IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JEFF DENNINGTON; JAMES STUART;
and CAREDA HOOD individually
and on behalf of all others similarly situated PLAINTIFFS

v. Case No. 4:14-cv-04001

STATE FARM FIRE AND CASUALTY
COMPANY and STATE FARM GENERAL
INSURANCE COMPANY DEFENDANTS

ORDER

Before the Court is the Plaintiffs' Motion for Class Certification, Appointment of Class Representatives and Appointment of Class Counsel. (ECF No. 82). Defendants have filed a Response. (ECF No. 87). Plaintiffs have filed a Reply. (ECF No. 104). The Court finds this matter ripe for its consideration.

I. BACKGROUND

Defendants State Farm Fire and Casualty Company and State Farm General Insurance Company (collectively, "State Farm") entered into contracts with Plaintiffs James Stuart and Careda Hood to provide insurance coverage.[1] Plaintiffs had replacement cost policies. In the policies, State Farm agreed to pay the reasonable and necessary cost to repair or replace damaged property, in two steps. First, prior to the insured making any repair or replacement, State Farm agreed to pay "the actual cash value at the time of the loss of the damaged part of the property." (ECF No. 42, Ex. 2-3). "Actual cash value" ("ACV") defined as "the amount it would cost to repair or replace damaged property, less depreciation." (ECF No. 42, Ex. 2-3). This first step required a State Farm adjuster to estimate the cost of repair or replacement, which included the cost of labor and materials. State

[1]Plaintiff Jeff Dennington has previously been dismissed as a Plaintiff for lack of standing. (ECF No. 110).

Farm then paid Plaintiffs the ACV of their loss, which was calculated by subtracting depreciation and the amount of the deductible from the adjuster's estimate. The depreciated amount included both the cost of labor and materials. Upon completion of the repairs, if the insured decided to repair or replace the damage, State Farm agreed to pay "the covered additional amount" that the insured "actually and necessarily spen[t] to repair or replace the damaged part of the property." (ECF No. 42, Ex. 2-3).

When estimating its payment obligation to insureds, Defendants would first send an adjuster to inspect the damaged property. The adjuster would enter relevant data into a program called Xactimate which would calculate a payment estimate. (ECF No. 83-2, p. 15). Relevant to this case, Xactimate has a number of different options that may be applied to depreciation of costs. Prior to 2013, Defendants' default setting was to apply depreciation to nonmaterial costs, including labor, in Arkansas. Defendants would then determine the amount of the payment appropriate for the insureds. Defendants store claim payment data in a separate database called Enterprise Claims System. (ECF No. 87-6).

Plaintiffs allege that they suffered a covered loss under their policies, made a claim, and received a payment from State Farm. They allege that State Farm, in calculating the amount of the payments owed to Plaintiffs, unlawfully deducted labor depreciation. In their Second Amended Complaint, Plaintiffs allege that Arkansas law prohibits an insurance company from depreciating the cost of labor. (ECF No. 69). Therefore, by depreciating this cost in the initial ACV payments, Plaintiffs claim that State Farm (1) breached their contract with Plaintiffs and (2) was unjustly enriched. Plaintiffs assert that they represent a class of Arkansas policyholders who were treated similarly by State Farm and seek to certify that class. Plaintiffs define the proposed class as follows:

> All persons and entities that received "actual cash value" payments, directly or indirectly, from State Farm for loss or damage to a dwelling or other structure located in the State of Arkansas, such payments arising from events that occurred between November 21, 2008 and December 6, 2013, where the cost of labor was depreciated. Excluded from the Class are: (1) all persons and entities that received payment from State Farm in the full amount of insurance shown on the declarations page; (2) State Farm and its affiliates, officers and directors; (3) members of the judiciary and their staff to whom this action is assigned; and (4) Plaintiffs' counsel.

