IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GREGORY A. BUFORD, SR., individually and on behalf of all others similarly situated,	§	
Plaintiff,	§	**CASE NO. 3:12-cv-05288-L-BH**
v.	§	
DRIVER SOLUTIONS, LLC, BRYAN K. ALSIP, TOM LANE, & PYRAMID FINANCIAL SOLUTIONS, LLC,	§	**CLASS ACTION - JURY**
Defendants.	§	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiff Gregory A. Buford, Sr., Individually and on behalf of two classes of similarly situated persons ("Plaintiff"), and files this, his Memorandum of Law in Support of Motion for Class Certification. Plaintiff would respectfully show that the proposed Plaintiff Classes should be certified for claims against Defendants Driver Solutions, LLC, Bryan K. Alsip, Tom Lane, and Pyramid Financial Solutions, LLC ("Defendants").

I. FACTUAL BACKGROUND

Defendant Driver Solutions owns and operates a network of training facilities in the United States through which it trains people to drive commercial motor vehicles. In order to entice would-be trainees into its program and to enable them to participate, Driver Solutions offers tuition loans that cover training (a mix of classroom, driving range instruction, and on-the-street driving experience), books, supplies, and housing. Such loans are documented by means of an Enrollment Agreement and Installment Business Loan Demand Note. The terms of such loans are nonnegotiable.

Upon completion of the Driver Solutions program, the graduates were expected to begin making loan payments as required by the Enrollment Agreement and Installment Business Loan Demand Note. When a Driver Solutions graduate failed to make payments on his or her loan, Defendant Bryan Alsip, while employed as the general counsel for Pyramid Financial Solutions[1] and also purportedly working for Driver Solutions[2] – and in concert with Defendant Tom Lane (the former Director of Finance of Driver Solutions and Chief Operating Officer of Pyramid

[1] Deposition of Bryan Keith Alsip taken on February 13, 2014, (hereinafter "Alsip deposition"), 32:10-14 (Appendix in Support of Plaintiff's Memorandum of Law in Support of Motion for Class Certification (hereinafter "App.") at 6).

Financial Solutions) – initiated legal action against the defaulted graduate in Small Claims Court in Marion County, Indiana. Because (1) nearly all the graduates signed the agreement that created the debt in locations other than Marion County, Indiana; (2) nearly all the graduates attended truck driving school in states other than Indiana; and (3) nearly all the graduates live in states other than Indiana, the cases could not be filed in Marion County Small Claims Court by virtue of the FDCPA's Fair Venue Provision, codified at 15 U.S.C. §1692i, and the Indiana Rules of Court – Small Claims venue provision. Thus, the Defendants wrongfully filed – and wrongfully conspired to file – the case against each of these graduates in Marion County, Indiana Small claims court.

As nearly all of the graduates reside in states other than Indiana and did not have sufficient funds to retain counsel to defend them in the lawsuits, and many were never properly served with the lawsuits in the first place, Defendants would obtain default judgments against them. After obtaining these default judgments, Defendants would initiate garnishment actions against the defaulted graduate – again, in Small Claims Court in Marion County, Indiana in violation of the aforementioned venue statutes, and they would collect a substantial sum of money with these improperly obtained default judgments.

Plaintiff Greg Buford was subjected to this scheme. The details of Defendants' scheme as applied to Mr. Buford are set out in Plaintiff's Brief in Support of Plaintiff's Response to Defendants Motion for Summary Judgment (Doc. 27), the contents of which are incorporated as if fully set forth at length herein. As the subsequent deposition of Defendant Bryan Alsip confirmed, the case filed against Mr. Buford by Defendants is hardly unique, but is merely one

[2] Alsip deposition, 22:9-11 (App. at 7). After Bryan Alsip left the Defendants' employ, additional lawsuits were

example of Defendants' routine, ordinary, cookie-cutter practice which resulted in the filing of thousands of these lawsuits in Small Claims Court in Marion County, Indiana against Driver Solutions graduates who resided all over the country, and the garnishment of the wages and bank accounts of at least hundreds – and likely thousands[3] – of these graduates.

The violations of Indiana law and the FDCPA are not the end of the story. Even if the graduates such as Mr. Buford had signed Enrollment Agreement and Installment Business Loan Demand Notes in Indiana, and, therefore, venue had been proper, the enforcement of the Indiana judgment by a wage garnishment against a Texas resident employed by a Texas employer violates both the Texas Constitution and Texas law. *See* TEX. CONST. Art. 16, Sec. 28 and TEX. PROP. CODE § 42.001(b)(1) (prohibiting wage garnishment in Texas for anything other than child support and spousal maintenance). Importantly, the Defendants never made any effort to domesticate their Indiana judgment in Texas prior to enforcing it against assets owned by a Texas resident and located wholly within the state of Texas. This failure to domesticate the judgment in any state which has enacted the Uniform Enforcement of Judgment Act prior to the enforcement of that Indiana judgment against assets in that state constituted even further violations of the law.

Plaintiff Buford now files this Motion for Class Certification, asking this Court to certify the two classes described below in order to recover damages stemming from Defendants' scheme and to enjoin further unlawful conduct by Defendants.

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filed by his successor, Garrett Lowe. Alsip deposition, 29:7-14 and 76:4-15 (App. at 8-9).

II. PLAINTIFF'S CLASS DEFINITIONS AND THE CAUSES OF ACTION TO BE CERTIFIED

Under Rule 23, a plaintiff must first define the class with specificity and show that he is a member of the class.[4] Here Plaintiff has defined the classes as:

> **National Class**: All persons within the United States from whom, on or after July 13, 2010, any of the Defendants sought to collect, or did collect, a debt. This class excludes persons who reside in Marion County, Indiana.
>
> **Texas Class:** All persons within the State of Texas from whom, on or after July 13, 2010, any of the Defendants sought to collect, or did collect, a debt.
>
> Neither of the above Classes include any employees of the Defendants or the judges assigned to this action or their relatives.

The class definitions clearly provide the requisites for being in the classes.

Plaintiff's Third Amended Class Action Complaint (Doc. 41) contains nine counts: (1-6) actions for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (six counts); (7) an action for violations of the Texas Debt Collection Act, TEX. FIN. CODE § 392.001 *et seq.* (on behalf of the Texas Class only); (8) an action for Conversion; and (9) an action for Malicious Prosecution. Plaintiff seeks certification of each of these causes of action.

III. COMPLIANCE WITH LOCAL RULE 23.2

In compliance with the requirements for class certification briefs set forth in Rule 23.2 of the Local Rules for the Northern District of Texas, Plaintiff would respectfully state the following:

Local Rule 23.2(a): This suit is appropriate for class certification pursuant to Rule 23(a)(1)-(4) and Rules 23(b)(2) and (b)(3). Plaintiff addresses the applicability of each of these

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[3] Alsip deposition, 131:1-8 and 147:3-14 (App. at 10-11).

sections and subparts of Rule 23, *infra*, at Section V.

Local Rule 23.2(b): The exact number of class members of each of the classes is currently unknown, but the National Class numbers at least 100 and would "probably" be in excess of 1,000.[5] As will be detailed in Section V.A.1, the number is both determinable from data in the Defendants' possession and ascertainable from the publicly available online court records in Indiana. The definitions of the proposed Classes are set out in section II, *supra.* Distinguishing and common characteristics of Class members are addressed in sections V.A. and V.B., *infra.* Common questions of law and fact are detailed in sections V.A. and V.B., *infra*. Specific factual allegations concerning the findings under FED. R. CIV. P. 23(b)(3) are set forth at section V.B., *infra.*

Local Rule 23.2(c): Plaintiff is a competent representative of the class. He understands the basic issues involved in this litigation and his responsibility as a class representative. There are no conflicts of interest between Plaintiff and the putative class. Moreover, financial responsibility for funding the class action has been assumed by Plaintiff's Counsel.

Local Rule 23.2(d): This Court has diversity jurisdiction over this matter.

Local Rule 23.2(e): Plaintiff anticipates providing individual notice to class members. Plaintiff's Counsel shall pay the cost of notice if that is ordered by the Court.

Local Rule 23.2(f): The parties have agreed in their Joint Conference Report/Scheduling Plan Under Rule 26(f) (ECF No. 19) that a hearing on class certification should be held in late September or early October of 2014. Pursuant to the Court's Scheduling Order (ECF No. 23),

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[4] *McManus v. Fleetwood Enterprises, Inc.*, 320 F.3d 545, 548 (5th Cir. 2003), *citing to Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1105 (5th Cir.1993).

[5] Alsip deposition, 147:3-14 and 131:1-8 (App. at 10-11).

discovery is to be completed by July 28, 2014. Plaintiff's Counsel has already propounded discovery on Defendants and Defendants have responded. The first deposition in this case took place on February 13, 2014 and Plaintiff's Counsel anticipates scheduling further depositions of Defendants' employees and corporate representatives during the months of May and June 2014. Plaintiff's Counsel anticipates that the subjects to be discussed in these depositions will include Defendants' debt collection efforts.

Local Rule 23.2(g): Plaintiff will seek an award of attorneys' fees under federal law, as allowed by the FDCPA and the other causes of action alleged herein. Plaintiff may seek attorneys' fees under either the Lodestar Method or the percentage of common fund method, as appropriate. Plaintiff's Counsel have entered into a contingency fee contract with Plaintiff, and will provide that to the Court if ordered to do so by the Court.

IV. CASES PREMISED UPON FDCPA VIOLATIONS LEND THEMSELVES TO CLASS CERTIFICATION

The nature of debt collection work involves standardized communications, routine practices, dealings with numerous debtors, and the collection of relatively small sums and service charges from individuals. These traits make debt collection practice violations ideal candidates for resolution through class action proceedings.

The language of the FDCPA itself indicates that Congress intended the class action procedure to be an integral part of the FDCPA's enforcement regime.[6] That is, the liability section of the FDCPA includes a listing of available damages that is specifically applicable in class action proceedings alone. 15 U.S.C. § 1692(k). Thus, it is beyond dispute that Congress

[6] *Barnett v. Experian Information Solutions*, 2004 WL 4032909, *5 (E.D. Tex., Sept. 30, 2004).

envisioned FDCPA provisions (such as those at issue in this case) being enforced through class action proceedings.

Countless courts throughout the United States have granted class certification for FDCPA claims involving standardized conduct and communications of the sort alleged in this case.[7] This Court should certify the Plaintiff Classes as they are the best, and likely only, way for class members to meaningfully address Defendants' illegal collection practices.

In *McCormick v. 7-Eleven*, a class certification opinion in which FDCPA claims were certified, Judge Godbey noted:

> Despite the fact that attorney's fees and court costs are recoverable under the FDCPA, given the minimal damages likely at stake for the vast majority of individual claimants, they are unlikely to pursue individual claims. In this context, a class action is the only viable remedy for most members of the proposed class.

Doc. 146, p. 19, No. 3:06-CV-00127-N (N.D. Texas, March 12, 2009).

[7] *E.g*., *Schwarm v. Craighead*, 233 F.RD. 655 (D.C. Cal. 2006)(certifying FDCPA claim involving standardized conduct); *Lucs v. GC Servs. L.P*. 226 F.R.D. 337 (D.C. Ind. 2005)(certifying FDCPA claim involving standardized letters); *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461 (D.C. Pa. 2000)(same); *Talbott v. GC Services Ltd. Partnership*, 191 F.R.D. 99 (D.C. Va. 2000)(same); *Carrol v. United Compucred Collections, Inc*., 399 F.3d 620 (6th Cir. 2005)(certifying FDCPA class action); *Liles v. American Corrective Counseling Servs., Inc.*, 231 F.R.D. 565 (S.D.Iowa 2005); *Abels v. JBC Legal Group*, P.C., 227 F.R.D. 541 (D.C. Cal 2005); *Carbajal v. Capital One*, 219 F.R.D. 437 (D.C.III. 2004); *Evans v. American Credit Sys., Inc*. 222 F.R.D. 388 (D.C. Neb. 2004); *Oslan v. Collection Bureau of Husdson Valley*, 206 F.R.D. 109 (D.C. Pa. 2002); *Clark v. Bonded Adjustment Co.*, 204 F.R.D. 662 (D.C. Wash. 2002); *Campion v. Credit Bureau Sevs., Inc., 206* F.R.D. 663 (D.C. Wash 2001); *Connor v. Automated Accounts, Inc*., 202 F.R.D. 265 (D.C. Wash 2001); *Kremnitzer v. Cabrera & Rephen, P.C.*, 202 F.R.D. 239 (D.C. III 2001); *Weber v. Goodman*, 9 F. Supp.2d 163 (D.C.N.Y. 1998); *Ditty v. Check Rite, Ltd*, 182 F.R.D. 639 (D.C. Utah 1998); *D'Alauro v. GC Sevs. Ltd. Partnership*, 168 F.R.D. 451 (D.C.N.Y. 1996); *Castro v. Collecto, Inc.*, 256 F.R.D. 534 (W.D. Tex 2009), *Hallmark v. Cohen & Slamowitz, LLP*, 293 F.R.D. 410 (W.D.N.Y. 2013), *Harris v. D. Scott Carruthers & Assoc*., 270 F.R.D. 446 (D. Neb. 2010), *Hartley v. Suburban Radiologic Consultants, Ltd*., 295 F.R.D. 357 (D. Minn. 2013), *Garo v. Global Credit & Collection Corp*., 2011 WL 251450 (D. Ariz. 2011), *Ellis v. General Revenue Corp*., 274 F.R.D. 53 (D. Conn. 2011), *Cox v. Sherman Capital LLC*, 295 F.R.D. 207 (S.D. Ind. 2013), *Gaalswijk-Knetzke v. Receivables Management Services Corp*., 2008 WL 3850657 (M.D. Fla. 2008), *LaRocque ex rel. Spang v. TRS Recovery Services, Inc*., 285 F.R.D. 139 (D. Maine 2012), *Bogner v. Masari Investments, LLC*, 257 F.R.D. 529 (D. Ariz. 2009), *del Campo v. American Corrective Counseling*

V. THIS CASE MEETS THE STANDARDS FOR CERTIFICATION UNDER RULE 23

The purpose of the procedural device of a class action is to "conserve 'the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion.'"[8] To ensure that this purpose is served, the prerequisites of FED. R. CIV. P. 23(a)(1)-(4) and at least one of the three alternate subdivisions of FED. R. CIV. P. 23(b) must be satisfied to maintain a class action.[9]

The plaintiff bears the initial burden of adducing reasons why a putative class action meets the requirements of Rule 23; however, the plaintiff's burden is not a heavy one.[10] Once the plaintiff has mounted a preliminary legal showing that the requirements of Rule 23 have been met, the burden of proof shifts to the defendant to demonstrate otherwise.[11] Provided that the plaintiff's contentions regarding the class issues enjoy a reasonable foundation, the court should not deny certification because of the defendants' challenge.[12]

Based on the allegations of the Complaint, there does not appear to be any credible basis for resistance by Defendants to certification of this case with respect to compliance with the Rule 23 requirements of numerosity, predominance of common issues, typicality, and adequacy. Nor are there other factors impeding the proposed certification. Plaintiff is entitled to class

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Services, Inc., 254 F.R.D. 585 (N.D. Cal. 2008), *Rawson v. Source Receivables Management, LLC*, 289 F.R.D. 267 (N.D. Ill 2013), *Eatmon v. Palisades Collection LLC*, 2011 WL 147680 (E.D. Tex. 2011).

[8] *See Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 471 (5th Cir. 1986), *reh'g denied, en banc*, 785 F.2d 1034 (5th Cir. 1986) (*quoting Gen. Tel. Co. of the Sw.*, 457 U.S. 147, 155 (1982)).

[9] *See Jenkins*, 782 F.2d at 471;*Longden v. Sunderman*, 123 F.R.D. 547, 550 (N.D. Tex. 1988).

[10] *See Paxton v. Union Nat'l Bank*, 688 F.2d 552, 562 (8th Cir. 1982), *cert. denied*, 460 U.S. 1083 (1983); *Gilchrist v. Bolger*, 89 F.R.D. 402, 405-06 (S.D.Ga. 1981); *Piel v. Nat'l Semiconductor Corp.*, 86 F.R.D. 357, 368 (E.D. Pa. 1980); *In Re Indep. Gasoline Antitrust Litig*., 79 F.R.D. 552, 561 (D. Md. 1978).

[11] 2 H. NEWBERG, NEWBERG ON CLASS ACTIONS §§ 7.22-25, at 7-74 to 84 (3d ed. 1992).

[12] *See Sollenbarger v. Mountain States Tel. & Tel. Co.*, 121 F.R.D. 417, 426-27 (D. N.M. 1988); *Kuck v. Berkey Photo, Inc.*, 81 F.R.D. 736, 739 (S.D.N.Y. 1979).

certification because this case meets each of the Rule 23(a) threshold requirements, and because the proposed class falls within Rule 23(b)(2) and/or (3).

A. The Requirements Of Rule 23(a) Are Satisfied

To proceed as a class action, Plaintiff's claims must satisfy the four prerequisites of Rule 23(a), such prerequisites being numerosity, commonality, typicality, and adequacy of representation. Each prerequisite is met here with respect to the claims asserted by Plaintiff.

1. Numerosity: The Classes Are So Numerous That Joinder Of All Members Is Impracticable and Defendants Have Agreed Not to Contest Numerosity

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). A court search of the Marion County Court website has revealed that there were thousands of individuals sued by Defendants in Marion County, Indiana small claims court.[13] Moreover, the names and addresses of class members are readily obtainable from Defendants and their agents, as this information is maintained in the computer database of Defendants and is likely easily retrievable.[14] In any event, Defendants have agreed not to contest numerosity for either of the Classes, and they have also agreed not to claim that the class members of either Class are not readily identifiable.[15]

No particular number has been set as the point at which the numerosity requirement is met. However, classes exceeding forty are deemed to be sufficiently large to make joinder

[13] Declaration of John R. Howie, Jr. (App. at 16-41).

