UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NARCISO JOSE ALEJANDRO CASTELLANOS,

Plaintiff,

v.

WORDLWIDE DISTRIBUTION SYSTEMS USA, LLC et al.,

Defendants.
_____/

Case No. 2:14-cv-12609

HONORABLE STEPHEN J. MURPHY, III

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO CERTIFY CLASS (document no. 23)

On August 19, 2015, the Court denied without prejudice Plaintiff Narciso Jose Alejandro Castellanos' initial Motion to Certify Class. Mot. Cert., ECF No. 15; Order, ECF No. 22. The Court allowed further discovery to allow Castellanos to develop his class definition and to determine other class elements, including numerosity. Castellanos has now filed a renewed Motion to Certify Class. ECF No. 23. Having reviewed the motion and Defendants' Response (document nos. 24 & 25), the Court is satisfied that Castellanos has met the Civil Rule 23 standard for certifying a class under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.* ("RICO"), and will grant his motion in part. The Court will decline, without prejudice, to certify a class under the Trafficking Victims Protection Act, 18 U.S.C. § 1589 ("TVPA").

BACKGROUND

Castellanos is a Mexican citizen and trained computer analyst. Mot. Cert. 2, ECF No. 23-1. In 2013, Defendant Systems USA ("SUSA") sent Castellanos an offer letter, reading as follows:

> On behalf of Systems USA, I am pleased to offer you a position as Computer Systems Analyst. Your beginning gross salary will be $40,000 (Forty Thousand Dollars). As a full time employee, you will be eligible to participate in Systems USA benefits which include a Healthcare/Medical Insurance Plan, Dental Plan, and Long Term Disability Plan. In addition, you will receive 10 days of paid vacation and company holidays.
>
> This offer of employment at will is contingent upon the following:
> - Your execution of this letter/attached employment agreement.
> - Approval of TN Visa
> - Proof of employment eligibility (I-9)
>
> * * *
>
> We look forward to working with you as part of the Systems USA team. If you have any questions regarding this letter, please do not hesitate to get in touch with us.
>
> Sincerely,
>
> Human Resources Department

Supp. Br., ECF No. 30.[1] The bottom of the letter contained a signature area for the candidate, affirming that "I fully understand the terms of employment stated herein, and wish to accept the offer of Systems USA." *Id.*[2]

Trade Nafta or "TN" Visas allow Canadian and Mexican professionals to work temporarily in the United States. *See Kirk v. N.Y. State Dep't of Educ.*, 644 F.3d 134, 135 (2d Cir. 2011). To support Castellanos' application for a TN visa (as well as other putative

[1] Document no. 30 consists of copies of offer letters sent by SUSA to potential class members. Defendants' counsel has stipulated that all letters sent to potential class members were virtually identical, differing only in date, addressee, position, and salary.

[2] Defendants claim that their HR manager told Castellanos "that he would not start receiving his salary until SUSA placed him on a client project" and that only once a project was found would be he hired by SUSA. Countercl. ¶¶ 9–10, ECF No. 12. Defendants have yet to produce evidence in support of this contention.

class members' applications), SUSA sent the following letter to the United States Embassy in Mexico, dated March 17, 2013:

> Systems USA, is a leading distributor of IT and Consumer products with headquarters in Michigan, USA and offices in Singapore and India. With revenue of US$4,000,000.00 in the US and Global Revenue of US$12,000,000.00 we distribute IT Software, IT Products, Consumer Electronics, Gillette Products and Food Items of various brands around the world. Leveraging our physical presence in USA, Singapore and India we are able to bring to our buyers the advantage of having a one-stop source for International Products and Services.
>
> We are writing to request that **Mr. Narciso Jose Alejandro Castellanos Meneses** be granted a TN status for the position of **Computer Systems Analyst** to develop, design and enhance the Computer Systems used in our distribution network.
>
> We would like to hire the services of **Mr. Castellanos**, as a **Computer Systems Analyst** to work for Systems USA in the United States. This NAFTA qualifying position is described in the NAFTA qualified position as "Computer Systems Analyst," which requires a Baccalaureate or Licenciatura Degree; or PostSecondary Diploma or PostSecondary Certificate, and three years experience.
>
> * * *
>
> This position requires an individual to have a degree in Computer discipline or related field. Based on **Mr. Castellano's** education and experience, he is ideally suited for this position. We believe **Mr. Castellanos** qualifies for TN status, as outlined in section 214(e) of the North American Free Trade Agreement. In addition, **Mr. Castellanos** meets the requirements of a professional as outlined in the regulations 8 CFR 214.6. We request that **Mr. Castellanos** be admitted as a Computer Systems Analyst, duties of which are outlined and described by the Department of Labor's Dictionary of Occupational Titles (DOT).
>
> **Mr. Castellanos** will be working with Systems USA as a **Computer Systems Analyst** from **03/28/2013**. His salary will be, if annualized, **$ 52,000**.
>
> We require **Mr. Castellanos** services temporarily for three years, starting **03/28/2013** and ending no later than **03/27/2016**. **Mr. Castellanos** has provided Systems USA evidence that []he is a Mexican citizen and will provide original documents showing proof of citizenship and proof of suitable education for this position.