II. STANDARD

Class certification is governed by Rule 23 of the Federal Rules of Civil Procedure. The decision whether to certify a class action is within the broad discretion of the district court. *In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 436 (8th Cir. 1999). In determining whether to certify a class action, "the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974) (internal citations omitted). However, the required "preliminary inquiry of the class certification stage may require the court to resolve disputes going to the factual setting of the case, and such disputes may overlap the merits of the case." *Luiken v. Domino's Pizza, LLC*, 705 F.3d 370, 372 (8th Cir. 2013) (quotation omitted). The plaintiff moving for class certification has the burden of showing that the requirements of Rule 23 are met. *Coleman v. Watt*, 40 F.3d 255, 259 (8th Cir. 1994).

"To be certified as a class, plaintiffs must meet all of the requirements of Rule 23(a) and must satisfy one of the three subsections of Rule 23(b)." *In re St. Jude Med., Inc.*, 425 F.3d 1116, 1119 (8th Cir. 2005). The Rule 23(a) requirements are met if: (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

(4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). These requirements for class certification under Rule 23(a) are commonly referred to as "numerosity, commonality, typicality, and adequacy of representation." *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 330 (1980).

Once the Court determines Rule 23(a)'s requirements are met, the Plaintiffs must also show that the class meets the definition of at least one type of class under Rule 23(b). *Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1029 (8th Cir. 2010). In this case, Plaintiffs are seeking certification under Rule 23(b)(3). Therefore, they must demonstrate that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The Eighth Circuit adheres to a rigorous analysis of the Rule 23 requirements, which includes that a class "must be adequately defined and clearly ascertainable." *Sandusky Wellness Center, LLC v. Medtox Scientific, Inc.*, 821 F.3d 992, 996 (8th Cir. 2016).

III. DISCUSSION

A. Rule 23(a)

1. Numerosity

The first prerequisite of Rule 23(a) is commonly referred to as the numerosity requirement. To meet this requirement, the court must conclude that a class is sufficiently large so as to render joinder of all its members impracticable in light of the particular circumstances of the case. *Ark. Educ. Ass'n v. Bd. of Educ. of Portland, Ark. Sch. Dist.*, 446 F.2d 763, 765 (8th Cir. 1971). A number of factors are relevant to this inquiry, and the most obvious is the number of persons in the proposed class. In addition to the size of the class, the court may also consider such factors as the

nature of the action, the size of the individual claims, the inconvenience of trying individual suits, and any other factor relevant to the practicability of joining all the putative class members. *Paxton v. Union Nat. Bank*, 688 F.2d 552, 560 (8th Cir. 1982).

Plaintiffs claim that hundreds of persons were adversely affected by Defendants' actions. This number is sufficiently numerous to make joinder of individual class members difficult. Defendants do not dispute that Plaintiffs' proposed class is numerous. Therefore, the Court finds that the numerosity requirement under Rule 23(a) has been met in this case. *See Ark. Educ. Ass'n.*, 446 F.2d at 765-66 (finding a class of twenty was sufficiently large to proceed as a class action).

2. Commonality

The second prerequisite of Rule 23(a) is the commonality requirement. "Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011) (quoting *Gen. Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982)). It is not required that every question of law or fact be common to every member of the class. *Paxton*, 688 F.2d at 561 (8th Cir. 1982). "Rather, it may be satisfied when the legal question 'linking the class members is substantially related to the resolution of the litigation.'" *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995) (quoting *Am. Fin. Sys., Inc. v. Harlow*, 65 F.R.D. 94, 107 (D. Md. 1974)).

Defendants assert that Plaintiffs have failed to demonstrate commonality because whether they are liable to Plaintiffs for a breach of contract cannot be answered with common proof, and the class cannot be ascertained without individualized review of each class member's claim. Plaintiffs have alleged, and put forth proof, of Defendants' practice of depreciating labor when calculating its payment obligations to its insureds in Arkansas. (ECF No. 83-3, p.60) (admitting that, prior to 2013,

the default setting to calculate estimates in the software was to depreciate labor). The members of the proposed class share a common question of law—whether labor was unlawfully depreciated under Arkansas law in their payments from Defendants. This question is substantially related to the resolution of the litigation. Therefore, the Court finds that the commonality requirement under Rule 23(a) has been satisfied. Defendants' arguments are more fully addressed under the predominance analysis, which requires a "far more demanding" standard in this case. *See infra*, III.B.1; *see also Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997).