[14] Alsip deposition, 147:15 – 150:13 (App. at 11-14).

[15] Alsip deposition, 150:24 – 151:14 (App. at 14-15). Counsel for Defendants agreed to this prior to the expansion of the National Class. However, the expanded class is actually more numerous than the class as previously defined in the Second Amended Complaint; therefore, if the original class was sufficiently numerous, then the expanded class is likewise sufficiently numerous.

impracticable.[16] The numerosity requirement of Rule 23(a) requires that joinder be impracticable, but this does not mean "impossible."[17] There is no strict numerical test for determining whether joinder in a given case is impracticable,[18] but when "class size reaches substantial proportions . . . the impracticability requirement is usually satisfied by . . . numbers alone."[19] Again, it is believed that the National Class Members number in the thousands and the State Class Members numbers in the hundreds – if not the thousands.

2. Commonality: The Commonality Requirement is Met

Rule 23(a)(2) requires that there be "questions of law *or* fact common to the class."[20] The commonality element of Rule 23(a) requires that class members have either questions of law or fact in common, but it does not require both, and it does not require that all questions of law or fact be common.[21] "[T]he commonality test is met when there is at least one issue whose resolution will affect all or a significant number of the putative class members."[22] "The . . .

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[16] *See, e.g., Mullen v. Treasure Chest Casino, LLC*, 186 F3d 620, 624 (5th Cir. 1999) (affirming certification of a proposed class of 100 to 150 persons; quoted from 1 NEWBERG ON CLASS ACTIONS § 3.05 at 3-25 that a class of more than 40 persons "should raise a presumption that joinder is impractical"); *Choice Inc. of Texas v. Graham*, 2005 WL 1400408, (E.D. La. 2005) (certifying class of 35 geographically dispersed members).

[17] The requirement is satisfied by showing that joinder would be difficult or inconvenient. *Adver. Specialty Nat'l Ass'n v. F.T.C.*, 238 F.2d 108, 119 (1st Cir. 1956); *Rodriguez by Rodriguez v. Berrybrook Farms, Inc.*, 672 F. Supp. 1009, 1013 (W.D. Mich. 1987); *Allen v. Isaac*, 99 F.R.D. 45, 53 (N.D. Ill. 1983); *Goldstein v. N. Jersey Trust Co.*, 39 F.R.D. 363, 367 (S.D. N.Y. 1966) ("the court concludes that the meaning to be ascribed to the word 'impracticable,' as used in Fed.R.Civ.P. 23(a)(3), should be 'impractical,' 'unwise' or 'imprudent' rather than 'incapable of being performed' or 'infeasible.'").

[18] *Watson v. Shell Oil Co.*, 979 F.2d 1014,1022 (5th Cir. 1992).

[19] *In re American Med. Sys. Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996); *Shipes v. Trinity Indus., Inc.*, 1982 WL 1759, at *8 (E.D. Tex. 1982) ("The core of the numerosity requirement involves an analysis of the practical realities which allegedly render joinder of all putative class members impracticable, as opposed to impossible.")

[20] FED. R. CIV. P. 23(a)(2); *Purdie v. Ace Cash Express, Inc.*, 2003 WL 2297661 (N.D.Tex. 2003).

[21] *Forbush v. J. C. Penney Co., Inc.*, 994 F.2d 1101, 1106 (5th Cir. 1993) (commonality test is met when there is at least one issue whose resolution will affect all or a significant number of putative class members).

[22] *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 424 (6th Cir. 1998) (*quoting Forbush*, 994 F.2d at 1106); *see also Lightbourn v. County of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997), *cert. denied*, 522 U.S. 1052 (1998)

standard for meeting the Rule 23(a)(2) prerequisite is qualitative rather than quantitative – that is, there need be only a single issue common to all members of the class."[23] The test for commonality under Rule 23(a)(2) is neither "demanding"[24] nor "high."[25] "[T]he fact that some of the Plaintiffs may have different claims, or claims that may require some individualized analysis, is not fatal to commonality."[26] Rather, the critical inquiry is whether the common questions are at the "core" of the cause of action alleged.[27] The result of that inquiry in this case is a finding that common questions prevail, and that the commonality requirement is therefore "easily met."[28]

Where declaratory or injunctive relief common to all class members is sought, the commonality requirement is readily satisfied.[29]

Courts have consistently recognized that claims by debtors under the FDCPA are appropriate for class action treatment under Rule 23, and have consequently certified such

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(commonality exists when the resolution of a single legal question "will affect all or a significant number of the putative class members").

[23] Rubenstein, W., Conte, A. & Newberg, H. 1 NEWBERG ON CLASS ACTIONS § 3:10 at 1 (4th ed. 2009).

[24] *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999).

[25] *Barnett v. Experian Information Solutions*, 2004 WL 4032909 (E.D.Tex. 2004)("'The threshold for commonality is not high.'"), *quoting,Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, 296-97 (5th Cir. 2001).

[26] *James v. City of Dallas*, 254 F.3d 551, 570 (5th Cir. 2001), *cert. denied*, 534 U.S. 1113 (2002).

[27] *See Halford v. Goodyear Tire & Rubber Co*, 161 F.R.D. 13, 18 (W.D.N.Y. 1995).

[28] *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 510 (D.N.J., 1997), *aff'd as to class certification*, 148 F.3d 283 (3d Cir. 1998), *cert. denied*, 119 S.Ct. 890 (1999) (citing H. Newberg & A. Conte, 1 NEWBERG ON CLASS ACTIONS, § 3.10 at 3-50 to 3-52 (3d ed. 1992)).

[29] "[C]lass actions seeking injunctive or declaratory relief often by their very nature present common questions fulfilling [the] commonality requirement." *Neff v. VIA Metro. Transit Auth.*, 179 F.R.D. 185, 193 (W.D. Tex. 1998). In *Bertulli*, the Fifth Circuit concluded that certification was proper based on "a legal question common to all of the class members that depend[ed] not on their individual circumstances, but on the application of [a] statute. . . ." *Bertulli*, 242 F.3d at 297; *Inmates of the Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24 (2d Cir. 1971); s*ee also Leist v. Sharano Cty.*, 91 F.R.D. 64, 67 (D. Wis. 1981) ("Although factual differences may exist among class members regarding eligibility or amount of assistance," a question of law was common to the class, which was sufficient for certification).

claims.[30] Indeed, "a court will normally find commonality where a question of law refers to standardized conduct by defendants towards members of the proposed class."[31] A single question common to the proposed class is sufficient to satisfy the Rule 23(a)(2) requirements.[32]

When the plaintiff alleges that defendants have engaged in a single or uniform act or course of conduct giving rise to a cause of action, one or more elements of the cause of action will be common to all individuals affected.[33] Moreover, differing amounts of damages among individual class members do not defeat the commonality requirement, and need not prevent class certification.[34]

The proposed classes here both easily meet the commonality requirement of Rule 23(a)(2). There are numerous questions of law and fact which are common to the classes. Common questions of law and fact for the National Class include:

a. Whether Defendants are debt collectors as defined by the FDCPA;

b. Whether Plaintiff and National Class Members are consumers as defined by the FDCPA;

c. Whether Defendants were engaged in the collection of consumer debt as defined by the FDCPA;

d. Whether Defendants violated the FDCPA Fair Venue Provision by filing lawsuits against Plaintiff and the Class Members in Marion County, Indiana;

e. Whether Defendants violated Indiana law by filing lawsuits against Plaintiff and the Class Members in Marion County, Indiana;

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[30] *See cases collected at footnote 7, supra.*

[31] *In re AmeriFirst Sec. Litig.*, 139 F.R.D. 423, 428 (S.D. Fla. 1991).

[32] *Mullen*, 186 F.3d at 625; *Port Auth. Police Benevolent Ass'n, Inc. v. Port Auth*., 698 F.2d 150 (2nd Cir. 1983); *Stewart v. Winter*, 669 F.2d 328, 335 (5th Cir. 1982).

[33] *Bertulli*, 242 F.3d at 297.

[34] *See, e.g., Bertulli*, 242 F.3d at 298; *Mullen*, 186 F.3d at 625-26.

f. Whether Defendants' garnishment of the Plaintiff's and Class Members' wages constituted conversion;

g. Whether Defendants' actions constituted malicious prosecution;

h. Whether Plaintiff and the Class Members sustained actual damages as a result of Defendants' illegal acts and omissions as alleged in the Complaint;

i. The scope, extent and measure of actual and/or statutory damages and equitable relief that should be awarded to Plaintiff and the Class;

j. The amount of attorneys' fees, prejudgment interest, and costs of suit to which Plaintiff and the Class Members are entitled; and

k. Whether the Defendants' acts and omissions were sufficiently wrongful to entitle Plaintiff and the Class Members to punitive damages.

Common questions of law and fact for the Texas Class include:

a. Whether Defendants are debt collectors as defined by the TDCA;

b. Whether Plaintiff and Texas Class Members are consumers as defined by the TDCA;

c. Whether Defendants were engaged in the collection of consumer debt as defined by the TDCA;

d. Whether Defendants garnished the Plaintiff's and Class Members' wages in violation of the Texas Constitution and Texas law;

e. Whether Defendants garnished the Plaintiff's and Class Members' wages in violation of the TDCA;

f. Whether Defendants employed a uniform pattern of misrepresentation and omissions in presenting "evidence" to the Marion, Indiana court that contained material misrepresentations;

g. Whether Plaintiff and the Class Members sustained damages and losses as a result of Defendants' illegal acts and omissions as alleged in the Complaint;

h. The scope, extent and measure of actual and/or statutory damages and equitable relief that should be awarded to Plaintiff and the Class;

i. The amount of attorneys' fees, prejudgment interest, and costs of suit to which Plaintiff and the Class Members are entitled; and

j. Whether the Defendants' acts and omissions were sufficiently wrongful to entitle Plaintiff and the Class Members to punitive damages.

As the list of common questions demonstrates, multiple common issues pertaining to Defendants' conduct and Plaintiff's theories of liability exist. Resolution of these common issues would resolve the rights of all of the claims each of the Classes. A violation as to one member of each of the Classes is a violation as to all members of that class. Each member of the Classes seeks the recovery of damages and to enjoin Defendants' unlawful conduct as it affects all others. In sum, the claims are common, Defendants' actions are common, and the method of calculating penalties and damages will be common. Thus, the requirements of Rule 23(a)(2) are satisfied.

3. Typicality: The Claims of the Named Plaintiff Are Typical of the Claims of Each of the Classes

The third requirement of Rule 23(a) is that "the claims . . . of the representative parties" be "typical of the claims . . . of the class." In practice, the "commonality and typicality requirements of [the class action rule] tend to merge."[35] "Like commonality, the test for typicality is not demanding."[36] The typicality requirement "'focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent.'"[37] Indeed:

Typicality does not require a complete identity of claims. Rather, the critical inquiry is

[35] *Gen. Tel. Co. of the Sw.*, 457 U.S. at 157 n.13.

[36] *Mullen*, 186 F.3d at 625 (as with commonality, "the test for typicality is not demanding.").

[37] *Id*. (internal citation omitted); *see also Jenkins*, 782 F.2d at 472.

> whether the class representative's claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.[38]

The typicality requirement should be determined with reference to the Defendant's actions, and not with respect to any particularized defenses it might have against certain class members.[39]

Even relatively pronounced factual differences between class members will not preclude a finding of typicality where there is a strong similarity of legal theories or where the claims of the class representatives and the class members arise from the same course of conduct by the defendant.[40] Moreover, differing theories about damages among the named plaintiff and the class will not defeat typicality when all plaintiffs share the same theories of liability.[41]

> Typicality refers to the nature of the claim of the Class representatives, and not to the specific facts from which the claim arose or relief is sought. The proper inquiry is whether other members of the class have the same or similar injury, whether the action is based on conduct not special or unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. Factual differences will not defeat class certification where the various claims arise from the same legal theory.[42]

Class members are not required to be clones.

An analysis of typicality in the context of the claims in this case yields the conclusion

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[38] *James*, 254 F.3d at 571 (quoting 5 James Wm. Moore *et al.*, MOORE'S FEDERAL PRACTICE ¶23.24[4] (3d ed. 2000)). *See, also, Bertulli*, 242 F.3d at 297 (rejecting the argument that differences in the extent of injury between class representatives and unnamed class members rendered the claims atypical); *Mullen*, 186 F.3d at 625 (rejecting the argument that because a wide array of claims could fall under the "respiratory illness" category, the named plaintiffs' claims were atypical).

[39] *Wagner v. NutraSweet Co*., 95 F.3d 527, 534 (7th Cir. 1996).

[40] *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 57-58 (3d Cir. 1994); *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985*), cert. denied*, 474 U.S. 946 (1985).

[41] *Bertulli*, 242 F.3d at 297.

[42] *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 (S.D.N.Y. 1981)(emphasis added)(citations omitted).

that the claims are typical. Again, the named Plaintiff is asserting legal claims against Defendants that are identical to those claims being asserted by absent class members against Defendants – primarily that the Defendants violated the law to the detriment of the debtors as a group. Again, the named Plaintiff's and each member of the Classes' claims stem from the same alleged practices and course of conduct by Defendants – and are all based upon the same legal theories. As was detailed in Section I, *supra,* Mr. Buford was but one of thousands of graduates of Driver Solutions who resided outside of Marion County, Indiana and signed his contract in Dallas County, Texas, but against whom a judgment was obtained in violation of law by the Defendants. His claim is identical to the claims of the members of the National Class and members of the Texas Class. Further, Buford's Texas wages were actually garnished from his Texas employer in spite of the fact that the foreign (Indiana) judgment was never domesticated in the state of Texas. Accordingly, the named Plaintiff's claims are typical of the claims of each member of the Classes, and the typicality requirement of Rule 23(a)(3) is satisfied.

4. Adequacy: The Named Plaintiff and His Counsel will Adequately Represent the Interests of the Proposed Class Members

Pursuant to Rule 23(a)(4), a plaintiff must "fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). To do so requires the satisfaction of two factors: (a) that the suit not be collusive and plaintiff's interests not be antagonistic to the class; and (b) that the representative party's attorney be qualified, experienced and generally able to conduct litigation.[43] As the Fifth Circuit has explained,

[43] *Sosna v. Iowa*, 419 U.S. 393, 403 (1975); *Jenkins*, 782 F.2d at 472; *Horton v. Goose Creek Ind. Sch.Dist.*, 690 F.2d 470, 484 (5th Cir. 1982). The clearest expression of the standard sought by courts is perhaps best articulated in *Bogosian v. Gulf Oil Corporation*, 561 F.2d 434, 449 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1086 (1978), which held that "the representatives and their attorneys will competently, responsibly, and vigorously prosecute the suit, and

> so long as all class members are united in asserting a common right, such as achieving the maximum possible recovery for the class, the class interests are not antagonistic for representation purposes.[44]

An adequate representative should not be in collusion with his opponent to the detriment of absent class members, and his interest should not be antagonistic to that of the class.[45] "Differences between named plaintiffs and class members render the named plaintiffs inadequate representatives only if those differences create conflicts between the named plaintiffs' interests and the class members' interests."[46] Quantitative factors, such as the number of representatives or the relative amount of their claims are inappropriate considerations under Rule 23(a)(4). In the absence of conflicts which go to the subject matter of the lawsuit, class certification is appropriate.[47] The burden is on the defendant "to establish inadequate representation."[48]

Here, the named Plaintiff is an adequate representative, and Defendants will be unable to rebut the presumption of adequate representation. Plaintiff's interests are aligned with, and not antagonistic to, the interests of each of the Classes. There are no differences between the Plaintiff and members of the Classes that could possibly create a conflict. The Plaintiff, as a member of each of the Classes who was subjected to the same conduct as the Class Members, shares common interests with the unnamed members of the Classes. All of the members of the Classes are burdened by Defendants' attempt to collect debts allegedly owed by means of acts

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that the relationship of the representative parties' interests to those of the class are such that there is not likely to be divergence in viewpoint or goals in the conduct of the suit."

[44] *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981) (citation omitted).

[45] *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).

[46] *Mullen*, 186 F.3d at 625-26 (emphasis added); *see also Jenkins*, 782 F.2d at 472.

[47] *Eisen v. Carlisle and Jaquelin*, 391 F.2d 555, 563 (C.A.N.Y 1968); *see also Berman v. Narragansett Racing Association*, 414 F.2d 311 (5th Cir. 1969), *cert. denied*, 396 U.S. 1037 (1970).

[48] *McGlothlin v. Connors*, 142 F.R.D. 626, 634 (W.D. Va. 1992), *citing Haywood v. Barnes*, 109 F.R.D. 568, 579 (E.D. N.C. 1986).

which were violative of the FDCPA. Their shared interest in enjoining the Defendants ensures the continued participation of the plaintiffs in this lawsuit.[49] The named Plaintiff and each absent Class Member has seen his or her rights identically infringed by Defendants. Here, the named Plaintiff has the same interests as those of each of the Classes: recover the improperly garnished monies and stop Defendants from engaging in debt collection efforts that violate the debt collection statutes. Therefore, the named Plaintiff and each Class Member has an identical interest: establishing the liability of the Defendants.[50] There is nothing to suggest that the named Plaintiff has any interest antagonistic to the vigorous pursuit of this litigation against Defendants. Indeed, by pursuing this litigation on his own behalf, Plaintiff will necessarily advance the interests of all other Class Members.

Mr. Buford, the named class representative, is willing to vigorously pursue these claims on behalf of the unnamed Classes. He has conferred – and continues to confer – with Class Counsel to monitor the progress of the litigation. In addition, he understands the duties of a class representative, and agrees to fulfill such duties.[51]

The second requirement for adequacy addresses counsel's "experience in litigating class actions" and whether counsel's "resources are adequate to represent the class competently."[52] FED. R. CIV. P. 23(g) complements Rule 23(a)(4)'s requirement that class counsel be adequate. In making this determination, the Court must consider the work counsel has done in identifying or investigating potential claims in the action; counsel's experience in handling class actions,

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[49] *In re Direct Gen. Corp.*, 2006 WL 2265472, *4 (M.D. Tenn. 2006)(finding adequacy of class members where their claims were "co-extensive with the interests of the unnamed proposed class members").

[50] *See Fisher Bros. v. Mueller Brass Co.*, 102 F.R.D. 570, 577 (E.D. Pa. 1984); *In Re South Cent. States Bakery Prod. Antitrust Litig.*, 86 F.R.D. 407, 417-19 (M.D. La. 1980).

[51] Declaration of Gregory A. Buford, Sr. (App. at 44-47).

other complex litigation, and claims of the type asserted in the action; counsel's knowledge of the applicable law; and the resources counsel will commit to representing the class. In addition, the Court may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class, and may direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs.

Plaintiff has retained counsel experienced in this type of litigation and eminently able to conduct this litigation and protect the interests of the Class, as reflected by the declarations of the proposed Class Counsel.[53] As averred in the Declarations, the proposed Class Counsel are experienced in successfully handling class actions, consumer law and debt collection matters, rendering proposed Class Counsel highly knowledgeable of the applicable law. Going forward, proposed Class Counsel are prepared to commit the resources necessary to prepare this case for trial – including the appropriate use of partners, associates, paralegals, and third party vendors. Proposed Class Counsel have an excellent working relationship, which will facilitate the flexible and responsive allocation of resources under the guidance of Lead Counsel for the Class.[54] The Court therefore has sufficient information to appoint Class Counsel who will fairly and adequately represent the interests of the Class, as required by Rule 23(g)(l)(B).

Counsel for Plaintiff submits that, based upon their individual and collective experience, they are capable of handling the present litigation, and that the Court should find that the requirements of Rule 23(a)(4) are easily met in this action. Plaintiff will fairly and adequately

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[52] *Neff*, 179 F.R.D. at 194.

[53] See Declarations of John R. Howie, Jr. (App. at 16-19), Walt D. Roper (App. at 1-3), and Janice E. Cohen (App. at 42-43).

protect the interests of the Class and has retained experienced and capable counsel. Simply put, "there is no ground for supposing that plaintiff[] will not adequately represent the class."[55]

B. Rule 23(b) Factors are Satisfied

Because Plaintiff has satisfied the requirements of Rule 23(a), this Court should certify the Class under one or more of the Rule 23(b)'s three subsections.[56] Classes have been certified under more than one provision of Rule 23(b) inside and outside the Fifth Circuit.[57] Certification under Rule 23(b)(2) or (b)(3) is favored by the courts.[58] FDCPA cases fall naturally under both of these provisions.

As often has been noted, the additional requirements of Rule 23(b) overlap considerably with those of Rule 23(a), and with each other.[59] The following discussion of the Rule 23(b) factors – in conjunction with the discussion of the Rule 23(a) factors above – demonstrates that the proposed Classes meet the requirements of one or more of the Rule 23(b) subsections. Accordingly, this Court should certify the Classes.

1. The Proposed Classes Satisfy The Requirements of Rule 23(b)(3)

Rule 23(b)(3) provides that a class should be certified where "the court finds that

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[54] *Id.*

[55] *In Re Glassine & Greaseproof Paper Antitrust Litig.*, 88 F.R.D. 302, 306 (E.D. Pa. 1980); *see also Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726-27 (11th Cir. 1987), *reh'g denied*, 832 F.2d 1267, *cert. denied*, 485 U.S. 959 (1988).

[56] *Henry v. Cash Today*, 199 F.R.D. 566, 569-70 (S.D. Tex. 2000) While only one of the conditions of Rule 23(b) must be satisfied in order to merit class certification, if the requirements of more than one of the alternatives are met, then the court may certify the action under each that is satisfied. *See Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 315-16 (S.D. Fla. 2001).

[57] *E.g., Alday v. Raytheon Co.*, 2008 WL 65602 (D.Ariz. 2008) (certifying class under both Rule 23 (b)(1) and (b)(2)); *In re Williams Cos. ERISA Litig.*, 231 F.R.D. 416, 425 (N.D. Okla. 2005) (same).

[58] *Mungin v. Florida E. Coast Ry. Co.*, 318 F. Supp. 720, 730 (M.D. Fla. 1970), *aff'd per curiam*, 441 F.2d 728 (5th Cir. 1971), *cert. denied*, 404 U.S. 897 (1971).

[59] Rubenstein, W., Conte, A. & Newberg, H. 2 NEWBERG ON CLASS ACTIONS § 4:1 (4th ed. 2009).

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." FED.R.CIV.P. 23(b)(3). Thus, class certification is proper under Rule 23(b)(3) when: (1) questions common to the class members predominate over questions affecting only individual members, and (2) class resolution is superior to alternative methods for adjudication of the controversy."[60]

a. Common Questions Predominate Over Questions Affecting Only Individual Class Members

To predominate, common issues must constitute a significant part of individual class members' cases. Where, as here, a common course of conduct has been alleged arising out of a common nucleus of operative facts, common questions predominate. In fact, cases (such as this one) which focus upon the legality of standardized practices often result in the predomination of common questions of law or fact and are, therefore, generally appropriate for resolution by class action.[61] Indeed, several FDCPA claims have received class certification based upon the defendant's use of standardized practices analogous to the ones alleged here.[62]

In the present case, it is the repeated use of standardized collection procedures – the filing of lawsuits against debtors in the same improper and illegal venue in violation of the FDCPA and Indiana law – that has given rise to claims of the Plaintiff Classes. There are numerous common questions of law and fact involving Defendants' use and abuse of the Indiana forum in

[60] *Bell Atlantic Corp. v. AT&T Corp*., 339 F.3d 294, 301 (5th Cir.2003).

[61] *E.g., Haynes v. Logan Furniture Mart, Inc*., 503 F.2d 1161, 1164 (7th Cir. 1974) (finding class action to be the appropriate method to resolve a dispute under TILA where the defendant used standardized retail contracts).

[62] *See, e.g., Avila v. Van Ru Credit Corp.*, 1995 WL 41425 (N.D.Ill. 1995); *Colbert v. Trans Union Corp.*, 1995 WL 20821 (E.D.Pa. 1995); *Carr v. Trans Union Corp*., 1995 WL 20865 (E.D.Pa.1995); *see also, cases collected at footnote 7, supra.*

connection with the collection of the debts at issue in this case. The central issues involved in the case on behalf of the National Class will be the collection practices used by Defendants under the FDCPA and Indiana law. The central issues involved in the case on behalf of the Texas Class will be the application of Texas law to the actions that Defendants have taken against Texans – specifically Defendants' violation of the Texas Debt Collection Act, TEX. FIN. CODE. § 392.403(e), and Defendants' violation of the Texas Constitution, and Defendants' failure to properly domesticate their judgments prior to enforcing them against Texas residents' assets under the TEX. CIV. PRAC. & REM. CODE §§ 35.001 – 35.008.[63] Simply stated, the standardized actions of the Defendants and the application of governing law common to all the Class Members predominate over any individual issues. Accordingly, Plaintiff has satisfied this predominance requirement of Rule 23(b)(3).

b. Class Resolution Is Superior To Alternative Methods For Adjudication Of The Controversy

Rule 23(b)(3) directs the Court to determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. FED. R. CIV. P. 23 (b)(3). Class actions are the superior method for resolving controversies when the main objectives of Rule 23 are served; namely, the efficient resolution of the claims or liabilities of many individuals in a single action, as well as the elimination of repetitious litigation and possibly inconsistent adjudications.[64] In testing predominance and superiority pursuant to Rule 23(b)(3), the trial court should consider (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any

[63] The details of these claims are spelled out in detail in Plaintiff's Brief in Support of Response to Defendants' Motion for Summary Judgment, Doc. 27, at pp. 8-14; 16-18.

litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forums; and (D) the difficulties likely to be encountered in the management of a class action. Each of these factors strongly weighs in favor of class certification in this case.

Class actions are often the superior method for resolving suits to enforce compliance with consumer protection laws, because the awards in an individual case are usually too small to encourage the lone consumer to file suit.[65] The Eastern District of Texas has noted that "the typical recovery in an FDCPA case by an individual is often very small . . . . The absence of the class action vehicle would leave many consumers with no practical alternative to enforce their rights under the statute."[66] Absent class certification, it is unlikely that the individual members of the Classes will bring suit on their own, as the FDCPA limits awards beyond actual damages to a maximum of $1,000 plus attorneys' fees and costs, and the TDCA limits damage awards, in most cases including this one, to actual damages plus attorneys' fees and costs. 15 U.S.C. § 1692k(a)(2)(A); TEX. FIN. CODE § 392.403. With relatively minor damage awards at stake in this case, the interests of individual class members in controlling the litigation are small – and the need for a class proceeding is great.

Considerations of judicial economy and convenience also favor certification of a class action proceeding in this forum. It is judicially efficient to determine the Defendants' liability for standardized conduct in a single proceeding. This Court is also an appropriate and convenient forum. The proposed Class likely includes a significant number of Texas residents.

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[64] *Califano v. Yamasaki*, 442 U.S. 682, 700-01, 99 S.Ct. 2545, 2557-58, 61 L,Ed,2d 176 (1979).

[65] *See, e.g., Watkins v. Simmons & Clark, Inc.*, 618 F.2d 398, 404 (6th Cir.1980).

Plaintiff is not aware of any other previously filed litigation by or against members of the class which would resolve the issues involved in this litigation. However, there are two nationwide class actions that were filed after this case, one of which is pending in Illinois State Court and one of which is pending in Federal Court in Illinois. The Court is not likely to encounter significant management problems in this case. Defendants' records will provide the name and addresses of potential Class Members. The liability issue will be identical for each Class Member. Damages should be capable of uniform determinations without need to resort to individual damage hearings.

2. The Proposed TDCA Class Also Satisfies Rule 23(b)(2)

Rule 23(b)(2) allows a class to be certified where a plaintiff can establish that:

> 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[.]

FED. R. CIV. P. 23(b)(2). Subsection (b)(2) is invoked when "broad, class-wide injunctive or declaratory relief is necessary."[67] Rule 23(b)(2) classes are "assumed to be a homogenous and cohesive group with few conflicting issues among its members."[68]

Courts have identified two requirements for proceeding under Rule 23(b)(2). First, the plaintiff must allege facts generally applicable to the class as a whole.[69] In this case, the conduct being challenged is the same for each member of the Texas Class.

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[66] *Barnett v. Experian Information Solutions*, 2004 WL 4032909, *5 (E.D. Tex., Sept. 30, 2004).
[67] *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 412 (5th Cir. 1998).
[68] *Id*. at 413 (citations omitted).
[69] *Davis v. Weir*, 497 F.2d 139 (5th Cir. 1974); *Allen*, 99 F.R.D. at 56.

Second, the plaintiff "must demonstrate that their class action suit seeks predominantly injunctive relief rather than monetary damages."[70]

In the instant case, Plaintiff seeks predominately injunctive relief under the TDCA, as well as attorneys' fees. Accordingly, the Texas Class may be certified under Rule 23(b)(2).

VI. CONCLUSION

For the reasons stated above, the Court should certify the National Class pursuant to FED. R. CIV. P. 23(b)(3) and the Texas Class pursuant to FED. R. CIV. P. 23(b)(2) and (b)(3). Further, for the foregoing reasons the Court should appoint Walt Roper, John Howie, Jr., and Janice E. Cohen as counsel for the proposed Classes and appoint Mr. Buford Class Representative for each of the proposed Classes.

Respectfully submitted,

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[70] *James*, 254 F.3d at 570.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2014, I electronically filed Plaintiff's Memorandum of Law in Support of Motion for Class Certification with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Walt D. Roper
Walt D. Roper