THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. **SUPERIOR COURT**

Karen Lawrence
and all others similarly situated

v.

Philip Morris, USA, Inc.

No. 09-CV-518

***

Shelby Peters

v.

Philip Morris, USA, Inc.

No. 09-CV-519

ORDER

Plaintiffs Karen Lawrence and Shelby Peters brought this action against the defendant, Philip Morris USA, Inc. ("Philip Morris") on behalf of themselves and those similarly situated, seeking damages for unfair and deceptive marketing of Marlboro Lights cigarettes, contrary to RSA chapter 358-A—the Consumer Protection Act ("CPA"). On February 19, 2010, the court granted Ms. Peters' assented-to motion for voluntary nonsuit of her claims with prejudice. Before the court is Ms. Lawrence's motion for class certification. Philip Morris objects. Because Ms. Lawrence has sustained her burden of showing that class certification is appropriate, her motion is GRANTED.

BACKGROUND

Karen Lawrence is a resident of New Hampshire who purchased and consumed approximately 1.5 to 2 packs of Marlboro Lights per day for approximately 30 years. Ms. Lawrence switched from regular Marlboro cigarettes to Marlboro Lights between 1973 and 1974, believing that "light" cigarettes marketed as "lowered tar and nicotine" presented reduced health risks. Ms. Lawrence purchased her last pack of Marlboro Lights on February 28, 2001.

On March 29, 2002, Ms. Lawrence filed this class action lawsuit against Philip Morris to recover damages under the CPA on behalf of herself and "everyone who purchased Marlboro Lights ... 'low-tar' filtered cigarettes manufactured, distributed and/or sold by defendant ... in the State of New Hampshire." Plaintiffs' Writ, ¶ 1. Ms. Lawrence alleges that Philip Morris falsely represented that Marlboro Lights cigarettes "contained lower levels of tar and nicotine by using words such as 'Lights,' ... and 'Lowered Tar and Nicotine.'" *Id.*, ¶ 18. Ms. Lawrence also alleges that Philip Morris failed to disclose, mark, or instruct consumers that: (1) Marlboro Lights had ventilation holes in the filter that diluted the tar and nicotine per puff, as measured by the industry standard testing apparatus; (2) consumers had to refrain from obstructing the ventilation holes and increasing their puff volume or frequency in order to receive lowered tar and nicotine; (3) Philip Morris had intentionally altered the nicotine levels in Marlboro Lights to maximize nicotine delivery; (4) Philip Morris intentionally designed Marlboro Lights to fool certain machine tests; and (5) Philip Morris' design changes increased the harmful effects tar has on smokers.

Ms. Lawrence alleges that she suffered damages because she did not receive what she paid for—a lower tar and nicotine cigarette. She requests as relief actual damages, in the form of either a refund or all profits that the defendant made selling Marlboro Lights to her, or statutory

liquidated damages in the amount of $1,000, whichever is greater, tripled. *Id.*, Prayer for Relief 2.

STANDARD

Ms. Lawrence argues that she is entitled to class certification under RSA 358-A:10-a. Philip Morris objects, arguing that individual issues of fact and law predominate over common issues and a class action is not a superior method for resolving Ms. Lawrence's CPA claim.

The CPA contemplates class actions. Under RSA 358-A:10-a, II, an action may be maintained as a class action if:

> (a) The class is so numerous that joinder of all members is impracticable; and
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> (b) There are questions of law or fact common to the class; and
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> (c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
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> (d) The representative parties will fairly and adequately protect the interests of the class; and, in addition
>
> (e)(1) The prosecution of a separate action by or against individual members of the class would create a risk of:
>
> A. Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
>
> B. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
>
> (2) 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; or
>
> (3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: the interest of members of the class in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the

> controversy already commenced by or against members of the class; the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and the difficulties likely to be encountered in the management of a class action.

