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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CAT BROOKS and RASHEED
SHABAZZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THOMSON REUTERS CORPORATION,

Defendant.

Case No. 3:21-cv-01418-EMC

**[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

[PROPOSED] ORDER

Plaintiffs Cat Brooks and Rasheed Shabazz have filed a Motion for Class Certification, Doc. 124-03 (“Motion”). Defendant Thomson Reuters Corporation opposes that Motion. Having considered the Motion, Defendant’s Opposition, and all associated briefing, documents, and evidence on the record at the time of this Order, Plaintiffs’ Motion is hereby DENIED for the following reasons.

First, the Court finds that Plaintiffs lack Article III standing. To maintain a case in federal court, a plaintiff must show: “(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Plaintiffs have not shown that the injury they assert here bears a “close relationship to harms traditionally recognized as providing a basis for a lawsuit.” *Id.* at 2204. Plaintiffs have also failed to show that their alleged “injury” (a loss of control over information relating to them) was “caused by the defendant.” *Id.* at 2203.

Second, the Court finds that Plaintiffs have not satisfied the requirements of Federal Rule of Civil Procedure 23(a). For at least two reasons, Plaintiffs are subject to atypical defenses such that they will not “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(3)-(4). Plaintiffs have not “lost money or property” as required for statutory standing under Cal. Bus. & Prof. Code § 17204. *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310, 322 (2011). And Plaintiffs are self-admitted public figures, subject to unique defenses relating both to the amount of information already out of their “control,” and about the public utility and benefits of such information being publicly accessible.

Plaintiffs have also not shown that there are common questions of law or fact in this case that would generate “common answers apt to drive resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Court cannot apply California unjust enrichment or unfair competition laws extraterritorially, as Plaintiffs’ class definition would require. *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945, 972 (N.D. Cal. 2015). And neither of

1 Plaintiffs’ remaining claims center on issues capable of common resolution. Unjust enrichment
 2 requires a detailed review of equities between each class member and Defendant that will change
 3 for each class member. *First Nationwide Sav. v. Perry*, 11 Cal. App. 4th 1657, 1663 (1992); *see*
 4 *also* 1 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 5:60 (19th ed. 2022) (“unjust
 5 enrichment claims usually are not amenable to class treatment”). Plaintiffs’ unfair competition
 6 claim similarly requires individualized analyses; to determine whether Defendant’s actions are
 7 “unfair” for purposes of imposing liability, the Court must weigh the Plaintiffs’ allegedly lost
 8 “control” of their information against the public benefits of Defendant’s conduct. *See Herskowitz*
 9 *v. Apple, Inc.*, 301 F.R.D. 460, 477 (N.D. Cal. 2014) (denying class certification because these
 10 assessments under the UCL are inherently individualized inquiries).

11 Third, Plaintiffs have not proven that they satisfy either Federal Rules of Civil Procedure
 12 23(b)(3) or 23(b)(2). Under Rule 23(b)(3), Plaintiffs have not shown that common issues
 13 predominate over individual ones. Individual issues abound here, including: the information at
 14 issue for each class member, the extent to which that class member exercised prior control over
 15 that information, whether that information was disclosed by Defendant to any users of
 16 Defendant’s CLEAR platform, and for what purpose(s) those users may have accessed that
 17 information (including for uses that may have benefitted either the class member or the public at
 18 large). Plaintiffs have also not shown that class treatment would be a superior method of
 19 adjudicating this controversy—not only because of the individualized issues described above, but
 20 also because balancing the public’s interest in products like CLEAR with Californians’ desires to
 21 control their information is a task best suited to the California legislature. *Mazza v. Am. Honda*
 22 *Motor Co.*, 666 F.3d 581, 592 (9th Cir. 2012), *overruled, in part, on other grounds by Olean*
 23 *Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022). And
 24 under Rule 23(b)(2), Plaintiffs have neither described the “general contours of an injunction that
 25 would provide relief to the whole class,” *Parsons v. Ryan*, 754 F.3d 657, 689 n.35 (9th Cir. 2014),
 26 nor established that injunctive relief here would be “appropriate respecting the class as a whole.”
 27 Fed. R. Civ. P. 23(b)(2).
 28

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2 IT IS SO ORDERED.

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4 DATED: _____

5 Judge: Hon. Edward M. Chen
6 United States District Judge

7 Submitted by:

8 PERKINS COIE LLP

9
10 By: /s/ Susan D. Fahringer
11 Susan D. Fahringer

12 Attorneys for Defendant
13 Thomson Reuters Corporation
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