> Systems USA was established in 2007 and is headquartered in Michigan USA. Systems USA is one of the fastest growing multinational companies in the areas of Distribution and Information Technology with a Global Revenue of over US $12,000,000.00
>
> If you require additional information, please contact our Human Resource Department at 248 247 1122.
>
> Thanks
>
> Jessica Rodriguez
>
> Manager - Human Resources

Mot. Cert., Ex. B, ECF No. 15-1.[3] The regulation cited in SUSA's letters to the embassy, 8 C.F.R. § 214.6, sets out the definition of terms and requirements for obtaining a TN Visa. The visa requires the non-citizen to "engage in business activities," defined as "the performance of prearranged business activities for a United States entity." 8 C.F.R. § 214.6. Furthermore, an applicant must provide documentation demonstrating that he is to engage in business activities, and the statute specifically contemplates that a letter from a "prospective employer" would suffice. *Id.* Presumably, the letters sent by SUSA to the embassy were meant as just such documentation.

Castellanos accepted SUSA's offer of employment, and personally paid the fees to obtain the TN Visa and travel to the United States. Mot. Cert. 2, ECF No. 23-1. When Castellanos arrived in April 2013, however, he was greeted not with a job but with a further hurdle: he was told that he did not have a job, but had to interview with SUSA's clients for

[3] Castellanos has provided numerous copies of various TN letters, which only differ in the subject applicant, date, job title, and salary. *See* Mot. Cert., Ex. C, ECF No. 23-1.

a position.[4] While not interviewing, Castellanos was required to report to SUSA's office each weekday from 10 a.m. to 5 p.m. Compl. ¶¶ 13–14, ECF No. 1. Castellanos claims that he was paid "next to nothing" for his time, and that he had to pay living expenses while not employed by SUSA. *Id.* ¶ 14. Eventually, three clients declined to hire Castellanos and SUSA apparently ended its relationship with him.

Castellanos has identified "59 other individuals [who] fall into the proposed class of foreign nationals who were offered full-time employment by defendant Systems USA, who accepted employment and traveled to the United States to secure employment, but who were not paid for varying amounts of time." Mot. Cert. 3, ECF No. 23-1.

STANDARD OF REVIEW

Civil Rule 23 governs class action lawsuits. A matter may proceed as a class action in the name of the representative parties if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the claims and defenses of the representative parties are typical of the claims and defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997) (citing Fed. R. Civ. P. 23(a)). A class must meet the above prerequisites, as well as fall within one of the class types identified by Rule 23(b). *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998). The party seeking certification bears the burden of establishing that the

[4] On May 23, 2013, Castellanos signed a "Pre-Interview Agreement" with SUSA, while already in the United States. ECF No. 12-1. That agreement, dated after both the offer letter and embassy letter, states that "the Applicant desires to be considered" for a position with SUSA, and that SUSA "desires to consider" the Applicant. *Id.*

requirements for class certification are met. *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996).

Courts have broad discretion in certifying a class, and must conduct a rigorous analysis into whether the prerequisites of Rule 23 have been met. *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 560 (6th Cir. 2007). In reviewing a motion for class certification, the court does not evaluate the merits of the plaintiff's claims, but accepts as true the allegations in the complaint. The court, however, may need "to probe behind the pleadings before coming to rest on the certification question." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982). "[O]rdinarily the determination should be predicated on more information than the pleadings will provide." *Am. Med. Sys.*, 75 F.3d at 1079 (quoting *Weathers v. Peters Realty Corp.*, 499 F.2d 1197, 1200 (6th Cir. 1974)).

DISCUSSION

A review of the relevant law shows that Castellanos has met the requirements to certify a class. Castellanos moves for class certification under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.* ("RICO") and the Trafficking Victims Protection Act, 18 U.S.C. § 1589 ("TVPA").