Because RSA 358-A:10-a, II is substantively similar to Federal Rule of Civil Procedure ("FRCP") 23, the court will rely on cases interpreting the federal rule for guidance. *Cf. Cantwell v. J&R Props. Unlimited*, 155 N.H. 508, 511 (2007) (relying on cases interpreting FRCP 23 for guidance in interpreting Superior Court Rule 27-A).

"Under Federal Rule of Civil Procedure 23, trial courts 'must conduct a rigorous analysis of the prerequisites established by [the] Rule ... before certifying a class.'" *Id.*, quoting *Smilow v. Southwestern Bell Mobile Sys., Inc.*, 323 F.3d 32, 38 (1st Cir. 2003). "Such a 'rigorous analysis' ordinarily involves looking beyond the allegations of plaintiff's complaint." *Id.*, citing *In re Public Offering Sec. Lit.*, 471 F.3d 24, 38 (2d Cir. 2006). This is not the same as a review of the merits. "A trial court has no authority to conduct a preliminary inquiry into the merits of a lawsuit when it is determining whether that lawsuit may be maintained as a class action." *Craft v. Philip Morris Co., Inc.*, 190 S.W.3d 368, 377 (Mo. App. E.D. 2005), citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). "The issue is not whether the plaintiff has stated a cause of action or will prevail on the merits, but rather whether [the] plaintiff has met the requirements for a class action." *Id.*

"'A class action is designed to promote judicial economy by permitting the litigation of the common questions of law and fact of numerous individuals in a single proceeding.'" *Id.*, quoting *Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 (Mo. 2004). Under the CPA, class certification requires that: (1) the class be so numerous that joinder of all members is impracticable; (2) the existence of issues of law or fact common to the class; (3) the common issues of law and fact predominate over individual issues; (4) a class action is superior to other

available methods for the fair and efficient adjudication of the controversy; (5) the claims of the representative parties are typical of the claims of the class; and (6) the representative parties will fairly and adequately protect the interests of the class. In addition to the above requirements, the class seeking certification must be ascertainable or adequately defined so that class members can be identified. *Van West v. Midland Nat'l Life Ins. Co.*, 199 F.R.D. 448, 451 (D.R.I. 2001). The party seeking class certification bears the burden to demonstrate that each of the above elements is met. *Coleman v. Watt*, 40 F.3d 255. 258 (8th Cir. 1994). Mindful of this standard, the court will examine each factor in turn.

ANALYSIS

Numerosity

Ms. Lawrence argues that she has satisfied the numerosity requirement because she "seek[s] certification of a class of all individuals who purchased Marlboro Lights cigarettes in New Hampshire at any time from the date [the defendant] introduced them into New Hampshire's stream of commerce until the date of trial." Plaintiffs' Mot. For Class Cert. at 32. Courts have recognized "'the difficulty inherent in joining as few as 40 class members,'" and have suggested that such a number "'should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the [numerosity requirement] on that fact alone.'" *City of Goodlettsville v. Priceline.com, Inc.*, 2010 WL 1609964, at *3 (M.D. Tenn), quoting 1 William B. Rubenstein, Alba Conte, and Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 3.5 (4th ed.) ("Conte & Newberg").

In this case, Ms. Lawrence asserts, and the defendant does not dispute, that Philip Morris sold "hundreds of millions of packs of Marlboro Lights cigarettes in New Hampshire during the class period." Plaintiffs' Mem. in Support of Mot. For Class Cert. at 32. Given this number, Ms. Lawrence estimates that "the number of Class members who purchased those cigarettes is in the

hundreds of thousands." *Id.* This estimate is compelling. Based on the size of plaintiff's proposed class, Ms. Lawrence has satisfied the numerosity requirement.

Commonality and Predominance

Ms. Lawrence also argues that common issues of law and fact exist in this case and that these common issues predominate over issues affecting individual class members. Philip Morris does not dispute that common issues of law and fact exist. Rather, it argues that Ms. Lawrence cannot show that common issues predominate over issues affecting only individual class members.

