

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

REBECCA M. BATCHELLER, <i>on behalf of</i>)	
<i>herself and all others similarly situated,</i>)	
)	
Plaintiffs,)	Case No. 2116-CV24281
)	
v.)	
)	
WAKEFIELD & ASSOCIATES, INC.,)	
)	
Defendant.)	

**MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiff Rebecca M. Batcheller respectfully moves the Court to enter an Order preliminarily approving the proposed Class Action Settlement Agreement and Release¹ attached hereto as Exhibit 1 (the “Agreement”) as fair, reasonable, and adequate under Missouri Supreme Court Rule 52.08, certifying the Settlement Class, and directing notice to the Settlement Class as provided for in the Agreement.

1. Rule 52.08 governs the certification of class actions in Missouri. Under Rule 52.08, “a class will be certified only if [the moving party] shows that, as defined by the [moving party] or as modified by the court:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

¹ Unless defined otherwise in this Motion, all capitalized terms have the meaning ascribed to them in the Settlement Agreement attached hereto as Exhibit 1.

(4) the representative parties will fairly and adequately protect the interests of the class.”

Green v. Fred Weber, Inc., 254 S.W.3d 874, 877 (Mo. banc 2008) (citing Rule 52.08(a)). “These requirements are commonly referred to as numerosity, commonality, typicality, and adequacy.”

Hope v. Nissan North America, Inc., 353 S.W.3d 68, 74 (Mo. App. W.D. 2011).

2. “If these four prerequisites are met, the court will certify a class if [the moving party] also shows that the class falls within one of the categories set out in Rule 52.08(b).” *Green*, 254 S.W.3d at 877. Rule 52.08(b)(3), under which the parties seek to certify a class in this matter, “allows a lawsuit to proceed as a class action if the court finds that common questions of law or fact ‘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.’” *Craft v. Philip Morris Cos., Inc.*, 190 S.W.3d 368, 379 (Mo. App. E.D. 2005) (quoting Rule 52.08(b)(3)). These additional requirements are commonly referred to as predominance and superiority, respectively.

3. “[T]he determination of class certification is based primarily upon the allegations in the petition.” *Elesa v. U.S. Engineering Co.*, 463 S.W.3d 409, 417 (Mo. App. W.D. 2015) (quoting *Hope*, 353 S.W.3d at 74). The “Missouri Supreme Court specifically rejected the argument that the court must hold a full evidentiary hearing before determining class certification.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 380 (Mo. App. W.D. 1997). Rather, the Court may resolve the issue based on the briefs or other evidence submitted by the parties. *Id.* See also *Senn v. Manchester Bank of St. Louis*, 583 S.W.2d 119, 132–33 (Mo. banc 1979).

4. In “making its preliminary determination, the court is only considering whether there is ‘probable cause’ to believe that the class can be certified for the purposes of settlement; it

is not making a determination as to whether the case could be maintained as a class action if the settlement fell through and litigation were required, nor is it making a final determination of certification for purposes of settlement.” *Chadwick*, 956 S.W.2d at 384. Preliminary approval is necessary because “[t]he court has an inherent duty to avoid unnecessarily confusing the class or adding expense by giving preliminary approval to a class which it is evident cannot be finally certified because it cannot meet the requirements of Rule 52.08.” *Id.* at 383. Put another way, the “goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement’s fairness.” Newberg on Class Actions § 13:13 (5th ed.).

5. Here, the allegations in Batcheller’s Petition, this Motion, and the attached exhibits demonstrate the case should be certified for the purposes of settlement, and at the very minimum, there is at least “probable cause” to believe the proposed settlement is fair and that the class can be certified for purposes of settlement.

6. **Numerosity.** Rule 52.08(a)(1) requires the Class to be “so numerous that joinder of all members is impracticable.” “[O]ur Court has said that generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the numerosity requirement has been met[.]” *Frank v. Enviro-Tech Servs.*, 577 S.W.3d 164, 167 (Mo. App. E.D. 2019) (quoting *In re Modafinil Antitrust Litig.*, 837 F.3d 238, 249–50 (3d Cir. 2016)); *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 168 (Mo. App. W.D. 2006) (surveying class actions where numerosity was satisfied for classes containing 18, 19, 25, and 29 class members). The Settlement Class has approximately 2,446 members. The numerosity requirement is satisfied.

7. **Commonality.** Rule 52.08(a)(2) requires “there are questions of law or fact common to the class.” A single common issue may satisfy this requirement. *Plubell v. Merck &*

Co., Inc., 289 S.W.3d 707, 713 (Mo. App. W.D. 2009) (“a single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.”). Ultimately, “the fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance.” *Dale*, 204 S.W.3d at 175. The common legal questions for Batcheller and each Settlement Class Member are whether the affidavits of assignment of debt were properly executed and notarized by Wakefield’s employee, Deanne M. Pollock and, as a result, whether Wakefield’s debt collection actions filed against the Settlement Class Members (and judgments obtained therein) based on those affidavits were proper. Each Settlement Class Member and Batcheller share the same common legal grievance in this regard. In other words, common issues relating to Wakefield’s liability for its uniform business practices are identical across each individual Settlement Class Member. Commonality is satisfied.

8. **Typicality.** The “typicality” requirement set forth in Rule 52.08(a)(3) directs the Court to focus on whether the named plaintiff’s claim has the same essential characteristics as the claims of the class at large. “Typicality means that the class members share the same interest and suffer the same injury.” *Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 223 (Mo. App. W.D. 2007). “The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff.” *Dale*, 204 S.W.3d at 169. Factual variations in individual claims do not preclude class certification so long as the named plaintiff’s claim arises from the same event or course of conduct as the class members’ claims and gives rise to the same legal theory or remedial theory. *See Plubell*, 289 S.W.3d at 715; *Hale*, 231 S.W.3d at 223. Here, Batcheller satisfies the class definition because she was named as a defendant in a debt collection lawsuit filed by Wakefield based upon an affidavit of assignment notarized by Deanne M. Pollock. This is the same course of conduct carried out by Wakefield which forms the basis for the

Settlement Class Members' claims. Wakefield's uniform business practices give rise to identical legal theories and remedies for Batcheller and all of the Settlement Class Members. Thus, the typicality requirement is satisfied.

9. **Adequacy.** Rule 52.08(a)(4) requires a finding that "the representative parties will fairly and adequately protect the interests of the class." "To determine if the adequacy prerequisite of Rule 52.08 is met, a trial court must consider whether the class representatives have conflicts of interest that would adversely affect the class's interests." *Plubell*, 289 S.W.3d at 716. There are no conflicts in this matter because Batcheller's interests are identical to those of the Settlement Class Members. More specifically, Batcheller seeks the same form of relief as the Settlement Class Members and has demonstrated commitment to the litigation since Class Counsel began investigating her claims in 2017. The settlement also demonstrates adequacy because it achieved an excellent result for the Settlement Class Members and was reached after arm's length negotiations and years of investigation, discovery, and motion practice. Adequacy is satisfied.

10. **Predominance.** Rule 52.08(b)(3) requires the court to find "questions of law or fact common to the members of the class predominate over any questions affecting only individual members." Predominance does not "demand that every single issue in the case be common to all the class members, but only that there are substantial common issues which 'predominate' over the individual issues." *State ex rel. Mckeage v. Cordonnier*, 357 S.W.3d 597, 600 (Mo. banc 2012). One significant fact or legal issue is sufficient to satisfy the predominance requirement. *See State ex rel. Am Fam. Mut. Ins. Co. v. Clark*, 106 S.W.3d 483, 488 (Mo. banc 2003). The heart of this lawsuit concerns the legality and propriety of uniform business practices employed by Wakefield and its employee, Deanne M. Pollock, with regard to the execution and notarization of affidavits of assignment of debt and subsequent debt collection lawsuits filed against debtors based upon

those affidavits. The nature of the evidence needed to resolve the question of liability for these claims is identical—namely, the Settlement Class Member’s form affidavit of assignment of debt and the underlying debt collection lawsuit filed by Wakefield. *Dale*, 204 S.W.3d at 176 (“The question is whether the record supports the fact that there is at least one significant fact question or issue, dispositive or not, that is common to each putative class with respect to each count.”); *Sykes v. Mel Harris & Associates, LLC*, 285 F.R.D. 279, 293 (S.D.N.Y. Sept. 4, 2012) (“Cases regarding the legality of standardized documents and practices often result in the predomination of common questions of law or fact and are, therefore, generally appropriate for resolution by class action.”). Predominance is satisfied.

11. **Superiority.** Rule 52.08(b)(3) also requires the Court to find “that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Rule 52.08(b)(3) lists four elements pertinent to the finding of superiority:

- (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 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 forum;
- (D) The difficulties likely to be encountered in the management of a class action.

Each of these elements weigh in favor of finding the superiority requirement is satisfied in this case. Specifically, the class action mechanism offers efficiency, uniformity, consistency, and conclusiveness in comparison to the unattractive and impractical alternative of thousands of individual actions. Further, the majority of the class is likely unaware of the availability of their

claims against Wakefield and/or do not possess the financial resources to pursue such a claim. *Whitney v. Alltel Communications, Inc.*, 173 S.W.3d 300, 309 (Mo. App. W.D. 2005) (“Prohibiting class treatment of these claims would leave consumers with relatively small claims without a practical remedy, and without a procedure (class actions) expressly provided for under ... the Missouri Rules of Civil Procedure.”). The universal outcome of thousands of claims encompassing the same common core issues offers substantial judicial economy, uniformity, and predictability, even if some individual questions may theoretically remain. Superiority is satisfied.

WHEREFORE, Plaintiff respectfully request the Court enter a preliminary approval order: (a) preliminarily approving the proposed Settlement Class and Agreement as attached hereto as Exhibit 1 as fair, reasonable, and adequate under Missouri Supreme Court Rule 52.08; (b) approving the appointment of Rebecca M. Batcheller as Class Representative and Timothy J. Wolf, Tyler J. Hamilton, Michael L. Belancio, and the law firm of Watters Wolf Bub & Hansmann, LLC, as Class Counsel for the Settlement Class; (c) approving a form of mailed notice substantially similar to the Class Mail Notice attached as **Exhibit A** to the Agreement; (d) approving a Long Form Notice substantially similar to the form attached as **Exhibit B** to the Agreement; (e) scheduling a hearing for final approval of the Agreement; (f) setting dates for a final fairness hearing, the parties submissions relative to the Settlement, including applications for payment of services to Batcheller, payment of attorney’s fees, reimbursement of expenses by Class Counsel, and for members of the Settlement Class to exclude themselves (opt-out), object and/or appear at the final fairness hearing; and (g) for such other and further relief consistent with the terms and provisions of the Agreement as the Court may deem advisable.

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**CERTIFICATE OF SERVICE AND
CERTIFICATE OF COMPLIANCE WITH RULE 55.03(a)**

The undersigned certifies that a true and correct copy of the foregoing was served by the Court's electronic filing system, this 30th day of October, 2023, on all counsel of record. In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this Certificate and the foregoing pleading.

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