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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

RYAN CHAMBERS  
Plaintiff

FARMERS INSURANCE OF COLUMBUS, INC.  
Defendant

Case No: CV-22-958771

Judge: JOAN SYNENBERG

**JOURNAL ENTRY**

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION, FILED 03/24/2023, IS GRANTED. OSJ.

Joan Synenberg 1/22/24  
Judge Signature Date

**FILED**  
2024 JAN 23 A 8:49  
CLERK OF COURTS  
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

RYAN CHAMBERS,	)	CASE NO. CV-23-958771
	)	
<i>Plaintiff,</i>	)	JUDGE JOAN SYNENBERG
	)	
v.	)	
	)	<b><u>OPINION AND ORDER</u></b>
FARMERS INSURANCE OF	)	
COLUMBUS, INC.,	)	
	)	
<i>Defendant.</i>	)	
	)	

**I. INTRODUCTION**

Now, before the Court, is Plaintiff's Motion for Class Certification, filed March 24, 2023. A hearing was held on November 28, 2023. Counsel for all parties were present. Upon consideration of the testimony and arguments offered at the hearing, as well as the Motions, Briefs, Replies, and Pleadings, the Court finds as follows:

**II. BACKGROUND**

Plaintiff was an insured of Defendant, Farmers Insurance of Columbus, Inc, who provides private-passenger auto coverage. Plaintiff's breach of contract claim against Defendant alleges that Defendant systematically underpaid Plaintiff and thousands of other class members state sales tax in the settlement of total loss claims on vehicles. Plaintiff alleges that Defendant does not include sales tax in its Actual Cash Value ("ACV") payments made to insureds in settlement of total loss claims on vehicles, in violation of Defendant's policy language.

Plaintiff now seeks class certification under Ohio Civ. R. 23(B)(3).

**III. LAW AND ANALYSIS**

The Court has broad discretion in determining class certification. *Marks v. C.P. Chem. Co.*, 31 Ohio St. 3d 200 (1987). Parties seeking class action certification must satisfy the four requirements of Ohio R. Civ. P. 23(A), commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591 (1997). Specifically, the four requirements of Rule 23(A) are:

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

Ohio R. Civ. P. 23(A).

If the plaintiff satisfies the requirements of Rule 23(A), it must also satisfy one of the three subsections of Rule 23(B). *Schmidt v. Avco Corp.*, 15 Ohio St. 3d 310 (1984). In the instant matter, Plaintiff relies on Civ. R. 23(B)(3), which provides as follows:

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 moving party "must affirmatively demonstrate his compliance" with the class certification requirements. *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

#### **A. Numerosity**

The first requirement of Ohio R. Civ. P. 23(A) is that the class must be "so numerous that joinder of all members is impracticable." There is no precise number that automatically indicates joinder would be impracticable, but Ohio courts have found numerosity to be satisfied when the purported class was comprised of hundreds of individuals. See *Schmidt*, supra. See also, *Couch v. Certified Flooring Installation, Inc.*, 439 F. Supp. 3d 964, 977 (S.D. Oh. 2020) (conditionally certifying class of approximately 100 members).

In the instant matter, Plaintiff relies on data produced by Defendant showing 1,543 potential class members. Thus, the Court finds that Plaintiff has satisfied the numerosity requirement.

#### **B. Commonality**

The next requirement is that "there are questions of law or fact common to the class." Ohio R. Civ. P. 23(A)(2). To satisfy commonality there "need only be one issue common to the class." *Sprague v. GMC*, 133 F.3d 388, 397 (6th Cir. 1998); *Schmidt*, 15 Ohio App.3d at 85. "Commonality may be found where the basis for liability is common to the proposed class or where a common factual question exists on issues of negligence, breach of contract, illegal practice, or other applicable causes of action" *Trinka v. Trinity Home Builders, LLC*, C.P. No. 18 CV-2023, 2021 Ohio Misc. LEXIS 870 (Dec. 3, 2021). It is not necessary that all the questions of law or fact raised in the dispute be common to all the parties. *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67 at 77 (1998).

In the instant matter, Plaintiff has demonstrated that the two critical questions in this litigation—whether Defendant’s insurance policy (“Policy”) requires payment of sales tax and whether Defendant can condition payment on proof of replacement—are questions of law for which interpretation of the uniform Policy language will provide a common answer. See, e.g., *Angell v. Geico Advantage Ins. Co.*, 573 F. Supp. 3d 1151 (“The common issue to be resolved is whether GEICO breached the form policies, underpaying ACV by withholding mandatory fees and/or sales tax.”). “[T]he mere fact that questions peculiar to each individual member of the class remain after the common questions . . . have been resolved does not dictate the conclusion that a class action is impermissible.” *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1197 (6th Cir. 1988). The Court rejects Defendant’s argument that class certification is inappropriate due to potential differences between class members regarding the amount of sales tax incurred.

The Court finds that Plaintiff has satisfied the commonality requirement.

### C. Typicality

The next requirement is that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Ohio. R. Civ. P. 23(A)(3). Typicality does not require identical claims or defenses. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). Rather, typicality is met where “[f]or each member within the proposed classes to recover under the claims at issue, each must prove the same elements as the named plaintiffs.” *Rikos v. P&G*, S.D.Ohio No. 1:11-cv-226, 2014 U.S. Dist. LEXIS 109302, at \*28 (June 19, 2014).

