UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ALINA VAZQUEZ, individually and on behalf of all others similar situated,

Plaintiff,

v. **Case No: 8:17-cv-00116-MSS-MAP**

MARRIOTT INTERNATIONAL, INC.,

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Plaintiff's Motion for Class Certification, ("Motion") (Dkt. 47), and Defendant's Response in opposition thereto. (Dkt. 53). Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **GRANTS** Plaintiffs' Motion for Class Certification.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff was employed as a housekeeper by Defendant from November 1998 until her termination on October 3, 2016. Following her termination, Plaintiff received a notice that was issued pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). Plaintiff claims that Defendant's COBRA notice of rights to continued healthcare coverage was deficient. As a result of the deficient notice, Plaintiff attested that both she and her husband lost their healthcare insurance coverage for approximately two months, incurred significant medical expenses, and have bills which remain unpaid. (See Dkt. 24, Ex. A, Pl.'s Decl. ¶¶ 13–16). Thus, on January 17, 2017, Plaintiff filed a Complaint against Defendant for violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by COBRA. (Dkt. 1). On April 3, 2017, Plaintiff

filed an Amended Complaint in which Plaintiff contends that Defendant violated the law by failing to provide the COBRA notice in Spanish, failing to adequately explain the procedures to elect healthcare coverage, failing to identify itself as the plan administrator, and failing to provide a notice that an average plan participant would understand. (Dkt. 24 ¶¶ 3–6). Plaintiff now moves the Court to certify this case as a class action for the following class of similarly-situated persons:[1]

> All participants are beneficiaries in the Defendant's Health Plan who: (1) were sent a COBRA notice by Defendant, in the form attached to the Motion as Exhibit A, during the applicable four-year statute of limitations period as a result of a qualifying event, as determined by Defendant, and (2) did not elect continuation coverage.

(Dkt. 47 at 1).

II. CLASS CERTIFICATION STANDARD

A district court has broad discretion in determining whether to certify a class. Washington v. Brown & Williamson Tobacco Corp., 959 F.2d 1566, 1569 (11th Cir. 1992); Griffin v. Carlin, 755 F.2d 1516, 1531 (11th Cir. 1985). As a threshold matter, courts consider whether "the proposed class is adequately defined and clearly ascertainable." Palm Beach Golf Ctr.-Boca, Inc. v. Sarris, 311 F.R.D. 688, 693 (S.D. Fla. 2015). Additionally, "the named plaintiffs must have standing, and the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements set forth in Rule 23(b)." Klay v. Humana, Inc., 382 F.3d 1241, 1250 (11th Cir. 2004). The party seeking to maintain the class action must affirmatively demonstrate its compliance with Rule 23. Wal-Mart Stores, Inc. v. Dukes,

[1] The Court notes in Plaintiff's First Amended Class Action Complaint and Demand for Jury Trial (Dkt. 24) the class action was also brought on behalf of a sub-putative class of National Spanish-Speaking Only participants. Plaintiff chose not to seek to certify the Spanish-speaking sub-class in her Motion for Class Certification. (Dkt. 47 at 19).

564 U.S. 338, 350–51 (2011). Rule 23 "establishes the legal roadmap courts must follow when determining whether class certification is appropriate." Valley Drug Co. v. Geneva Pharm., Inc., 350 F.3d 1181, 1187 (11th Cir. 2003).

> A class may be certified under Rule 23(a) only 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 are commonly referred to as the "numerosity, commonality, typicality, and adequacy of representation" requirements. Valley Drug, 350 F.3d at 1188. As to the additional requirement under Rule 23(b), Plaintiff contends that the proposed class satisfies Rule 23(b)(3). Under Rule 23(b)(3), the Court must find "that 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." Id.

