UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JENNIFER JALBERT, individually and on behalf of all others similarly situated, Plaintiffs,	)	
v.	)	Civil Action No. 1:15-cv-10452-NMG
GRADUATE LEVERAGE, LLC and DANIEL THIBEAULT, Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR (1) CLASS CERTIFICATION; (2) ORDER AUTHORIZING CLASS NOTICE; AND (3) JUDGMENT AGAINST ALL DEFENDANTS

I. INTRODUCTION

NOW COMES the plaintiff Jennifer Jalbert, individually and on behalf of all others similarly situated ("Jalbert" or "Plaintiff"), who respectfully moves for the following relief:

- For an Order certifying the Class (including two Subclasses) pursuant to FED. R. CIV. P. 23(c) and 29 U.S.C., § 216(b);
- For an Order authorizing Notice to members of the Class pursuant to FED. R. CIV. P. 23(c) and 29 U.S.C., § 216(b);
- For an Order compelling Defendants to provide the names, last known addresses, and a list of the form and amounts of compensation owed to each member of each Subclass;
- For an Order compelling Defendants to appear and to show cause as to why the Defendants should not be held in Contempt of Court for failing to provide the names, last known addresses, and a list of the form and amount of compensation owed to each member of each Subclass; and
- For an Order scheduling an assessment of damages hearing so as to enter final Judgment against defendants Graduate Leverage LLC ("GL") and Daniel Thibeault ("Thibeault") (collectively, "Defendants") pursuant to FED. R. CIV. P. 55(a).

It is requested that this relief be granted ***forthwith***, as the Court has entered a default against the Defendants who have failed to appear in this action.

II. FACTUAL BACKGROUND

A. PROCEDURAL HISTORY

On February 29, 2015 Plaintiff filed this putative class action alleging violations of the Fair Labor Standards Act, 29 U.S.C., §§ 201, *et seq*. ("FLSA"), the Massachusetts Wage Act, G. L. c. 149, § 148 (the " Wage Act"), and quantum meruit, alleging various forms of unpaid employment compensation. *See* Dkt. 1. The Defendants were duly served with Summonses and copies of the Complaint via in hand service on March 16, 2015. *See* Dkt. 7 and 8. On April 9, 2015, the Court entered defaults against both Defendants for failing to answer or respond to the Complaint. *See* Dkt. 10. Because default has entered against the Defendants, all facts pled in the Complaint are deemed admitted and Defendants are liable to the Plaintiff for the claims alleged therein. *See Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co.*, 771 F.2d 5, 13 (1st Cir. 1985) ("there is no question that, default having been entered, each of [plaintiff's] allegations of fact must be taken as true and each [cause of action] must be considered established as a matter of law."). However for purposes of certifying a class, a brief recitation of facts is warranted.

B. GL CEASES BUSINESS OPERATIONS WITHOUT COMPENSATING EMPLOYEES

On December 10, 2014 GL effectively shuttered operations when the FBI raided its Waltham offices. As a result of the raid and investigation, the SEC filed a lawsuit styled *Securities and Exchange Commission v. Thibeault, et al.*, C.A. No. 1:15-cv-10050-NMG (D. Mass) (the "SEC Action"). The SEC Action alleges that the Defendants and other affiliates engaged in securities fraud. *See* SEC ACTION, (Dkt. 1). Defendants' assets were frozen in the SEC Action, save for a carve out for attorneys' fees and limited living expenses. *See* SEC ACTION, (Dkt. 30). The result of this freeze, however, was to deprive GL's unsuspecting employees of their earned compensation in violation of the FLSA and the Wage Act.

C. JALBERT'S WAGE CLAIMS

Named Plaintiff Jalbert was a GL employee when the FBI raided the offices, when the SEC filed its lawsuit, and when GL missed its February 6, 2015 payroll. *See* AFFIDAVIT OF JENNIFER JALBERT, attached herewith as "Exhibit A" ("Jalbert Aff."), at ¶ 8. Jalbert, like others who remained employed on February 6, 2015, was assured that she would be paid and asked to continue her work to help GL survive. *Id.*, at ¶ 7. Despite these assurances, Defendants missed the February 6, 2015 payroll nonetheless. *Id.*, at ¶ 8. As a result of the missed payroll, Jalbert was not paid her bi-weekly salary (i.e., $1,728.46). *See id.* Consequently, Jalbert resigned from GL on February 15, 2015. *Id.*, at ¶ 9. At the time of her resignation, Jalbert was also owed 120 hours of earned time off. *Id.*, at ¶ 10. This totals $2,592.69 in unpaid vacation pay. *See id*. Combined, GL owes Jalbert $4,321.15. *Id.*, at ¶ 13. Jalbert filed these wage claims against GL and its president and treasurer Thibeault. *Id.*, at ¶ 4. Thibeault is also the officer and agent of GL in charge of all operations, management and personnel decisions, including payroll and the hiring/firing of employees. *See id*.

D. WAGE CLAIMS OF OTHERS SIMILARLY SITUATED

At the time of the FBI raid, there were approximately 150 employees, many of whom were employed in the Waltham, Massachusetts office. *Id.*, at ¶ 6. On February 6, 2015, the Defendants did not pay any of its employees. *Id.*, at ¶ 8. The Defendants have conceded that these wages are owed. *See* DEFENDANT DANIEL THIBEAULT'S EMERGENCY MOTION FOR LIMITED RELIEF FROM ASSET FREEZE, SEC ACTION (Dkt. 34 – Attachment C). These employees had been retained to assist GL in surviving after the FBI raided the offices and arrested Thibeault. *See id.*; *see also* JALBERT AFF., at ¶ 7. By February 6, 2015, however, most GL employees had resigned. *See id*. Each time an employee resigned after the FBI raid, GL unlawfully withheld the

employee's final paycheck. *See* AFFIDAVIT OF DEREK MICHAELS, attached herewith as "Exhibit B" ("Michaels Aff."), at ¶ 15; AFFIDAVIT OF RACHEL EVANS, attached herewith as "Exhibit C" ("Evans Aff."), at ¶ 10. This was in addition to other forms of compensation that were owed, including without limitation, commissions, reimbursable expenses, benefits, deductions and garnishments (i.e., 401K contributions, child support payments, etc.). *See* MICHAELS AFF., at ¶ 16; EVANS AFF., at ¶ 11. In addition, GL's employee handbook sets forth its paid time off policy that requires payment of vacation pay to departing employees whether separated from the business voluntarily or involuntarily. *See* JALBERT AFF., at ¶ 11. After the FBI raid, GL has failed to pay any employee this earned compensation as well. *Id*., at ¶ 12; *see also* ATTORNEY GENERAL ADVISORY, No. 99/1; *Elec. Data Sys. Corp. v. Attorney Gen.*, 907 N.E.2d 635, 641-42 (Mass. 2009). Accordingly, this lawsuit was filed on behalf of all current and former employees of GL who are owed any form of compensation resulting from the FBI raid and GL's closure.

III. ARGUMENT

A. THE COURT SHOULD GRANT CLASS CERTIFICATION PRIOR TO ISSUING A DEFAULT JUDGMENT

This Clerk of this Court has entered a default against both Defendants. Complicating matters, Plaintiff sues not merely on her own behalf, but on behalf of all others similarly situated. Plaintiff is unwilling to forego class relief; indeed Plaintiff suspects that Defendants may have strategically defaulted to limit damages to individual claims. In instances where defendants are defaulted for failing to appear, the Court may certify a class prior to the entry of a default judgment. *See, e.g.*, *Skeway v. China Natural Gas, Inc.*, No. 10-cv-728-RGA, 2014 WL 2795466, at *3 (D. Del. June 18, 2014); *Leider v. Ralfe*, No. 1:01-cv-3137-HB-FM, 2003 WL 24571746, at *8-13 (S.D.N.Y. Mar. 4, 2003) (reasoning that "any other conclusion might give defendants an incentive to default in situations where class certification seems likely"); *In re*

Industrial Diamonds Antitrust Litig., 167 F.R.D. 374, 376 n. 1, 386–87 (S.D.N.Y. 1996) (certifying a class against co-defendants after one defendant's default); *Trull v. Plaza Assocs.*, No. 97-cv-0704, 1998 WL 578173, at *1, 4 (N.D.Ill. Sept. 3, 1998) (entry of default "does not change the fundamental analysis [the Court] must undertake in deciding whether to certify the class"); *Nelson v. Almega Cable, Inc.*, No. 4:09-cv-00349-Y [Dkt. 13] (N.D.Tx. Feb. 5, 2010) (certifying an FLSA class where defendants defaulted); *accord, Davis v. Hutchins*, 321 F.3d 641, 649 (7th Cir. 2003) (court may certify a class in default, but only after conducting an analysis of the Rule 23 prerequisites).

Because Plaintiff is not abandoning the class claims and her former colleagues are looking to her to obtain class-wide relief, the Plaintiff seeks class certification prior to obtaining a default judgment. The entry of default does not alter the Court's analysis for class certification. *See Skeway*, 2014 WL 2795466, at *2. Traditionally, this means that the Court must conduct a "rigorous inquiry" to ensure that the Rule 23 requirements are met. *See Industrial Diamonds*, 167 F.R.D. at 378. Here, however, the federal cause of action (i.e., FLSA) and the state law causes of action (i.e., Wage Act and quantum meruit) contemplate two different procedural mechanisms for class certification. The FLSA contemplates a collective action via an "opt-in" class. *See* 29 U.S.C., § 216(b). Conversely, the Wage Act/quantum meruit causes of action can be certified under a typical Rule 23 analysis. These are "entirely separate rights that may [both] be pursued by the plaintiffs." *McLaughlin v. Liberty Mut. Ins. Co.*, 224 F.R.D. 304, 308 (D. Mass. 2004). Accordingly, Plaintiff requests that the Court certify two subclasses to assure that neither standard is offended.

1. CERTIFICATION OF A COLLECTIVE ACTION UNDER THE FLSA

Certification of a collective action under the FLSA is directed by statute, not by

procedural rule. This statute states that an action may be brought "by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." *See* 29 U.S.C., § 216(b). The Court has broad discretion in implementing § 216(b). *See Kane v. Gage Merch. Servs., Inc.*, 138 F. Supp. 2d 212, 214 (D. Mass. 2001) (Gorton, J.); citing *Hoffmann–La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989). This typically results in a lenient standard favoring conditional certification and order for judicial notice.

In exercising its discretion, the Court can consider two methods for determining whether potential class members are similarly situated for purposes of participation in a § 216 "opt-in" collective action. *See Trezvant v. Fid. Employer Servs. Corp.*, 434 F. Supp. 2d 40, 42-43 (D. Mass. 2006). "The first method is a two-tier approach where the court makes an initial determination of whether the potential class should receive notice of the pending action and then later, after discovery is complete, the court makes a final "similarly situated" determination. *See id.*, at 42; citing *Kane,* 138 F.Supp.2d at 214. During the initial "notice stage," a preliminary finding of "similarly situated" plaintiffs is necessary to authorize notice to potential class members. *See id.*, at 43. Plaintiffs need only allege that the putative class members were subject to a similar violation of law and "[b]ecause the court has minimal evidence, this determination is made using a fairly lenient standard, and typically results in 'conditional certification' of a representative class." *Kane,* 138 F.Supp.2d at 214. Once the "notice stage" is complete, the defendant may request decertification if it is shown that the plaintiffs are not "similarly situated." *See id*. The second approach is to apply the standards of Rule 23. *See Trezvant*, 434 F.Supp.2d at 43; citing *Dionne v. The Ground Round Inc.*, No. 93-11083, 1994 U.S. Dist. LEXIS 21641, at

*6-7 (D.Mass. July 6, 1994) (Stearns, J.). This includes a preliminary analysis of numerosity, commonality, typicality and adequacy of representation. *See* FED. R. CIV. P. 23. This Court should follow the lead of most of the courts inside and outside the First Circuit who utilize the two tiered approach to class certification of FLSA claims. *See Trezvant*, 434 F.Supp.2d at 43.

Plaintiff has made a preliminary showing that putative class members are "similarly situated" for purposes of certifying an FLSA collective action. The FLSA claims are predicated on minimum wage violations wherein Defendants failed to pay its employees wages at a rate not less than $7.25 per hour. *See* 29 U.S.C., § 206. Each similarly situated class member has a claim against the Defendants because, during one or more pay periods, no wages were paid as a result of the FBI/SEC investigation, the asset freeze, and the cessation of business operations. *See Donovan v. Agnew*, 712 F.2d 1509, 1510 (1st Cir. 1983) (finding, subject to remand on an unrelated issue, FLSA minimum wage violations where no wages were paid prior to impending plant closure). This includes unpaid wages at the conclusion of various class member's employment and/or missed payroll for pay cycles ending February 6, 2015 and beyond. Accordingly, the Court should conditionally certify a class defined as follows: "**all current and former United States based employees of Graduate Leverage, LLC who did not receive payment of earned salary or wages from November 1, 2014 through the present**" (the "FLSA Subclass").[1]

2. CLASS CERTIFICATION UNDER THE MASSACHUSETTS WAGE ACT

Unlike the FLSA claims, class certification of the Wage Act claim and the quantum meruit claims may not be by way of an opt-in class. *See, e.g.*, G. L. c. 149, § 150; *see also* FED. R. CIV. P 23. In a typical class action, a Plaintiff must demonstrate that the class meets all four

[1] Of course, the Court may, in its discretion, certify the class under Rule 23 (without conditional certification), as these elements, as discussed below, have been satisfied in this case. *See Trezvant*, 434 F.Supp.2d at 43.

requirements of FED. R. CIV. P. 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *See Smilow v. Southwestern Bell Mobile Svs*., 323 F.3d 32, 38 (1st Cir. 2003). In addition, the case must fit into one or more of the categories enumerated in Rule 23(b). *See Mack v. Suffolk County,* 191 F.R.D. 16, 22 (D. Mass. 2000); *In re Community Bank of Northern Va*., 418 F.3d 277, 299 (3d Cir. 2005).

While Plaintiff contends that class certification under Rule 23 will be appropriate based on the analysis below, class certification of the Wage Act claim is also warranted pursuant to G. L. c. 149, § 150. Section 150 provides, in relevant part, that "an employee claiming to be aggrieved by a violation of [the Wage Act] may . . . institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits." The Massachusetts Supreme Judicial Court ("SJC") has interpreted these statutory provisions as conferring a substantive right to bring class claims, separate and independent from Rule 23's procedural mandates. *See Machado v. System4 LLC*, 989 N.E.2d 464, 470 (Mass. 2013) ("the Wage Act provides for a substantive right to bring a class proceeding"). "These policy rationales include the deterrent effect of class action lawsuits and, unique to the employment context, the desire to allow one or more courageous employees the ability to bring claims on behalf of other employees who are too intimidated by the threat of retaliation and termination to exercise their rights under the Wage Act." *Id*., n. 12. The SJC has further cautioned against equating Rule 23(a) requirements with the statutory requirements that only require the parties seeking certification be "similarly situated." *See Kuehl v. D&R Paving, LLC*, 2011 Mass. Super. LEXIS 69, *3 (Mass. Super. Ct. May 6, 2011) citing *Salvas v. Wal-Mart Stores, Inc.*, 452 Mass. 337, 370-371 n. 66 (2008); *see also Fletcher v. Cape Cod Gas Co.*, 477 N.E.2d 116, 123 (Mass. 1985)

(although Rule 23 provides a "useful framework," certification of a class authorized by Massachusetts statute is appropriate upon the Court's finding that class members are "similarly situated" to the class representative). As the *Kuehl* Court noted, a court has greater discretion to certify a class under Rule 23 than it would under G. L. c. 149, § 150. *Kuehl*, 2011 Mass. Super. LEXIS 69, at * 3.[2]

Just as Rule 23 yields to the substantive rights afforded by the FLSA, so, too, should Rule 23 yield to the substantive rights embodied in the Wage Act. *See* 28 U.S.C., § 2072 (federal rules "shall not abridge, enlarge or modify any substantive right"). Under this relaxed standard, the Court's analysis is akin to the "notice stage" of the analysis for the FLSA Subclass, and the Court need only make a finding of "similarly situated" plaintiffs to authorize notice to potential class members. *See* G. L. c. 149, § 150. Under this standard, it is requested that the Court certify a subclass defined as follows: "**all current and former Massachusetts based employees of Graduate Leverage, LLC who did not receive payment of any earned compensation including salary, wages, commissions, bonuses, expenses, earned time off, or vacation pay from November 1, 2014 through the present**" (the "Wage Act Subclass"). While this subclass should be certified under the less stringent statutory mechanism, this Subclass would also be certified under a Rule 23 analysis.

i. NUMEROSITY – **FED. R. CIV. P. 23(a)(1)**

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. FED. R. CIV. P. 23(a)(1); *see Guckenberger v. Boston Univ.*, 957 F. Supp. 306, 325 (D. Mass. 1997). There is no magic number of class members, but courts in this District have typically held that a "40-person class is 'generally found to establish numerosity.'"

[2] Despite discussing Section 150's more lenient standard for class certification, the *Kuehl* Court concluded that it would have reached the same conclusion under either standard. *See id*.

McLaughlin v. Liberty Mut. Ins. Co., 224 F.R.D. 304, 307 (D. Mass. 2004); *see also McAdams v. Mass. Mut. Life Ins. Co.*, 2002 WL 1067449, at *3 (D. Mass. May 15, 2002). Ordinarily, the size of the class is discernible by reviewing records maintained by the Defendants. Here, however, the Plaintiff does not have the luxury of this discovery in light of the Defendants' default. However, based on affirmations of members of the Class, it is believed that GL had over 150 employees at the time of the FBI raid. This is more than enough to satisfy the numerosity element of Rule 23.

ii. COMMONALITY – **FED. R. CIV. P. 23(a)(2)**

Rule 23(a)(2) requires the existence of questions of law or fact common to the class. FED. R. CIV. P. 23(a)(2). This "commonality" requirement "is satisfied if common questions of law or fact exist and class members' claims are not in conflict with one another." *Mack*, 191 F.R.D. at 23. The commonality requirement "does not require that class members' claims be identical," *id.*, and "[a] single common legal or factual issue can suffice." *Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D. 21, 25 (D. Mass. 2003) (citation omitted). Further, some courts have found that "'[t]he threshold of commonality is not a difficult one to meet,' especially when 'there are a number of common issues of fact and law that the class members would be required to establish to prove the defendants' liability, as well as their entitlement to damages.'" *In re Transkaryotic Therapies, Inc. Sec. Litig.*, 2005 WL 3178162, at *2 (D. Mass. Nov. 28, 2005).

Here, there are numerous common legal and factual theories asserted, and the same alleged facts giving rise to the Plaintiff's claims give rise to the rest of the Class' claims. The common legal and factual arguments include, among others:

a. Whether Defendants' conduct violates the Massachusetts Wage Act concerning the payment of wages. *See* G. L. c. 149, § 148;

b. Whether Defendants' conduct violates the Massachusetts Wage Act concerning

the timeliness of payments at the conclusion of a pay period. *See* G. L. c. 149, § 148;

c. Whether Defendants' conduct violates the Fair Labor Standards minimum wage requirements. *See* 29 U.S.C., § 206; and

d. Whether Plaintiff and Class members should be compensated in quantum meruit.

Thus, commonality exists by the similarity of the issues alleged by the Plaintiff on behalf of other Class members.

iii. TYPICALITY – **FED. R. CIV. P. 23(a)(3)**

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." FED. R. CIV. P. 23(a). This requirement has been found by some courts to be "not highly demanding" because "the claims only need to share the same essential characteristics, and need not be identical." *Payne*, 216 F.R.D. at 26 (citation omitted). "As with the commonality requirement, the typicality requirement does not mandate that the claims of the class representative be identical to those of the absent class members." *Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 260 (D. Mass. 2005). *See also Abelson v. Strong*, MDL No. 584, 1987 WL 15872, at *2 (D. Mass. July 30, 1987) ("'When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met.' Seen in this light, the burden on plaintiffs in proving typicality is not 'very substantial.'") (citations omitted); *Priest v. Zayre Corp.*, 118 F.R.D. 552, 555 (D. Mass. 1988) ("With respect to typicality under Rule 23(a)(3), plaintiffs need not show substantial identity between their claims and those of absent class members, but need only show that their claims arise from the same course of conduct that gave rise to the claims of the absent members. The question is simply whether a named plaintiff, in presenting his case, will necessarily present the claims of the absent plaintiffs.")

Where the class representative's alleged injuries "arise from the same events or course of conduct as do the injuries that form the basis of the class claims, and when the plaintiff's claims and those of the class are based on the same legal theory," the typicality requirement is often satisfied. *Swack*, 230 F.R.D. at 260; *see also Payne*, 216 F.R.D. at 26. Here, the claims of the Plaintiff, the proposed Class Representative, involve questions of law and fact typical to the potential claims of other Class members. The gravamen of Plaintiff's claim is that she, like the rest of the Class, was denied various forms of compensation once the FBI raided GL. Liability for this conduct is predicated on the same legal theories and, thus, the Rule 23(a)(3) typicality requirement is satisfied.

iv. ADEQUACY OF REPRESENTATION – **FED. R. CIV. P. 23(a)(4)**

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). The Court must measure the adequacy of representation by two standards: (1) whether the plaintiff's counsel are qualified, experienced, and generally able to conduct the litigation; and (2) whether the class representative has interests antagonistic to those of the class. *See In re Transkaryotic Therapies,* 2005 WL 3178162, at *4. Plaintiff is an adequate representative of the two Subclasses, and her counsel has adequately represented the interests of the Class and Subclasses. Class Counsel is aware of no conflict between Plaintiff and other Class members. In fact, Plaintiff's claims and legal theories are the same as those that would be asserted by other Class members. Class Counsel is highly experienced in class action and other employment litigation. Accordingly, the Class Representative and Class Counsel have fairly and adequately protected the interest of the Class members. Thus, the adequacy requirement is satisfied.

v. PREDOMINANCE AND SUPERIORITY – **FED. R. CIV. P. 23(b)(3)**

Rule 23(b)(3) authorizes class certification if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). These requirements are met in this case.

a. Common Legal and Factual Questions Predominate

"Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *In re Livent, Inc. Noteholders Sec. Litig.*, 210 F.R.D. 512, 517 (S.D.N.Y. 2002) (common issues predominate where "each class member is alleged to have suffered the same kind of harm pursuant to the same legal theory arising out of the same alleged course of conduct [and] the only individualized question concerns the amount of damages") .

Here, Plaintiff's legal theories, claims, and injuries are the same as those experienced by other members of the Class. At least one common question predominates over all other potential individual questions – whether Defendants violated the Massachusetts Wage Act and/or the Fair Labor Standards Act. This common question outweighs any questions regarding individual proof of damages. Therefore, predominance is met.

b. A Class Action Is Superior

Rule 23(b)(3) sets forth the following non-exhaustive factors to be considered in making a determination of whether class certification is the superior method of litigation: "(A) the class members' interests in individually controlling the prosecution . . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by . . . class members; (C) the desirability . . . of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." FED. R. CIV. P. 23(b)(3). Considering these factors, this

class action is "superior to other available methods for the fair and efficient adjudication" of the potential claims of the vast number of Defendants' employees. A Class Action is particularly superior were, as here, the Defendants have ceased business operations, have had their assets frozen by the SEC and have defaulted in this action. These factors make it extremely difficult and impractical to bring claims on an individual basis. Absent the class action device, "the very real risk [is] that potential class members with relatively small claims would not have the financial incentives or wherewithal to seek legal redress for their injuries." *In re Transkaryotic Therapies*, 2005 WL 3178162, at *2. Finally, it is desirable to concentrate the claims of all Class members in this forum, and Plaintiff does not foresee any difficulties in the management of this action as a class action. Accordingly, the requirements of Rule 23(b)(3) are satisfied, and the Court should certify the Subclasses as discussed herein.

B. THE PROPOSED NOTICE COMPLIES WITH THE REQUIREMENTS OF BOTH THE FLSA AND THE WAGE ACT SUBCLASSES

Plaintiff requests that the Court approve the Notice in the form attached. *See* NOTICE OF CLASS ACTION LAWSUIT, attached herewith as "Exhibit D." This proposed Notice was designed to serve the competing goals of informing Class members of their right to opt-in to the FLSA Subclass and to opt-out of the Wage Act Subclass. Significant efforts were made to explain the differences in the two subclasses, the rights and obligations each Class member has under both Subclasses, and how to participate (in the event of the FLSA Subclass) or how to opt-out (in the event of the Wage Act Subclass). Accordingly, the Notice complies with FED. R. CIV. P. 23 and 29 U.S.C., § 216(b) and should be approved by the Court. Plaintiff believes service of the Notice by first-class mail to the last known address of each member of the Class is sufficient.

C. OBTAINING NAMES, CONTACT INFORMATION, AND WAGE INFORMATION FOR SIMILARLY SITUATED EMPLOYEES

Plaintiff must obtain the names and contact information for all members of the Class for

purposes of sending Notice. Typically these roles are provided by defendants to a class action lawsuit. However, since Defendants have defaulted and it is uncertain whether they will provide this necessary information to the Court, Plaintiff proposes a two-stepped process to obtain this information. It is requested that the Court compel the Defendants to provide all names, last known addresses, and all forms of compensation owed to each member of the Class. Should the Defendants fail to provide this information, the Court should issue a *capias* and Order the Defendants to appear and show cause as to why they should not be held in Contempt of Court. As a fallback, Plaintiff recently served a Subpoena upon GL's payroll processor, Paychex, Inc. *See* SUBPOENA TO PAYCHEX, INC., attached herewith as "Exhibit E." It is believed that these records should provide the names and contact information necessary to send Notice to members of the Class.

Because the FLSA Subclass requires written consent to participate, a Claim Form must be sent to all Class members. Since Claim Forms must be sent under any circumstances, Plaintiff proposes using the Claim Form as an additional method to collect evidence of forms and amounts of compensation owed to each member of both Subclasses. This will assist the Court in assessing damages should the Defendants fail to provide this necessary information. Plaintiff requests that the Court approve the Claim Form in the form attached. *See* CLAIM FORM, attached herewith as "Exhibit F." This Claim Form was designed to allow members of the FLSA Subclass to opt-in, and to obtain wage information that can be used to assess damages for both the FLSA and the Wage Act Subclasses.

D. PROPOSED SCHEDULE OF EVENTS

To accomplish the goals set forth in the memorandum, the Plaintiffs propose that the Court certify the class forthwith and follow this proposed schedule of events:

Activity	**Timing of Event**
Defendants to provide requested Class member information by:	May 1, 2015
Court should hold Show Cause Hearing (for non-compliance) by:	May 15, 2015
Class Notice to be mailed no later than:	June 1, 2015
Deadline to submit Claim Form, object, opt-in or opt-out:	July 1, 2015
Assessment of Damages Hearing to be scheduled by the Court by:	July 15, 2015

IV. CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests the following relief:

- An Order certifying the Class (including two Subclasses) pursuant to FED. R. CIV. P. 23(c) and 29 U.S.C., § 216(b);
- An Order authorizing Notice to members of the Class pursuant to FED. R. CIV. P. 23(c) and 29 U.S.C., § 216(b);
- An Order compelling Defendants to provide the names, last known addresses, and a list of the form and amounts of compensation owed to each member of each Subclass;
- An Order compelling Defendants to appear and to show cause as to why the Defendants should not be held in Contempt of Court for failing to provide the names, last known addresses, and a list of the form and amount of compensation owed to each member of each Subclass; and
- An Order scheduling an assessment of damages hearing so as to enter final Judgment against the Defendants.

A Proposed Order is attached for the Court's consideration. *See* PROPOSED ORDER, attached herewith as "Exhibit G."

Respectfully Submitted,

/s/ Joshua N. Garick

Joshua N. Garick (BBO #674603)
LAW OFFICES OF JOSHUA N. GARICK, P.C.
100 TradeCenter, Suite G-700
Woburn, Massachusetts 01801
Phone: (617) 600-7520
Fax: (617) 600-7430
Joshua@GarickLaw.com

Counsel for Plaintiff and the Class

Dated: April 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants on April 13, 2015.

/s/ Joshua N. Garick
Joshua N. Garick (BBO #674603

Dated: April 13, 2015