3. Typicality

The third prerequisite of Rule 23(a) is the typicality requirement. To meet this prerequisite, the claims of the representative parties must be typical of the claims of the proposed class. Typicality requires a showing "'that there are other members of the class who have the same or similar grievances as the plaintiff.'" *Chaffin v. Rheem Mfg. Co.*, 904 F.2d 1269, 1275 (8th Cir. 1990) (quoting *Donaldson v. Pillsbury Co.*, 554 F.2d 825, 830 (8th Cir. 1977)). "This requirement is generally considered to be satisfied if the claims or defenses of the representatives and the members of the class stem from a single event or are based on the same legal or remedial theory." *Paxton*, 688 F.2d at 561-62. To have claims typical of a class, the named Plaintiffs must have standing to pursue the relief sought. *In Re Milk Prods*., 195 F.3d at 437; *Hall v. Lhaco*, 140 F.3d 1190, 1196-97 (8th Cir. 1998).

Defendants assert that the named Plaintiffs' claims are not typical of the class because they lack standing to bring the suit. To have standing, as required by Article III of the Constitution, there must be "injury in fact to the plaintiff that is fairly traceable to the challenged action of the defendant, and likely to be redressed by a favorable decision." *Braden v. Wal-Mart Stores, Inc.*, 588

F.3d 585, 591 (8th Cir. 2009) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Defendants first assert that Plaintiffs Hood and Stuart lack standing to sue Separate Defendant State Farm General.[2] Defendants argue, supported by Plaintiffs' depositions, that neither Stuart nor Hood had a contract for insurance with State Farm General. Plaintiffs do not present evidence to the contrary and do not contest Defendants' assertion. Without a contract for insurance, Plaintiffs do not have standing to pursue their claims against State Farm General, and the Court concludes that it should be dismissed as a Defendant in this litigation.

Defendants assert that Stuart and Hood also lack standing to sue State Farm Fire because Plaintiffs have been paid for their losses. Payment is an affirmative defense which does not defeat Article III standing. *See Snider Int'l Corp. v. Town of Forest Heights*, 906 F.Supp.2d 413, 424 (D.Md. 2012), *aff'd sub nom. Snider Int'l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140 (4th Cir. 2014). The claims of Stuart and Hood and the members of the class are based on the same legal theory. Therefore, the requirement of typicality is satisfied.

4. Adequacy of Representation

The fourth and final prerequisite under Rule 23(a) is that the representative parties must fairly and adequately represent the proposed class. The focus of this requirement is whether "(1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Paxton*, 688 F.2d at 562-63. A class action may not be maintained without a named plaintiff with standing. *Sudler v. City of New York*, 689 F.3d 159, 179 (2d Cir. 2012). Defendants assert that the

[2]The Court determined, after Defendants filed their Response to Plaintiffs' Motion for Class Certification, that Plaintiff Dennington lacks standing. (ECF No. 110). Accordingly, the Court will not address any arguments regarding Dennington.

representative Plaintiffs are not adequate representation for the class because they lack standing. However, the Court has determined that named Plaintiffs Stuart and Hood have standing to proceed against Separate Defendant State Farm Fire. The Defendants have not otherwise indicated that the named Plaintiffs and their counsel will not vigorously prosecute the interests of the proposed class. Therefore, the Court finds that the adequacy of representation requirement is satisfied

B. Rule 23(b)(3)

1. Predominance

"The Rule 23(b)(3) predominance inquiry" is meant to "test[] whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623. "The predominance inquiry requires an analysis of whether a prima facie showing of liability can be proved by common evidence or whether this showing varies from member to member." *Halvorson v. Auto-Owners Ins. Co.*, 718 F.3d 773, 778 (8th Cir. 2013) (citing *Avritt*, 615 F.3d at 1029); *see also Ebert v. Gen. Mills, Inc.*, 823 F.3d 472, 478-79 (8th Cir. 2016). Thus, the question of predominance begins with the elements of the underlying cause of action. *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). To prevail on a breach of contract claim under Arkansas law, a plaintiff must prove (1) a contract; (2) the contract required the defendant to act; (3) the plaintiff did what was required under the contract; (4) defendant failed to do what was required under the contract; and (5) the plaintiff was damaged. *Foreman Sch. Dist. No. 25 v. Steele*, 61 S.W. 3d 801, 807 (Ark. 2001).

The Court is entitled to look behind the pleadings and make a preliminary determination with respect to the merits of a class proponent's allegations when they are material to deciding whether the predominance factor has been satisfied. *See Dukes*, 564 U.S. at 351-52 & n.6; *Blades v.*

Monsanto Co., 400 F.3d 562, 567 (8th Cir. 2005). In conducting this preliminary inquiry, however, the Court must look only so far as to determine whether common evidence could suffice to make out a prima facie case for the class if the plaintiff's general allegations are true. *Blades*, 400 F.3d at 566.

Finally, for the class to be sufficiently cohesive to warrant adjudication as a class, the class must be administratively ascertainable, which requires that the members of the class be determined based upon an objective standard. *See Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc.*, 821 F.3d 992, 997 (8th Cir. 2016) (requiring an "objective indicator" to ascertain class membership).

Defendants assert that Plaintiffs have failed to demonstrate predominance because an individualized inquiry will be required to demonstrate whether breach occurred and to determine any damages. Defendants first assert that class certification is inappropriate because individualized inquiry is required to prove breach. They argue that they have not breached the policies of all proposed class members because either the insured was not injured when the ACV payment covered the cost of their repairs or the insured was paid a full replacement value and thus was reimbursed for any wrongfully withheld labor depreciation. Therefore, Defendants assert that common proof cannot be used to prove breach on a classwide basis but instead individualized proof will be necessary.

The authority cited by Defendants in attempting to demonstrate that common issues do not predominate because individualized proof is required to prove breach is distinguishable from the facts of this case. In *Halvorson v. Auto-Owners Insurance Co.*, 718 F. 3d 773 (8th Cir. 2013), individualized review of files precluded class certification because for each claim, there was an individualized question of "reasonableness" to be resolved. *See also Schafer v. State Farm Fire & Cas. Co.*, 2009 WL 2391238 (E.D. La. Aug. 3, 2009); *Nguyen v. St. Paul Travelers Ins. Co.*, 2008 WL 4691685 (E.D. La. Oct. 22, 2008). In *Avritt*, a highly individualized inquiry, including proof

of intent of the potential class members when entering into an agreement was required and therefore classwide resolution of the issues was not appropriate. 615 F.3d at 1026. Similarly, in *Kennedy v. United American Insurance Co.*, 2013 WL 1367131 (E.D. Ark. Apr. 3, 2015), multiple individualized inquiries, including choice of law, individual questions of assignment, and individualized affirmative defenses were required for resolution of the litigation. The Court finds that the record in this case evidences neither a fact-intensive "reasonableness" analysis nor an improper individualized inquiry. Here, class membership may be determined by an objective indicator. Although individual review of the files is required, the review is necessary to answer objective questions without the need to resort to "mini-trials" on any particular question.

State Farm asserts that some class members were able to complete the repairs at a cost less than the original ACV payment they received. State Farm asserts that the practicalities of estimates involving individual judgment and reliance on human accuracy sometimes results in a higher ACV payment than the insured is due. State Farm asserts that the contracts have not been breached in those cases. However, Plaintiffs' breach of contract theory is that the position they would have been in had the contract not been breached includes an additional amount representing labor depreciation. *See Dawson v. Temps Plus, Inc.*, 987 S.W.2d 722 (Ark. 1999) (reasoning that damages recoverable for breach of contract are those damages that would place the injured party in the same position as if the contract had not been breached). Thus, Plaintiffs theory includes recovery even for those persons Defendants claim to have overpaid in their initial estimate.