The burden of proof to establish the propriety of class certification rests with the advocate of the class, and failure to establish any one of the four Rule 23(a) factors and at least one of the alternative requirements of Rule 23(b) precludes class certification. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613–14 (1997). "[I]n deciding whether to certify the class, a court generally must take as true the allegations in the complaint, rather than determine the merits of the claim at the class certification stage." Butler-Jones v. Sterling Casino Lines, L.P., No. 6:08-CV-01186, 2008 WL 5274384, at *4 (M.D. Fla. Dec. 18, 2008). More specifically, "[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23

prerequisites for class certification are satisfied." Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds, 568 U.S. 455, 466 (2013) (citing Dukes, 564 U.S. at 352).

III. DISCUSSION

A. STANDING

As determined in the Court's Order Denying Defendant's Motion to Dismiss, (Dkt.38), Plaintiff has standing because she alleges facts that present questions of whether: (1) Defendant provided adequate COBRA notification and (2) the failure to receive adequate COBRA notice resulted in unpaid medical bills. Defendant does not contest Plaintiff's standing. Accordingly, the Court finds that Plaintiff has standing to assert her claims.

B. ASCERTAINABILITY

As stated above, Plaintiff seeks to certify a class consisting of:

> All participants are beneficiaries in the Defendant's Health Plan who: (1) were sent a COBRA notice by Defendant, in the form attached to the Motion as Exhibit A, during the applicable four-year statute of limitations period as a result of a qualifying event, as determined by Defendant, and (2) did not elect continuation coverage.

(Dkt. 47 at 1). "An identifiable class exists if its members can be ascertained by reference to objective criteria. The analysis of the objective criteria also should be administratively feasible. Administrative feasibility means that identifying class members is a manageable process that does not require much, if any, individual inquiry." Bussey v. Macon Cnty. Greyhound Park, Inc., 562 F. App'x 782, 787-88 (11th Cir. 2014) (internal quotation omitted).[2] Proposed class members are former employees of

[2] Unpublished 11th Circuit Case: The Court notes that "[a]lthough an unpublished opinion is not binding on this court, it is persuasive authority. See 11th Cir. R. 36-2." United States v. Futrell, 209 F.3d 1286, 1289 (11th Cir. 2000).

Defendant who have been identified by Defendant's reference to objective criteria—their having been sent a COBRA notice through Defendant's myHR benefits system. (Dkt. 47 at 23-4). Although Defendant argues that the class definition is unworkable because it includes individuals who experienced no impact, this contention points to whether questions of individual damages predominate, not whether the class is adequately defined and ascertainable. See Teggerdine v. Speedway, No. 8:16-CV-03280, slip op. at *3 (M.D.Fla. May 31, 2018) (citing Comcast Corp. v. Behrend, 569 U.S. 27, 34 (2013)). The Court finds that the proposed class is adequately defined and clearly ascertainable.

C. NUMEROSITY

The numerosity requirement "imposes a 'generally low hurdle' and a plaintiff need not show the precise number of members of the class." Palm Beach Golf Ctr., 311 F.R.D. at 695. The "general rule of thumb in the Eleventh Circuit is that 'less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors.'" Manno v. Healthcare Revenue Recovery Grp., LLC, 289 F.R.D. 674, 684 (S.D. Fla. 2013) (quoting Cox v. Am. Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986)). Evidence produced by Defendant establishes that more than 15,000 individuals were sent the contested COBRA notification and elected not to continue coverage during the four-year period relevant to this case. Plaintiff asserts that joinder is impractical because the group is larger than forty. Defendant does not contest the number of potential class members asserted by Plaintiff. Rather, Defendant contends that Plaintiff fails the numerosity test because she has not alleged that all members of her purported class were identically harmed; however, this is not part of the numerosity determination.

Accordingly, the Court finds that Plaintiff satisfies the numerosity query.