In the instant matter, Plaintiff's claims are typical of claims of other putative class members because they were each insured by Defendant pursuant to insurance policies with identical material terms when they had a claim determined by Defendant. Plaintiff and the putative class members all suffered the same injury as a result of Defendant's conduct, namely, that Defendant did not pay sales tax as part of a total loss claim.

The Court finds that Plaintiff has satisfied the typicality requirement.

#### **D. Adequacy**

The final requirement under Rule 23(A) is that "the representative parties will fairly and adequately protect the interests of the class." Ohio. R. Civ. P. 23(A)(4). This requirement applies to both the named plaintiff and counsel. See *Vinci v. Am. Can Co.*, 9 Ohio St. 3d 98, 101 (1984). In the instant matter, there do not appear to be any conflicts of interest between Plaintiff and the putative class. Further, the Court finds Plaintiff's counsel qualified to represent the putative class. Plaintiff's counsel has sufficient experience with class actions and complex litigation.

Therefore, Plaintiff and counsel satisfy the adequacy requirement.

#### **E. Rule 23(B)(3)**

In addition to meeting the requirements under Rule 23(A), a party seeking class certification must also satisfy one of the subsections of Rule 23(B). *Schmidt*, supra. Here, Plaintiff asserts that certification is appropriate under Ohio. R. Civ. P. 23(B)(3). "Class certification under Rule 23(B)(3) is appropriate when (1) 'questions

of law or fact common to the members of the class predominate over any questions affecting only individuals members, and [...] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.* (quoting Ohio R. Civ. P. 23(B)(3)).

### **1. Predominance**

Under this factor, "for common questions of law or fact to predominate, it is not sufficient that such questions merely exist; rather, they must present a significant aspect of the case. Furthermore, they must be capable of resolution for all members in a single adjudication." *Marks*, 31 Ohio St.3d at 204, 509 N.E.2d 1249. Determining whether common questions predominate over questions affecting only individual members requires showing that "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole . . . predominate over those issues that are subject only to individualized proof." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 564 (6<sup>th</sup> Cir. 2007). "Breach of contract claims arising out of a standardized, form contract ordinarily are suitable for class certification." *Zehentbauer Family Land, LP v. Chesapeake Expl., L.L.C.*, 935 F.3d 496, 506 (6<sup>th</sup> Cir. 2019). Moreover, the existence of individualized damages for each class member does not prevent a finding that the common issues in the case predominate." *Glazer v. Whirlpool Corp.* 722 F.3d 838, 2013 U.S. App. LEXIS 14519, 2013 FED App. 0180P (6<sup>th</sup> Cir.).

In the instant matter, the need for individual damages calculations in this case does not defeat a finding of predominance. The common legal and factual

issues identified in this case are significantly more substantial than the individualized damages issue emphasized by Defendant. Thus, the Court finds that the predominance factor is satisfied.

## **2. Superiority**

Ohio. R. Civ. P. 23(B)(3) requires that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. To determine superiority the rules provides the following factors:

- (a) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (b) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (d) the likely difficulties in managing a class action.

Plaintiff presents compelling arguments to support each of these factors. First, Plaintiff alleges the average ACV of each class member is approximately \$824.41, which is a disproportionately small value compared to the cost of litigating a breach of contract case against a large insurance company. The "most compelling rationale for finding superiority in a class action . . . [is] the existence of a negative value suit." *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 2001 U.S. Dist. LEXIS 22803, quoting *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 420 (5th Cir. 1998). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth



someone's (usually an attorney's) labor." *Amchem Prods., Inc. v. Windsor* (1997), 117 S. Ct. 2231, 2245, quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (C.A.7, 1997).

Second, there is no evidence that any other litigation concerning the controversy at issue has already commenced by or against members of the class. The lack of parallel lawsuits weighs in favor of certification *Hamilton v. Ohio Sav. Bank*, 82 Ohio St. 3d 67, 80, (1998).

Third, the class definition is confined to purchases in the State of Ohio, and the allegations involve violations of Ohio law, making this Court a desirable forum. *Pfaff v. Whole FoodsMkt. Grp., Inc.*, No. 1:09-cv-02954, 2010 U.S. Dist. LEXIS 104784, (N.D. Ohio Sep.29, 2010), ("Concentrating the claims in this forum, where the breach allegedly occurred and where many of the witnesses and much of the evidence presumably resides, is desirable").

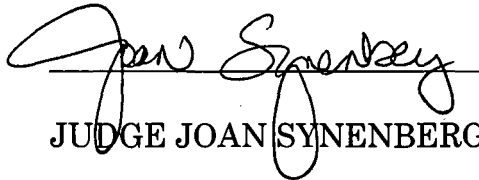
Lastly, Plaintiff's assertion that the class action is manageable is well taken, as a uniform policy provision lies at the heart of this case and damages can be determined by an analysis of Defendant's data. A defendant's arguments regarding manageability in cases involving insurance policies similar to the instant matter have been rejected uniformly. *Chesner v. Stewart Title Guar. Co.*, 2008 U.S. Dist. LEXIS 19303, citing Cohen, 242 F.R.D. at 299-300 (finding difficulties with identifying class members and computation of damages manageable in case where the title insurer wrote 97,760 title policies at the basic rate and plaintiff argued that as many as 90% of those should have received discounted rates).

In the instant matter, the Court finds that class certification is superior to other methods for adjudicating this controversy.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Class Certification is GRANTED.

IT IS SO ORDERED.

  
JUDGE JOAN SYNENBERG

1/22/2024  
DATE