I. RICO

A. Underlying Allegations

A civil RICO action requires that the plaintiff allege conduct that could be indictable under the statute: a predicate violation. *See Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 495–97 (1985). Castellanos alleges that Defendants committed mail fraud, wire fraud, and foreign labor visa fraud under 18 U.S.C. §§ 1341, 1343, 1351(a), respectively. Compl. ¶¶ 36–37, 58, ECF No. 1. "Mail fraud consists of (1) a scheme or artifice to defraud; (2) use

of mails in furtherance of the scheme; and (3) intent to deprive a victim of money or property." *United States v. Turner*, 465 F.3d 667, 680 (6th Cir. 2006); *see also* 18 U.S.C. § 1341. Wire fraud has the same elements, only instead of the mails, perpetrators use "interstate wire communications" to defraud. *United States v. Prince*, 214 F.3d 740, 747–48 (6th Cir. 2000) (citing 18 U.S.C. § 1343).

It is not clear from the facts whether SUSA sent its offer letters to the proposed class via the mail or internet; likewise whether it used the mails or internet to send its TN visa letters to the American embassy in Mexico. But if Castellano's allegations on the topic are true, then fraud would be established under either 18 U.S.C. § 1341 or § 1343, and an underlying violation would exist for class purposes.

Castellanos has adequately pled either mail or wire fraud — the parties do not dispute that the letters were sent. And the offer and TN visa letters sent by SUSA, assuming Castellanos' allegations are true, are fraudulent. The offer letter "offers" the applicant a position, lists a salary, and names available benefits. The only mention of any contingency merely requires the applicant to sign and accept the offer, have his visa approved, and furnish an I-9 (proof of eligibility) form. Supp. Br., ECF No. 30. The offer letter makes no mention of any other contingency, of the necessity of further interviews with third parties, or of the fact that the applicant will not be paid or actually have a position until hired by a third party. Any reasonable person reading the offer letter would think that he or she was being offered a position, full stop.[5]

[5] Defendants argue that they "had every intention of hiring" Castellanos, and that their letters were sent in good faith. Resp. 3, ECF No. 24. But the offer letter contains no evidence of hedging.

Similarly, the TN visa letter indicates that the visa applicant has a position waiting for him or her in the United States. SUSA describes itself and its business, the qualifications necessary for the position, and the position's duties. Mot. Cert., Ex. B, ECF No. 15-1. Most significantly, the letter lists the applicant's salary, and expected starting and ending dates. *Id.* Taken as a whole, the obvious conclusion one draws from the letter is that SUSA is hiring the applicant. No mention is made of any third party, or that the hiring is in any way contingent. Had SUSA told the full truth — that it hoped to bring applicants to the country and only possibly find work for them — the letter presumably would have been far less convincing to embassy officials. And indeed, the TN Visa regulations require the applicant to engage in "prearranged business activities for a United States entity," not merely potential opportunities. 8 C.F.R. § 214.6(b).

A reasonable person receiving the offer letter, relying on it to make arrangements to leave Mexico, and traveling to the United States, would be harmed by his or her reliance if (as was the case for many applicants) there was not a position already established for them. Under the scheme, the Defendants were able to access an increased pool of labor at essentially no cost to themselves, shifting the burden of travel, visa fees, and recruiting time to the applicants. The applicants, thinking they had a job waiting, paid out of their own pocket only to face a further hurdle unmentioned in the Defendants' correspondence. If Castellanos' allegations are true, the Defendants operated a classic bait-and-switch that constitutes fraud.

Castellanos also alleges violations of 18 U.S.C. § 1351(a):

> Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States . . . or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent

> pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.

18 U.S.C. § 1351(a). Castellanos has successfully alleged visa fraud. The offer and TN visa letters were fraudulent, because they clearly stated that the applicant was offered a position, without further conditions. Thus, Castellanos has alleged an underlying fraud violation.

B. RICO Definitions

Castellanos correctly argues that violation of the fraud statutes would constitute predicate acts under 18 U.S.C. § 1961. RICO states, "[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in . . . interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." 18 U.S.C. § 1962(c). RICO, furthermore, defines "racketeering activity" to include violations of 18 U.S.C. §§ 1341, 1343, 1351 (the fraud statutes addressed above). 18 U.S.C. § 1961(1)(B).

Defendants argue that they lacked the specific intent to defraud the proposed plaintiff class. Resp. 6, ECF No. 24. They also argue that Castellanos has failed to allege a "pattern" of racketeering activity, because several applicants did have jobs waiting for them upon arrival in the United States. *Id.* at 8. But Castellanos has provided evidence that 45 people were enticed to come to the United States by the Defendants without prearranged work. In each of these 45 cases, the Defendants sent the apparently fraudulent offer letter to the applicant, and the TN visa letter to the American embassy. Even if in a minority of cases such a position did already exist, repeatedly sending the same form letters indicates a pattern of activity.