> Satisfying commonality requires meeting a relatively low threshold. This requirement will be satisfied if the proposed class members share at least one significant question of law or fact in common with each other.
>
> The predominance requirement, however, is far more demanding. To satisfy the predominance test, the issues common to the proposed class must outweigh the issues that are particular to the individual class members. The purpose of the predominance test is to promote the 'economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated.... To achieve these pragmatic goals, the trial court must consider how the case will be tried by identifying the substantive issues that will control the outcome of the case, assessing which issues will predominate, and determining whether those issues are common to the class.

Petition of Bayview Crematory, 155 N.H. 781, 785-86 (2007) (citations omitted).

"'The 'predominance' requirement ... does not demand that every single issue in the case be common to all class members, but only that there are substantial common issues which 'predominate' over the individual issues.'" *Am. Family Ins. v. Clark*, 106 S.W.3d 483. 486 (Mo. 2003), quoting *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 325, 331 (D.S.C. 1991). "The predominant issue need not be 'dispositive of the controversy or even be determinative of the liability issues involved.'" *Id.*, quoting Conte & Newberg § 4:25, at 169. Moreover, "[t]he need for inquiry as to individual damages does not preclude a finding of predominance." *Id.* Indeed, "'[a] single common issue may be the overriding one in the litigation, despite the fact that the

suit also entails numerous remaining individual questions.'" *Id.* at 381-82, quoting Conte & Newberg § 4:25, at 172.

Under the CPA, it is "unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce" within New Hampshire. RSA 358-A:2. In determining whether an act or practice under RSA 358-A:2 is unfair or deceptive, the court considers the following factors:

> (1) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law statutory or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers....

Milford Lumber Co. v. RCB Realty, 147 N.H. 15, 19 (2001), quoting *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244-45 n. 5 (1972). The court also considers whether the act or practice falls within one of the specifically delineated categories of proscribed commercial actions listed under RSA 358-A:2.

If the act or practice is unfair or deceptive but does not fall within one of the specifically delineated categories of proscribed conduct, the court applies the "rascality" test. *See State v. Moran*, 151 N.H. 450, 452 (2004) ("Because of the difficulty often associated with determining which commercial actions, not specifically delineated, are covered by the act, we employ[] the rascality test."). Under the rascality test, the "objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce." *Id.* (quotations omitted).

In this case, common issues of law and fact predominate over individual issues. Among these common issues of law and fact are the following: (1) whether each class member is a "person" within the meaning of RSA 358-A:1, I; (2) whether Philip Morris was engaged in "trade or

commerce" within New Hampshire when it committed the alleged unlawful or deceptive acts or practices at issue; (3) whether Philip Morris engaged in unlawful or deceptive acts or practices under the CPA; (4) whether the alleged unlawful or deceptive acts or practices fall within one of the specifically delineated categories of proscribed commercial conduct listed under RSA 358-A:2; (5) if Philip Morris's alleged unlawful or deceptive acts or practices do not fall within one of the categories of proscribed commercial conduct, whether its alleged unlawful or deceptive conduct meets the rascality test; (7) whether each class member must prove reliance, deception, or some other form of causation to recover under the CPA; (8) if causation is an element under the CPA, whether a single understanding of the labeling of Marlboro Lights as "lights" and "lowered tar and nicotine" exists; (9) whether a damages theory exists under which each class member's damages can be measured; and (10) when each class member knew, or reasonably should have known, of Philip Morris' alleged unfair or deceptive conduct, RSA 358-A:3, IV-a.

Philip Morris argues that common questions of law and fact do not predominate over individual questions because whether a smoker received lower tar and nicotine depends on his or her individual smoking behavior. The court disagrees. Ms. Lawrence alleges in her writ that she purchased a product designed and manufactured to manipulate test results, resulting in a misrepresented and mislabeled product. She also alleges that she failed to receive the qualities and economic value of a low tar, low nicotine cigarette. These allegations go to the condition and labeling of Philip Morris' product at the time it was sold. *See Craft*, 190 S.W.3d at 382. Neither allegation makes Philip Morris's liability dependent on each class member's smoking behavior. *See id.* Thus, evidence of individual smoking behavior does not predominate over common issues of law and fact.

Philip Morris also argues that individual questions of law and fact predominate over common questions because individuals purchased Marlboro Lights for many reasons, including reasons unrelated to lower tar and nicotine. The court again disagrees. Ms. Lawrence has not alleged reliance, deception, or causation in her writ. In fact, Ms. Lawrence contests whether she must prove reliance, deception, or causation under the CPA. Thus, at this stage of the proceedings, each class members' reasons for purchase are not issues and do not predominate over common questions. *See id.* at 383.

Philip Morris next argues that individual issues predominate over common issues because smokers varied in their knowledge about whether Marlboro Lights delivered lower tar and nicotine. Philip Morris asserts that knowledge is a defense to the CPA, which would defeat a claim or cut it off at a certain time. Consequently, each consumer's individual knowledge is a predominant issue. Philip Morris raises a similar argument with respect to the statute of limitations. The court disagrees that knowledge is a predominant issue. Whether and to what extent knowledge is a defense under the CPA is a common issue of law and fact that the court must resolve. If knowledge is not a defense, it will not be an issue. If knowledge is a defense, it would not necessarily create a predominant individual issue.

"As a general matter, the fact that an affirmative defense may be available against certain individual class members and affect them differently does not, by itself, show that individual issues predominate." *Id.*, citing *In re Visa Check/MasterMoney Antitrust Litigation*, 280 F.3d 124, 138 (2nd Cir. 2001). "'[A] trial court can resolve individual questions, particularly those relating to damages and defenses, after making a determination on the predominant issue.'" *Id.*, quoting *Am. Family Ins.*, 106 S.W.3d at 489 n. 7. "If knowledge is a defense under the [CPA] and serves to cut off a claim, its application would be similar to the application of a statute of limitations

defense." *Id.* "Differences in the application of the statute of limitations to individual class members do not preclude certification." *Id.*, citing *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 924 (3rd Cir. 1992). Thus, each class member's individual knowledge and Philip Morris' statute of limitations defense do not create individual issues that predominate over common issues.

Next, Philip Morris argues that individual issues predominate over common issues because each class member has no means of establishing that he or she suffered an injury as a result of its alleged conduct. The court disagrees. Ms. Lawrence has shown that each class member could prove recoverable damages on a class-wide basis under the benefit-of-the-bargain rule. Under the benefit-of-the-bargain rule, a plaintiff may recover "the difference between the actual value of the cigarettes and the value the cigarettes would have had if they had truly been as represented—*i.e.*, a true low-tar, low-nicotine cigarette," regardless of the actual price paid for the cigarettes. *Collora v. R.J. Reynolds Tobacco Co.*, 2003 WL 23139377, at * 3 (Mo. Cir. Dec. 31, 2003); *Craft v. Philip Morris Co., Inc.*, 23139381, at *6 (Mo. Cir. Dec. 31, 2003); *see also* 37 AM. JUR. 2D FRAUD AND DECEIT §§ 385, 409, 416 (2010). Thus, contrary to Philip Morris' assertions, Ms. Lawrence has asserted a potentially viable theory for determining class-wide damages and shown that the fact of damages is an issue common to the class.

Finally, Philip Morris argues that individual issues predominate because each class member's damages will require individualized assessment. The court again disagrees. "The need for inquiry into individual damages does not preclude a finding of predominance." *Craft*, 190 S.W.3d at 381, quoting *Am. Family Ins.*, 106 S.W.3d at 489 n. 7. It is well-settled that class action rules allow trial courts "to devise imaginative solutions to problems created by the presence in a class action litigation of individual damages issues." *Carnegie v. Household Int'l, Inc.*, 376

F.3d 656, 661 (7th Cir. 2004). Thus, a trial court may "modify its class certification order, sever liability and damages, or even decertify the class if such an action ultimately became necessary." *In re Visa Check/MasterMoney Antitrust Litigation*, 280 F.3d at 141. At this stage of the proceedings, common issues of law and fact predominate over individual issues of each class member's damages. Should individual issues of each class member's damages come to predominate over common issues of law and fact, however, the court may modify its class certification order, sever liability and damages, or decertify the class, whichever is appropriate.

Ms. Lawrence also appears to request that the court resolve certain questions of law relating to damages, such as whether she may seek a refund of the purchase price or claim statutory damages under the CPA. The court declines Ms. Lawrence's invitation to resolve these issues at this stage of the proceedings because "[i]t is inappropriate to resolve competing damages theories on a motion for class certification." *Craft*, 190 S.W.3d at 385. Resolution of these questions at this time is premature.

Typicality

Ms. Lawrence bears the burden of proving that her claims are typical of the claims and defenses of the class. "A sufficient nexus is established [to show typicality] 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." *In re Terazosin Hydrochloride Antitrust Litigation*, 220 F.R.D. 672, 686 (S.D. Fla. 2004). "Although [the plaintiff] may not have suffered identical damages, that is of little consequence to the typicality determination when the common issue of liability is shared." *In re Lorazepam & Clorazepate Antitrust Litigation*, 202 F.R.D. 12, 28 (D.D.C. 2001). To satisfy the typicality requirement, "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 absent members." *Randle v. Spec-*

tran, 129 F.R.D. 386, 391 (D. Mass. 1988). Typicality is not a demanding test. *Forbush v. J.C. Penney Co., Inc.*, 994 F.2d 1101, 1106 (5th Cir. 1993).

Here, Ms. Lawrence has shown substantial identity between her claims and defenses and the claims and defenses of absent class members. Ms. Lawrence and absent class members purchased Marlboro Lights cigarettes during the relevant class period. Ms. Lawrence and absent class members were unaware of Philip Morris' conduct with respect to the manufacturing, marketing, and distribution of Marlboro Lights and, as a result, received a misrepresented and mislabeled product. Based on these facts, Ms. Lawrence's claims and defenses under the CPA are typical of the claims and defenses of the absent class members.

Adequacy

Ms. Lawrence must also show that the representative parties will fairly and adequately protect the interests of the class. "The adequacy rule has two parts. The moving party must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced, and able to vigorously conduct the proposed litigation." *Andrews v. Bechtel Power Co.*, 780 F.2d 124, 130 (1st Cir. 1985).

In this case, Ms. Lawrence has shown that her interests are the same as other class members—they will not conflict. Additionally, Ms. Lawrence has shown, and Philip Morris does not dispute, that class counsel is qualified, experienced, and able vigorously to conduct the proposed litigation. Thus, Ms. Lawrence has sustained her burden with respect to the adequacy requirement.

Superiority and Manageability

Ms. Lawrence also bears the burden of showing that she meets the superiority and manageability requirements. She argues that she has met this burden because her claims arise out of a

single course of conduct and common issues of law and fact predominate. Philip Morris objects. It contends that a class action is not superior because: (1) individual issues predominate over common questions; (2) the plaintiff has not submitted a "trial plan" describing the issues likely to be presented at trial and whether they are susceptible to class-wide proof; and (3) during the 1990s, forty state attorneys general filed suit against the tobacco company seeking reimbursement of healthcare costs. The court agrees with Ms. Lawrence that she has met the superiority and manageability requirements.

The superiority requirement is met where "a class action would achieve [the] 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." *Amchem Products, Inc. v. Windor*, 521 U.S. 591, 615 (1997).