D. COMMONALITY

Commonality requires the identification of an issue that by its nature "is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, at 350. Proof of commonality is a "relatively light burden." County of Monroe, Fla. v. Priceline.com, Inc., 265 F.R.D. 659, 667 (S.D. Fla. 2010) (internal quotation marks omitted). Moreover, the commonality requirement "does not require that all the questions or law and fact raised by the dispute be common." Id. Commonality is satisfied if the case "involve[s] issues that are susceptible to class wide proof." Garcia-Celestino v. Ruiz Harvesting, Inc., 280 F.R.D. 640, 646 (M.D. Fla. 2012) (internal quotation marks omitted).

Plaintiff's complaint alleges several common questions. Just by way of example, Plaintiff challenges: (1) whether Defendant violated COBRA's notice requirements; and, (2) whether and to what extent statutory penalties are appropriate. Plaintiff's putative class only includes individuals who were sent a COBRA Notice, as substantiated by Defendant's evidence. Thus, each member of the purported class did receive, or should have received, the allegedly inadequate Notice and as such, has a claim, for statutory penalties, against the Defendant for the failure to provide adequate Notice. Plaintiff has alleged, as a threshold matter, common questions of fact concerning whether the COBRA Notice complies with the law.

E. TYPICALITY

To satisfy the typicality requirement, the class representative must have the same interest and suffer the same injury as the class members. Busby v. JRHBW Realty, Inc., 513 F.3d 1314, 1322 (11th Cir. 2008) (citing Cooper v. Southern Co., 390 F.3d 695, 713 (11th Cir. 2004)). The focus of the typicality requirement is whether the named plaintiff will advance the interests of the class members by advancing her own interests. Agan v. Katzman & Korr, P.A., 222 F.R.D. 692, 698 (S.D. Fla. 2004). "'Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large.'" Cooper, 390 F.3d at 713 (citing Prado-Steiman v. Bush, 221 F.3d 1266, 1279 (11th Cir. 2000)). The typicality requirement, much like the commonality requirement, does not require that the claims of the proposed class representative and the proposed class be identical. Prado-Steiman, 221 F.3d at 1279. The requirement may be met "even if some factual differences exist between the claims of the named representatives and the claims of the class at large." Id. All that is required is that "the claims or defenses of the class and class representative arise from the same event or pattern or practice and are based on the same theory." Agan, 222 F.R.D. at 698 (citing Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir. 1984)). Generally, "a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences." Prado-Steiman, 221 F.3d at 1279.

Plaintiff posits that her claims are typical of the putative class because she received the same COBRA notice; thus, the claims at issue stem from the same conduct: the allegedly deficient COBRA notification. (Dkt. 47 at 19). Defendant contends that Plaintiff's claims are not typical because she could not understand English, could not

understand the Marriott COBRA Notice once she had it translated, does not use computers, and could not afford COBRA continuation coverage; traits personal to her and not typical of the class. (Dkt. 53 at 14). Defendant here casts Plaintiff's case as solely supported by her individualized lack of understanding of the Marriott COBRA Notice. However, whether a COBRA Notice provides adequate information is not based on an individual's understanding of the notice, but rather, an objective determination of whether the mailer complies with the letter of the statute. Rodriguez v. Int'l Coll. of Bus. and Tech., 364 F.Supp.2d 40, 46 (D.P.R. 2005) ("Neither a plaintiff's actual knowledge of his rights under COBRA nor his prior COBRA related job responsibility, dispenses with a plan administrators obligation to give the employee [proper] notification") (citing Torres-Negron, et al. v. Ramallo Bros. Printing Inc., 203 F.Supp.2d 120, 124-125 (D.P.R. 2002)). Thus, whether Marriott's contested COBRA notification complies with the law, does not depend on Plaintiff's personal characteristics; but, on whether the Notice is understandable by an average plan participant. 29 C.F.R. 2590.606-4(b)(4). This requirement has been interpreted as "an objective standard rather than requiring an inquiry into the subjective perception of the individual [plan] participants." Wilson v. Sw. Bell Tel. Co., 55 F.3d 399, 407 (8th Cir. 1995) (interpreting regulatory requirements for Summary Plan Descriptions, which are subject to an identical regulatory requirement to be written in a manner calculated to be understood by the average plan participant). Accordingly, this claim is typical of all members of the class and its resolution does not depend on Plaintiff's personal characteristics.

Defendant also asserts that Plaintiff's injuries are not typical of those of the putative class member. However, Eleventh Circuit law is clear that individual variations among

class members' claims with respect to the extent of their damages do not defeat typicality for purposes of class certification. Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir. 1984) ("Differences in the amount of damages between the class representative and other class members does not affect typicality.") On this record, there is a sufficient nexus between the claims of the class representatives and those of the class as a whole to satisfy the typicality requirement.

F. ADEQUACY

Under Rule 23(a)(4), Plaintiff must show that, as a class representative, she will fairly and adequately protect the interests of the class. The adequacy evaluation encompasses two inquiries: (1) whether any substantial conflicts of interest exist between the representative and the class; and (2) whether the representative will adequately prosecute the action. Valley Drug Co. v. Geneva Pharm., Inc., 350 F.3d 1181, 1189 (11th Cir.2003) (quoting In re HealthSouth Corp. Sec. Litig., 213 F.R.D. 447, 460–461 (N.D.Ala.2003)). The central component of representative adequacy is the absence of conflicts of interest between the named representative and the class. Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 625–26 (1997) ("The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. A class representative must be part of the class and possess the same interest and suffer the same injury as the class members.") (citations omitted); Beattie v. CenturyTel, Inc., 511 F.3d 554, 562 (6th Cir. 2007). A class representative whose interests are materially adverse to some of the class cannot be an adequate representative for the whole class because in promoting her own interests she may undercut the interests of other class members.

Defendant argues that Plaintiff is not an adequate representative because her personal motivations,[3] rather than any alleged notification violations by the Defendant, were the reasons she did not elect COBRA coverage. Defendant claims that these personal motivations present flaws and weaknesses in Plaintiff's claims that are not shared with the other putative class members, rendering Plaintiff an inadequate class representative. As noted above, the relevant inquiry is whether the COBRA Notice sent by Defendant objectively complied with statutory and regulatory requirements. Defendant's assertions concerning Plaintiff's underlying motivations against selecting coverage do not establish any conflicts of interest relevant to the objective question of whether Marriott's Notice complied with the law, which must be considered apart from Plaintiff's personal knowledge or understanding of the COBRA requirements. Rodriguez, 364 F.Supp.2d at 46.

Defendant also contests Plaintiff's representative adequacy because she was allegedly terminated for violating Marriott's non-violence policy, rendering her ineligible for COBRA coverage. More specifically, Defendant asserts that a violation of Marriott's non-violent workplace policy constitutes gross misconduct, and that policy precludes COBRA coverage in that event. The Court notes that Defendant did not raise the issue of gross misconduct until its Motion in Opposition to Plaintiff's Motion to Certify Class; the issue was absent from both Defendant's Motion to Dismiss, (Dkt. 31), and Answer to Plaintiff's First Amended Complaint. (Dkt. 40). Importantly, Defendant admits in its Answer that Plaintiff was not terminated for gross misconduct, that Plaintiff's termination was a qualifying event and that Plaintiff was a qualified beneficiary of the Marriott Plain.

[3] Specifically, Defendant faults Plaintiff's alleged inability to read English, her inability to use computers, and her inability to afford COBRA continuation coverage. (Dkt. 53 at 15).

(Dkt. 40 ¶¶ 10, 24). This admission is echoed in the testimony of Defendant's Human Resource representative. (Dkt. 48 at 24-25).

Thus, this assertion is belied by Defendant's own actions towards the Plaintiff and is foreclosed by Defendant's admissions in this case. Hence, this newly asserted claim fails.

Even had Defendant preserved this issue, its argument fails. The claimed gross misconduct was a verbal altercation between Plaintiff and another employee. The relevant statute defines qualifying event as "the termination (other than by reason of such employee's gross misconduct)." 29 U.S.C. § 1163(3). In support of its contention here, Defendant has not produced any evidence of Marriott's alleged nonviolence policy, Plaintiff's alleged violation of this policy, or whether the violation of such policy constitutes gross misconduct as a matter of Marriott policy. The only evidence presented by the Defendant that Plaintiff was fired for gross misconduct is the testimony of Defendant's corporate representative that she "suspect[s] that under the regs that violation of a nonviolence policy would constitute gross misconduct." (Dkt. 48 at 25). Defendant's suspicion is unwarranted. Not only do the regulations not define gross misconduct, the Eleventh Circuit has not recognized an objective standard for defining employee gross misconduct. Virciglio v. Work Train Staffing LLC., 674 Fed. Appx. 879, 891 (11th Cir. 2016) (citing Mlsna v. Unitel Commc'n, Inc., 91 F.3d 876, 881 (7th Cir. 1996) ("The parties have not cited any Eleventh Circuit case law interpreting the term "gross misconduct" as used in COBRA. But, we agree with the Seventh Circuit that it must involve something more than incompetence or unsatisfactory performance."))

According to Defendant's representative, the Marriott COBRA Notice form is sent to all terminated employees regardless of the reason for termination. Consequently, an analysis of whether an employee was terminated for gross misconduct is only undertaken after—and if—the individual attempts to elect coverage. (Dkt. 48 at 40-45). Marriott places itself in the convenient position of beginning an investigation into whether misconduct was gross and disqualifying for the purposes of COBRA eligibility, after the individual has sought the benefit for which the investigation will determine her eligibility. Such *ex post facto* determination of gross misconduct, after the employee has been notified that she experienced a qualifying event and is eligible for continuation coverage, raises further questions about Defendant's compliance with COBRA's statutory and regulatory requirements. See generally 29 U.S.C. § 1166; 29 C.F.R. § 2590.606-4 (requiring COBRA Notice be sent to all former employees who experienced a qualifying event, defining qualifying event as termination for any other reason that gross misconduct, requiring COBRA Notice be written in manner to be understood by the average plan participant). Based on Defendant's own actions conceding that Plaintiff had a right to continuation of insurance coverage and failing to establish a system in which gross misconduct is objectively determined, the Court finds Defendant's gross misconduct allegations insufficient to defeat adequacy.

A secondary component of representative adequacy is whether the proposed class representative is properly qualified to assume the role of class representative, or, stated differently, whether the proposed representative has the proper "motivation" or "desire" to "vigorously pursue" the interests of absent class members. See Teggerdine v. Speedway, No. 8:16-CV-03280, slip op. at *5 (M.D. Fla. May 31, 2018) (citing Piazza v

Ebsco Indus., Inc., 273 F.3d 1341, 1346 (11th Cir. 2001)). Frequent considerations in this regard include the proposed representative's knowledge of the case, interest in and enthusiasm for the litigation and for representing the class, her willingness to respond to interrogatories and depositions, and her understanding of the role and duties of a class representative. Id. Thus far, Plaintiff has dutifully prosecuted this action with qualified and competent counsel. (Dkts. 1, 24, 32, 34, 47).

Accordingly, the Court finds Plaintiff an adequate representative of the class.

G. PREDOMINANCE

The requirement that common questions of law or fact predominate means "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof." Kerr v. City of West Palm Beach, 875 F.2d 1546, 1558 (11th Cir. 1989). Common issues do not predominate if "as a practical matter, the resolution of . . . [an] overarching common issue breaks down into an unmanageable variety of individual legal and factual issues." Babineau v. Fed. Exp. Corp., 576 F. 3d 1183, 1191 (11th Cir. 2009).

Defendant claims that common questions do not predominate because individualized proof of the motivations of thousands of putative class members is required to determine whether, and to what extent, Defendant is liable. The resolution of whether the COBRA Notice complied with the law, however, does not break into individualized inquiries; rather, it is an objective determination and central to the resolution of any claims of any purported class members. Thus, the question of individual class members'

motivations is irrelevant as to Defendant's liability for the allegedly inadequate COBRA notice.

Defendant also argues that Plaintiff's penalty claim, if certified, requires an individualized inquiry into whether each putative class member suffered the same injury. Defendant is incorrect. Section 502(c)(1) of ERISA, 29 U.S.C. § 1132(c)(1), authorizes the assessment of a penalty of up to $100 per day ($110 per day for violations occurring after July 29, 1997) for the failure to provide adequate COBRA notice. 29 C.F.R. § 2575.502c–1 (increasing the maximum amount of the civil penalty available under 29 U.S.C. 1132(c)(1) from $100 a day to $110 a day). Both the decision whether to award penalties for violating COBRA notification requirements and the amount of such award are squarely within the trial court's discretion. Scott v Suncoast Bev. Sales, Ltd., 295 F.3d 1223, 1232 (11th Cir. 2002). The Eleventh Circuit has held that "the penalty range of up to $100 per day is unrelated to any injury suffered by the plan participant, suggesting that section 1132(c) is intended to punish noncompliance with the employer or administrator's disclosure obligations and not to compensate the participant." Daughtrey v. Honeywell, Inc., 3 F.3d 1488, 1494 (11th Cir.1993) (citing Sandlin v. Iron Workers Dist. Council, 716 F.Supp. 571, 574 (N.D. Ala. 1988), aff'd mem. op., 884 F.2d 585 (11th Cir. 1989)).

Further, the Eleventh Circuit has explicitly stated that prejudice is not a prerequisite for the Court to award statutory penalties for the violation of COBRA notification requirements because the penalty is meant to be in "the nature of punitive damages, designed more for punishing the violator than compensating the participant or beneficiary." Scott 295 F.3d at 1232 (citing Curry v. Contract Fabricators, Inc., 891 F.3d

8442, 8477 (11th Cir. 1990)). Thus, class wide evidence likely resolves the penalty inquiry.

Moreover, if the Court, in its sole discretion, chooses to examine class members' penalty issues individually, this still does not defeat class certification. As the Supreme Court recently noted, "[w]hen 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" See Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036, 1045 (2016) (quoting 7AA C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1778, pp. 123–124 (3d ed. 2005)); see also Allapattah Servs., Inc. v. Exxon Corp., 333 F.3d 1248, 1261 (11th Cir. 2003) ("the presence of individualized damages issues does not prevent a finding that the common issues in the class predominate.") (internal citations omitted).

H. SUPERIORITY

"The focus of the superiority analysis is on 'the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.'" Palm Beach Golf Ctr., 311 F.R.D. at 699 (quoting Klay v. Humana, Inc., 382 F.3d 1241, 1269 (11th Cir. 2004)). In analyzing this requirement, courts often look at the size of the class, the similarity of the claims, and the size of the potential recovery for individual class members. See id. at 699 ("Given the large number of purported members in this suit and the similarity of their claims, disposition by class action is an efficient use of judicial resources. Moreover, the relatively small potential recovery in individual actions . . . and reduced likelihood that plaintiffs will bring suit also weighs in favor of class resolution.")

More than 15,000 potential class members received the allegedly deficient COBRA Notice. If Plaintiff prevails, it is likely that each individual class member would be entitled to damages under the law. For many class members, the claims will be small in relation to the costs and expenses of litigating the claims, making it unlikely that the claims would be pursued individually. Consequently, the Court finds that the class mechanism is superior.

IV. CONCLUSION

Accordingly, it is hereby **ORDERED** as follows:

1. The Plaintiff's Motion for Class Certification, (Dkt. 47), is **GRANTED**.

DONE and **ORDERED** in Tampa, Florida, this 7th day of August, 2018.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person