Castellanos has alleged an underlying fraud violation and a pattern of activity surrounding the fraud. He therefore has successfully alleged a civil RICO violation, and the Court will turn, in Section III, to addressing the class action requirements of Civil Rule 23.

II. TVPA

Castellanos moves for certification of a TVPA class, claiming that 18 U.S.C. § 1595 allows plaintiffs alleging a claim under 18 U.S.C. § 1351 (visa fraud) to pursue a civil remedy separate from a RICO claim. Mot. Cert. 10, ECF No. 23-1. Section 1595 states that an "individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator." 18 U.S.C. § 1595(a). But § 1351 is not a part of "this chapter" referenced in the statute; Chapter 77 ("Peonage, Slavery, and Trafficking in Persons") encompasses 18 U.S.C. §§ 1581–97, not § 1351.

To save the TVPA claim, Castellanos also alleges violations of 18 U.S.C. § 1589, which creates penalties for a person who:

> knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means--
> (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
> (2) by means of serious harm or threats of serious harm to that person or another person;
> (3) by means of the abuse or threatened abuse of law or legal process; or
> (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

18 U.S.C. § 1589(a). Castellanos has not alleged that the Defendants engaged in any threat of force, serious harm, or physical restraint, so only the potential "abuse or threatened abuse of law or legal process" could be the basis for a claim. Presumably, Castellanos would argue that the mailing of the TN Visa letters to the embassy constituted an abuse of law.

The Court remains unconvinced that the TN Visa letters, while potentially fraudulent, were the kind of abuse of law contemplated by the TVPA. The statute goes on to define abuse of law or legal process as "the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action." 18 U.S.C. § 1589(c)(1). Considering the context of the statute, which otherwise concerns the *coercion* of people through the use or threat of violence, serious harm, or physical restraint, the Court does not believe that the *enticement* of individuals through a potentially fraudulent job offer is contemplated under § 1589. At the very least, the civil RICO claim, based on fraud, is a superior vehicle for pursuing a remedy here. The Court, therefore, will deny class certification on the TVPA claim. The issue was briefed in a cursory manner, and further discovery may uncover additional bases for the TVPA claim, so the Court will issue the denial without prejudice.

III. Civil Rule 23 Requirements

Having determined that Castellanos has adequately pled a RICO claim, the Court must now consider whether his proposed class meets Rule 23's certification requirements. The Court may certify a class when (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the class, (3) the claims and defenses of the representative parties are typical of the claims and defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997) (citing Fed. R. Civ. P. 23(a)). Furthermore, the class must fall within one of the class types identified by Rule 23(b). *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998).

The proposed class meets the requirements, and the Court will certify it.

A. Numerosity

"The first subdivision of Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1080 (6th Cir. 1996) (internal quotation marks and citation omitted). There is no strict numerical test; rather, the circumstances of the case should determine whether joinder is impracticable. *Id.* That said, "[t]his Court has found that although not an absolute rule, it generally is accepted that a class of 40 or more members is sufficient to satisfy the numerosity requirement." *Davidson v. Henkel Corp.*, 302 F.R.D. 427, 436 (E.D. Mich. 2014) (internal quotation marks and citation omitted). The Court can also consider geographical distribution of class members in its impracticability analysis. *See Turnage v. Norfolk S. Corp.*, 307 F. App'x 918, 921 (6th Cir. 2009).

Including himself, Castellanos has identified 60 people who, upon their arrival in the country, did not immediately begin the employment described by SUSA in their offer and TN visa letters. Mot. Cert., Exs. A & B, ECF No. 23-1. Furthermore, the 60 individuals are geographically dispersed across the United States and Mexico. The 60 class members exceed the Court's general numerical limit of 40, and the wide geographic dispersal (including members in a foreign country) also add to the difficulty of potential joinder. The Court finds that, in these circumstances, joinder is impracticable.

B. Commonality

Rule 23 requires a showing that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A common question of law or fact exists when it can be shown that all class members suffered the same injury. *Wal-Mart Stores, Inc. v. Dukes*, 564

U.S. 338, 349–50 (2011). "Their claims must 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." *Id.* at 350. Furthermore, "[w]hen the legality of the defendant's standardized conduct is at issue, the commonality factor is normally met." *Gilkey v. Cent. Clearing Co.*, 202 F.R.D. 515, 521 (E.D. Mich. 2001).

Castellanos has alleged standardized conduct on the part of the Defendants, and has identified a common question of law or fact: whether Defendants fraudulently induced the prospective class members to come to the United States with offer letters containing false representations (and with TN visa letters to the American Embassy in Mexico). The offer letters and TN visa letters were virtually identical in every case, differing only in individual details. In the case of each proposed class member, Defendants sent the offer letter to the member and the TN visa letter to the embassy. Defendants argue that because 19 of the foreign nationals sent an offer letter did, in fact, have a job upon arrival, their conduct cannot be considered standardized. Resp. 9–11, ECF No. 24. But when a company sends out identical letters stating that their subjects are offered a job, and only for a minority of the recipients is the claim true, it still has engaged in standardized conduct. *See Gilkey*, 202 F.R.D. at 521 ("[T]he defendants have engaged in standardized conduct towards members of the proposed class by mailing to them allegedly illegal form letters or documents.") (quoting *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998)). Castellanos has sufficiently alleged commonality.

C. Typicality

Rule 23's typicality test "limits the class claims to those fairly encompassed by the named plaintiffs' claims." *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998) (citation omitted). The test's purpose is to ensure that the interests of the representative and larger class are aligned, so that by pursuing his own claims, the representative also advances the claims of the class. *Id.* In short, "a plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Am. Med. Sys.*, 75 F.3d at 1082 (quotation omitted).

The class claims are fairly encompassed is Castellanos' claims. According to Castellanos' allegations, the Defendants sent virtually identical letters to class members, and more than 50 class members arrived in the United States without beginning their offered position. The class members were allegedly injured by paying for their living expenses in the United States without the salary promised by the Defendants. While it is true that the class members' individual damages will differ, this fact alone does not defeat class certification. *See Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988) ("No matter how individualized the issue of damages may be, these issues may be reserved for individual treatment with the question of liability tried as a class action."). In the present case, Castellanos' claims are typical of those of the class, as the question of liability (though not damages) will be the same for each class member.

D. Adequacy of Representation

The Court must also find that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "There are two criteria for

determining whether the representation of the class will be adequate: 1) The representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524–25 (6th Cir. 1976).

The Court has already determined that Castellanos has common interest with the other members of the proposed class. Furthermore, the Court believes that Castellanos' current counsel will vigorously prosecute the interests of the class. No concerns about counsel's competence, loyalty, or ability to serve has been brought to the Court's attention. Counsel has performed satisfactorily up to this point and, indeed, has successfully argued for the instant motion. Therefore, Rule 23(a)'s fourth requirement is met.

E. Predomination of Common Questions

Once Rule 23(a)'s requirements are met, a proposed class representative must still show that the class will fall under one of the class "types" enumerated in Rule 23(b). In the instant case, Castellanos argues that his proposed class qualifies under Rule 23(b)(3):

> [Q]uestions 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. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). The Court believes that common questions predominate in the present case.

No evidence has been presented indicating that individual class members have expressed interest in controlling the prosecution of separate actions. In fact, the Court finds it unlikely that the disparate members of the proposed class would be interested in separate prosecutions. Furthermore, due to the differing lengths of time for which class members were without a job and salary, it is likely that many of the damages will be small, and thus unlikely to prompt individual prosecution. When there is little interest in individual prosecution, and likely recovery amounts are small, it is more likely that common questions predominate. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 616–17 (1997).

SUSA sued six individuals for breach of contract, and the parties settled those cases. Otherwise, the Court is not aware of any other ongoing litigation regarding these facts. Therefore, certifying a class would not disrupt other litigation.

Because the prospective class members are geographically dispersed across the continent, including in Mexico, the location of class members does not indicate that any forum would be particularly desirable. But because the Defendants are based in this judicial district, and because the offer and TN visa letters were sent from this district, this jurisdiction is likely the most desirable forum to adjudicate these claims. Similarly, the geographic dispersal of the prospective class members suggest that the difficulties of managing a class action would be fair outweighed by the difficulties of litigating individual actions. For these reasons, the Court finds that common questions predominate.

CONCLUSION

The Court has found that Rule 23's requirements have been met in the RICO claims, and will certify a class consisting of "foreign nationals who were offered full-time employment by defendant Systems USA, who accepted such employment and traveled to the United States to secure such employment, but who were not paid for varying amounts of time" because their jobs did not begin upon arrival. Mot. Cert. 3, ECF No. 23-1. The Court will deny the motion to certify a class under the TVPA claims.

ORDER

WHEREFORE, it is hereby **ORDERED** that Plaintiff's Motion to Certify Class (document no. 23) is **GRANTED IN PART** as to the Civil RICO claims and **DENIED IN PART** as to the TVPA claims.

IT IS FURTHER ORDERED that Plaintiff make all reasonable efforts to contact class members and inform them of their right to opt-out of the class litigation.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: June 20, 2016

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 20, 2016, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager