#102/120/124

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TAYLER ULMER; SERGIO GIANCASPRO; CORI ERSHOWSKY; ALEXIS GERACI; JAMERE BOWERS; and ADAKU IBEKWE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

STREETTEAM SOFTWARE, LLC d/b/a POLLEN; NETWORK TRAVEL EXPERIENCES, INC; JUSEXPERIENCES UK LIMITED; CALLUM NEGUS-FANCEY; LIAM NEGUS-FANCEY; and JAMES ELLIS,

Defendants.

Case No. 2:23-cv-02226-HDV-AGR

ORDER CERTIFYING CLASS [Dkt. No. 120]

I. INTRODUCTION

This case arises out of the failure of a music events startup to pay wages and to honor severance agreements. After a series of financial difficulties, Pollen's leadership repeatedly missed payroll, laid off approximately 50 U.S.-based employees, and failed to honor severance agreements, before eventually laying off the remainder of its U.S. workforce.

After careful consideration of the requirements of Federal Rule of Civil Procedure 23, the Court finds class certification appropriate. Plaintiffs' claims are well suited for class treatment; they present several common issues of law and fact that are most efficiently resolved on a classwide basis. For those reasons and the additional reasons detailed below, the Court grants Plaintiffs' Motion for Class Certification ("Motion"). [Dkt. No. 120].

II. BACKGROUND

A. Factual Background

Pollen, a London-based international startup founded by Callum Negus-Fancey and Liam Negus-Fancey, aimed to produce and promote entertainment events around the world. Declaration of Alexis Geraci ("Geraci Decl.") ¶ 3 [Dkt. No. 125]; Declaration of Damion Robinson ("Robinson Decl.") Ex. 10 [Dkt. No. 123]; Declaration of Sam Thacker ("Thacker Decl.") ¶¶ 2–4 [Dkt. No. 132]. It operated in the United States through two affiliated companies, StreetTeam Software LLC and Network Travel Experiences, Inc., but employees of both companies were told they worked for Pollen. Geraci Decl. ¶ 3; Thacker Decl. ¶ 2; Declaration of Jamere Bowers ("Bowers Decl.") ¶ 2 [Dkt. No. 127]; Declaration of Tayler Ulmer ("Ulmer Decl.") ¶ 2 [Dkt. No. 130]; Declaration of Collin Duwe ("Duwe Decl.") ¶ 2 [Dkt. No. 131].

When Pollen faced financial difficulties beginning in late 2021, its leadership team, including Callum Negus-Fancey, continued to assure employees that their jobs were safe. Declaration of Cori Ershowsky ("Ershowsky Decl.") ¶¶ 8–9, 21–22 [Dkt. No. 126]; Duwe Decl. ¶¶ 15–21, 25, Exs. 5–10, 14. In April 2022, Pollen management went so far as to represent that the company had raised over $150 million in venture capital. Ershowsky Decl. ¶ 10.

But this optimism proved unfounded. Pollen repeatedly missed payroll from late 2021 through the summer of 2022. Duwe Decl., ¶ 3; Ershowsky Decl. ¶ 7; Ulmer Decl. ¶ 5; Declaration

of Sergio Giancaspro ("Giancaspro Decl.") ¶ 4 [Dkt. No. 128]. In the summer of 2022, Pollen's independent directors resigned *en masse* and fired its CFO. Thacker Decl. ¶¶ 11, 20. In May 2022, Pollen laid off approximately 200 employees, including over 50 U.S.-based employees. Declaration of Adaku Ibekwe ("Ibekwe Decl.") ¶ 4, Ex. 1 [Dkt. No. 129]; Duwe Decl. ¶ 5, Ex. 1. The laid off employees signed severance agreements set to begin in June and July of 2022. These payments never materialized. Ibekwe Decl., ¶¶ 5–6, Ex. 2; *see also* Declaration of Valdi Licul ("Licul Decl.") Exs. 41–44 [Dkt. No. 121].

Despite Callum Negus-Fancey's assurances that the May layoffs were a onetime measure, Duwe Decl. ¶ 5, Ex. 1, Pollen again missed payroll on June 30, 2022. Giancaspro Decl. ¶ 6, Ex. 1; Duwe Decl. ¶ 6; Thacker Decl. ¶ 6; Ershowsky Decl. ¶ 16; Bowers Decl., ¶ 4; Ulmer Decl. ¶ 5. Employees were paid once more through direct wire transfers. Duwe Decl. ¶ 7, Ex. 2; Giancaspro Decl. ¶ 7; Thacker Decl. ¶ 7; Bowers Decl. ¶ 5; Ulmer Decl. ¶ 7. After July 1, 2022—despite repeated assurances to the contrary, Duwe Decl., Exs. 2, 3, 6, 8, 9, 11—employees were never again paid wages, reimbursed for expenses incurred, or provided benefits. Thacker Decl. ¶¶ 8, 27; Bowers Decl. ¶¶ 6–7, 10; Duwe Decl. ¶¶ 13–14, 30–31; Geraci Decl. ¶ 6; Giancaspro Decl. ¶ 9; Ershowsky Decl. ¶¶ 23, 28; Ulmer Decl. ¶¶ 7–8, 11.

