of both classes. (Mot. at 13.) Defendants argue that Plaintiffs are inadequate class representatives because they are seeking different relief than class members they seek to represent, such as damages related to emotional distress and loss of time and wages. (Opp. at 12.) Defendants incorrectly imply those are the only damages Plaintiffs seek. While Plaintiffs are seeking personal damages, they also seek damages allegedly suffered by the class they purport to represent. (*See* Declaration of Michell T. Franklin ("Franklin Decl."), Dkt. No. 46-3, ¶¶ 11-14; Declaration of

Kara Sampson ("Sampson Decl."), Dkt. No. 46-4, ¶¶ 3-4; Declaration of Cybele A. Munson ("Munson Decl."), Dkt. No. 46-5, ¶¶ 3-4.) The fact that Plaintiffs are seeking individual damages does not make their interests antagonistic to those of the class.

Plaintiffs argue that their choice of counsel will adequately represent the class. Counsel are experienced class action litigators and have stated they will dedicate the resources necessary to prosecute this action. (Mot. at 13; Wilens Decl., ¶¶ 8-34; Declaration of Jeffrey Spencer ("Spencer Decl."), Dkt. No. 46-2, ¶¶ 2-31.) Defendants do not contest class counsel's adequacy. The Court finds that Plaintiffs meet the requirements of Rule 23(a)(4).

B. Rule 23(b)

Because Plaintiffs have satisfied the four requirements of Rule 23(a), the Court next turns to Rule 23(b)(3).

Rule 23(b)(3) requires that "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." Fed. R. Civ. P. 23(b)(3). Plaintiffs must meet both the predominance and superiority prongs. *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 211 (9th Cir. 1975).

"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). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than an individual basis." *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted). Defendants argue that individual issues predominate this litigation for two reasons. First, Defendants contend that Plaintiffs have failed to set forth a cognizable theory of damages that can be reliably measured. (Opp. at 12-24.) Second, Defendants argue that Plaintiffs cannot prove causation on a classwide basis. (*Id.* at 24-25.)

1. Actual Damages Are Required under the CCRAA.

The CCRAA prohibits a person from "furnish[ing] information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate." Cal. Civ. Code. § 1785.25(a). "Any consumer who suffers damages as a result of a violation of [the CCRAA]" may bring an action to recover those damages. *Id.* § 1785.31(a).

At trial, Plaintiffs intend to introduce evidence that each class member was harmed by the reporting of negative financial information that would have resulted in the lowering of the member's credit score. (Declaration of Thomas A. Tarter ("Tarter Decl."), ¶ 16, Dkt. No. 46-6.) The amount of debt incurred by the putative class members ranged from $25 to $3,190. (*Id*.) According to Plaintiffs' expert, "the type of debt reported about the Class Members could lower their credit scores 50-125 points" (*id*. ¶ 21), and a lower score "often [results in] the loss or reduction in credit expectancy (credit availability)" (*id*. ¶ 23). The cost of borrowing "may go up" even if a consumer's credit score is reduced by five points. (*Id*. ¶ 25.) A negative report "can cause a large and diverse variety of adverse consequences," including:

> missed investment opportunities; negative effect on business; loss of job offers or business expansion opportunities; higher and more stringent borrowing costs on credit cards, mortgages and automobile loans; higher premiums on life, medical, home, and business insurance premiums; as well as reduced credit availability.

(*Id*. ¶ 26; *see also id*. ¶ 27 (noting other potential "adverse consequences" including the myriad potential effects resulting from "the perception . . . by employers, government agencies, investors, and others").

According to Plaintiffs, the wide variation in the potential impact of a lower credit score on putative class members is no impediment to certification. As counsel stated at the hearing, Plaintiffs plan to address the variation problem by forfeiting any claim for actual damages for unnamed class members and pursuing only punitive damages on their behalf. Avoidance by forfeiture, however, is not a viable plan.

The plan does not avoid the need to show actual damages because the CCRAA only authorizes a "consumer who suffers damages as a result of a violation" to assert a claim. Cal. Civ. Code § 1785.31. Plaintiffs do not view this requirement as an obstacle because any negative impact on a consumer's credit score—even as little as five points—"may" increase the cost of obtaining credit, they argue. This argument, however, has been rejected under California law. *See Trujillo v. First Am. Registry, Inc.*, 157 Cal. App. 4th 627 (2007), *disapproved on other grounds by Connor v. First Student, Inc.*, 5 Cal. 5th 1026, 1038 (2018).

In *Trujillo*, the defendant prepared tenant screening reports that showed plaintiffs had been sued for eviction but failed to show that either the suit was dismissed or any judgment was satisfied. *Id*. at 631-32. Plaintiffs sued under the CCRAA claiming that the reports were inaccurate in neglecting to include material information bearing on their creditworthiness. *Id*. Moving for summary judgment, the defendant submitted unopposed declarations from property managers stating that they would have denied the plaintiffs' rental applications even if they had known of the omitted information. *Id*. In affirming the grant of summary judgment, the court rejected the argument that the plaintiffs "suffered damage because the incomplete tenant screening reports were 'inherently harmful.'" *Id*. at 637. In other words, the court concluded that the CCRAA requires an inquiry into the actual impact of the statutory violation on the individual purportedly affected.

Plaintiffs seek to distinguish *Trujillo* because *Trujillo* involved incomplete rather than inaccurate reporting. This distinction is based on an overly narrow construction of *Trujillo*. *Trujillo* rejected the plaintiffs' "novel theory" of inherent harm as a matter of statutory interpretation, reasoning:

> But if the Legislature thought inaccurate reports were inherently harmful, it would not have required that CCRAA plaintiffs have "suffer[ed] damages as a result of a violation . . . ." (§ 1785.31, subd. (a).) Actual damage, not "inherent harm," is required to state a CCRAA cause of action. And plaintiffs offer no authority for their theory, other than an analogy to the libel per se doctrine.

157 Cal. App. 4th at 637.

In interpreting the statute, the *Trujillo* court did not distinguish between incomplete and inaccurate reports. On the contrary, the court treated the incomplete reports in that case, as quoted above, as being "inaccurate." *Id*. This treatment follows from the decision's rationale: *Trujillo* rests on the principle that

the legislative requirement that a plaintiff "suffer[] damages as a result of a violation" precludes a theory of "inherent harm."

Despite *Trujillo*, Plaintiffs offer a damage theory in this case that is one of "inherent harm"—i.e., that the invasion of the statutorily protected right inevitably results in compensable injury. But this Court is not free to reject *Trujillo* either directly or through an overly restricted interpretation of its holding. *See Norcia v. Samsung Telecommunications Am., LLC*, 845 F.3d 1279, 1284 (9th Cir. 2017) (noting that federal courts should "follow a published intermediate state court decision regarding California law unless [they] are convinced that the California Supreme Court would reject it"). The *Trujillo* holding on actual damages is one of long standing, and this Court cannot find convincing evidence that the California Supreme Court stands ready to reject it. Indeed, another district court reached that conclusion more than six years ago—and *Trujillo* remains on the books. *See Duarte v. J.P. Morgan Chase Bank*, No. CV 13-1105 GHK (MANx), 2014 WL 12561052, at *3 (C.D. Cal. Apr. 7, 2014) (finding that it was "bound to follow *Trujillo*"). Other federal courts have followed *Trujillo*. *See Gadomski v. Patelco Credit Union*, No. 2:17-CV-00695-TLN-AC, 2020 WL 1433138, at *4 (E.D. Cal. Mar. 24, 2020) (concluding that "impaired credit score alone" does not constitute actual damages under the CCRAA); *Abdelfattah v. Carrington Mortg. Servs. LLC*, No. C-12-04656-RMW, 2013 WL 5718463, at *3 (N.D. Cal. Oct. 21, 2013) (same).

In light of *Trujillo*, cases interpreting the Fair Credit Reporting Act (FCRA) are not controlling.[3] Nevertheless, most courts have concluded that a reduced credit score does not by itself constitute actual damage under the FCRA. *Compare Gadomski*, 2020 WL 1433138, at *4 (lower credit score insufficient); *Yackytooahnipah v. Liberty Mut. Fire Ins. Co.*, No. SACV 18-00449 CJC (DFMx), 2019 WL 4570034, at *5 (C.D. Cal. Aug. 5, 2019) (same); *Clements v. Trans Union, LLC*, No. 3:17-CV-00237, 2018 WL 4519196, at *9 (S.D. Tex. Aug. 29, 2018), *report and recommendation adopted*, No. 3:17-CV-00237, 2018 WL 4502255 (S.D. Tex. Sept. 20, 2018) (same); *Adams v. Fifth Third Bank*, No. 3:16-CV-00218-TBR, 2017 WL 561336, at *7 (W.D. Ky. Feb. 10, 2017) (same); *Perl v.*

[3] The CCRAA was modeled after the FCRA. *Olson v. Six Rivers Nat'l Bank*, 111 Cal. App. 4th 1, 12 (2003). Still, California courts are the ultimate arbiter of the meaning of the CCRAA, even if they generally look to the FCRA when interpreting the CCRAA. *See id.*

Am. Exp., No. 11 CIV. 6899 KBF, 2012 WL 178333, at *4 (S.D.N.Y. Jan. 19, 2012) (same); *King v. Bank of Am., N.A.*, No. C-12-04168 JCS, 2012 WL 4685993, at *6 (N.D. Cal. Oct. 1, 2012) (same); *Young v. Harbor Mortor Works, Inc.*, No. 2:07CV0031JVB, 2009 WL 187793, at *5 (N.D. Ind. Jan. 27, 2009) (same) *with Cristobal v. Equifax, Inc.*, No. 16-cv-06329, 2017 WL 1489274 (N.D. Cal. Apr. 26, 2017) (negative impact on credit alone constitutes damage); *Alkan v. Citimortage, Inc.*, 336 F. Supp. 2d 1061 (N.D. Cal. 2004) (same); *Calvillo v. Experian Info. Solutions, Inc.*, No. 2:19-cv-00277-RFB-NJK, 2020 WL 1549574, at *3 (D. Nev. Apr. 1, 2020) (reporting of negative credit data conferred standing and may constitute actual damage).

The Ninth Circuit has not squarely weighed in on this issue. In an unpublished decision, the court concluded that a plaintiff must show more than a lower credit score to have standing to sue under the FCRA. *See Jaras v. Equifax Inc.*, 766 F. App'x 492, 495 (9th Cir. 2019). More specifically, the majority stated: "Without any allegation of the credit report harming Plaintiffs' ability to enter a transaction with a third party in the past or imminent future, Plaintiffs have failed to allege a concrete injury for standing." *Id*. Judge Berzon dissented, stating that "adverse information on a credit report, often resulting in a lower credit rating, constitutes a reputational injury creating a material risk of harm." *Id*. at 496.

Even if the standing principles discussed in *Jaras* were relevant to an interpretation of the CCRAA, the relevance would be limited. The "material risk of harm" required to confer standing is not necessarily sufficient to show actual, compensable damage under California law. After all, standing is a jurisdictional standard rather than a substantive question going to the merits of a claim. *See Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). The Ninth Circuit has held that "there is sufficient injury in fact when a defendant's statutory violation creates a 'risk of real harm' to a plaintiff's concrete interest." *Ramirez v. TransUnion LLC*, 951 F.3d 1008, 1024 (9th Cir. 2020), *cert. granted in part sub nom. Transunion LLC v. Ramirez, Sergio L.*, No. 20-297, 2020 WL 7366280 (U.S. Dec. 16, 2020).[4] A *risk* of harm—no matter how real—is not enough to state a claim for *actual* damage under the CCRAA as interpreted by *Trujillo*. *See Adams*,

[4] The U.S. Supreme Court granted certiorari on the following question: "Whether either Article III or Rule 23 permits a damages class action where the vast majority of the class suffered no actual injury, let alone an injury anything like what the class representative suffered."

2017 WL 561336, at *7 (five-point credit score reduction may confer standing but does not constitute actual damage under the FCRA).

Moreover, *Trujillo* expressly rejected the argument that a party may avoid proving actual damage by seeking only punitive damages under section 1785.31(c). For a willful violation of the CCRAA, a plaintiff may recover "punitive damages of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each violation." Cal. Civ. Code § 1785.31. The statute states:

> Notwithstanding any other provision of this section, any person who willfully violates any requirement imposed under this title may be liable for punitive damages in the case of a class action, in an amount that the court may allow. In determining the amount of award in any class action, the court shall consider among relevant factors the amount of any actual damages awarded, the frequency of the violations, the resources of the violator and the number of persons adversely affected.

Id. § 1785.31(c).

While the introductory clause of this provision removes the cap on punitive damages provided in subdivision (a), it does not eliminate the need to prove actual damages as a prerequisite to obtaining punitive damages. *Trujillo*, 157 Cal. App. 4th at 638 ("But reading subdivision (c) as superseding the actual damage requirement would take all teeth out of subdivision (a), absurdly breathing life into any CCRAA complaint seeking punitive damages, even those filed by uninjured plaintiffs—i.e., by anyone.").

In short, Plaintiffs have not shown that they have a viable plan to prove actual damages on a classwide basis. On the contrary, they intend to rely on an inherent damage theory and then go straight to punitive damages. *Trujillo*, however, does not allow this bypass procedure. *See Abdelfattah*, 2013 WL 5718463, at *3 ("Because [plaintiff] has failed to allege that the class was harmed, as is required under *Trujillo* to bring a claim under sections (b) or (c) of the CCRAA, the complaint is defective on its face and thus the court strikes the class allegations."). This defeats class certification here. *See Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013) ("It is true that the plaintiffs must be able to

show that their damages stemmed from the defendant's actions that created the legal liability.").

2. Plaintiffs Do Not Propose a Viable Damages Model.

Even if credit impairment constituted actual damages under the CCRAA, Plaintiffs' motion as to the Main Class still fails because they neglected to submit any damages model. (Opp. at 21.) It is an "unremarkable premise" that Plaintiffs must set forth a damages model consistent with its liability theory. *Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013); *Leyva*, 716 F.3d at 514. Although "the need for individualized findings as to the amount of damages does not defeat class certification," some common methodology for calculating damages must be shown. *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016) (citing *Leyva*, 716 at 514). Plaintiffs must provide a model showing that "damages could feasibly and efficiently be calculated once the common liability questions are adjudicated." *Leyva*, 716 F.3d at 514. Plaintiffs offer no damages model at all.

The amount of actual damages caused by an alleged violation is not only statutorily required, but it is also highly relevant to a fair evaluation of any award of punitive damages. "The principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long pedigree." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996). Yet Plaintiffs intend to request an award of punitive damages that is wholly unrelated to the amount of harm inflicted, except to the extent that the Court would permit them to have the named Plaintiffs tell their story about the individual harm they purportedly suffered. Given that the named Plaintiffs were handpicked as representatives, and given their expert's admission that the extent of harm is so varied, the risk of a distorted—if not arbitrary—view of the actual damage caused by the alleged statutory violation is great in such circumstances.

Because Plaintiffs must demonstrate actual damages and fail to offer any model to support their liability theory on a classwide basis, the Court will not certify the Main Class. With respect to the Main Class, the Court therefore need not address the issues of superiority or causation.

C. The Restitution Subclass May Be Certified.

In their briefing, the parties focus on the Main Class and largely ignore the Restitution Subclass of 189 individuals who made a payment to Midwest. (Mot. at 5; Wilens Decl. ¶ 5.) In total, the Restitution Subclass members paid a total of $94,366.34 to Midwest. (*Id.*) Defendants do not dispute that payments made to Midwest constitute actual damages for purposes of the CCRAA. The Court therefore next considers the predominance and superiority requirements of Rule 23(b).

1. Predominance

"The predominance inquiry of Rule 23(b)(3) asks 'whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 957 (9th Cir. 2009) (quoting *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)). Individualized issues do not appear to predominate here. Specifically, each of the Restitution Subclass members allege the same injury—payment of a sum of money to Midwest to remove damaging credit information. While some individualized issues may exist, such as the amount paid or the date of the payments, those issues appear to be easily determined. *See* Wilens Decl., ¶ 5, Ex. 1 (providing sample extract of exact information that can be proven). Defendants do not dispute the accuracy or methodology of this damage calculation.

In fact, the only issue that Defendants challenge is causation. (*See* Opp. at 25.) While Defendants argue that the Restitution Subclass members could have paid Midwest "for any number of reasons," Defendants offer no plausible reason for the payments other than to remove an allegedly void debt from their credit report. Nor do they explain how these unspecified reasons are relevant to the class certification analysis. The Court thus finds the predominance prong of Rule 23(b) met.

2. Superiority

Class actions certified under Rule 23(b)(3) must be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem Prods.*, 521 U.S. at 615. Factors relevant to assessing superiority include:

"(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(A-D).

Here, the relevant factors weigh in favor of certifying the Restitution Subclass. Indeed, Defendants offer no argument to the contrary. In a case with nearly 200 members, a class action promotes efficiency and judicial economy. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009). Moreover, the parties do not dispute the desirability of this forum or show that there is any other related litigation involving the subclass members. Finally, a class action is the superior method when litigation costs likely exceed potential recovery if the class members litigated individually. *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). The Court thus finds the superiority prong of Rule 23(b) met.

Plaintiffs' motion for class certification of the Restitution Subclass is **GRANTED**. The Court **CERTIFIES** this class under Rule 23(b)(3).

D. Rule 23(g)—Appointment of Class Counsel

Under Rule 23(g), "a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1). Plaintiffs ask the Court to appoint Jeffrey Wilens and Jeffrey Spencer as class counsel. (Mot. at 12-13.) Factors considered in appointing class counsel include: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A)(i-iv). The Courts finds—and Defendants do not dispute—that class counsel is qualified to prosecute this case. As discussed above, Messrs. Wilens and Spencer have sufficient experience and have agreed to devote the necessary resources to adequately represent the class. (*See* Discussion *supra*.) The Court thus **APPOINTS** them as class counsel in this case.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Class Certification is **GRANTED in part and DENIED in part**.