IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

Shirley Williams,
Gale Pelfrey,
Bonnie Jones, and
Lora Sisson, individually
and on behalf of a class,

Plaintiffs,

v.

CIVIL ACTION FILE
NO. 4:04-CV-0003-HLM

Mohawk Industries, Inc.,

Defendant.

ORDER

This is a class action alleging violations of the federal and Georgia Racketeer Influenced Corrupt Organizations Acts. The case is before the Court on Plaintiffs' Motion for Class Certification [174].

I. Background

A. Factual Background

1. The Parties

Plaintiff Shirley Jane Williams resides in Rome, Georgia. (Dep. of Shirley Jane Williams at 4, 129.) From 1999 through 2003, Plaintiff Williams was employed by Defendant, first at a printing plant and then at a warehouse. (Id. at 6-7, 137.) Plaintiff Williams previously worked for Crown Craft, which Defendant bought. (Id. at 8-9, 132-33.)

Plaintiff Bonnie Jones is a resident of Chatsworth, Georgia. (Dep. of Bonnie Jones at 3.) Plaintiff Jones has been employed by Defendant for fourteen years, most recently working as a creeler at Defendant's Caradon location. (Id. at 3-5; Def.'s Resp. Mot. Class Certification Ex. 11.)

Plaintiff Gale Pelfrey resides in Rome, Georgia. (Dep. of Gale Pelfrey at 4.) From 1998-2001, Plaintiff Pelfrey worked at Crown Craft, which Defendant acquired in 2001. (Id. at 6, 9.) After Defendant acquired Crown Craft, Plaintiff Pelfrey worked at a warehouse and then at a print plant. (Id. at 11-12; Def.'s Resp. Mot. Class Certification Ex. 12.) In 2002, Defendant terminated Plaintiff Pelfrey's employment for job abandonment. (Def.'s Resp. Mot. Class Certification Ex. 12; Pelfrey Dep. at 6.)

Defendant is a Delaware corporation with its principal place of business in Calhoun, Georgia. (Compl. ¶ 9.) Defendant is the second-largest carpet and rug manufacturer in the United States. (Id. ¶ 2.) From January 1, 1999, to the present, Defendant, through its wholly-owned subsidiaries, has employed more than 1,000 hourly workers who are authorized to work in the United States. (Def.'s Objs. & Resps. Pls.' Second Req. Admis. No. 4; Def.'s Objs. & Resps. Pls.' First Interrogs. No. 2.)

2. Defendant's Organization

Defendant has employees in all fifty states, including Georgia. (Decl. of Jerry L. Melton ¶ 9.) From 1999 through 2000, Defendant completed twelve mergers and acquisitions. (Melton Decl. ¶ 3; Dep. of Mark Dailey at 12-13.) Defendant acquired the following companies: (1) Horizon Industries; (2) Karastan; (3) American Rug Craftsmen; (4) Aladdin Mills; (4) Galaxy Carpet Mills; (5) Diamond; (6) World Carpets; (7) Newmark & James; (8) American Weavers; (9) Image Industries; (10) Durkan Patterned Carpets; and (11) Crown Craft. (Melton Decl. ¶ 3; Dailey Dep. at 12-13.) Since 2000, Mohawk has completed five mergers and acquisitions, including: (1) Dal-Tile; (2) Lees; (3) Wayntex; (4) Unilin; and (5) Columbia Flooring. (Melton Decl. ¶ 4; Dailey Dep. at 12-13.)

As a result of its rapid expansion, Defendant's operations are highly decentralized in nature. (Melton Decl. ¶ 5; Dailey Dep. at 14, 181, 198.) Consequently, primary operational and human resources responsibility for Defendant's facilities and workforce exists at the location level and the divisional level. (Melton Decl. ¶ 5; Dailey Dep. at 14-15, 181, 198.) Until 2002, Defendant's corporate human resources department primarily focused on benefits. (Melton Decl. ¶ 6.)

Since 1999, Defendant has divided its operations into divisions, each of which have separate responsibilities and business objectives. (Melton Decl. ¶ 7.) Since 1999, Defendant has had eight principal divisions. (Id.) Five of those divisions are included within Plaintiffs' proposed class definition, including: (1) the Residential Division; (2) the Commercial Division; (3) the Yarn Division; (4) the Operations Division; and (5) the Home Division. (Id.) Defendant's other divisions include the Unilin Division, the Dal-Tile Division, and the former Padding Division, all of which are excluded from Plaintiffs' proposed class definition. (Id. ¶ 8.) Subject to conditions and approvals, Defendant has permitted some employees to transfer between its divisions. (Def.'s Objs. & Resps. Pls.' Second Req. Admis. No. 17.)

Defendant's Residential Division primary manufactures carpet for installation in homes and apartments. (Melton Decl. ¶ 7.a; Decl. of Michael O'Neill ¶ 3.) The Residential

Division includes the operations at approximately two dozen different locations, including numerous locations that Defendant has acquired through acquisitions and mergers. (Melton Decl. ¶ 7.a; O'Neill Decl. ¶ 5.)

Defendant's Commercial Division manufactures carpet for installation in commercial buildings, such as offices and hotels. (Melton Decl. ¶ 7.b.) Plaintiffs' proposed class definition includes only a few locations within the Commercial Division. (Id.)

Defendant's Yarn Division manufactures yarn for use in carpet and rug manufacturing. (Melton Decl. ¶ 7.c; Decl. of Jerry Hendrix ¶ 3.) The Yarn Division includes the operations of approximately fifteen different locations within Georgia, and consists of many locations that Defendant acquired in mergers and acquisitions. (Melton Decl. ¶ 7.c;

Hendrix Decl. ¶¶ 3, 5.) In 2005, Defendant combined the Yarn Division with the Residential Division. (Melton Decl. ¶ 7.c.)

In 2005, Defendant created the Operations Division. (Melton Decl. ¶ 7.d; O'Neill Decl. ¶ 19.) The Operations Division consists of a number of shared service and support functions that previously existed primarily within the Residential Division. (Melton Decl. ¶ 7.d; O'Neill Decl. ¶ 19.) Those functions included a national transportation and distribution network, including warehouses, extrusion, and creation of carpet samples. (Melton Decl. ¶ 7.d; O'Neill Decl. ¶ 19.)

In 1999, Defendant created its Home Division by aggregating the operations of three companies Defendant had acquired: American Rug Craftsmen, American

Weavers, and Newmark & James. (Melton Decl. ¶ 7.e; Decl. of Patti D. Silver ¶ 4.) In 2000, Defendant acquired Crown Craft, which in turn became part of the Home Division. (Silver Decl. ¶ 4.) Defendant's Home Division primarily manufactures products for use in homes, such as pillows, blankets, bath mats, and rugs. (Melton Decl. ¶ 7.e.) Since 1999, the Home Division has included the operations of over two dozen different locations. (Silver Decl. ¶ 5.)

Each of the five divisions at issue in the proposed class definition has its own management structure in charge of operations at each location within each division. (Melton Decl. ¶ 12.) Each division also has its own Division Director of Human Resources, who is responsible for human resources for the division. (Id.) From 1999 through 2007, the Division Directors of Human Resources have reported directly to the operational management within their respective divisions. (Melton Decl. ¶ 12; O'Neill Decl. ¶¶ 4, 19; Hendrix Decl. ¶¶ 4, 19.) The Division Directors of Human Resources did not report directly to the corporate Vice President of Human Resources, but instead simply had an informal, "dotted line" relationship with that individual. (Melton Decl. ¶ 13; O'Neill Decl. ¶¶ 4, 19; Hendrix Decl. ¶ 19.) The Division Directors of Human Resources consulted with the corporate Vice President of Human Resources, but ultimately had the power to decide issues concerning hiring procedures, employee discipline, wages, and the use of temporary agencies at the division level. (Melton Decl. ¶ 13.)

Defendant also organizes some of its functions into two Groups that exist outside of the division structure. (Melton

Decl. ¶ 10.) The Sales & Marketing Group handles sales to, and relationships with, Defendant's customers. (Id.) The Corporate Group provides shared administrative and management functions across Defendant's company, including executive management, accounts payable, accounts receivable, and information systems. (Id.) Hourly workers employed in the two Groups primarily are administrative and clerical employees who work in office environments. (Id.)

During the proposed class period, Defendant had approximately seventy-one locations within Georgia that fall within Plaintiffs' proposed class definition. (Melton Decl. ¶ 11.) Defendant assigns a unique location number to each of its locations, and uses that number to identify the location. (Id.) Although most locations refer to a single physical site, a location infrequently may refer to a number of buildings that are geographically close to one another. (Id.) Additionally, a single physical site may have more than one assigned location number. (Id.) Moreover, a few location numbers do not strictly correspond to a physical location, but instead refer to a function that may be spread across a number of physical sites. (Id.)

3. Defendant's Hiring Practices

From 1999 through 2007, each of Defendant's divisions generally hired its own employees at its own hiring locations. (Melton Decl. ¶ 14; O'Neill Decl. ¶ 6.) Each division had its own human resources personnel, who had responsibility for hiring employees, including verifying employment eligibility and completing I-9 forms. (Melton Decl. ¶ 14.) Each division's human resources personnel reported to that division's operational management. (Id.) Defendant's corporate-level personnel had no responsibility for divisional employment decisions, including hiring and disciplining employees. (Id. ¶ 15.)

For example, from 1999 through 2005, the Residential Division maintained its own separate hiring locations for hourly employees, and conducted its hiring primarily at four county hiring centers. (O'Neill Decl. ¶ 6.) From 2005 to the present, the Residential Division has conducted its hiring at five county hiring centers, and locations within the Residential Division that fall outside those counties conduct their own hiring. (Hendrix Decl. ¶ 20.) With one minor exception, the Residential Division's hiring locations did not hire employees for Defendant's other divisions or groups. (O'Neill Decl. ¶ 6.) Human resources personnel within the

Residential Division, rather than Defendant's corporate headquarters ran the hiring centers. (O'Neil Decl. ¶ 7; Hendrix Decl. ¶ 21.) Those personnel, in conjunction with management at plants within the Residential Division, determined which applicants to hire and for which jobs and shifts. (O'Neill Decl ¶ 7; Hendrix Decl. ¶ 21.) Applicants for jobs within the Residential Division applied for jobs within that division and not for jobs with Defendant in general. (O'Neill Decl. ¶ 8; Hendrix Decl. ¶ 22.)

Employees of the Residential Division were responsible for completing I-9 forms. (O'Neill Decl. ¶ 9; Hendrix Decl. ¶ 23.) The management of the Residential Division determined whether to discipline, including whether to terminate, its hourly employees. (O'Neill Decl. ¶ 10; Hendrix Decl. ¶ 24.)

Similarly, from 1999 through 2005, Defendant's Yarn Division maintained and managed its own separate hiring locations for hourly employees, and conducted its own hiring at each of its approximately fifteen locations. (Hendrix Decl. ¶ 6.) Those hiring locations did not hire employees for Defendant's other divisions or groups. (Id.) The Yarn Division's personnel, including human resources personnel, ran the hiring locations and determined which applicants to hire and for which jobs and shifts. (Id. ¶ 7.) Applicants who sought jobs within the Yarn Division applied for jobs within that division and not for jobs with Defendant in general. (Id. ¶ 8.) The Yarn Division employees were responsible for competing the I-9 forms. (Id. ¶ 9.) The Yarn Division's management also determined whether to discipline, including whether to terminate, the Yarn Division's hourly employees. (Id. ¶ 10.)

The Home Division also maintains its own separate hiring locations for hourly employees. (Silver Decl. ¶ 6.) From 1999 through 2007, the Home Division conducted its hiring for its plants in Gordon County, Georgia, at a hiring center in Calhoun, Georgia, and for its plants in Whitfield County, Georgia, at a hiring center in Dalton, Georgia. (Id.) Home Division plants located in Jasper and Hiawassee, Georgia, did their own hiring. (Id.) The Home Division's hiring locations have not hired employees for Defendant's other divisions or groups. (Id.) Applicants who seek jobs within the Home Division complete applications for jobs within that division, and not for jobs with Defendant in general. (Id. ¶ 8.)

Home Division employees ran the Home Division's hiring centers. (Silver Decl. ¶ 7.) Home Division human resources personnel operated the hiring centers in Calhoun and Dalton, while individual plant managers at the Hiawassee and Jasper plants oversaw hiring at those locations. (Id.) Those personnel determined which applicants to hire and for which jobs and shifts. (Id.) Those personnel also were responsible for completing the I-9 forms. (Id. ¶ 9.) The Home Division's management determines whether to discipline, including whether to terminate, its hourly employees. (Id. ¶ 10.)

Defendant generally does not take language into consideration when determining whether to hire someone for employment, unless the job requirements make it necessary for the employee to have the ability to speak and write English. (Dep. of Matthew B. Brown Dated Aug. 30, 2007 ("Brown Dep. III") at 52, 63-64.)

Defendant contends that its human resources department follows the law with respect to completing I-9 forms, and that Defendant does not knowingly allow an employee who is not eligible to work in the United States to work for it. (Brown Dep. III at 54, 102.) Defendant uses good faith efforts to collect and maintain I-9 forms consistent with all applicable laws and regulations, and denies the remainder of the request. (Def.'s Objs. & Resps. Pls.' Second Req. Admis. No. 11.)

Defendant does not distribute materials to its human resources personnel in its different divisions concerning completing I-9 forms. (Brown Dep. III at 55-57.) Government documents, however, are available to assist in completing I-9 forms. (Id. at 56.) Defendant does not use the SSA's Basic Pilot System. (Id. at 90.)

If Defendant has questions concerning an applicant's eligibility for employment, Defendant investigates and resolves those questions before allowing the applicant to work for Defendant. (Brown Dep. III at 98-99.) Similarly, if Defendant receives information from the SSA reporting a "no match" between the employee's name and social security number, Defendant will review the employee's employment eligibility. (Id. at 103.) Defendant also has a practice of investigating questions and complaints concerning eligibility to work in the United States that come to Defendant's attention. (Id. at 100, 102-03.) Defendant, however, does not have a written policy describing its investigation process. (Id. at 100.) A report presented by

Plaintiffs indicates that, during the period from January 2006 through August 2006, Defendant terminated some employees for discrepancies on work documents. (Pls.' Mot. Class Certification Ex. 17.)

4. Defendant's Use of Temporary Employment Agencies

Defendant has ongoing relationships with employment agencies who supply Defendant with temporary employees ("temporary employment agencies"), and most of Defendant's day-to-day interactions with temporary employment agencies are informal and occur without a written agreement. (Dep. of Matthew Brown Dated Aug. 23, 2007 ("Brown Dep. II") at 53; Def.'s Objs. & Resps. Pls.' First Interrogs. No. 10; Dep. of Kenneth Glenn Michaels at 46-47, 50, 52; Dep. of Catherine Stuff at 11, 31; Decl. of Catherine Waring Stuff ¶ 5; Dep. of Ginger Talley at 11;

Dep. of Barbara Waters at 22-24.) The decisions as to whether to use temporary employment agencies and which temporary employment agency to use generally are left to the discretion of local human resources managers, with approval from the human resources directors of their particular divisions. (Brown Dep. II at 44-45, 48, 50, 53; Def.'s Objs. & Resps. Pls.' First Interrogs. No. 10; O'Neill Decl. ¶¶ 16-17, 23; Hendrix Decl. ¶¶ 15-16, 28-29; Silver Decl. ¶¶ 15-16.) Specifically, since 1999, each division has had authority to determine whether, and to what extent, to use the services of temporary agencies' employees. (Melton Decl. ¶ 19; O'Neill Decl. ¶¶ 16-17, 23; Hendrix Decl. ¶¶ 15-16, 28-29; Silver Decl. ¶¶ 15-16.)

Each division also has authority to determine which temporary agencies to use and to enter into, and to negotiate, fee agreements with those agencies. (Melton Decl. ¶ 19; O'Neill Decl. ¶¶ 17, 23; Hendrix Decl. ¶¶ 15-16, 28-29; Silver Decl. ¶¶ 15-16; Brown Dep. II at 57-60.) Defendant's division management determines whether to discontinue use of a particular temporary agency or to discontinue the use of temporary employees for particular jobs or at particular locations. (O'Neill Decl. ¶¶ 17, 23; Hendrix Decl. ¶¶ 16, 29; Silver Decl. ¶ 16.) No one at Defendant's corporate level is responsible for temporary agency employees working within the divisions or for the divisions' relationships with temporary agencies. (Melton Decl. ¶ 20.)

Similarly, evaluations as to performance of temporary employment agencies generally occur at the division or site level. (Brown Dep. II at 68.) Such evaluations include consideration of whether the agencies are meeting their obligations to provide temporary employees who report to work on time, who are of good quality, who can perform the work they are sent to perform or learn to do so, who follow safety rules, and who do not cause high "turnover." (Id. at 68.)

Orders for temporary workers generally are placed by the human resources personnel, or by other supervisory personnel, at Defendant's various plants. (Michaels Dep. at 52-53, 59; Dep. of Cheryl Johannsen at 21-22; Talley Dep. at 20; Waters Dep. at 35-37; Stuff Dep. at 38, 62-63.) The temporary agencies ordinarily set the wage rates to be paid by Defendant to the temporary employees. (Michaels Dep. at 55-58; Stuff Dep. at 17-18, 70; Talley Dep. at 12-14; Johannsen Dep. at 24; but see Waters Dep. at 34 (stating that Defendant set wages to be paid to temporary employees).)

Defendant requires that the temporary employment agencies perform drug screens and background checks on the temporary employees to be provided to Defendant. (Brown Dep. II at 63, 65; Johannsen Dep. at 14-15; Michaels Dep. at 64-65; Stuff Dep. at 44, 48.) Defendant also requires that the temporary employment agencies complete I-9 forms accurately. (Brown Dep. II at 63, 79-80; Michaels Dep. at 20; Stuff Dep. at 75, 77; Waters Dep. at 24-25, 62.)

Temporary agencies send invoices to Defendant's human resources departments, generally at the divisional level. (Dailey Dep. at 233-36; Brown Dep. II at 179; Johannsen Dep. at 26; Waters Dep. at 73-74; Stuff Dep. at

39, 65-66.) Defendant's human resources employees verify the hours claimed on the invoices, and forward the invoices to Defendant's accounts payable department. (Dailey Dep. at 233-36; Brown Dep. II at 179.) Defendant's accounts payable department pays the invoices. (Dailey Dep. at 233-36; Brown Dep. II at 179.)

5. Defendant's Wage-Setting Practices

Since 1999, each of Defendant's divisions has set wages and has independently determined the wages of its hourly employees. (Melton Decl. ¶ 16; O'Neill Decl. ¶¶ 12, 20; Hendrix Decl. ¶¶ 12-13, 26-27; Silver Decl. ¶ 12.) Defendant and its various divisions have used Wage Progression Tables ("WPTs") to determine wages to be paid to employees. (Dep. of Matthew Brown Dated August 17, 2007 ("Brown Dep. I" at 24.) Defendant's Residential, Commercial, and Home divisions each have their own WPTs. (Brown Dep. I at 19, 24-25, 99, 102; Melton Decl. ¶ 16.) The divisions use their respective WPTs to determine the wages to be paid to employees within those divisions for particular jobs. (Brown Dep. I at 25.) Wages paid for a given job may differ from facility to facility or from division to division. (Id. at 20, 47.)

The number of wage steps for each job, and the timing of the progression through those steps, differ by division. (Melton Decl. ¶ 16.) The starting and top pay rates for hourly positions differ by division, and also frequently differ between the Georgia locations within each division. (Id.)

The WPTs list salary grades. (Brown Dep. I at 28.) The salary grades for companies acquired by Defendant generally were in place when Defendant acquired those companies, and Defendant continued to use those salary grades after it acquired the companies. (Id. at 14, 28, 85; O'Neill Decl. ¶ 13; Silver Decl. ¶ 13.)

In exceptional circumstances, some managers may provide for certain employees to receive hourly rates that exceed the top rates established by the applicable WPT for the employees' positions and divisions. (Brown Dep. I at 79, 83.) Generally, however, the top rate listed on the WPT for a given job within a given division is the top rate that an employee within that division will receive for performing that job. (Id. at 84.)

Defendant ordinarily provides for an annual general wage increase ("GWI") to its total budget allocation for annual wages on an annual basis. (Brown Dep. I at 29; Def.'s Objs. & Resps. Pls.' First Interrogs. No. 4.)

Defendant's corporate Human Resources department establishes the annual GWI, which generally is three percent per year, and communicates that increase to the divisions. (Brown Dep. I at 67-68; Def.'s Objs. & Resps. Pls.' First Interrogs. No. 4.) Each division, in turn, decides how to implement the GWI and whether to give employees in that division the full GWI for a given year. (Brown Dep. I at 79, 108; O'Neill Decl. ¶ 14; Hendrix Decl. ¶¶ 13-14, 26-27; Silver Decl. ¶ 14.) Defendant generally anticipates that its divisions will administer the GWI as an across-the-board increase for all hour employees within that division. (Pls.' Mot. Class Certification Ex. 30 at 1.) The presidents and human resources directors of each division, however, retain the discretion to allocate the GWI as they see fit within their divisions, subject to a budgetary cap. (Def.'s Objs. &

Resps. Pls.' First Interrogs. No. 4; O'Neill Decl. ¶¶ 15, 21-22; Hendrix Decl. ¶¶ 13-14, 26-27; Silver Decl. ¶ 14.)

The wage rates for given job grades generally will increase with GWI. (Brown Dep. I at 67-68, 86.) Outside of GWI, Defendant makes no changes or adjustments to the wage rates for given job grades. (Id. at 29.)

When evaluating its wage rates, Defendant considers employee turnover and the available applicant pool. (Brown Dep. I at 133-35.) When setting wage rates for a given position, Defendant also considers factors such as the relevant labor market, the nature of the position, the skill required to perform the position, and the employee's experience and tenure. (Def.'s Objs. & Resps. Pls.' First Interrogs. No. 4.) Wage rates for a given position generally are determined at the division level or local facility level.

(Id.; Brown Dep. I at 13, 15.) Generally, as long as Defendant receives enough applicants to fill its positions, Defendant believes that its wages are competitive. (Brown Dep. I at 134.)

In 2002, Defendant created a corporate compensation department led by a Director of Compensation, who reports directly to Defendant's corporate Vice President of Human Resources. (Melton Decl. ¶ 17.) The corporate compensation department has not played a significant role in setting hourly wages for Defendant's employees, but instead principally has focused on the wages of salaried employees. (Id.) The Director of Compensation has evaluated hourly wages for administrative and clerical jobs, and has established recommended wage ranges for those positions. (Id. ¶ 18.) The management of each division, however, has authority to deviate from those recommended wage ranges for administrative and clerical employees. (Id.)

6. Defendant's Records

Defendant admits that it has records of, or is able to determine, the aggregate amount of time worked by a Georgia hourly employee within a larger time frame. (Def.'s Objs. & Resps. Pls.' Second Req. Admis. No. 8.) Defendant further admits that it has records of, or is able to determine, the aggregate amount of monetary compensation paid to a Georgia hourly employee over the course of a period of time. (Id. No. 9.) Defendant admits that it collected, and has maintained, the names and social security numbers, or other government identification numbers, of its Georgia hourly workers. (Id. No. 13.) Additionally, Defendant has admitted that it has collected and maintained some data regarding the monetary compensation paid to Georgia hourly employees. (Id. No. 14.)

Since 1997, Defendant's human resources personnel have used an Infinium system, which stores human resources data concerning permanent employees. (Dep. of Mark Dailey at 224.) The information stored in that system includes the employees' names, social security numbers, job titles, hire dates, and termination dates. (Id. at 225.)

7. Plaintiffs' Evidence Concerning Defendant's Alleged Employment of Illegal Immigrants or Alleged Notice of Use of False Social Security Numbers or Documentation

a. Testimony of the Named Plaintiffs

i. Plaintiff Williams

Plaintiff Williams testified that her supervisor, Roy

Bennett, frequently stated that he could get "illegals" to come in and do the jobs that Plaintiff Williams and her co-workers performed. (S. Williams Dep. at 14-15, 35-36, 50, 52, 53, 135, 140-41, 145-46.) Plaintiff Williams testified that after one Hyster accident, her supervisor was angry and stated: "That's why I prefer to hire illegal people. There is none of this carryings on back here, all this talking, all this stuff going on." (Id. at 16-17.) According to Plaintiff Williams, Mr. Bennett stated that he preferred to hire illegals. (Id. at 20-21, 45-47.)