Here, as stated earlier, common issues of law and fact predominate over individual issues. Also, the CPA does not require Ms. Lawrence to submit a "trial plan" describing the issues likely to be presented at trial and whether they are susceptible to class-wide proof. Additionally, the court cannot ascertain how litigation during the 1990s in which forty state attorneys general filed suit against various tobacco companies has any bearing on this case, especially where Philip Morris has not indicated whether it or the New Hampshire Attorney General was involved in a similar lawsuit in New Hampshire. In any event, "'litigation by a government agency will not preclude a private party from vindicating a wrong that arises from related facts but generates a distinct individual cause of action.'" *Engle v. Ligget Group, Inc.*, 945 So. 2d 1246, 1261 (Fla. 2006), quoting *Southwest Airlines Co. v. Texas Intern. Airlines, Inc.*, 546 F.2d 84, 98 (5th Cir. 1977).

In its supplemental memorandum, Philip Morris argues that a class action would be unmanageable because RSA 358-A:10-a, X "expressly provides that no judgment may be entered until after a determination of whether: (1) each individual is a member of the class; (2) whether that individual suffered any injury; and (3) the amount of damages suffered by the individual." Philip Morris, USA Inc.'s Supp. Memo. In Opposition to Pl.'s Mot. For Class Cert., at 11. The court disagrees.

"Failure to certify an action on the sole ground that it would be unmanageable is disfavored...." *Craft*, 190 S.W.3d at 386, citing *In re Visa Check/MasterMoney Antitrust Litigation*, 280 F.3d at 140. "While it is almost inevitable that a class will include some people who have not been injured by the defendant's conduct because at the outset of the case many members may be unknown, or facts bearing on their claims may be unknown, this possibility does not preclude class certification." *Pella Corp.*, 606 F.3d at 394. Moreover, "the existence of administrative complications in managing the distribution of different damages awards to a class does not by itself make a class unmanageable." *Craft*, 190 S.W.3d at 386.

In this case, the requirements of RSA 358-A:10-a, X do not preclude class certification. While the possibility that the class includes some people who have not been injured by the defendant's conduct may preclude entry of a final judgment under RSA 358-A:10-a, X, it does not preclude class certification at this stage of the proceedings. Similarly, the possibility that each class member will have to prove individual damages or that different damages awards will need to be managed does not preclude class certification. Should the class become unmanageable, the court may modify its class certification order, sever liability and damages, or even decertify the class. *See Link v. Mercedes-Benz of North America, Inc.*, 550 F.2d 860, 864 (3rd Cir. 1977)

("Thus, after a determination of liability, the district court is free to decertify the class for a proper reason, and unmanageability would be such a circumstance.").

Ascertainability

Finally, the court must determine whether Ms. Lawrence has sustained her burden of showing that she meets the ascertainability requirement. "[A] proposed class must be precisely defined and its members must be ascertainable through the application of 'stable and objective factors' so that a court can decide, among other things, 'who will receive notice, who will share in any recovery, and who will be bound by the judgment.'" *Van West v. Midland Nat'l Life Ins. Co.*, 199 F.R.D. 448, 451 (D.R.I. 2001).

According to Ms. Lawrence's pleadings, she seeks to certify the following class: "[A]ll individuals who purchased Marlboro Lights cigarettes in New Hampshire at any time from the date [the defendant] introduced them into New Hampshire's stream of commerce until the date of trial." Plaintiff's Mot. For Class Cert. at 32. Such a class is readily ascertainable through the application of stable and objective factors.

CONCLUSION

Based on the foregoing, the court finds and rules that Ms. Lawrence has sustained her burden of establishing the requirements for class certification under the CPA. Accordingly, Ms. Lawrence's motion for class certification is GRANTED.

So ORDERED.

Larry M. Smukler

Date: November 22, 2010

LARRY M. SMUKLER
PRESIDING JUSTICE