On August 9, 2022, employees learned, through a companywide email from Callum Negus-Fancey, that Pollen's parent company was entering administration, the U.K. equivalent of bankruptcy. Duwe ¶ 26, Ex. 15. The next day, approximately 200 U.S.-based employees were informed, through a mass email, that they were laid off, effective immediately. *Id.* ¶¶ 27–29; Exs. 16–17; Giancaspro Decl. ¶¶ 10–11, Exs. 2–3; Ulmer Decl. ¶¶ 9–10, Ex. 1.

B. Procedural Background

Plaintiffs, who are former Pollen employees, filed a putative class action complaint in the Eastern District of New York on September 22, 2022. [Dkt. No. 1]. Plaintiffs then filed their First Amended Complaint ("FAC") alleging violations of the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101, *et seq.* and state mini-WARN acts, failure to pay wages, failure to reimburse, failure to pay wages due at termination, violation of the Fair Labor Standards Act, unfair business practices in violation of California Business & Professions Code

section 17200, breach of employment contract, breach of severance contract, failure to provide accurate itemized wage statements in violation of California Labor Code section 226(a), fraud, and failure to pay wages in violation of New York Labor Law section 191. FAC ¶¶ 86–163 [Dkt. No. 15]. The case was transferred to the Central District of California on March 16, 2023.

All Defendants defaulted, [Dkt. No. 75], but the Court set aside the defaults of the individual Defendants, Callum Negus-Fancey, Liam Negus-Fancey, and James Ellis. [Dkt. No. 91].

Plaintiffs now move to certify the following classes and subclasses:

- Wage Class defined as "All U.S.-based employees of Defendants StreetTeam Software, LLC d/b/a Pollen and Network Travel Experiences, Inc. (collectively, "Defendants") in the United States from July 1, 2022 through August 10, 2022 and who did not receive wages, benefits, or expense reimbursements for said period."
    - Subclasses for members of the Wage Class for New York, California, and Nevada.
- Layoff Class, defined as "All U.S.-based employees of Defendants who were laid off from May 2022 through August 2022."
    - Severance Subclass, defined as "All members of the Layoff Class who had in place an agreement for payment of severance."

Motion at 2–3. Plaintiffs also seek certification of a collective action in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* *Id.* at 17. The individual Defendants oppose. Defendants James Ellis, Callum Negus-Fancey & Liam Negus-Fancey's Opposition to Plaintiffs' Motion ("Opposition") [Dkt. No. 141].

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23 confers on trial courts "broad discretion to determine whether a class should be certified, and to revisit that certification throughout the legal proceedings before the court." *Armstrong v. Davis*, 275 F.3d 849, 871 n.28 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005). Rule 23 is the "exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). To justify departure from the rule, a class representative must be part of the class

and possess the same interest and suffer the same injury as fellow class members. *Id*. at 348–49 (quoting *East Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)); *accord Ellis v. Costco Wholesale Corp*., 657 F.3d 970, 979 (9th Cir. 2011).

A motion for class certification involves a two-part analysis. First, the plaintiffs must demonstrate that the proposed class satisfies the requirements of Rule 23(a): (1) the members of the proposed class must be so **numerous** that joinder of all claims would be impracticable; (2) there must be questions of law and fact **common** to the class; (3) the claims or defenses of the representative parties must be **typical** of the claims or defenses of absent class members; and (4) the representative parties must fairly and **adequately** protect the interests of the class. Fed. R. Civ. P. 23(a). The plaintiffs may not rest on mere allegations, but must provide facts to satisfy these requirements. *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977) (citing *Gillibeau v. Richmond*, 417 F.2d 426, 432 (9th Cir. 1969)).

Second, the plaintiffs must meet the requirements for at least one of the three subsections of Rule 23(b). Here, Plaintiffs seek certification under Rule 23(b)(3). Motion at 3. Rule 23(b)(3), which concerns monetary relief, requires the court to find that "questions of law or fact common to class members predominate over any questions affecting only individual members" and "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

The plaintiffs bear the burden of demonstrating that Rule 23 is satisfied. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001), *amended by* 273 F.3d 1266 (2001). The district court must rigorously analyze whether the plaintiffs have met the prerequisites of Rule 23. *Dukes*, 564 U.S. at 350–51 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982)). The district court need only form a "reasonable judgment" on each certification requirement because "some degree of speculation" is necessary at this early stage. *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975). This may require the court to "probe behind the pleadings before coming to rest on the certification question," and the court "*must* consider the merits if they overlap with the Rule 23(a) requirements." *Dukes*, 564 U.S. at 350 (quoting Falcon, 457 U.S. at 160); *Ellis*, 657 F.3d at 981.

IV. DISCUSSION

A. Rule 23(a) Prerequisites

The Court first turns to the requirements of Rule 23(a).

As an initial matter, the Court finds that Plaintiffs' proposed classes are ascertainable, in that membership is "determinable from objective, rather than subjective, criteria." *Xavier v. Philip Morris USA Inc.*, 787 F. Supp. 2d 1075, 1089 (N.D. Cal. 2011) (discussing ascertainability as an "implied prerequisite" to class certification"). *See also Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 n.4 (9th Cir. 2017) (" . . . [W]e have addressed the types of alleged definitional deficiencies other courts have referred to as 'ascertainability' issues . . . through analysis of Rule 23's enumerated requirements."). Here, class members can be identified through Defendants' records. *See* Duwe Decl. ¶ 29, Ex. 17; Ibekwe Decl. ¶ 4, Ex. 1.

1. Numerosity

Rule 23(a)(1) requires that a class be sufficiently numerous such that it would be impracticable to join all members individually. There is no set number required to satisfy the numerosity requirement; a court must examine the specific facts of each case. *Gen. Tel. Co. of Nw. v. Equal Emp. Opportunity Comm'n*, 446 U.S. 318, 330 (1980). Broadly, however, "courts find the numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010) (citation omitted). The numerosity requirement is typically relaxed for subclasses. Rubenstein, Newberg and Rubenstein on Class Actions, § 3:16 (6th ed.).

Here, Plaintiffs have established that the class is sufficiently numerous to make joinder impracticable. The Wage Class and the Layoff Class each consist of over 200 people. Ulmer Decl. ¶¶ 14–15, Ex. 2; Duwe Decl. ¶ 29, Ex. 17. Each of the state-specific subclasses consists of between 25 to 93 people, and the Severance Subclass consists of at least 50. *Id.*; Ibekwe Decl. ¶¶ 4, 6, Ex. 1.

2. Commonality

Rule 23(a)(2) requires that questions of law or fact be common to the class. To establish commonality, Plaintiffs must show that their claims depend upon a common contention "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350. However,

Plaintiffs need not show that every question, or even a preponderance of questions is capable of classwide resolution. Even a single common question can satisfy the commonality requirement. *Id.* at 359 (citation omitted).

Here, Plaintiffs' claims are amenable to classwide resolution. The Wage Class and Subclasses depend on common contentions, like Defendants' failure to pay compensation and benefits. The Layoff Class depend on Defendants' failure to provide notice before layoffs. Similarly, the Severance Subclass depends on Defendants' failure to make required severance payments. Importantly, in many cases Defendants communicated with class numbers through mass communications. *See, e.g.*, Giancaspro Decl. ¶ 10, Ex. 2; Ulmer Decl. ¶ 9, Ex. 1.

With respect to these Classes and Subclasses, Plaintiffs are correct that Defendants misunderstand the commonality inquiry by objecting that Plaintiffs' claims are not amenable to "common answers with respect to each of the Defendants." Plaintiffs' Reply in Support of Motion ("Reply") 6–11 [Dkt. No. 145]; Opposition at 12. The commonality inquiry addresses the commonality of Plaintiffs' injuries, not commonality among Defendants. Insofar as some individual Defendants are less liable, they will be less liable with respect to the whole class.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality tests "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) *overruled on other grounds by Wal-Mart*, 564 U.S. at 338.

The Court finds that the typicality requirement is met. Class representatives' claims arise from the same conduct and are based on the same legal theories as those of absent class members. Motion at 23. Plaintiffs Ulmer, Giancaspro, Ershowsky, Geraci, and Bowers are all representative of

the Wage and Layoff Classes. Ulmer Decl. ¶¶ 4–12; Giancaspro Decl. ¶¶ 4–11; Ershowsky Decl. ¶¶ 5, 7, 16–18; Geraci Decl. ¶¶ 4–8; Bowers Decl. ¶¶ 3–10. Plaintiff Ulmer is representative of the New York Subclass, Ulmer Decl. ¶ 3, Plaintiff Geraci of the Nevada Subclass, Geraci Decl. ¶ 2, and Plaintiffs Giancaspro and Ershowsky of the California Subclass. Giancaspro Decl. ¶ 2; Ershowsky Decl. ¶ 4. Plainiff Ibekwe is representative of the Layoff Class and the Severance Subclass. Ibekwe Decl. ¶¶ 4–6.

4. Adequacy

Rule 23(a)(4) requires that the representative party "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This requirement is grounded in constitutional due process concerns: 'absent class members must be afforded adequate representation before entry of a judgment which binds them.'" *Evans v. IAC/Interactive Corp.*, 244 F.R.D. 568, 577 (C.D. Cal. 2007) (quoting *Hanlon*, 150 F.3d at 1020). Plaintiffs satisfy the adequacy test if named plaintiffs and their counsel have no conflict of interest with other class members and if named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Ellis*, 657 F.3d at 985.

The Court finds that the adequacy requirement is met. Here, class representatives have suffered from the same nonpayment and layoffs as other class members and have no known conflicts with other class members. See Ulmer Decl.; Giancaspro Decl.; Ershowsky Decl.; Geraci Decl.; Bowers Decl.; Ibekwe Decl.; Licul Decl. Exs. 1–44. Insofar as class representatives are disproportionately from New York or California, Opposition at 10, Plaintiffs have sought to mitigate this issue through subclassing. Similarly, Plaintiffs have demonstrated that they are represented by qualified and competent counsel, capable of vigorously prosecuting this action on behalf of the class. Licul Decl. ¶¶ 8–20; Robinson Decl. ¶¶ 14–19.

B. Rule 23(b)(3)

Having considered the prerequisites of Rule 23(a), the Court now considers whether the proposed class satisfies the requirements of Rule 23(b)(3). Subdivision (b)(3) encompasses those cases "in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *In re Wells Fargo Home Mortg. Overtime Pay*

Litig., 571 F.3d 953, 958 (9th Cir. 2009) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997)). A class may be certified under this subdivision where common questions of law and fact predominate over questions affecting individual members, and where a class action is superior to other means to adjudicate the controversy. Fed. R. Civ. P. 23(b)(3).

1. Predominance

In assessing predominance, the Ninth Circuit looks for a "common nucleus of operative facts and potential legal remedies" but does not require class members to be identical. *Hanlon*, 150 F.3d at 1022–23. With respect to the Wage Class and Subclasses, the Layoff Class, and the Severance Subclasses, there are sufficient questions of law and fact common to the class and class members' damages can be calculated through common proof.

2. Superiority

Finally, a class action is superior to individual suits to resolve this controversy. "The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). Here, where Plaintiffs' claims arise from a single organization's layoffs and failure to pay during a discrete time period, a class action is superior to other available methods for fair and efficient adjudication of the controversy. In particular, many class members suffered damages that may not be sufficiently large to justify individual actions. Reply at 18.

C. FLSA Collective Action

The requirements for certifying a FLSA collective action are "less rigorous" than those for certifying a Rule 23 class action. *See Misra v. Decision One Mortg. Co., LLC*, 673 F. Supp. 2d 987, 995 (C.D. Cal. 2008). Because the Wage Class is amenable to class certification it is also qualifies for collective action under FLSA.

V. CONCLUSION

Plaintiffs' Motion for Class Certification is ***granted***.

The Court certifies the following classes and subclasses:

a. Wage Class: All U.S.-based employees of Defendants StreetTeam Software, LLC d/b/a Pollen and Network Travel Experiences, Inc. (collectively, "Defendants") in the United States from July 1, 2022 through August 10, 2022 and who did not receive wages, benefits, or expense reimbursements for said period.

   1. New York Wage Subclass: All members of the Wage Class who were protected under the New York Labor Law during July 1, 2022 through August 10, 2022.
   2. California Wage Subclass: All members of the Wage Class who were protected under the California Labor Code during July 1, 2022 through August 10, 2022.
   3. Nevada Wage Subclass: All members of the Wage Class who were protected under Nevada wage laws, including Nevada Revised Statutes, Chapter 608, during July 1, 2022 through August 10, 2022.

b. Layoff Class: All U.S.-based employees of Defendants who were laid off from May 2022 through August 2022.

   1. Severance Subclass: All members of the Layoff Class who had in place an agreement for payment of severance.

The foregoing classes and subclasses exclude Defendants' current owners, shareholders, members, managers, officers, directors, agents, and attorneys, and members of their immediate families; this Court and its staff; and any persons, other than members of the Severance Subclass, who settled their claims against Defendants or litigated or arbitrated such claims to a final judgment or award.

The Court appoints Plaintiffs as representatives of the classes and subclasses set forth above.

The Court appoints Valdi Licul, Meredith Firetog, William Baker, and Damion Robinson as co-lead class counsel pursuant to Federal Rule of Civil Procedure 23(g).

The Court directs all parties to confer on notice and other procedural matters and to submit a proposal for class notice within 30 days of the date hereof.

Plaintiffs' associated Request for Judicial Notice is hereby granted. [Dkt. No. 124]. The Court takes judicial notice of Exhibits 2 through 12 to the Declaration of Damion Robinson pursuant to Federal Rule of Evidence 201.

Dated: December 19, 2024

Hernán D. Vera
United States District Judge