According to Plaintiff Williams, Mr. Bennett reported that he had obtained twenty-three replacement workers, and claimed that the workers were illegal workers. (S. Williams Dep. at 22-23.) Plaintiff Williams also recalled her supervisor stating that he could send "Wayne" to Texas to bring back "enough people to replace the whole push." (Id.) Plaintiff Williams testified that she reported Mr. Bennett's comments to the plant manager, who informed Plaintiff to do her job if she wanted it. (Id. at 146-47.) Similarly, Plaintiff Williams testified that she reported Mr. Bennett's comments to a human resources employee at her plant, and that the human resources employee told Plaintiff Williams that she needed to do her job. (Id. at 146-48.)

According to Plaintiff Williams, "Wayne" reported that he had been off from work because he had to go get his son, who in turn had been to Texas to bring back illegal workers. (S. Williams Dep. at 36-37, 40-41.) Plaintiff Williams recalls hearing "through the plant" that the workers were illegal. (Id. at 23, 43-44.) Plaintiff Williams recalls that the employees could not speak English, and believes that the employees were illegal workers because they could not speak English. (Id. at 47, 56-57.)

According to Plaintiff Williams, Wayne reported that two busloads of workers had arrived for Defendant, and that the workers were packed in like sardines. (S. Williams Dep. at 61-62.) Plaintiff Williams did not see a busload of illegal workers come to Defendant's facility where she worked. (Id. at 64.)

Plaintiff Williams also complains that Mr. Bennett called a temporary employment agency and obtained "Mexican" workers. (S. Williams Dep. at 48-49, 128.) Although Mr. Bennett referred to some full-time employees as illegal, Plaintiff Williams does not know first-hand whether the full-time employees or the temporary employees were illegal. (Id. at 50-51.)

Plaintiff Williams also recalls that an employee named "Carlos" had a number of Social Security cards, driver's licenses, and a big roll of cash. (S. Williams Dep. at 19, 53-54, 153-54.) According to Plaintiff Williams, Carlos offered to cash everyone's checks. (Id. at 73-74, 126, 128, 153.) Plaintiff Williams testified that Carlos claimed to be an illegal worker and that Carlos contended that Mr. Bennett had knowledge of this fact and that Mr. Bennett would not do anything about it. (Id. at 85-86.)

Plaintiff Williams further complains that a Hispanic woman named "Maria" performed Plaintiff Williams' job, and that Plaintiff Williams' wages were cut. (S. Williams Dep. at 21.) Plaintiff Williams recalls that Maria translated for individuals whom Plaintiff Williams believed were illegal workers. (Id. at 28-29.) Plaintiff Williams states that she saw Maria give cards to "Mexicans," and that she heard Maria state on one occasion, "Here is your social security card." (Id. at 60, 65, 161-62, 175.)

Plaintiff Williams also recalls that one Hispanic employee left a plant operated by Defendant after an injury, and later came back to work for Defendant under a different name. (S. Williams Dep. at 19, 79-85, 156-57, 172.) According to Plaintiff Williams, the injured employee and Carlos both indicated that the injured employee was an illegal worker. (Id. at 79-80, 82-83.) Plaintiff Williams states that another employee worked for Defendant at different facilities under different names. (Id. at 157-58, 172.)

ii. Plaintiff Jones

Plaintiff Jones testified that she was working at Aladdin in 1993 or 1994 when the government raided the plant for illegal workers. (Jones Dep. at 11-13, 37.) Plaintiff Jones also is aware of an audit that occurred more recently at the Caradon plant. (Id. at 13, 14-15.)

Plaintiff Jones complains that a number of employees had false identification documents; however, Plaintiff Jones cannot identify a specific employee or applicant who has false identification documents. (Jones Dep. at 22-23.) Similarly, Plaintiff Jones cannot identify a supervisor or hiring employee who knowingly accepted false work authorization documents or hired illegal aliens. (Id. at 22, 28-29.) Plaintiff Jones does not know which employees supervisors allegedly encouraged to return to the United States and to re-apply for work with Defendant. (Id. at 27-28.) Plaintiff Jones also is not aware of anyone with Defendant traveling to the United States border to recruit undocumented aliens, transporting undocumented aliens, making incentive payments for locating such workers, providing housing to workers, helping workers find employment with Defendant, helping applicants apply for jobs, or destroying employment eligibility documents. (Id. at 28-32, 44, 63, 70-72.) Plaintiff Jones complains that Defendant has more Hispanic workers than "American" workers. (Id. at 45.)

Plaintiff Jones states that she learned that some employees left Defendant's employ but later returned approximately three or four months later using different names. (Jones Dep. at 13-16, 56-59, 76.) Plaintiff Jones also heard reports of illegal employees working under different names. (Id. at 17.)

According to Plaintiff Jones, Bobby Tucker, who was her supervisor at Aladdin in 1993, stated that he preferred to hire illegal workers. (Jones Dep. at 42, 51.) Plaintiff Jones recalled that Mr. Tucker stated that he preferred to hire illegal workers because they did their jobs and did not complain, and did not care whether they took breaks. (Id.)

iii. Plaintiff Pelfrey

Mr. Bennett was Plaintiff Pelfrey's supervisor in the shipping department of the print plant. (Pelfrey Dep. at 12, 16.) Plaintiff Pelfrey complains of suffering pay cuts and job transfers and seeing Hispanics performing her job. (Id. at 9-10, 13-14.) Plaintiff Pelfrey also contends that Mr. Bennett and the plant manager told employees that they preferred to hire illegal workers. (Id. at 89-90.)

Plaintiff Pelfrey has no first-hand knowledge that Defendant hired illegal aliens or individuals who were not authorized to work in the United States. (Pelfrey Dep. at 54.) Plaintiff Pelfrey heard talk in the plant indicating that an employee named "Maria" was obtaining false documents for some illegal workers, but has no first-hand knowledge of this occurring or of anyone using false documents to obtain jobs with Defendant. (Id. at 76-78.) Plaintiff Pelfrey has no idea whether Maria received payment for her services, but heard a rumor that Maria received kickbacks for providing documents. (Id. at 130, 140-42.) Plaintiff Pelfrey contends that Maria received preferential treatment from their supervisor. (Id. at 141-42.)

Plaintiff Pelfrey also does not have first-hand knowledge of any of Defendant's employees helping aliens avoid detection or remain in the United States, and has no first-hand knowledge of Defendant's employees accepting false documents. (Pelfrey Dep. at 111-13.) Plaintiff Pelfrey has no first-hand knowledge of any employees of Defendant allowing immigrants to live with them. (Id. at 54-55, 58-59, 81-83.) Plaintiff Pelfrey suspects that some of the employees, including temporary employees, were illegal workers because the employees could not speak English. (Id. at 30, 43-44, 66, 69, 97.)

Plaintiff Pelfrey recalls hearing that the son of an employee named Wayne Bishop picked up illegal workers and brought those employees to work at Defendant's facilities. (Pelfrey Dep. at 30, 34, 36-37.) Plaintiff Pelfrey, however, has no first-hand knowledge of this incident. (Id.)

Plaintiff Pelfrey recalls working with one Hispanic individual who left Defendant's employ after an injury, but later returned to work for Defendant under a different name.

(Pelfrey Dep. at 35, 38-41, 70.) Plaintiff Pelfrey recalls Hispanic workers going home and coming back to work for Defendant, but does not know whether the workers were eligible to work in the United States. (Id. at 72-74.)

Plaintiff Pelfrey recalls seeing a "bunch" of Social Security cards in an employee named Carlos's wallet. (Pelfrey Dep. at 30-32, 113.) Although Plaintiff Pelfrey suspects that Carlos got kickbacks for bringing in workers, she has no first-hand knowledge that this occurred. (Id. at 132-35, 139-40.) Carlos, however, had lots of cash and offered to cash the employees' checks. (Id. at 30, 130, 132-35, 139-40.) Plaintiff Pelfrey saw Carlos bring in one worker, but also knows that some workers rode with Carlos to work. (Id.) Plaintiff Pelfrey does not know whether the workers who rode with Carlos were temporary employees.

(Id.)

iv. Defendant's Documents

Plaintiffs have adduced evidence indicating that, at a June 26, 2003, human resources meeting, Defendant's human resources personnel discussed the fact that the Social Security Administration ("SSA") had sent Defendant a list of 800 social security numbers for employees that did not match the names of the employees. (Pls.' Mot. Class Certification Ex. 5 at 1.) Other evidence presented by Plaintiffs indicates that Defendant's human resources personnel forwarded the names of 400 individuals who reportedly had names and social security numbers either in Defendant's system or on their W-2 forms that did not match to the SSA's database. (Id. Ex. 6.) Defendant's human resources department requested that divisional human resources directors contact the employees to verify the information. (Id.) Plaintiffs also have presented a March 21, 2007, memorandum to Defendant's twisting plant supervisors notifying the supervisors of recent problems with invalid cards. (Id. Ex. 8.)

v. Wal-Mart Complaint

In June 2005, an employee of Defendant's Home division complained to Wal-Mart's ethics hotline concerning Defendant's alleged use of illegal immigrants in a plant. (Pls.' Mot. Class Certification Ex. 9.) Wal-Mart requested that Defendant investigate the complaint and provide a report to Wal-Mart. (Id.)

vi. March 2006 E-Mail

In March 2006, one of Defendant's employees sent an e-mail reporting that representatives of Defendant had asked two to three Hispanic employees in each of Defendant's sites about those employees' expectations of how Defendant's operations would be affected by a rally protesting a "crackdown" on illegal immigrants. (Pls.' Mot. Class Certification Ex. 4.) The e-mail stated: "All areas felt that it would have little to no impact because: The people live paycheck to paycheck & can't afford the loss. There is a rumor in practically every Site that the 'march' is really a plot by the INS to assemble a large group of illegals, arrest them, & deport." (Id.)

vii. Declaration of Christina Martinez

Plaintiffs also have presented a declaration from Christina Martinez, who works as a piece goods clerk for Defendant. (Decl. of Christina Martinez ¶ 2.) According to Ms. Martinez, she has learned from her conversations with other employees that a substantial number of Defendant's employees do not have proper documentation to work in the United States. (Id. ¶ 3.) Ms. Martinez complains that one of Defendant's human resources employees stated that she was aware that many of Defendant's employees were not legally authorized to work in the United States, but if applicants came to Defendant with a social security number and a false identification card, she could and would hire the applicants, and Defendant would employ the applicants. (Id. ¶ 4.)

Ms. Martinez further asserts that she provided translation services for November 2006 meetings concerning converting temporary employees to permanent employees of Defendant. (Martinez Decl. ¶ 5.) According to Ms. Martinez, a number of temporary employees stated that they could not convert to permanent employment because they did not have the correct documentation. (Id. ¶ 6.)

According to Ms. Martinez, in December 2006, she was directed to meet with an attorney for Defendant. (Martinez Decl. ¶ 7.) During that meeting, the attorney informed Ms. Martinez of a lawsuit and asked her about four temporary employees. (Id.) Ms. Martinez informed the attorney that she understood that those employees could not legally work in the United States. (Id.) Ms. Martinez contends that, shortly after her meeting with Defendant's attorney's, three of Defendant's human resources employees informed her that she should not be seeking information concerning the work status of Defendant's employees, as this task was human resources' job, and stated that, if she did so again, "'it could cost you your job.'" (Id. ¶ 8.)

viii. **Carpenter Action**

Plaintiffs also have presented a copy of the complaint in Carpenter v. Mohawk Industries, Inc., Civil Action File No. 4:07-CV-0049-HLM. (Pls.' Mot. Class Certification Ex. 35.) In that action, the plaintiff, a former supervisor at one of Defendant's plants, asserts that Defendant terminated his employment after the plaintiff notified Defendant that some of the temporary workers at the plant were illegal immigrants.

8. Expert Evidence

a. Dr. Borjas

Plaintiffs propose to present expert testimony from George Borjas, a labor economist. (Decl. of George Borjas ¶ 1.) Dr. Borjas asserts that he has performed empirical research concerning the impact of increased immigration on wages and employment opportunities of the pre-existing work force. (Id. ¶ 7.) According to Dr. Borjas, standard models of economic theory reveal unambiguous implications concerning the impact of immigration-induced supply shifts on the earnings of competing workers. (Id. ¶ 8.) Specifically, Dr. Borjas opines that, other things being equal, an immigration-induced increase in the size of the workforce deceases the wage of competing workers. (Id. ¶ 9.)

According to Dr. Borjas, he prepared a 2003 paper that addressed a methodological approach to estimate the responsiveness in wages of competing workers to an immigration-induced increase in the labor supply. (Borjas Decl. ¶ 10.) According to Dr. Borjas, that paper revealed that wages during a particular decade grew slowest for those groups that experienced the largest increase in immigration, and indicated that a ten percent immigration-induced increase in the supply of workers deceased the wages of competing workers by three to four percent. (Id.)

Dr. Borjas opines that he can apply the econometric framework from his 2003 paper to the situation at issue in this litigation. (Borjas Decl. ¶ 11.) Dr. Borjas further states that he has used methods to estimate the wage impact of hiring illegal immigrants by a particular firm in a similar case involving pending litigation. (Id.) According to Dr. Borjas, the key result from this analysis, wage elasticity, measures the responsiveness of wages to an immigration-induced increase in the supply of labor, which, in turn, can be used to calculate the damages to Plaintiffs on a class-wide basis. (Id. ¶ 12.) Dr. Borjas states that he is not aware of conceptual difficulties that will prevent application of those standard methodological approaches to this case. (Id. ¶ 13.)

Dr. Borjas opines that Defendant's alleged practice of hiring illegal immigrants would tend to depress the wages that Defendant pays its workers below what would otherwise have been observed. (Borjas Decl. ¶ 14.) Dr. Borjas discusses Defendant's wage-setting practices and wage progression tables, and opines that Defendant's approach to setting wages does not seem consistent with the wage-setting practices that one would expect to observe for a firm that attracts labor from a local pool of applicants by offering competitive wages that vary with local market conditions. (Id. ¶¶ 15-18.) According to Dr. Borjas, Defendant's approach to setting wages instead seems consistent with that of a firm that pays a wage that guarantees a steady supply of applicant labor from some source, not necessarily from the local labor market, and that this approach could be the result of access to a steady supply of undocumented labor that did not originate in the local labor market. (Id. ¶ 18.)

Dr. Borjas opines that he can apply regression analysis to estimate wage elasticity to measure responsiveness, in percentage terms, of average hourly earnings for Defendant's employees to a percentage increase in the labor supply. (Borjas Decl. ¶ 19.) Dr. Borjas sets forth a description of this analysis, as well as a description of the analysis to be used to estimate damages. (Id. ¶¶ 20-21.) Dr. Borjas opines that damages for the individual class members and for the class can be established and calculated on a class-wide basis. (Id. ¶ 25.)

b. Daniel S. Hamermesh, Ph.D.

Plaintiffs also have presented a declaration from Dr. Daniel S. Hamermesh, who studies the demand for labor. (Decl. of Daniel S. Hamermesh ¶ 1.) Dr. Hamermesh opines that the theory of labor implies that one can expect a firm's hiring of illegal workers to reduce the total wages of the firm's legal employees. (Id. ¶ 2.) Dr. Hamermesh observes that the issue presented in this case is: "What happens in a labor market, and in an individual firm that employs workers in that market, when there is an increase in the supply of workers available to a particular firm in that market?" (Id. ¶ 4.) According to Dr. Hamermesh, the analysis of changes such as that one has become fairly standard in the study of labor markets. (Id. ¶ 5.)

Dr. Hamermesh opines that "the exogenous increase in the supply of workers of a given type can generally have two different direct impacts on employed workers in the labor market where it occurs." (Hamermesh Decl. ¶ 5.) First, if the existing workers' hourly rates are rigid and cannot be competed down by the new workers, the demand for existing workers' services will be reduced, causing them to lose their jobs or work reduced hours. (Id.) Second, if wage rates are flexible, the total wages of at least some workers in the labor market will decrease. (Id.)

Dr. Hamermesh further opines that the influx of workers will have a greater impact on reduced wage rates and total wages among the low-skilled legal workers "who compete most closely with a low-skilled group of illegal immigrants who are brought into a labor market." (Id. ¶ 7.) According to Dr. Hamermesh, the applicable literature clearly indicates that immigrants to the United States reduce the wages of lower-skilled, lower-wage native workers. (Id. ¶ 8.) Dr. Hamermesh opines that multiple regression analysis could be used to estimate the alleged impact of Defendant's alleged use of illegal immigrant workers on wages of its other workers. (Id. ¶ 11.) According to Dr. Hamermesh, using that analysis, "one can infer what the wage rates and total wages of the affected legal workers would have been had the illegal workers not been hired by the company. (Id. ¶ 12.)

Dr. Hamermesh further states that he believes that "the theory and statistical methods of labor economics can be usefully applied to this case." (Hamermesh Decl. ¶ 13.) According to Dr. Hamermesh, with appropriate data, he or another experienced labor economist can "measure the impact of the influx of illegal workers on individual legal employees at Mohawk and on those employees as a class." (Id. ¶ 13.)

c. Criticisms by Defendant

i. Declaration of Finis Welch

Defendant has presented the Declaration of Finis Welch, Ph.D., in opposition to Plaintiffs' Motion for Class Certification. (Def.'s Resp. Pls.' Mot. Class Certification Ex. 15.) Dr. Welch attempts to review and comment upon Dr. Borjas' declaration and upon the declaration of Dr. Hamermesh. (Decl. of Finis Welch, Ph.D. ¶ 4.)

Dr. Welch opines that: (1) Dr. Borjas' methodology is based on an analysis that Dr. Borjas previously rejected, (Welch Decl. ¶¶ 6, 9-11); (2) Dr. Borjas consistently has taken the position that examining the local effects of immigration is not possible, and that attempts to do so yield results that are completely uninformative, (id. ¶¶ 6, 12-15); (3) Dr. Borjas repeatedly has concluded that wage impacts of immigration can only be calculated at the national level due to capital and labor mobility and immigrant location decisions, (id. ¶¶ 6, 16-21); and (4) Dr. Borjas has noted that some groups of workers–specifically, those with skills that differ from the skills possessed by immigrants, actually may gain from a nationwide increase in immigration, (id. ¶¶ 6, 42-46).

Dr. Welch complains that Dr. Hamermesh has described immigration inaccurately as an "exogenous shock," and has ignored the interconnectedness of labor markets. (Welch Decl. ¶¶ 6, 35-40.) Consequently, Dr.

Welch opines that Dr. Hamermesh cannot identify, or estimate, the impact of Defendant's alleged hiring of illegal workers on the wages of Defendant's legal workers. (Id. ¶¶ 6, 40-41.) Dr. Welch further opines that Dr. Hamermesh's statistical methodology does not provide a reliable benchmark for making wage comparisons to Defendant's employees. (Id. ¶ 6; 40-41.)

Dr. Welch further opines that Defendant's own database reveals "notable variation" in the use of temporary workers across Defendant's various locations. (Welch Decl. ¶ 51.) Dr. Welch observes that Defendant has numerous vendors that supply it with temporary workers. (Id. ¶ 52.) Dr. Welch also notes that many of Defendant's hourly employees likely never worked at locations that used temporary employees. (Id. ¶ 53.)

ii. Declaration of Robert C. Divine

Defendant also has presented the Declaration of Robert C. Divine. (Def.'s Resp. Pls.' Mot. Class Certification Ex. 16.)[1] Robert C. Divine is an attorney who practices in the area of immigration law. (Decl. of Robert C. Divine ¶¶ 1-2.) Attorney Divine previously served as the first Chief Counsel of U.S. Citizenship and Immigration Services ("USCIS"), an

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[1]In a footnote in their reply brief, Plaintiffs argue that the Court should strike Attorney Devine's declaration, contending that Attorney Devine's declaration actually is a thirty-page legal brief filed in violation of the page limitations. To the extent that Plaintiffs sought to strike Attorney Devine's declaration, Plaintiffs should have filed a separate Motion to Strike or Notice of Objection to that declaration. Simply requesting affirmative relief in a footnote or the body of a reply brief is not sufficient to trigger the motions reporting system used by the Clerk's office, and a party who requests relief in this way runs a very real risk of having his or her request for relief overlooked.

In any event, the Court declines to strike Attorney Devine's declaration as a legal brief. Instead, the Court has not considered the portions of that declaration that simply appear to be legal conclusions. The Court further observes that Attorney Devine's declaration did not affect the Court's decision as to class certification.

agency within the United States Department of Homeland Security. (Id. ¶ 4.) Attorney Divine also previously served as the acting director and acting deputy director of USCIS. (Id.)

USCIS manages the electronic employment verification system originally known as Basic Pilot and now known as E-Verify. (Devine Decl. ¶ 5.) According to Attorney Devine, Plaintiffs' proposal that they can ascertain who is "legally authorized to be employed in the United States" by having the Court order Defendant to run its employees' names through Basic Pilot or E-Verify is erroneous. (Id. ¶ 11.) Attorney Devine complains that neither E-Verify nor the SSA's Social Security Number Verification Service ("SSNVS") allow the types of queries that Plaintiffs propose to submit. (Id. ¶ 15.) According to Attorney Devine, E-

Verify: (1) only allows employers to submit queries about current employees at the time of hiring of the employees; (2) does not allow queries for workers after hiring; and (3) does not allow queries for former employees or applicants who are not hired. (Id.) Attorney Devine also notes that although the SSNVS allows queries about existing and former employees, those queries are allowed only to ensure that the records of such employees are correct for purposes of completing Internal Revenue Service Form W-2. (Id.) According to Attorney Devine, even if the queries proposed by Plaintiffs were permissible, the responses to those inquiries would not necessarily determine which workers are authorized to work in the United States. (Id. ¶¶ 16-26.) Attorney Devine opines that proposed queries using private databases suffer from similar problems. (Id. ¶¶ 27-28.)

Similarly, Attorney Devine notes that SSA no-match letters, health insurer notifications, and I-9 forms do not establish whether given workers are authorized to work in the United States. (Id. ¶¶ 29-30, 32-37.) Finally, Attorney Devine opines that federal law prohibits an employer from using English language proficiency to determine whether a worker is authorized to work in the United States. (Id. ¶¶ 38-53.)

9. Qualifications of Plaintiffs' Counsel

a. Bobby Lee Cook

Bobby Lee Cook, an attorney representing Plaintiffs, has experience representing classes in class actions, and has been approved to act as class counsel in a number of cases. (Decl. of Bobby Lee Cook ¶ 2.) Attorney Cook has presented a declaration detailing the work that he and his co-counsel have performed in this case. (Id. ¶ 3.)

According to Attorney Cook, he has the experience and skill necessary to represent the class in this case. (Id. ¶ 4.)

b. John E. Floyd

Similarly, Attorney John E. Floyd, who also serves as class counsel for Plaintiffs, has submitted a declaration indicating that his law firm has handled a number of federal and Georgia RICO cases, including class action cases. (Decl. of John E. Floyd ¶ 2.) Attorney Floyd states that he has experience in litigating complex cases involving RICO claims, and that he has authored several publications concerning RICO. (Id. ¶ 3.) Attorney Floyd also indicates that the other attorneys from his law firm who are participating in this case have prior experience with class actions. (Id. ¶¶ 6-9.) Attorney Floyd further provides information concerning the work that he and his co-counsel have performed in this case. (Id. ¶ 10.) Finally, Attorney Floyd opines that his law firm and the individual attorneys from that firm who are involved in this case have the experience and skill necessary to represent the class in this case. (Id. ¶ 11.)

c. Howard W. Foster

Attorney Howard W. Foster, who also serves as counsel for Plaintiffs in this case, has provided a declaration indicating that he has considerable experience in RICO actions, including experience as class counsel in RICO actions proceeding under the same legal theory at issue in this case, and that he also teaches a class regarding Civil RICO at a law school. (Decl. of Howard W. Foster ¶ 2.) Attorney Foster further provides the Court with information concerning the work that he and his co-counsel have performed in this case. (Id. ¶ 3.) Attorney Foster opines that he and his firm have the experience and skill necessary to represent the class adequately in this case. (Id. ¶ 4.)

d. Matthew D. Thames

Finally, Attorney Matthew D. Thames, who also serves as counsel for Plaintiffs in this litigation, has submitted a declaration stating that Attorney Thames has significant experience in litigating against carpet manufacturers on behalf of plaintiff factory workers. (Decl. of Matthew D. Thames ¶ 2.) Attorney Thames further provides information concerning the work that he has performed in this case, and states that he has the experience and skill necessary to represent the putative class adequately. (Id. ¶¶ 3-4.)

B. Procedural Background

On January 6, 2004, Plaintiffs filed this lawsuit.

Plaintiffs are current and former hourly employees of Defendant who claim that Defendant's alleged employment and harboring of illegal aliens has depressed their wages. Plaintiffs assert the following claims: (1) a claim that Defendant's conduct violates 18 U.S.C.A. § 1962(c) (Compl. ¶¶ 88-92); (2) a claim that Defendant's conduct violates O.C.G.A. § 16-14-4(a) (id. ¶¶ 93-98); (3) a claim that Defendant's conduct violates O.C.G.A. § 16-14-4(c) (id. ¶¶ 99-105); and a claim for unjust enrichment arising under Georgia law (id. ¶¶ 106-110). Plaintiffs also seek certification of a class pursuant to Federal Rule of Civil Procedure 23. (Id. ¶ 46.)

On February 9, 2004, Defendant filed a Motion to Dismiss. Defendant requested that the Court dismiss Plaintiffs' federal and state RICO claims. Defendant also requested that the Court decline to exercise its pendent jurisdiction over Plaintiffs' state law claims.

On April 12, 2004, the Court granted in part and denied in part Defendant's Motion to Dismiss. (Order of Apr. 12, 2004.) The Court denied the Motion to Dismiss with respect to Plaintiffs' federal and Georgia RICO claims and with respect to Plaintiff's unjust enrichment claim relating to Defendant's wage savings in employing Plaintiffs at a reduced rate, but granted the Motion to Dismiss with respect to Plaintiffs' unjust enrichment claim relating to Defendant's savings with respect to workers' compensation claims. (Id.)

On May 27, 2004, the Court granted Defendant's request to certify its April 12, 2004, Order for an interlocutory appeal. (Order of May 27, 2004.) The Court also stayed discovery pending resolution of the interlocutory appeal. (Id.)

On June 9, 2005, the United States Court of Appeals for the Eleventh Circuit entered an Order affirming in part and reversing in part the Court's ruling on the Motion to Dismiss. Williams v. Mohawk Indus., Inc., 411 F.3d 1252 (11th Cir. 2005). The Eleventh Circuit affirmed the Court's decision with respect to Plaintiffs' RICO claims, but reversed the Court's denial of the Motion to Dismiss with respect to Plaintiffs' unjust enrichment claims based on Defendant's wage savings in employing Plaintiffs at a reduced rate. Id.

Defendant filed a petition for rehearing en banc with the Eleventh Circuit. On July 29, 2005, while that petition remained pending before the Eleventh Circuit, Plaintiffs filed a Motion to Lift the Stay of Discovery in this Court.

On August 8, 2005, the Eleventh Circuit denied

Defendant's petition for rehearing en banc. On August 11, 2005, Defendant filed a Motion to Continue the Stay of Discovery Pending its Petition for Certiorari.

On August 16, 2005, the Eleventh Circuit issued its mandate in the case. On August 18, 2005, the Eleventh Circuit returned the record on appeal to the Court.

On August 18, 2005, the Court entered an Order staying discovery in this case until the Supreme Court either denied Defendant's petition for a writ of certiorari or granted Defendant's petition and decided the case on its merits. (Order of Aug. 18, 2005.) On October 7, 2005, Defendant filed a petition for certiorari with the Supreme Court, raising the following questions for review: (1) whether a defendant corporation and its agents can constitute an enterprise under RICO; and (2) whether Plaintiffs had stated proximately caused injuries to business property by alleging that the hourly wages they accepted were too low. On December 12, 2005, the Supreme Court granted certiorari as to the first question presented in the petition. Mohawk Indus., Inc. v. Williams, 126 S. Ct. 830 (2005).

On April 25, 2006, the Supreme Court held oral arguments in the case. On June 5, 2006, the Supreme Court dismissed the writ of certiorari limited to the first question contained in the petition for certiorari as improvidently granted, and remanded the case to the Eleventh Circuit for further consideration in light of Anza v. Ideal Steel Supply Corp., 126 S. Ct. 1991 (2006). Mohawk Indus., Inc. v. Williams, 126 S. Ct. 2016 (2006).

On September 27, 2006, the Eleventh Circuit issued an opinion concluding that the Court properly denied

Defendant's Motion to Dismiss as to Plaintiffs' federal and state RICO claims, and that the Court improperly denied the Motion with respect to Plaintiffs' unjust enrichment claims. Williams v. Mohawk Indus., Inc., 465 F.3d 1277 (11th Cir. 2006). The Eleventh Circuit remanded the case to this Court "for further proceedings." Id. at 1295.

On October 9, 2006, Defendant filed a petition for rehearing en banc. On November 22, 2006, the Eleventh Circuit denied Defendant's petition for rehearing en banc. On November 30, 2006, the Eleventh Circuit issued its mandate.

On December 13, 2006, Plaintiffs filed a Motion for Discovery. Plaintiffs requested that the Court issue an Order confirming that the stay of discovery in this case had expired according to its terms and directing the parties to proceed with discovery according to the terms outlined in the March 15, 2004, scheduling order entered by the Court.

On December 19, 2006, Defendant filed a second petition for a writ of certiorari with the Supreme Court. On January 2, 2007, Defendant filed a response in opposition to Plaintiff's Motion for Discovery, arguing that the Court should stay discovery in the case until the Supreme Court denied Defendant's petition for a writ of certiorari or ruled on the merits of the case.

On January 16, 2007, the Court entered an Order denying Plaintiffs' Motion for Discovery. (Order of Jan. 16, 2007.) The Court stayed discovery in the case until the Supreme Court denied Defendant's petition for a writ of certiorari or decided the case on the merits after granting Defendant's petition. (Id.)

On February 26, 2007, the Supreme Court denied Defendant's second petition for a writ of certiorari. Mohawk Indus., Inc. v. Williams, 127 S. Ct. 1381 (2007). The case subsequently was returned to this Court for further proceedings.

On March 21, 2007, Plaintiffs filed an Emergency Motion for Hearing Regarding Mohawk's Contact With Witnesses. (Docket Entry No. 85.) On April 9, 2007, the Court denied that Motion. (Order of Apr. 9, 2007.)

On March 30, 2007, Plaintiffs filed a Motion for Sanctions and to Compel as a Result of Mohawk's Presentation of an Unprepared Corporate Designee. (Docket Entry No. 95.) On that same day, Plaintiffs filed a Motion for the Entry of a Document Preservation Order. (Docket Entry No. 96.) On April 27, 2007, the Court entered an Order denying the Motion for the Entry of a Document Preservation Order as moot, as Plaintiffs' counsel indicated an intent to withdraw that Motion without prejudice. (Order of April 27, 2007.) Similarly, on May 14, 2007, the Court entered an Order denying Plaintiffs' Motion for Sanctions without prejudice after Plaintiffs withdrew the Motion. (Order of May 14, 2007.)

On May 18, 2007, Plaintiffs filed a Notice of Death of Plaintiff. (Docket Entry No. 126.) That Notice informed the Court of the death of Plaintiff Lora Sisson. (Id.)

On June 6, 2007, the parties filed a Joint Stipulation. (Docket Entry No. 136.) The Joint Stipulation states, in relevant part:

> 1. Plaintiffs allege that they are current and former hourly employees of Mohawk.

2. Mohawk has denied that it employs or has employed Plaintiffs–or any other hourly workers–within the State of Georgia. Mohawk has contended that certain subsidiaries, including but not limited to Aladdin Manufacturing Corporation, Mohawk Carpet Corporation and Mohawk ESV, Inc., have employed Plaintiffs and other hourly workers in Georgia.

3. The parties stipulate that, for purposes of this action only, no party will rely on the fact or contention that one or more Mohawk subsidiaries–rather than Mohawk itself–may have employed, paid for, or contracted for hourly workers (a) in connection with any aspect of class certification, (b) to establish or dispute any liability or violation of state or federal law, or (c) to avoid the collection of any judgment or award in this action.

4. The parties stipulate that, for purposes of this action only, no party will rely on the fact or contention that one or more Mohawk

subsidiaries–rather than Mohawk itself–may have contracted with or had other dealings with temporary employment agencies, recruiting firms, and individual recruiters (a) in connection with any aspect of class certification, (b) to establish or dispute any liability or violation of state or federal law, or (c) to avoid the collection of any judgment or award in this action.

5. The parties stipulate that, for purposes of this action only, that Mohawk will assume any liability for the conduct of its subsidiaries. The parties further agree and stipulate that Plaintiffs need not and will not add any other Mohawk subsidiary as a defendant in this action.

6. For purpose of this action only, the parties stipulate that any current or former hourly employee in Georgia of any Mohawk subsidiary (including, but not limited to, Gale Pelfrey, Shirley Williams and Bonnie Jones) has standing to pursue claims for injuries to their wages against Mohawk in this action.

> 7. Nothing in these stipulations, however, will affect the ability of any party to rely upon other issues of corporate organization–including but not limited to Mohawk's divisional structure–(a) in connection with any aspect of class certification, or (b) to dispute any legal violation or liability.
>
> . . .

(Id. ¶¶ 1-7.)

On December 10, 2007, Plaintiffs filed a Notice of Death of Plaintiff, notifying the Court of the death of Plaintiff Shirley Williams. (Docket Entry No. 169.)

On December 18, 2007, Plaintiffs filed their Motion for Class Certification. (Docket Entry No. 174.) Plaintiffs request that the Court certify the following class:

> All persons legally authorized to be employed in the United States who are or have been employed in hourly positions by Mohawk Industries, Inc., its

> subsidiaries or affiliates in Georgia at any time from January 5, 1999 to the present, other than Excluded Employees.
>
> Excluded Employees are employees whose employment at Mohawk has been limited to: Dal-Tile, Unilin, or any Mohawk facility or facilities in Milledgeville, Dublin, Tifton, Norcross, Kennesaw or Atlanta, Georgia.

(Id. at 1-2.) Plaintiffs seek certification of their claim for injunctive relief under Federal Rule of Civil Procedure 23(b)(2), and request that the Court certify all of their claims under Rule 23(b)(3).

Defendant opposes Plaintiffs' Motion for Class Certification. The briefing process for the Motion is complete, and the Court therefore concludes that the Motion is ripe for resolution by the Court.

II. Standard for Class Certification

A. In General

Federal Rule of Civil Procedure 23 governs motions to proceed as a class action in federal court. Rule 23 requires a two-step inquiry to determine whether class certification is appropriate. Fed. R. Civ. P. 23. Plaintiffs bear the burden of satisfying each of Rule 23's certification requirements. Hudson v. Delta Air Lines, Inc., 90 F.3d 451, 456 (11th Cir. 1996). The determination whether a plaintiff has satisfied the requirements imposed by Rule 23 is left to the discretion of the trial court. Califano v. Yamasaki, 442 U.S. 682, 703 (1979); Armstrong v. Martin Marietta Corp., 138 F.3d 1374, 1386 (11th Cir. 1998).

When assessing a motion for class certification, the Court ordinary does not inquire whether the plaintiffs have adduced sufficient evidence to prevail on the merits of their claims. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974); Hudson v. Delta Air Lines, Inc., 90 F.3d 451, 456 (11th Cir. 1996). The Court, however, "performs a 'rigorous analysis' of the arguments offered in support of certifying the class." Rhodes v. Cracker Barrel Old Country Store, Inc., 213 F.R.D. 619, 673 (N.D. Ga. 2003) (citing Gilchrist v. Bolger, 733 F.2d 1551, 1556 (11th Cir. 1984)).

"When performing this analysis, the Court is not limited solely to the substance of the parties' pleadings; indeed, the Court should allow–and has allowed in this case–the parties to conduct discovery and adduce evidence relevant to the class certification issue." Rhodes, 213 F.R.D. at 673 (citing Washington v. Brown & Williamson Tobacco Corp., 959 F.2d 1566, 1570-71 (11th Cir. 1992)). As the Supreme

Court has recognized, the need for such discovery varies depending on the circumstances presented by each case:

> "[T]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." [Coopers & Lybrand v. Livesay, 437 U.S. 463, 469 (1978)] (quoting Mercantile Nat. Bank v. Langdeau, 371 U.S. 555, 558). Sometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim, and sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.

General Tel. Co. v. Falcon, 457 U.S. 147, 160 (1982); Hudson, 90 F.3d at 457; see also In re Polypropylene Carpet Antitrust Litig., 178 F.R.D. 603, 610-11, 614 (N.D. Ga. 1997) ("Polypropylene I") (noting, because motion for class certification pursuant to Rule 23(b)(3) requires court to examine whether evidence to be used by plaintiffs at trial is common to class, court must perform preliminary review of plaintiffs' proposed evidence). In sum, the Court must determine "through information submitted outside of the pleadings that the requirements of Rule 23 are met, not whether plaintiffs' claims are viable." Telecomm Technical Servs. v. Siemens Rolm Commc'ns, Inc., 172 F.R.D. 532, 543 (N.D. Ga. 1997). "Stated differently, the Court will examine whether sufficient evidence exists to reasonably conclude that Plaintiffs may proceed in the manner proposed, not whether the evidence can withstand any and all factual challenges leveled by Defendant[]." Rhodes, 213 F.R.D. at 673.

B. Evaluation of Expert Testimony

At the class certification stage, the Court "need not evaluate competing expert opinions pursuant to Federal Rule of Evidence 702 or the rule of Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)." In re Microcrystalline Cellulose Antitrust Litig., 218 F.R.D. 79, 83 (E.D. Pa. 2003). Indeed, at this stage of the proceedings, the Court "'should not delve into the merits of an expert's opinion, or indulge in dueling between opposing experts.'" Fisher v. CIBA Speciality Chems. Corp., 238 F.R.D. 273, 281 (S.D. Ala. 2006) (quoting In re Natural Gas Commodities Litig., 231 F.R.D. 171, 182 (S.D.N.Y. 2005)) (internal quotation marks omitted). The Court also "need not assign any one opinion particular weight." In re Microcrystalline Cellulose Antitrust Litig., 218 F.R.D. at 83.

"An expert opinion must meet only a 'low hurdle' to receive consideration at the Rule 23 stage." Fisher, 238 F.R.D. at 281 (citing In re Natural Gas Commodities Litig., 231 F.R.D. at 182). The Court asks only "'whether the expert evidence is sufficiently probative to be useful in evaluating whether class certification requirements have been met.'" Id. (quoting Dukes v. Wal-Mart, Inc., 222 F.R.D. 189, 191 (N.D. Cal. 2004)).

Defendant raises numerous arguments as to why Defendant believes the Court should not consider the expert testimony presented by Plaintiffs. Those arguments, however, essentially present Daubert challenges or challenges to the merits of the opinions offered by Plaintiffs' experts. The Court need not, and does not, consider such challenges at this stage of the proceedings. Rather, the

Court concludes, for the limited purposes of ruling on the instant Motion, that the expert evidence presented by Plaintiffs is sufficiently probative to be useful to the Court in determining whether Plaintiffs have satisfied the requirements for class certification. Plaintiffs' expert evidence consequently satisfies the low hurdle required at this stage of the proceedings.

C. Requirements of the Federal Rules of Civil Procedure

Before the Court may certify a case as a class action, the case must satisfy all four requirements of Federal Rule of Civil Procedure 23(a), and also must fall within one of the categories described in Rule 24(b). Rhodes, 213 F.R.D. at 673-74. Rule 23(a) requires Plaintiffs to show:

(1) the class is so numerous that joinder of all members is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and

(4) the representative parties will fairly and adequately protect the interests of the class.

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

Plaintiffs argue that the putative class's claim for injunctive relief qualifies for certification under Rule 23(b)(2). Rule 23(b)(2) allows certification if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2).

Plaintiffs also claim that the putative class fits within

Rule 23(b)(3). Rule 23(b)(3) requires that: (1) questions of law or fact common to members of the class predominate over questions affecting only individual members; and (2) a class action must be superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

The Court first addresses whether Plaintiffs have standing to pursue their claims. The Court then discusses Plaintiffs' showing under Rule 23(a) and, finally, discusses whether Plaintiffs have satisfied the requirements of Rule 23(b)(2) or Rule 23(b)(3).

III. Standing

As an initial matter, Defendant contends that the named

Plaintiffs lack standing to pursue their claims. The United States Court of Appeals for the Eleventh Circuit has observed:

> [I]t is well-settled that prior to the certification of a class, and technically speaking before undertaking any formal typicality or commonality review, the district court must determine that at least one named class representative has Article III standing to raise each class subclaim. "[A]ny analysis of class certification must begin with the issue of standing." "Only after the court determines the issues for which the named plaintiffs have standing should it address the question whether the named plaintiffs have representative capacity, as defined by Rule 23(a), to assert the rights of others." It is not enough that a named plaintiff can establish a case or controversy between himself and the defendant by virtue of having standing as to one of many claims he wishes to assert. Rather, "each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at

> least one named plaintiff has suffered the injury that gives rise to that claim."

Prado-Steiman v. Bush, 221 F.3d 1266, 1279-80 (11th Cir. 2000) (citations omitted) (alteration in original). Plaintiffs, as the parties claiming jurisdiction, have the burden of establishing standing. Fla. Pub. Interest Research Group Citizen Lobby, Inc. v. Envtl. Prot. Agency, 386 F.3d 1070, 1083 (11th Cir. 2004).

"Article III of the United States Constitution limits the power of federal courts to adjudicating actual 'cases' and 'controversies.'" Nat'l Alliance for the Mentally Ill, St. Johns, Inc. v. Bd. of County Comm'rs of St. Johns County, 376 F.3d 1292, 1294 (11th Cir. 2004). "The most significant case-or-controversy doctrine is the requirement of standing." Id. "'In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" Id. (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)).

To satisfy the standing requirement, a party must show: (1) that he has suffered an injury in fact; (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) that it is likely, as opposed to merely speculative, that the injury "will be 'redressed by a favorable decision.'" Bischoff v. Osceola County, Fla., 222 F.3d 874, 883 (11th Cir. 2000).

Here, the Court finds that at least one of the named Plaintiffs has standing to assert all of the claims advanced by Plaintiffs. Although Defendant correctly notes that the named Plaintiffs who are former employees of Defendant[2]

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[2]Plaintiff Pelfrey is a former employee of Defendant. As previously noted, Plaintiffs Williams and Sisson passed away since

lack standing to raise claims for injunctive relief, the evidence in the record indicates that Plaintiff Jones still is employed by Defendant. See Reid v. Lockheed Martin Aeronautics Co., 205 F.R.D. 655, 665 n.13 (N.D. Ga. 2001) (observing that former employees lacked standing to seek injunctive relief). At least one named Plaintiff consequently has standing to pursue claims for injunctive relief.[3]

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the filing of this action, and thus obviously are no longer employed by Defendant.

[3]To the extent that Defendant contends that Plaintiff Jones lacks standing to pursue claims because Plaintiff Jones worked at a facility that did not use temporary labor, this issue "is more properly one of commonality and typicality than of standing." Reid, 205 F.R.D. at 663 n.9. Consequently, the Court addresses that contention in connection with the commonality and typicality inquiries.

IV. Rule 23(a) Analysis

A. Numerosity

The numerosity requirement is satisfied if the proposed class is so numerous that joinder of all members is impracticable. Fed R. Civ. P. 23(a)(1). The impracticability requirement does not require that joinder be impossible; rather, a plaintiff need only show that joinder would be extremely difficult or inconvenient. Anderson v. Garner, 22 F. Supp. 2d 1379, 1384 (N.D. Ga. 1997). Additionally, a plaintiff "generally must proffer some evidence or a reasonable estimate of the number of members comprising the purported class." In re Disposable Contact Lens Antitrust Litig., 170 F.R.D. 524, 529 (M.D. Fla. 1996).

Here, Plaintiffs allege that the class satisfies the numerosity requirement, and Defendant apparently agrees.

(Def.'s Resp. Pls.' Mot. Class Certification at 1 ("Plaintiffs seek to represent a class consisting of 49,708 members."). The Court finds that the proposed class is sufficiently numerous to make joinder of all members extremely difficult or inconvenient.

A second element of the numerosity requirement is that the proposed class meet a minimal standard of identifiability. Rhodes, 213 F.R.D. at 674. Although "[i]t is not necessary that the members of the class be so clearly identified that any member can be presently ascertained, . . . [Plaintiffs] must establish that there exists a legally definable 'class' that can be ascertained through reasonable effort." Earnest v. Gen. Motors Corp., 923 F. Supp. 1469, 1473 & n.4 (N.D. Ala. 1996) (quotations and citations omitted). The class simply must meet a "minimum standard of definiteness which will allow the trial court to determine membership in the proposed class." Id.; see also Telecomm Technical Servs., 172 F.R.D. at 543-44 (noting all members of class need not be specifically identified and may be dispersed geographically).

One court has noted that to meet Rule 23(a)'s requirement that the class be identifiable, "a proposed class definition must specify a particular group harmed during a particular time period via a particular manner, such that the district court can utilize objective indicia to determine who is and is not part of the class." Fisher, 238 F.R.D. at 301. Courts have declined to certify classes "where the proposed [class] definition would require individualized fact-finding to identify class members." Id.

Plaintiffs suggest that they can identify the members of the proposed class through Defendant's records, notifications that third parties have provided to Defendant concerning use of social security numbers, submission of the names and social security numbers of Defendant's hourly workers to E-Verify, by reviewing I-9 forms, and by using databases such as Lexis-Nexis or People Finder. Defendant devotes a significant amount of time and energy to contending that those methods will not allow Plaintiffs or the Court to identify the members of the proposed class. The Court, however, finds at this point, and solely for purposes of the instant Motion, that the alleged deficiencies pointed out by Defendant do not cause the proposed class to fail the "minimal" standard of ascertainability.

In sum, the Court finds that the proposed class satisfies the numerosity requirement. The Court further concludes that the proposed class meets the minimal standard of identifiability required by Rule 23(a).

B. Commonality

To satisfy the commonality requirement, a plaintiff must show the presence of questions of law or fact common to the entire class. Fed. R. Civ. P. 23(a)(2). Stated differently, Rule 23(a)(2) requires a plaintiff to demonstrate the existence of issues subject to class-wide proof. Hudson, 90 F.3d at 457. "[W]hile it is not necessary that every question of law or fact is common to every class member, commonality will not exist as long as there is a predominance of individual issues." Domestic Air, 137 F.R.D. at 699 (citing 3 Herbert B. Newburg, Newburg on Class Actions § 18.09, at 464 (2d ed. 1985)).

Here, Plaintiffs argue that several questions of fact and law are common to the proposed class. In particular, Plaintiffs contend that the common questions at issue in this case include:

(1) Enterprise: Has Mohawk conducted or participated, directly or indirectly, in the conduct of an enterprise's affairs? What are the nature and extent of the relationships between Mohawk and the third parties that supply Mohawk with illegal workers?

(2) Pattern of Racketeering Activity: Has Mohawk engaged in a pattern of racketeering activity? How many persons who are not authorized to be employed in the United States has Mohawk employed in hourly positions in Georgia during the Class Period? Did Mohawk knowingly hire those unauthorized aliens? How many aliens has Mohawk harbored during the Class Period? Did Mohawk knowingly or recklessly harbor those aliens? Has Mohawk knowingly or recklessly

encouraged or induced aliens to come to or reside in the United States? Has Mohawk knowingly accepted false employment authorization documents? Has Mohawk knowingly used false identification documents?

(3) Conspiracy: Has Mohawk engaged in a conspiracy to violate § 16-4-4(a) of the Georgia RICO statute?

(4) Injury: To what extent has Mohawk's pattern of racketeering activity depressed the wages of the class members and/or increased or maintained Mohawk's profits?

(5) Injunctive Relief: What injunctive relief is required to remedy Mohawk's violations of the federal and Georgia RICO statutes?

(Pls.' Br. Supp. Mot. Class Certification at 15-16.)

For the following reasons, the Court concludes that this case does not satisfy the commonality requirement. Contrary to Plaintiffs' arguments that Defendant engaged in one grand conspiracy to employ illegal workers, the evidence in the record indicates that Defendant's operations, including its use of temporary employment agencies and wage-setting practices, are extremely decentralized. Indeed, the evidence shows that Defendant's corporate-level management, including its human resources department, did not enter into relationships with temporary agencies or even exercise control over those relationships, and did not exercise control over wages. Instead, the evidence in the record demonstrates that each of Defendant's five divisions at issue in this case conducted its own hiring, entered into its own relationships with various temporary employment agencies, and had discretion and autonomy to choose whether to enter into such relationships and to set the terms of the relationships. The record further demonstrates that each division set its own wages for its non-temporary hourly employees. The record also shows that some locations within divisions even conducted their own hiring, and that the management at those locations had discretion to choose whether to use temporary employees or to engage in relationships with temporary employment agencies. The evidence thus reveals that the relationships with the various temporary employment agencies occurred on a division-by-division or facility-by-facility basis, rather than on a corporate-level basis. Under those circumstances, the Court finds that Plaintiffs have failed to satisfy the commonality requirement. See Reid, 205 F.R.D. at 669-70 (noting that plaintiffs in employment discrimination suit failed to satisfy commonality requirement where evidence indicated that employment practices were established at local level in various facilities); see also Cooper v. S. Co., 390 F.3d 695, 715 (11th Cir. 2004) (stating courts frequently have declined to certify class actions where "class certification was sought by employees working in widely diverse job types, spread throughout different facilities and geographic locations"); Wright v. Circuit City Stores, Inc., 201 F.R.D. 526, 541 (N.D. Ala. 2001) (observing, in discrimination case, that plaintiffs who were employed in different stores, in different states, in different departments, and at different levels within company hierarchy did not have claims that were susceptible to generalized proof or defenses).[4]

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[4]Plaintiffs argue that the Court should treat this case differently because it is a RICO action, rather than an employment

C. Typicality

The typicality requirement is satisfied if the claims and defenses of the representative parties are typical of the claims and defenses of the class. Fed R. Civ. P. 23(a)(3). A representative plaintiff's claim is typical if "the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir. 1984). Stated differently, the Court simply inquires whether the named representative's claims "have the same essential

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discrimination case. The Court understands and appreciates Plaintiffs' argument. The Court, however, cannot simply ignore the evidence in the record, which fails to support Plaintiffs' contention that Defendant engaged in a corporate-wide RICO enterprise with temporary employment agencies to employ illegal workers and thereby depress the wages of workers who were eligible for employment in the United States.

characteristics as the claims of the class at large." Appleyard v. Wallace, 754 F.2d 955, 958 (11th Cir. 1985).

"Typicality, however, does not require identical claims or defenses. A factual variation will not render a class representative's claim atypical unless the factual position of the representative markedly differs from that of other members of the class." Kornberg, 741 F.2d at 1337. Furthermore, "[d]ifferences in the amount of damages between the class representative and other class members does not affect typicality." Id. A plaintiff thus can satisfy the typicality requirement "even though varying fact patterns support the claims or defenses of individual class members, or there is a disparity in the damages claimed by the representative parties and the other members of the class." Domestic Air, 137 F.R.D. at 698 (quoting 7A Charles Alan

Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure: Civil § 1764 (2d ed. 1986)). "However, 'there must be a nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class.'" Wright, 201 F.R.D. at 543 (quoting Kornberg, 741 F.2d at 1337).

For the following reasons, the Court finds that Plaintiffs have failed to satisfy the typicality requirement. First, Plaintiff Jones never worked at a facility owned by Defendant that used temporary labor. Plaintiff Jones' claims thus are not typical of the claims of members of the proposed class, many of whom may have worked at facilities owned by Defendant that used temporary labor.

Additionally, both Plaintiff Jones and Plaintiff Pelfrey worked at only a handful of Defendant's facilities that

Plaintiffs seek to include in the class definition. As previously noted, the evidence in the record indicates that decisions as to the use of temporary labor, as to agreements with temporary employment agencies, and as to wage-setting were made by the various divisions or even on a facility-by-facility basis. Under those circumstances, the Court simply cannot find that the named Plaintiffs' claims are typical of those of the members of the proposed class at large. See Cooper, 390 F.3d at 714-15 (noting that district court did not abuse its discretion in concluding that plaintiffs failed to satisfy typicality requirement where compensation and promotion decisions were made by individual managers in disparate location, and where plaintiffs sought to represent very broad class that purported to represent all African-American employees of defendants, even though named plaintiffs, collectively, did not have claims that would have been typical of entire class); Wright, 201 F.R.D. at 544-45 (finding typicality requirement was not satisfied where class representatives worked in only six of 125 to 160 stores, warehouses, and service centers, located throughout fifteen states, that plaintiffs sought to include in class certification).

Finally, Plaintiff Pelfrey fails the typicality requirement with respect to her claims for injunctive relief. As previously noted, Plaintiff Pelfrey lacks standing to seek injunctive relief. Under those circumstances, Plaintiff Pelfrey does not meet the typicality requirement with respect to her claims for injunctive relief. Franze v. Equitable Assurance, 296 F.3d 1250, 1254 (11th Cir. 2002) ("'[w]ithout individual standing to raise a legal claim, a named representative does not have the requisite typicality to raise the same claim on behalf of a class.'") (quoting Piazza v. Ebsco Indus., 273 F.3d 1341, 1345 (11th Cir. 2001)) (alteration in original).

In sum, the Court concludes that Plaintiffs have failed to satisfy the typicality requirement of Rule 23(a). The Court next discusses Rule 23(a)'s adequacy requirement.

D. Adequacy

To satisfy the adequacy requirement, Plaintiffs must show that they will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(b)(4). This requirement involves a two-part inquiry: (1) whether the proposed class' counsel possesses the qualifications and experience to conduct the litigation; and (2) whether Plaintiffs possess interests that are antagonistic to the interests of other class members. Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718, 726 (11th Cir. 1987); Telecomm Technical Servs., 172 F.R.D. at 543-44. The Court addresses those questions in turn.

Defendants do not contest the qualifications of proposed class counsel. Proposed class counsel have considerable experience in class action litigation, and their performance in the litigation to date indicates that proposed class counsel possess the necessary qualifications and experience to conduct the litigation. The Court therefore concludes that Plaintiffs satisfy the first element of the adequacy requirement of Rule 23(a)(4).

"The adequacy requirement also serves to 'uncover conflicts of interest between named parties and the class they seek to represent.'" Wright, 201 F.R.D. at 545 (quoting Robinson v. Sears, Roebuck & Co., 111 F. Supp. 2d 1101, 1124 (E.D. Ark. 2000)). "'A class representative must be part of the class and possess the same interest and suffer the same injury as the class members.'" Id. (quoting Robinson, 111 F. Supp. 2d at 1124). Further, "class representatives should have 'the personal characteristics and integrity necessary to fulfill the fiduciary role of class representatives.'" Id. (quoting Kirkpatrick, 827 F.2d at 726).

Defendant argues, among other things, that the named Plaintiffs are not adequate class representatives because the named class members lack sufficient knowledge and understanding of the nature of this action and the facts underlying this action. The Court has reviewed the depositions of each of the named Plaintiffs, and cannot find that the named Plaintiffs lack sufficient knowledge of the facts underlying this action or sufficient understanding of the facts underlying this action to be adequate representatives. The Court therefore rejects this argument.

Defendant further contends that Plaintiff Pelfrey is not an adequate representative with respect to Plaintiffs' claims for injunctive relief, as Plaintiff Pelfrey is no longer employed by Defendant. See Wright, 201 F.R.D. at 546 (finding plaintiffs failed to satisfy adequacy requirement, partly because none of plaintiffs were current employees of defendant and had no ties to defendant or prospect of benefit from injunctive relief plaintiffs were seeking). While this argument has merit, Plaintiff Jones remains employed by Defendant, and she has standing to seek injunctive relief. The Court therefore cannot find that Plaintiffs fail the adequacy requirement based on this argument.

For the reasons discussed above, the Court finds that

Plaintiffs' counsel possess the qualifications and experience necessary to conduct this litigation, and that the named Plaintiffs are adequate class representatives. The Court therefore concludes that Plaintiffs satisfy the adequacy requirement.

E. Summary

In sum, the Court finds that Plaintiffs satisfy the numerosity and adequacy requirements of Rule 23(a). The Court, however, concludes that Plaintiffs cannot satisfy Rule 23(a)'s commonality and typicality requirements. The Court therefore cannot certify this case as a class action, because Plaintiffs have failed to satisfy all of the requirements of Rule 23(a). In an abundance of caution, however, the Court will discuss whether Plaintiffs can satisfy the requirements of Rule 23(b)(2) or Rule 23(b)(3).

IV. Rule 23(b) Analysis

In addition to satisfying all of the criteria of Rule 23(a), Plaintiffs must meet the requirements set forth in Rule 23(b). Here, Plaintiffs seek to certify their claims for injunctive relief under Rule 23(b)(2), and also seek to certify their claims under Rule 23(b)(3). Plaintiffs thus seek to certify a "hybrid" class action. Reid, 205 F.R.D. at 686 (describing "hybrid" class action as action in which plaintiffs sought to certify their claims for injunctive relief under Rule 23(b)(2) and their claims for damages under Rule 23(b)(3)). The Court first addresses Plaintiffs' request for class certification under Rule 23(b)(2), and then addresses Plaintiffs' request for class certification under Rule 23(b)(3).

A. Rule 23(b)(2)

Class certification is appropriate under Rule 23(b)(2) when the plaintiffs satisfy the requirements of Rule 23(a) and the defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "Subsection (b)(2) class actions are 'limited to those class actions seeking preliminary injunctive or corresponding declaratory relief.'" Barnes v. Am. Tobacco Co., 161 F.3d 127, 142 (3d Cir. 1998) (quoting 1 Newburg, supra, at 4-39).

Here, Plaintiffs seek injunctive relief for only one of their three remaining claims–their claim for Defendant's alleged violation of O.C.G.A. § 16-14-4(a). (Compl. ¶¶ 97-98.) Plaintiffs, however, also request an award of treble damages, plus an award of punitive damages, in connection with that same claim. (Id. ¶¶ 95-96.) Similarly, Plaintiffs request treble and punitive damages in connection with their claims for alleged violations of 18 U.S.C.A. § 1962(c) and O.C.G.A. § 16-14-4(c). (Id. § XII (prayer for relief)).

Punitive damages and treble damages are "legal relief that can only be awarded in a Rule 23(b)(2) class action when the damages sought are 'incidental' to the claims for equitable and declaratory relief." Cooper, 390 F.3d at 720 (quoting Murray v. Auslander, 244 F.3d 807, 812 (11th Cir. 2001)). "Damage claims in a Rule 23(b)(2) class action must be incidental to the equitable and declaratory relief because the basic premise of such a class action–that class members suffer a common injury properly addressed by class-wide equitable relief–'begins to break down when the class seeks to recover . . . monetary relief to be allocated based on individual injuries.'" Id. (quoting Allison v. Citgo Petroleum Corp., 151 F.3d 402, 413 (5th Cir. 1998)). In Murray, the United States Court of Appeals for the Eleventh Circuit adopted the position of the United States Court of Appeals for the Fifth Circuit in Allison:

> By incidental, we mean damages that flow directly from liability to the class as a whole on the claims forming the basis of the injunctive or declaratory relief. . . . Ideally, incidental damages should be only those to which class members automatically would be entitled once liability to the class (or subclass) as a whole is established. . . . Liability for incidental damages should not . . . entail complex individualized determinations. Thus, incidental damages will, by definition, be more in the nature of a group remedy, consistent with the forms of relief intended for (b)(2) class actions.

Murray, 244 F.3d at 812 (quoting Allison, 151 F.3d at 415) (emphasis in original; omissions in original). "In keeping with the requirement that monetary damages be incidental to equitable relief in Rule 23(b)(2) class actions, the advisory committee's note to Rule 23 explains that certification under section (b)(2) is not proper in 'cases in which the appropriate final relief relates exclusively or predominately to money damages.'" Cooper, 390 F.3d at 720-21 (emphasis in original).

Applying the rule set forth in Cooper, it is clear that the monetary damages sought by Plaintiffs are not simply incidental to the injunctive relief sought by Plaintiffs. Indeed, Plaintiffs primarily seek monetary damages. Consequently, certification under Rule 23(b)(2) is inappropriate.

To the extent that Plaintiffs contend that the Court simply may certify only Plaintiffs' claims for injunctive relief under Rule 23(b)(2), this approach also is inappropriate. As another judge in this District has noted, the Seventh Amendment may prohibit such an approach. Reid, 205 F.R.D. at 686. As the Reid court observed:

> The Seventh Amendment preserves the right to a jury trial "in Suits at common law." Although the amendment specifically mentions suits at common law, the Supreme Court has made clear that the right to jury trial applies in any suit "in which legal rights [are] to be ascertained and determined, in contradistinction to those where equitable rights alone [are] recognized, and equitable remedies [are] administered."

Id. (citations omitted) (alterations in original). The Reid court concluded that a jury trial was required with respect to the plaintiffs' claims for damages because the parties in Reid had the right to a jury trial in a Title VII case seeking both compensatory and punitive damages, and because both sides had demanded a jury trial. Id. The Reid court noted:

> Many of the factual issues relevant to Plaintiffs' damages claims, however, are also relevant to Plaintiffs' equitable claims. As such, the litigants have the right to a determination of these issues by a single jury. Adjudication would therefore require one jury to resolve the many individual and case-specific issues relating to Plaintiffs' employment discrimination claims prior to any ruling by the court with regard to equitable remedies. The court finds that such a task would be overly cumbersome and would result in litigation characterized by confusion and incoherency.

205 F.R.D. at 686-87.

In the instant case, Plaintiffs have a right to a jury trial on their claims for damages, and they have demanded a jury trial on those claims. (Compl. § XIII E (Prayer for Relief).) Consequently, a jury trial is required with respect to Plaintiffs' claims for damages. Here, as in Reid, many of the factual issues relevant to Plaintiffs' damages claims also are relevant to Plaintiffs' claim for injunctive relief, and the parties have the right to have a single jury determine those issues. The Court agrees with the Reid court that employing an approach whereby one jury would resolve all of the many individual and case-specific issues relating to Plaintiffs' claims before the Court issued a ruling as to equitable remedies would be overly cumbersome, confusing, and highly inefficient. The Court consequently declines to adopt the approach suggested by Plaintiffs.

Additionally, even if the named Plaintiffs were willing to forego class certification with respect to damages to pursue injunctive relief on behalf of the class, it is far from clear that the named Plaintiffs would represent the interests of the other class members adequately. Cooper, 390 F.3d at 721. As the Eleventh Circuit recognized in Cooper, "the monetary damages requested might be of far greater significance than injunctive relief" for many of the class members, especially for those who no longer work for Defendant. Id. For those reasons, the Court will not certify a class only as to Plaintiffs' claim for injunctive relief.

In sum, the Court finds that Rule 23(b)(2) certification is inappropriate because Plaintiffs' claims for monetary damages are not simply incidental to Plaintiffs' claim for injunctive relief. The Court further concludes that certification of only Plaintiffs' claims for injunctive relief under Rule 23(b)(2) is inappropriate. The Court therefore denies Plaintiffs' request for certification under Rule 23(b)(2).

B. Rule 23(b)(3)

Rule 23(b)(3) raises two questions: (1) whether issues of law or fact common to members of the class predominate over questions affecting only individual members; and (2) whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3) states:

> The matters pertinent to the findings [of predominance and superiority] include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D)

> the difficulties likely to be encountered in management of a class action.

Id. The Advisory Committee's notes emphasize that Rule 23(b)(3) is designed for cases "in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." Id. advisory committee's notes to the 1966 Revision of Rule 23(b)(3) (reprinted in 39 F.R.D. 69, 102-03 (1966)). Before reaching these issues, however, the Court must identify the substantive law governing Plaintiffs' claims.

A. Substantive Law Governing Claims

1. Federal RICO Claims

The Eleventh Circuit set forth a thorough summary of the law governing Plaintiffs' federal RICO claims in its previous opinion in this case. In the interest of brevity and efficiency, the Court incorporates that portion of the Eleventh Circuit's opinion into this Order, and will not repeat that portion of the opinion, or set forth an entirely new section summarizing the applicable law governing Plaintiffs' RICO claims, in this Order. Williams, 465 F.3d at 1282-92.

2. Georgia RICO Claims

Similarly, the Eleventh Circuit's previous opinion in this case sets forth a thorough summary of the law governing Plaintiffs' Georgia RICO claims. In the interest of brevity and efficiency, the Court again incorporates that portion of the Eleventh Circuit's opinion into this Order, rather than repeating that portion of the opinion or setting forth an entirely new section summarizing Georgia RICO law in this

Order. Williams, 465 F.3d at 1292-94.

B. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). A plaintiff may satisfy this requirement by showing that issues subject to class-wide proof predominate over issues requiring proof that is unique to the individual class members. Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1005 (11th Cir. 1997).

In deciding this question, the Court must keep in mind two related purposes of class action litigation: (1) promoting economies of time, effort, and expense; and (2) providing individuals with relatively small claims the opportunity to assert their rights. Fed. R. Civ. P. 23(b) advisory committee's notes to the 1966 Revision of Rule 23(b)(3); Amchem, 521 U.S. at 617 ("the Advisory Committee [in drafting Rule 23(b)(3)] had dominantly in mind vindication of 'the rights of groups of people who individually would be without effective strength to bring their opponents into court at all'"). If common questions do not predominate, however, no economies will be achieved through the use of the class action device. Fed. R. Civ. P. 23(b)(3) advisory committee's notes to the 1966 Revision of Rule 23(b)(3).

The predominance requirement "does not require that all issues be common to all parties," rather, it mandates that "'resolution of the common questions affect all or a substantial number of the class members.'" Watson v. Shell Oil Co., 979 F.2d 1014, 1022 (5th Cir. 1992) (quoting Jenkins v. Raymark Indus., Inc., 782 F.2d 468, 472 (5th Cir.

1986)). "Whether an issue predominates can only be determined after considering what value the resolution of the class-wide issue will have in each class member's underlying cause of action." Rutstein v. Avis Rent-A-Car Sys., Inc., 211 F.3d 1228, 1234 (11th Cir. 2000) (citing Amchem, 521 U.S. at 623). The Eleventh Circuit has warned that "'serious drawbacks to the maintenance of a class action are presented where initial determinations, such as the issue of liability vel non, turn upon highly individualized facts.'" Id. at 1235-36 (quoting McCarthy v. Kleindienst, 741 F.2d 1406, 1415 (D.C. Cir. 1984)).

"Common issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues." In re Visa Check/Master Money Antitrust Litig., 280 F.3d 124, 139 (2d

Cir. 2001) (citing Bertulli v. Indep. Ass'n of Cont'l Pilots, 242 F.3d 290, 290 (5th Cir. 2001); accord Sterling v. Velsicol Chem. Corp., 855 F.2d 1188, 1197 (6th Cir. 1988) ("where the defendant's liability can be determined on a class-wide basis because the cause of the disaster is a single course of conduct which is identical for each of the plaintiffs, a class action may be the best suited vehicle to resolve such a controversy") (quoting in In re Teletronics Pacing Sys., Inc., 172 F.R.D. 271, 288 (S.D. Ohio 1997)).

Although "the presence of commonality alone is not sufficient to fulfill Rule 23(b)(3) . . . '[w]hen 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 on an individual basis.'" Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998) (quoting 7A Wright, Miller & Kane, supra, § 1778); accord Mullen v. Treasure Chest Casino, LLC, 186 F.3d 620, 626 (5th Cir. 1999) ("'In order to 'predominate,' common issues must constitute a significant part of the individual cases.'") (quoting Jenkins v. Raymark Indus., 782 F.2d 468, 472 (5th Cir. 1986)). "Common issues will not predominate over individual questions if, 'as a practical matter, the resolution of . . . [an] overarching common issue breaks down into an unmanageable variety of individual legal and factual issues.'" Cooper, 390 F.3d at 722 (quoting Andrews v. Am. Tel. & Tel. Co., 95 F.3d 1014, 1023 (11th Cir. 1996)) (omission and alteration in original).

Here, the resolution of the common issues that Plaintiffs claim exist will, by necessity, break down into an unmanageable number of individual legal and factual issues. As previously noted, the evidence in the record fails to support a determination that Defendant engaged in a relationship with the various temporary employment agencies at a corporate-wide level. Rather, the evidence indicates that: (1) the individual divisions, and, in many cases, the individual facilities, had discretion to determine whether to enter into relationships with temporary employment agencies, to determine which of the various temporary employment agencies to use, and to determine whether to use temporary labor at all; (2) Defendant's corporate-level management had little control over the relationships between the divisions or facilities and the temporary employment agencies; (3) many facilities may have chosen not to use temporary labor at all during the proposed class period; (4) the divisions each operated their own hiring centers and made their own decisions with respect to employee hiring and discipline; (5) the divisions, rather than Defendant's corporate management, established wages for their hourly employees; and (6) the wages for the hourly employees differed from division to division, and, often, from facility to facility for the same position. To determine whether a RICO enterprise existed, the Court will have to examine each of the relationships between the divisions or facilities and the various temporary employment agencies. Additionally, although the Court need not, and does not, evaluate the merits of Defendant's statute of limitations argument at this point, it is highly likely that the Court will have to engage in fact-specific inquiries as to each member of the class, or as to each facility or division, to evaluate this argument. Under those circumstances, the Court cannot find that common issues predominate over individual inquiries.

For the reasons discussed above, the Court finds that individual factual issues and inquiries predominate over any common issues that this case may present. The Court therefore concludes that Plaintiffs have failed to satisfy Rule 23(b)(3)'s predominance requirement. Class certification under Rule 23(b)(3) consequently is inappropriate.

C. Superiority

Plaintiffs seeking certification of a class under Rule 23(b)(3) also must show "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). When determining whether a case satisfies the superiority requirement, the Court should consider:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Id. The Court discusses those factors in turn.

First, the individual class members likely have little, if any, interest in pursuing separate actions against Defendant. Second, to the Court's knowledge, the instant action and the related Carpenter action are the only cases filed that involve allegations of Defendant's alleged hiring of illegal workers. Third, this case has been pending before the Court for more than four years, and the Court already has supervised class discovery in the case and ruled on a Motion to Dismiss. Defendant also has its headquarters in this Division, and many of the potential class members reside in or near this Division. Under those circumstances, these three factors counsel in favor of finding that Plaintiffs have satisfied the superiority requirement.

The fourth factor, however, tips the scales in favor of concluding that Plaintiffs have failed to satisfy the superiority requirement. As previously noted, resolution of the issues involved in this case will, by necessity, break down into an unmanageable number of individual legal and factual issues. Given this concern, and given the Court's finding that common issues do not predominate, the Court concludes that a class action is not superior to other available methods for adjudicating this controversy. The Court therefore finds that Plaintiffs have failed to satisfy the superiority requirement of Rule 23(b)(3). The Court consequently cannot certify this case as a class action under Rule 23(b)(3).

V. Conclusion

ACCORDINGLY, the Court **DENIES** Plaintiffs' Motion for Class Certification [174]. **This Order is not intended for publication.**[5]

IT IS SO ORDERED, this the 3rd day of March, 2008.

UNITED STATES DISTRICT JUDGE

[5]The Court has learned that certain of its Orders in other cases are available on Westlaw. The Court did not authorize the publication of many of those Orders, and the Court and its staff were not contacted prior to the publication of many of those Orders. The Court does not routinely make its Orders available on Westlaw or LEXIS, and would not ordinarily have chosen to publish many of the Orders attributed to this Court that are now available on Westlaw. The Court does not intend to authorize the instant Order for publication, and expects counsel to abide by this decision. The Court expects counsel or individuals who seek to publish the Court's Orders to consult the Court prior to sending the Orders to Westlaw, LEXIS, or any other similar legal-related publisher.