Moreover, to the extent that State Farm argues that the accuracy and individual judgment of its own adjusters was incorrect and that a subsequent, more accurate, estimate would be required on each claim will not prevent class certification. Should Plaintiffs' theory prevail, the Court would

be hesitant to permit an adjuster to conduct new estimates on properties, years after the claims were made and paid, such that State Farm would then be permitted to argue that they routinely overpaid their claimants and are not liable for unlawful labor deprecation. However, should Defendants prevail on this affirmative defense, the Court is unconvinced, nor has sufficient evidence been presented, that there is such a practice of overestimating claims such that a significant portion of the proposed class would be affected. *See Halliburton Co. v. Erica P. John Fund*, 134 S. Ct. 2398, 2412 (2014) ("That the defendant might attempt to pick off the occasional class member here or there through individualized rebuttal does not cause individual questions to predominate.").

State Farm next asserts that some class members were paid a full replacement cost after their initial ACV payment and thus were not harmed. Plaintiffs assert that these class members are harmed because they were not paid the amount owed to them in the initial calculation and payment. The Court's resolution of this affirmative defense would not require individual questions or result in administrative infeasibility. Instead, this question may be answered after looking at common proof from both Plaintiffs and Defendants. Should Defendants prevail on their defense, those class members may be ascertained and excluded from the class.

State Farm next argues that individualized proof is required to make a determination of damages. Initially, a number of courts have determined that, when an insurance company's records contain the information necessary to identify class members or determine damages, the burden placed on the company to retrieve that information does not defeat certification. *See, e.g.*, *Rikos v. Procter & Gamble Co.*, 799 F.3d 497, 525-26 (6th Cir. 2015) (finding class ascertainable where it "can be discerned with reasonable accuracy using Defendants' electronic records . . . , though the process may require additional, even substantial, review of files") (emphasis omitted), *cert. denied*,

136 S.Ct. 1493 (2016); *In re Monumental Life Ins. Co.*, 365 F.3d 408, 419 (5th Cir. 2004) (certifying class despite fact that "thousands of grids must be constructed for the myriad of policy variations" where "defendants' records contain the information necessary to determine [damages]"); *Perez v. First Am. Title Ins. Co.*, 2009 WL 2486003, at *7 (D. Ariz. Aug. 12, 2009) ("Even if it takes a substantial amount of time to review files and determine [who is in the class], that work can be done during discovery."); and *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 560 (D. Md. 2006) ("Although the task [of compiling claims data for each class member] may prove to be a laborious one, this court is not persuaded that it is one that cannot be reasonably managed.").

Defendants rely on *Comcast Corp. v. Behrend*, 133 S.Ct. 1426 (2013) to support their assertion that individualized proof of damages will "inevitably overwhelm questions common to the class." Defendants assert that the substantial need for individualized inquiry into its liability to each class member, combined with the required individualized inquiry into the damages question, precludes a finding of predominance. The Court has already determined that Defendants' arguments that certification is defeated by individualized inquiry into liability fail. State Farm produced a spreadsheet containing labor depreciation amounts for every claim filed in Arkansas from 2008 through 2013. (ECF No. 83-6). Plaintiffs' expert testified that it would take a matter of a few seconds to minutes to find the relevant payment data. (ECF No. 104-4). Those numbers can be objectively entered into a formula to determine damages. Though Defendants assert that the time required to review the claims would take substantially longer, (ECF No. 87-12), the Court may use mechanisms to make the action more managable should the issue arise. *See Mayberry v. United States*, 151 F.3d 855, 856 (8th Cir. 1998) (describing the use of a special master in an ERISA class action to assist in the settlement of the damages issues after the Court granted partial summary

judgment). As stated by the Sixth Circuit:

> [T]he need to manually review files is not dispositive. If it were, defendants against whom claims of wrongful conduct have been made could escape class-wide review due solely to the size of their businesses or the manner in which their business records were maintained.

Young v. Nationwide Mut. Ins. Co., 693 F.3d 532, 540 (6th Cir. 2012). The Court finds that the necessity to review the individual claim files to determine the exact payment amount does not preclude a finding of predominance when that information is within records, does not require highly-individualized inquiries or factual determinations, and may be easily ascertained.

Finally, Defendants assert that Plaintiffs have not met their burden to demonstrate predominance because individualized inquiry is required for Plaintiffs' claim for statutory damages. Plaintiffs have put forth the following damages model:

> DAMAGES = (WITHHELD LABOR DEPRECATION - RECOVERED LABOR DEPRECIATION) + (12% x WITHHELD LABOR DEPRECIATION)

Plaintiffs' inclusion of the additional 12% of the withheld labor depreciation results from their theory that because Defendants have failed to pay Plaintiffs what they were owed, Plaintiffs are entitled to a 12% penalty under Arkansas law. The Arkansas statute reads as follows:

> In all cases in which loss occurs and the [insurance company] liable therefor shall fail to pay the losses within the time specified in the policy after demand is made, the person, firm, corporation, or association shall be liable to pay the holder of the policy or his or her assigns, in addition to the amount of the loss, twelve percent (12%) damages upon the amount of the loss, together with all reasonable attorney's fees for the prosecution and collection of the loss.

Ark. Code Ann. § 23-79-208. Defendants assert that a determination of whether the penalty applies cannot be determined on a classwide basis.

Defendants' arguments supporting their theory that the penalty does not apply in some cases is disputed by Plaintiffs. However, it is a dispute that may be decided by the Court on a classwide basis. Should Defendants prevail on their claim that the penalty does not apply in certain cases, that may be examined during the review of the claim files which will be required for determining membership in the class. The penalty inquiry does not defeat predominance. Accordingly, the Court finds taht the predominance requirement of Rule 23(b)(3) is satisfied.

2. Superiority

The Court must also find that proceeding as a class is a superior method of adjudication. *Halvorson*, 718 F.3d at 778. Rule 23(b)(3) contains four relevant factors to be considered when deciding whether a class action is superior to other available methods for fairly and efficiently adjudicating the controversy:

> (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.

Defendants assert that the class action method is not the superior method for bringing the litigation for the same reasons that it argues undermine Plaintiffs' demonstration of predominance.

The individual class members' damages are relatively small, indicating little interest in individually controlling the prosecution of the action. The parties have indicated no existing litigation concerning the controversy begun by existing class members. Concentrating the claims in one forum with uniform decisions is desirable, and the Court does not anticipate unreasonable difficulty in managing the class action. Accordingly, the Court finds that the class action method

is the superior method to litigate these claims. *Mejdrech v. Met–Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003) ("If there are genuinely common issues, issues identical across all the claimants, issues moreover the accuracy of the resolution of which is unlikely to be enhanced by repeated proceedings, then it makes good sense, especially when the class is large, to resolve those issues in one fell swoop.").

IV. CONCLUSION

The record before the Court is sufficient to conclude that the Rule 23 requirements have been met. Accordingly, Defendants' Motion for Hearing (ECF No. 91) is **DENIED**.

Because no named Plaintiff has standing to sue separate Defendant State Farm General, it is **DISMISSED** as a Defendant.

For the reasons discussed herein, Plaintiffs' Motion for Class Certification, Appointment of Class Representatives and Appointment of Class Counsel (ECF No. 82) is **GRANTED**. Plaintiffs James Stuart and Careda Hood are named as representatives of the class. The Court additionally approves the following law firms as class counsel: Kessler Topaz Meltzer & Check, LLP; Keil & Goodson, P.A.; Mattingly & Roselius, PLLC: Murphy, Thompson, Arnold, Skinner & Castleberry; Taylor Law Partners, LLP: Stephen Engstrom Law Office; Crowley Norman LLP: and James M. Pratt, Jr., P.A.

IT IS SO ORDERED, this 24th day of August, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge