

**BROWN COUNTY COMMON PLEAS COURT
BROWN COUNTY, OHIO**

FILED
CLERK OF COURTS
BROWN COUNTY OHIO

JUL 25 2023

L. CLARK GRAY
CLERK OF COURTS

TINA MARCK, et al. Plaintiffs,	:	CASE NO. 20200399
	:	
	:	<u>MAGISTRATE'S DECISION AND</u>
v.	:	<u>ORDER GRANTING PLAINTIFFS'</u>
	:	<u>MOTION FOR CLASS CERTIFICATION</u>
THOMAS PARTIN, et al. Defendants.	:	
	:	
	:	JUDGE SCOTT GUSWEILER
	:	Mag. Kenneth Zuk
	:	

I. Introduction

This matter came on for hearing on February 14 and 15, 2023, upon Plaintiffs' Motion for Class Certification. Those Plaintiffs who testified and Plaintiffs' counsel were present. Defendant Thomas Partin was present with Defendants' counsel.

This Court has carefully reviewed the Memorandum of Plaintiffs in Support of their Motion; Defendants' Memorandum Contra Motion for Class Certification; and Plaintiffs' Reply Memorandum to Defendants' Memorandum. The following Plaintiffs were present at the February 14 - 15, 2023, hearing and testified: Tyrea Bragg; Betty Curless; Diana Waldman; Bethany Rothwell; Cody Rutherford; and Tina Marck. Due to illnesses, Plaintiffs Charles Elliot, Ticey Elliot, and Bertha Popp were unavailable to testify. The depositions of these unavailable Plaintiffs were previously filed in this action. It is stipulated that those depositions, as well as the depositions of the other Plaintiffs, the deposition of Steven Partin, and the deposition of Defendant Thomas Partin would be admitted into evidence. The parties stipulated that the exhibits

used in and attached to those depositions are admitted into evidence for purposes of the consideration to the pending class certification motion. Steven Partin testified at the hearing on behalf of Defendants.

This Court has reviewed Plaintiffs' Exhibits 1 through 21, and Defendants' Exhibits A and B, admitted in evidence at the February 14-15 hearing. This Court has conducted a review of those depositions filed herein and the over two thousand pages of exhibits attached to the depositions. The Court states that it has conducted an extensive and rigorous analysis of Plaintiffs' claims. The Court considered the underlying merits of Plaintiffs' Claims only for the purpose of determining whether the Plaintiffs have satisfied the prerequisites of Civil Rule 23.

Shannon Watson, was withdrawn as a named Plaintiff and the fraud and breach of contract claims set forth in the Fourth and Eighth causes of action are withdrawn by Plaintiffs as class claims. Both Parties submitted proposed Entries and final Arguments were submitted on June 14, 2023. The Court acknowledges that this matter has been delayed several times due to illness and scheduling issues.

II. Applicable Rule

Plaintiffs have moved for class certification of certain claims contained in the Second Amended Complaint that are discussed in detail below. Specifically, Plaintiffs seek certification pursuant to Rule 23, Ohio R. Civ. Proc., and ask the Court to certify this action under both Rule 23(B)(2) and (3). Rule 23 provides in relevant part as follows:

(A) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members 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,

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

(B) Types of class actions. A class action may be maintained if the prerequisites of subdivision (A) are satisfied, and if:

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds 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. The matters pertinent to these findings include:

(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.

As to the requirements of Rule 23(A), the Defendants have stipulated that 23(A)(1) and (4) have been met. Defendants deny that Plaintiffs have met the remaining requirements of Rule 23(A) and (B).

III. Description of the Class

Plaintiffs have asked the Court to define the class and subclasses as follows.

Class Definition: All persons who entered into a “Rent-To-Own” or “Lease With Option To Buy” agreement with any Defendant for the purpose of renting and/or purchasing residential real property in Ohio, or have entered into any other similar form of agreement in which any such class member is obligated to make periodic payments to any Defendant for the rent and/or purchase of residential real property in Ohio. These contracts are best described as seller financed residential mortgage agreements but the sellers retain the right of a residential landlord to evict for non-payment. The class is

limited to those individuals described above who are or were making payments to any of the defendants at any time since August 11, 2016, to the present.

Subclass A Definition: All individuals who fit the Class Definition and who continue to perform under such contract.

Subclass B Definition: All individuals who fit the Class Definition and who abandoned such contracts or otherwise terminated performance under such contracts.

IV. Plaintiffs' Claims for Which Class Certification is Sought

Plaintiffs' claim that all of the prerequisites for class action certification are met as discussed below. Plaintiffs state that the following claims raised in the Second Amended Complaint, and for which certification is sought, each contain common questions of fact and law. The claims for which Plaintiffs seek class status all involve the execution and servicing of what Defendants have titled "Rent To Own" and "Lease With Option To Buy" Contracts (hereinafter collectively referred to as "the Contracts").

Plaintiffs contend that Defendants use substantively identical methods and practices in entering into and servicing the Contracts and that these substantively identical methods and practices trigger the following common questions of law supporting certification:

- (a) Whether Defendants are subject to and failed to comply with the requirements of the Ohio Land Installment Contract laws set forth in R.C. 5313.01, *et seq.*, in entering into and carrying out the Contracts with Plaintiffs and the class members.
- (b) Whether Defendants are subject to and failed to comply with the requirements imposed upon landlords under the Ohio Landlord-Tenant laws, R.C. 5321.01, *et seq.*, including R.C. 5321.04, under these "Rent-to-Own" Contracts, and whether such Contracts violate R.C. 5321.13, by limiting Defendants' statutory obligations as a landlord, and whether these agreements are unconscionable as defined by R.C. 5321.14.
- (c) Whether Defendants' practices and methods constitute actions and omissions in violation of Plaintiffs' and class members' rights under the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*

- (d) Whether, Defendants' practices and methods in entering into and servicing the Contracts constitute actions as a "mortgage lender" or "mortgage broker" without first having obtained a certificate of registration from the Ohio Superintendent of Financial Institutions in violation of R.C. 1322.07, and whether Defendants are in violation of R.C. 1322.40; and whether Plaintiffs are entitled to damages plus reasonable attorney fees and court costs pursuant to R.C. 1322.52.
- (e) Whether, Defendants' practices and methods in entering into and servicing the Contracts are in violation of R.C. 1322.45 by actions as a person required to be registered or licensed under R.C. Chapter 1322 and by failing to act with reasonable skill, care, and diligence in their transactions with Plaintiffs and the class members thereby entitling Plaintiffs and class members the right to recover all of their damages plus reasonable attorney fees and court costs.
- (f) Whether Defendants' practices and methods in entering into and servicing the Contracts, make Defendants liable to Plaintiffs and the class under R.C. 1349.41, because Defendants, as nonbank lenders, have engaged in transactions with Plaintiffs that are not in good faith or fair dealings, or that operate as fraud upon Plaintiffs and the class members.
- (g) Whether, in entering into and servicing the Contracts, Defendants are "creditors" as defined by 15 U.S.C. §1602(g) and Plaintiffs and members of the class are "consumers" as defined by 15 U.S.C. § 1602(i) and whether the above described agreements between the parties constitute "residential mortgage transactions," "high-cost mortgages," and "residential mortgage loans," as those terms are defined by 15 U.S.C. §1602(x), (bb), and (dd)(5), respectively.
- (h) Whether, in entering into and servicing the Contracts, Defendants violated Plaintiffs and class members' rights under the federal Truth in Lending Act, 15 U.S.C. § 1639(a), (h), (k) and (u); 15 U.S.C. §1639b; 15 U.S.C. § 1639c; 15 U.S.C. § 1639d; 15 U.S.C. § 1639h; and 12 C.F.R. §1026.32(c).
- (i) Whether the Contracts are unconscionable.

Plaintiffs' claims are predicated upon the assertion that the above common issues arise out of the Defendants' Rent To Own and Lease With Option To Buy Contracts with the named Plaintiffs and all class members and the common practices used by Defendants in implementing and servicing the Contracts.

There is no dispute regarding the structure of the Defendants' companies and the control of those companies by Defendant Thomas Partin. As explained in more detail below, while the Contracts are in the names of various corporate entities and or individuals, Defendants confirmed at the class certification hearing that all of those entities are owned and controlled by Defendant Thomas Partin.¹ One of those Defendant entities is Heritage, which services all of the Contracts.²

There is no dispute that all Plaintiffs and all members of the class defined in this litigation have entered into the Contracts with one or more of the Defendants which are usually called either "Lease With Option To Buy" or "Rent-To-Own." Plaintiffs allege that these two forms of the Contracts, while having different titles, contain the same provisions,³ and that Defendants' practices and methods with respect to the Contracts are seller financed mortgage agreements in which the sellers (i.e. the Defendants) retain the right of a residential landlord to evict for non-payment. It is claimed that the Contracts all contain the following key elements.

1. The contracts provide for the rent and/or purchase⁴ of residential real estate. Not included are commercial contracts or contracts involving only vacant land.
2. Defendants charge an initial down payment by the renter/purchaser of almost always seven percent (7%) of the overall purchase price.
3. The contracts provide for payment of property taxes and insurance by the renter/purchaser⁵ to Defendants and Defendants never maintain a separate escrow account for these payments.
4. The contracts provide monthly payments to be made by the renter/purchaser of the balance of the purchase amount amortized over usually thirty (30) years typically at an interest rate of twelve percent (12%).⁶

¹Tr. 292-293 (Steven Partin).

² Tr. 295 (Steven Partin).

³ At some point in or around 2016, defendants started naming these Contracts "Rent-To-Own" which practice appears to continue into the present.

⁴ Because the Contracts contain conflicting terms, the determination of whether the Contracts are residential rental contracts or property sale contracts, and the rights of class members that attach to such Contracts are to be determined in this litigation.

⁵ The Contracts often use the term "purchaser/tenant" although the status of the parties to the Contracts is far from clear.

5. The Contracts provide that the renter/purchaser assumes responsibility for payment of all utilities and for the repair and maintenance of both the interior and exterior of the premises.
6. In all cases, Defendants reserve the right to evict the renter/purchaser for non-payment of any financial obligation under the agreement in the same manner of a residential landlord⁷ and "late fees" of \$50.00 are charged after any payment obligation is seven days in arrears.
7. Defendants never record any of these agreements with the county recorder's office.
8. Defendants never assume any of the responsibilities and obligations of a residential landlord under the Ohio Landlord – Tenant Laws found in R.C. §§5321.01, *et seq.*

V. Facts

A. The Contracts

This Court has reviewed the Contracts of each Plaintiff and the Contracts of the proposed members of the class.⁸ Each Contract was in existence during the relevant period of this action.⁹ The contracts are titled "Lease With Option To Buy"¹⁰ or "Rent To Own."¹¹ While the title and wording of each Contract may vary in minor, non-substantive ways, every Contract entered into by both the named Plaintiffs and the class members contains the following substantively identical factual elements common to all class members and Plaintiffs:

1. **Down Payment Obligation** – The renter/purchaser is charged a down payment of seven percent of the established purchase price at the outset. Steven Partin

⁶ The facts to date reveal that over the course of time Defendants have called the various payments different terms. For example, "down payment" is sometimes called an "option fee" and the monthly mortgage payments are sometimes called "lease payments." Ultimately, the names given by Defendants to their practices are less important than what actually occurs in these transactions. Under the terms of the Contracts these payments operate in the same fashion as monthly installment or mortgage payments which are seller financed mortgage agreements. Tr. 325-328 (Steven Partin).

⁷ See Partin dep., p. 205.

⁸ See Appendix.

⁹ The relevant time period covers the period of four years prior to the filing of this action (August 11, 2016) up until the present.

¹⁰ Plaintiffs Waldman (Ex. 8); and Charles and Ticey Elliot (Ex. 11, dep.)

¹¹ Plaintiffs Tyrea Bragg (pka Miles) (Ex. 1); Rutherford and Rothwell (Ex. 11); Tina Marck (Ex. 19); and Betty Curless and Bertha Popp (Ex. 21).

acknowledged that a seven percent (7%) down payment is charged; however, a renter/purchaser may choose to pay more in order to reduce the monthly payments.¹²

2. **Payment Obligation of Plaintiffs** – Each Plaintiff is required to make one monthly payment which includes the following three components: a monthly “mortgage” or “Rent to Own” payment;¹³ a property tax payment; and an insurance payment. Often there is a monthly \$5.00 water bill processing fee. The stated duration is almost always for thirty years (i.e. 360 months).
3. **Obligation to Keep the Premises Fit and Habitable** – In all of the Contracts, this obligation lies with the Plaintiffs.
4. **Defendants’ Right to Evict** – In the event that a purchaser/tenant becomes in arrears of rent or any payment obligation for more than ten days, Defendants may evict the tenant/purchaser as if Defendants are residential landlords. The exhibits and testimony establish that Defendants routinely bring forcible entry and detainer actions pursuant to R.C. Chapter 1923.¹⁴ In fact, as confirmed by the testimony of named Plaintiffs Marck and Waldman and Defendants’ employee Steven Partin, Defendants have issued three-day notices to vacate to Plaintiffs when a water bill was not timely paid.¹⁵
5. **Recording of Documents** – Defendants never record with the county recorder any of these the Contracts with Plaintiffs or with the purported class members.¹⁶
6. **The Finance Terms** – After the down payment, the balance of the purchase price is financed by Defendants over thirty years at a twelve percent (12%) interest rate. Typically, the contracts provide for monthly “rent” to be paid over a thirty-year period (360 payments). Defendants have developed an amortization schedule setting forth the calculation of the payments over the life of the contract.¹⁷
7. **Seller Financed Agreements** – Defendants function as a nonbank financier of the Contracts.¹⁸

¹² Tr. 299 (Steven Partin).

¹³ In the contracts called “Lease With Option To Purchase,” this payment is called a “lease payment.” See, for example, Ex. 8. In Plaintiffs’ “Rent To Own” contracts, Tyrea Bragg’s obligation is called a “monthly Rent To Own” (Ex. 1); and Tina Marck’s obligation is called a “monthly mortgage.” (Ex. 19).

¹⁴ Appendix note 3.

¹⁵ Tr. 128-129 (Diana Waldman); Tr. 222-223 and Ex. 20 (Tina Marck); and Tr. 317 (Steven Partin).

¹⁶ Tr. 318 (Steven Partin).

¹⁷ Tr. 299, and 316-317 (Steven Partin).

¹⁸ Tr. 306 and 316 (Steven Partin).; and Ex. 10 (“30 yr. term 12% APR Seller will finance”).

8. **Escrow Accounts** – Although Defendants handle all of the property tax payments and insurance payments for the renter/purchaser, Defendants never maintain a separate escrow account for these payments.¹⁹
9. **Finance Disclosures** – Other than advising the renter/purchaser that the payment obligation is financed at twelve percent (12%), no other finance information or other disclosures which might be required under both federal and state laws are provided.²⁰
10. **Insurance Information** – The purchaser/tenant is charged a monthly amount for “insurance,” yet no policy is ever issued in the name of the purchaser/tenant. Additionally, the amount of coverage is limited to Defendants’ interest in the property and may not cover the purchaser’s entire interest. Unless specifically requested, Defendants never provide the information to the renter/purchaser of the amount of insurance coverage being purchased; the terms of coverage including the losses which would be insured; the process by which a claim may be made; and the identity of the insurer.²¹
11. **Late Payment Penalty** – In the event that the purchaser/tenant is not current in any financial obligation by the seventh day of the due date, there is a \$50.00 late fee penalty assessed.²²
12. **No Determination of Ability to Make Scheduled Payments** – Steve Partin confirmed the named Plaintiffs’ testimony that Defendants never inquired of any of the Plaintiffs or class members as to whether they had any financial ability to make the scheduled payments pursuant to the terms of the Contracts.²³

B. The Defendants

The Defendants are individuals, partnerships, or other entities. Defendant Thomas Partin testified that he directly owns and markets these residential properties to Plaintiffs and the

¹⁹ Tr. 331 (Steven Partin)

²⁰ Tr. 319-320 (Steven Partin).

²¹ Tr. 333, 339-340 (Steven Partin); and Tr. 121-122, 127, and 147-148 (Diana Waldman).

²² For example, see Ex. 1, 8, 11, and 19. The records of assessment of the \$50/month late fee charges are recorded in the payment records, Appendix, note 2.

²³ Tr. 319 (Steven Partin); and Tr. 167 (Bethany Rothwell).

purported class members, and he owns or controls the entity Defendants. Specifically, Thomas Partin owns the following entity Defendants: Heritage Unlimited, LLC; Capital Investment Priorities Ltd.; DECA Management, Inc.; and Brush Creek Motor Sport Complex, LLC.²⁴ Defendant Equity Trust Company Custodian FBO Thomas Partin IRA is owned and managed by Defendant Thomas Partin as a retirement asset.²⁵ Thomas Partin testified that he is a fifty percent (50%) owner and the active partner with Defendant Gary Rowland and with Denver Dunn with respect to the residential properties they market under this scheme.²⁶ Defendant Equity Trust Company FBO Edmund Taylor IRA is a retirement asset of Edmond Taylor who is Thomas Partin's former brother-in-law.

Defendant Thomas Partin stated that he directly manages the Rent To Own/Lease With Option To Buy properties marketed by this asset.²⁷ Defendant Thomas Partin owns some Rent To Own/Lease With Option To Buy properties with his wife, Defendant Melissa Partin.²⁸ Defendant Melissa Partin also owns some Rent To Own/Lease With Option To Buy properties individually.²⁹ Defendant Regal Partnership is no longer functioning and its Rent To Own assets were assigned to Defendant Thomas Partin after the other partner passed away.³⁰ Defendant Heritage Unlimited, LLC (hereinafter "Heritage"), is the entity which manages all the Rent To Own/Lease With Option Contracts.

²⁴ Thomas Partin Dep. p. 14-15 (Oct. 17, 2022); and Tr. 293 (Steven Partin).

²⁵ Thomas Partin Dep., p. 26 (Oct. 17, 2022).

²⁶ Thomas Partin Dep., p. 21-22, and 27 (Oct. 17, 2022). Denver Dunn is not a plaintiff but is listed with Thomas Partin in Exhibit 1.

²⁷ Thomas Partin Dep., p. 25-26.

²⁸ Thomas Partin Dep., p. 27-28.

²⁹ Steven Partin Dep., p. 57 (Feb. 22, 2022).

³⁰ Thomas Partin Dep., p. 23-24 (Oct. 17, 2022).

Steven Partin, who is the son of Defendants Thomas and Melissa Partin, administers the operation.³¹ For those Rent To Own/Lease With Option To Buy properties owned and marketed by the other Defendants, Heritage receives as compensation the seven percent (7%) down payment.³² Steven Partin testified that any year end profits or “management fees” from the transactions are split between his father and the person or entity owning the property.³³ Steven Partin described the documents which establish the initial payment information and the on-going payment information.³⁴

C. The Class – Identical Treatment of Class and Named Plaintiffs

A review of the many documents relating to the purported class and the testimony of Steven Partin render the conclusion that Defendants’ Contracts with all Plaintiffs and class members contain the substantively identical aspects described above. Defendants’ witness, Steven Partin, affirmed each of these identical provisions and practices by Defendants.³⁵

This Court’s analysis of every Rent to Own and Lease With Option To Buy Contract is summarized in the attached Appendix.³⁶ Every Contract requires the obligee³⁷ to pay on a monthly basis, what this Court will call a “mortgage payment.”³⁸ Every Contract requires the

³¹ Tr. 253, and 295 (Steven Partin).

³² Tr. 306-307 (Steven Partin).

³³ Tr. 308-309 (Steven Partin).

³⁴ For example, see Steven Partin dep., Exhibit 1 Bates numbered page 49, which contains the spreadsheet similar to all other spreadsheets in the record. This document sets forth for each month the principal; interest; late fees; taxes and insurance; and actual payments made. The same type of spreadsheet is used for the named Plaintiffs. See Exhibit 2. Another spreadsheet is created and used at the inception of the Contracts. This usually sets forth the purchase price; the amount of the 7% down payment; the amount of the monthly insurance and property tax charges; the amortization schedule for the balance for thirty years of monthly payments calculated at 12% interest. See Steven Partin dep., Exhibit 1, Bates numbered pages 1176-1182; and Exhibit 12 (Plaintiff Bethany Rothwell).

³⁵ Tr. 314-329 (Steven Partin).

³⁶ The Appendix summarizes this Court’s review of the Rent To Own and Lease With Option To Buy Contracts with class members (Steven Partin deposition Feb. 22, 2022, Ex. 1) and identifies obligations and provisions of those Contracts which are identical to Plaintiffs’ Contracts and which form the factual basis of the claims common to the class.

³⁷ Different terms are used in the contracts such as: “Purchaser/tenant;” “Lessee;” or “Tenant.”

³⁸ As described above, sometimes this term is called a “lease payment;” at other times a “rent to own” payment; and sometimes a “mortgage payment.”

obligee (i.e. “purchaser/renter”) to pay the property taxes and insurance to Defendants. Every Contract requires the obligee to assume the obligations to keep the premises fit and habitable. Despite Steven Partin testifying that these are rental contracts, the normal landlord obligations under R.C. 5321.04 are placed on the tenant.³⁹ In every contract, Defendants retain the right to evict for non-payment of any financial obligation under the Contract if it is ten days in arrears.⁴⁰ As a usual practice, Defendant Melissa Partin brings the eviction action on behalf of all Defendants, including the entity Defendants, and holds herself out to be the “plaintiff” in these proceedings.⁴¹

Moreover, Steven Partin acknowledged that these documents are never recorded; a seven percent (7%) down payment is charged; and almost all of the agreements provide for the balance amortized over thirty years at twelve percent (12%).⁴² The late payment penalty is the same for every contract and Defendants never establish separate escrow accounts for their handling of the taxes and insurance. Steven Partin acknowledged that over the years, Defendants have used different terms for the same charge. For example, the seven percent (7%) down payment is sometimes called a “down payment” and sometimes called an “option fee,” and the monthly mortgage payment is sometimes called a “mortgage payment” and sometimes called a “rent-to-own” payment.⁴³

Although the obligees are all required to maintain all risk casualty Insurance coverage on the house and real estate, the coverage information is never provided by Defendants unless

³⁹ Tr. 347 (Steven Partin).

⁴⁰ Set forth in the Appendix is a list of all the contracts which contain this provision, and separately, a list of all the records of Defendants showing when an eviction action under R.C. 1923.04 was brought, or a three day notice to vacate was served.

⁴¹ When asked how she can serve as the party plaintiff in these eviction actions, Steven Partin pointed out that his mother would have a dower interest in these properties. Tr. 282 (Steven Partin).

⁴² See Appendix. Steven Partin testified that Plaintiff Tyrea Bragg was charged 11 percent.

⁴³ Tr. 325-327 (Steven Partin); and fn. 37 and 38, *infra*.

specifically requested. As noted above, no policy is issued in the name of the obligee and the coverage is limited to what Defendants have invested in the house and property, not what the obligees have invested.⁴⁴

Additionally, no finance charge disclosures are given as may be required under federal or state laws. Finally, in all cases, these contracts are seller financed agreements in which Defendants are a non-bank lender of a residential mortgage.⁴⁵

VI. Analysis and Conclusions of Law

A. Criteria for Class Certification

This Court is mindful that Plaintiffs must affirmatively demonstrate compliance with the procedural rules governing class actions and this Court must carefully apply the requirements of class certification and conduct a “rigorous analysis” into whether those requirements have been satisfied. *Hamilton v. Ohio Savings Bank*, 82 Ohio St.3d 67, 70, 1998-Ohio-365, 694 N.E.2d 442.

Civ. R. 23 governs the procedural aspects of class certification. Under Civ. R.23(A), there are four requirements to certify a class:

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

Keba v. Bowling Green State University, (10th Dist.) 22AP-226, 2022-Ohio-4592, at ¶10, 2022

⁴⁴ Tr. 338-339 (Steven Partin).

⁴⁵ While the exact nature of these Contracts is far from clear, in multiple documents, which appear to be an agreement made prior to the actual “Rent to Own” or “Lease With Option To Buy” are signed, Defendants state the basic terms of the agreement and state “seller financed mortgage” (Ex. 5), or “seller will finance rent to own.” (Ex. 10).

Ohio App. LEXIS 4287 (2022). In addition, at least one of the requirements under Civ. R. 23(B) must be met. Plaintiffs contend that the requirements under both Civ. R. 23(B)(2) and (3) are met.

Civ. R. 23(B)(2) provides for class treatment of cases where the actions of the parties opposing the class “have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole...” Civ. R. 23(B)(3) requires two findings by the court: (1) that the common questions predominate over questions affecting only individual members; and (2) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Although Civ. R. 23(B)(3) sets forth a list of factors pertinent to both the predominance and superiority findings, the list is not exhaustive, and other relevant factors can be considered. *Id.*, ¶ 12.

Keba recognizes that there are seven prerequisites to be met in this analysis:

“Summarizing the Civ.R. 23 requirements, the Supreme Court of Ohio articulate the following seven prerequisites for certification of a class action pursuant to Civ.R. 23:

‘(1) an identifiable class must exist and the definition of the class must be unambiguous, (2) the named plaintiff representatives must be members of the class, (3) the class must be so numerous that joinder of all the members is impracticable, (4) there must be questions of law or fact common to the class, (5) the claims or defenses of the representatives must be typical of the claims or defenses of the class, (6) the representative parties must fairly and adequately protect the interests of the class, and (7) one of the three requirements for certification set forth in Civ.R.23(B) must be met.’

[Citations omitted] The first two prerequisites are implicitly required while the remaining five are explicitly set forth in Civ. R. 23. *Warner* at 94.”

Keba, at ¶ 13, citing, citing *Hamilton [v. Ohio Sav. Bank*, 82 Ohio St. 3d 67], 71 (1998); citing *Warner v. Waste Mgt.*, 36 Ohio St.3d 91, 96 (1988); and *Egbert*, 10th Dist. No. 20AP-266, 2022-

Ohio-474, at ¶ 16. As set forth below, this Court finds that all seven prerequisites exist. These prerequisites include two implied criteria, to wit: that an identifiable class exists and its definition is unambiguous; and the named plaintiff representatives are members of the class.

The Court will address each of these prerequisites in order below.

1. An Identifiable Class Exists and the Class Definition is Unambiguous.

Plaintiffs have defined the class as follows:

Class Definition: All persons who entered into a “Rent-To-Own” or “Lease With Option To Buy” agreement with any Defendant for the purpose of renting and/or purchasing residential real property in Ohio, or have entered into any other similar form of agreement in which any such class member is obligated to make periodic payments to any Defendant for the rent and/or purchase of residential real property in Ohio. These contracts are best described as seller financed residential mortgage agreements but the sellers retain the right of a residential landlord to evict for non-payment. The class is limited to those individuals described above who are or were making payments to any of the defendants at any time since August 11, 2016, to the present.

Plaintiffs’ proposal that there should be two subclasses is described as follows.

Subclass A Definition: All individuals who fit the Class Definition and who continue to perform under such contract.

Subclass B Definition: All individuals who fit the Class Definition and who abandoned such contracts or otherwise terminated performance under such contracts.

The above class definition identifies the class and the definition is unambiguous. To be a class member, one must be an individual person. This excludes any form of business entity. The contracts must be for residential property, which would exclude any commercial property or vacant land. The Contracts, the “Rent to Own” and “Lease With Option To Buy” all contain the key elements as established in the exhibits reviewed by this Court. Contained in this definition would be any similar form of contract with a different title. If such contract with a different title were presented, that contract would necessarily contain the same requirements and obligations set forth in the “Rent to Own” and “Lease With Option To Buy” Contracts.

The Court notes that 101 contracts of putative class members have been filed as exhibits in support of the Motion to Certify. The Court notes that the total number is almost certainly higher than 101.⁴⁶ Steven Partin, who manages the properties and services the Contracts, confirmed that all the Contracts contain the same core provisions and that all such Contracts are serviced in the same manner, as described in the common questions of fact itemized by the Court at pages 9 and 12, above.⁴⁷

Finally, the residential properties must be within the State of Ohio and any member of the class must have had a contract in effect at any time on or after August 11, 2016, to the present.⁴⁸ The subclasses, as provided by Civ.R. 23(C)(5), differentiate between those class members who are still operating under one of these contracts and are still in their home from those who have either abandoned their homes, or have been dispossessed (i.e. evicted) and are not operating under one of the contracts with Defendants. As will be discussed, the forms of relief to be accorded to each subclass may vary without affecting the viability of the subclass.

2. The Named Plaintiff Representatives Are Members of the Class.

All of the named Plaintiffs fit the definition of the class.⁴⁹ During the relevant period, all have entered into either a Rent to Own or Lease With Option To Buy Contract with a Defendant for residential property in Ohio. While most of the Plaintiffs are no longer living in the home and still operating under the Contract with one of the Defendants, everyone was operating under the Contract and paying a Defendant within the relevant time period commencing on August 11, 2016. Thus, the named Plaintiffs' interests are identical to those of the class members.

⁴⁶ Appendix, note 1. Defendants' testimony suggests that this number is likely higher than those contracts described in the Appendix. Tr. 288-293 (Steven Partin).

⁴⁷ See Tr. 315-333 (Steven Partin); and Steven Partin deposition Tr. 375-387 (October 17, 2022).

⁴⁸ In effect, there is a four year statute of limitations.

⁴⁹ One previously named Plaintiff, Shannon Watson, did not testify at the hearing nor was his deposition taken, and Plaintiffs' counsel advised that Mr. Watson is withdrawn as a named Plaintiff.

3. The Class is so Numerous That Joinder of All the Members is Impractical.

Defendants concede that this requirement was not in dispute.⁵⁰ As noted above, the Court must, nevertheless, make an independent assessment of this requirement, based on the testimony taken at the class certification hearing and evidence that has been admitted in support of and opposition to class certification.

There is no dispute in the evidence that Defendants and class members have entered into well over a hundred of these Contracts which had been in effect during the relevant time period. Those Contracts have been admitted into evidence and confirm that the class members and Plaintiffs alike entered into Rent to Own or Lease With Option To Purchase Contracts that contain substantively identical provisions regarding the responsibilities and obligations of Plaintiffs and class members. The testimony of Steve Partin confirms that Defendants process and allocate payments under these Contracts in substantially the same manner regardless of the title of each individual Contract.

Both the testimony and exhibits establish that the potential number of class members is in excess of one hundred.⁵¹ Attempting to join each of these class members would clearly be impracticable, and simply result in inexcusable delays in the resolution of the class members' claims and a burden on the civil courts that can and should be avoided. Thus, consistent with Defendants' stipulation and the record, the Court finds that Plaintiffs have met their burden under Rule 23(A)(1).

Courts in Ohio have generally declined to specify a numerical limit for the size of a class action. This analysis must be made on a case-by-case basis. However, it has been stated that a

⁵⁰ See Defendants' Memorandum Contra For Class Certification, p. 9.

⁵¹ Tr. 288-293(Steven Partin); and Appendix, note 1.

class of more than 40 people satisfies the numerosity requirement. Plaintiffs have the burden of showing that a number of people have been harmed by Defendants' actions.

This Court finds that this requirement is met. *Lasson v Coleman*, Mont. App. No. 21524, 2007-Ohio 3443, ¶ 29, 2007 WL 1934320, citing *Warner v. Waste Mgmt.*, 36 Ohio St. 3d 91, 97, 521 N.E.2d 1091, 1097 ("[i]f the class has more than forty people in it, numerosity is satisfied."). Also see *Mozingo v. 2007 Gaslight Ohio, LLC*, 2012 Ohio App. LEXIS 4510, *8, 2012-Ohio-5157, ¶ 13, (Ct. App. 9th Dist. 2012) (concluding a class of 100 meets the numerosity requirement).

4. There Are Questions of Law or Fact Common to the Class.

This Court finds that the twelve common questions of fact⁵² and nine common issues of law⁵³ based on those facts claimed by Plaintiffs that are common to the entire class. Commonality requires the presence of questions of law or fact common to the class. *Marks v. C.P. Chem. Co.*, (1987), 31 Ohio St.3d 200, 202, 509 N.E.2d 1249. It is not necessary that all legal and factual questions be common to the class. *Id.* If legal or factual issues differ, the court will evaluate whether those differences defeat class certification when it analyzes the predominance and superiority requirements of Civ. Rule 23(B)(3). *Id.* The commonality requirement should be given a permissive application. *Warner, supra*, at 97, 521 N.E.2d 1097. "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." *Goree v. Northland Auto Enters*, 2020-Ohio-3457, ¶53, 2020 Ohio App. LEXIS 2398, *26-27 (Ct. App. 8th Dist. 2020) (Internal quotation marks and citation omitted).

⁵² See pages 7-9, *supra*, for the listing of common questions of fact.

⁵³ See pages 4-5, *supra*, for the listing of common question of law.

This Court finds that the nine common questions of law raised by Plaintiffs claims are in fact common to the class. The Court discusses each of these in the order listed above at pages 4-5.

- (a) Whether Defendants are subject to and failed to comply with the requirements of the Ohio Land Installment Contract laws set forth in R.C. 5313.01, *et seq.*, in entering into and carrying out the above described Contracts with Plaintiffs and the class members.
- (b) Whether Defendants are subject to and failed to comply with the requirements imposed upon landlords under the Ohio Landlord-Tenant laws, R.C. 5321.01, *et seq.*, including R.C. 5321.04, under these “Rent-to-Own” agreements, and whether the Contracts violate R.C. 5321.13, by limiting Defendants’ statutory obligations as a landlord, and whether these agreements are unconscionable as defined by R.C. 5321.14.

Without analyzing the merits of whether Defendants’ actions and the Contracts violate either the Ohio Land Installment Contract Laws, R.C. Chapter 5313, or Ohio Landlord-Tenant laws, R.C. Chapter 5321, or both, there is no doubt that these issues are applicable to the entire class. Defendants’ own witness, Steven Partin, claimed that Plaintiffs and the class are considered by him to be tenants, yet readily acknowledged that the provisions of the Ohio Landlord-Tenant Act did not apply to the Contracts.⁵⁴ Early in this litigation, Defendants asked this Court to declare as a matter of law that the Contracts were not subject to the Ohio Land Installment Act. This Court refused to make such a determination and commented how the Contracts were poorly drafted and ambiguous.⁵⁵ With respect to the class, all of the Contracts contain these same ambiguities and shortcomings previously found by this Court.

⁵⁴ Tr. 347 (Steven Partin).

⁵⁵ See Decision and Entry on Defendants’ Motion for Judgment on the Pleadings as to Certain Causes of Action and Defendants’ Motion for Protective Order, p. 2.

- (c) Whether Defendants' practices and methods constitute actions and omissions in violation of Plaintiffs' and class members' rights under the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*

The Ohio Consumer Sales Practices Act, R.C. Chapter 1345, includes in the definition of a "supplier" a "nonbank mortgage lender." R.C. 1345.01(C). Plaintiffs claim that Defendants are nonbank mortgage lenders in these transactions and that the provisions of R.C. 1345.031 apply and establish that Defendants have committed unconscionable acts or practices with respect to the class as a whole. Without deciding the merits of that legal issue, this Court finds that this issue is certainly common to Plaintiffs and the entire class due to the similarities of all the Contracts.

- (d) Whether, Defendants' practices and methods in entering into and servicing the Contracts constitute actions as a "mortgage lender" or "mortgage broker" without first having obtained a certificate of registration from the Ohio Superintendent of Financial Institutions in violation of R.C. 1322.07, and whether Defendants are in violation of R.C. 1322.40; and whether Plaintiffs are entitled to damages plus reasonable attorney fees and court costs pursuant to R.C. 1322.52.
- (e) Whether, Defendants' practices and methods in entering into and servicing the Contracts are in violation of R.C. 1322.45 by actions as a person required to be registered or licensed under R.C. Chapter 1322 and by failing to act with reasonable skill, care, and diligence in their transactions with Plaintiffs and the class members thereby entitling Plaintiffs and class members the right to recover all of their damages plus reasonable attorney fees and court costs.

The two common issues of fact and law address the Ohio governing mortgage brokers and loan originators. R.C. Chapter 1322. Once again, because the provisions of all of the Contracts are essentially the same, the questions of the applicability of the claimed violations of R.C. 1322.07, 1322.40, and 1322.45, raised by Plaintiffs is applicable to the entire class.

- (f) Whether the Contracts described above are unconscionable.

With each agreement containing substantively identical provisions,⁵⁶ this is found to be a class wide common issue.

- (g) Whether Defendants' practices and methods in entering into and servicing the Contracts at issue, make Defendants liable to Plaintiffs and the members of the class under R.C. 1349.41, because Defendants, as nonbank lenders, have engaged in transactions with plaintiffs that are not in good faith or fair dealings, or that operate as fraud upon Plaintiffs and the members of the class.

Defendants' Contracts and actions in servicing the Contracts provide the basis for Plaintiffs' claim that that Defendants function as a nonbank mortgage lender in every transaction with each class members as described herein.⁵⁷ The common legal issue applicable to the entire class is whether Defendants are functioning as nonbank mortgage lenders in such a manner that these transactions are not in good faith or fair dealings, or that they operate as fraud upon Plaintiffs and the class thereby implicating R.C. 1349.41. However, the Court may rule on the merits, this is a legal issue common to the class.

- (h) Whether, in entering into and servicing the Contracts at issue, Defendants are "creditors" as defined by 15 U.S.C. §1602(g) and Plaintiffs and members of the class are "consumers" as defined by 15 U.S.C. § 1602(i) and whether the Contracts between the parties constitute "residential mortgage transactions," "high-cost mortgages," and "residential mortgage loans," as those terms are defined by 15 U.S.C. §1602(x), (bb), and (dd)(5), respectively.
- (i) Whether, in entering into and servicing the Contracts, Defendants violated Plaintiffs and class members' rights under 15 U.S.C. § 1639(a), (h), (k) and (u); 15 U.S.C. §1639b; 15 U.S.C. § 1639c; 15 U.S.C. § 1639d; 15 U.S.C. § 1639h; and 12 C.F.R. §1026.32(c).

⁵⁶ See pages 9 to 11, *supra*, for the list of common contractual provisions and practices that, based on the review of the Contracts and the testimony of Steve Partin, are substantively identical among all Plaintiffs and class members.

⁵⁷ For example, see Exhibit 5 which states in part "7% down = \$3,843 \$525.19 month 30 yr. term \$125 closing costs. Seller financed mortgage..." and Exhibit 10 which states in part "...7% down = \$4,893 30 yr. term 12% APR seller will finance..."

The federal claims brought against Defendants raise common issues of fact and law necessarily shared by all class members alike. Without deciding the merits of the underlying claims, the Court concludes that all of the above federal statutes and regulations will necessarily apply similarly to every Contract of each Plaintiff and class member.

Defendants claim that the disparities among the Plaintiffs defeat commonality is not well taken. The various Plaintiffs will necessarily come from varying backgrounds and economic circumstances; Plaintiffs' sophistication and experience with purchasing a home will vary as will their experiences interacting with Defendants and problems they encountered with their Rent to Own homes. Yet these facts have no impact on the common facts⁵⁸ and legal issues⁵⁹ raised by Plaintiffs. The common facts and common legal issues arise solely both from the Contracts which contain substantially identical provisions and the identical manner in which these Contracts were administered by Defendants. Not one of the class causes of action would be impacted by the individual facts of Plaintiffs. By illustration, the statutory requirements under the Ohio Land Installment Contract Laws (R.C. Chapter 5313) or Ohio's Landlord Tenant Laws (R.C. Chapter 5321) exist universally without regard to circumstances of individual land installment vendees or tenants. Plaintiffs' other class claims can be subject to a similar analysis. The individual circumstances of each plaintiff, or any member of the class, would have no bearing on the actual merits of each class claim. Each class claim turns on proof common to each class member which is opposite of one of the cases relied upon by Defendants. *Stammco, LLC v United Tel. Co.*, 136 Ohio St.3d 231, 2013-Ohio-3019, 994 N.E.2d 408. In that case, each claimed class members' claim was dependent upon an individual analysis of each contractual

⁵⁸ See pages 7-9, *supra*, for the listing of common questions of fact.

⁵⁹ See pages 4-5, *supra*, for the listing of common questions of law.

situation. The Court denied certification, because, contrary to the instant case, it could not be shown that claimed unauthorized charges existed on a class wide basis. *Id.* ¶ 58.

Defendants contend that there are substantial legal differences between the Contracts.⁶⁰ The evidence fails to support Defendants' claim. Defendants' assertion that the Lease with Option to Purchase Contracts are lawful leases with an option to buy constitutes a massive generalization which does not fit the evidence.⁶¹ While this Court's analysis of the similarities contained in both Contracts would seemingly contradict Defendants' argument,⁶² Defendants are not foreclosed presenting this argument at a later time.

5. The Claims and Defenses of the Representatives Are Typical of the Claims and Defenses of the Class.

The next requirement for class certification is a showing that the claims of the representative parties are typical of the claims of the class. Rule 23(A)(3). Typicality is meant to provide protection to absent class members and promote economy of the class action by ensuring that the interests of the named Plaintiffs are substantially aligned with those of the class. *5 Moore's Federal Practice* (3 Ed. 1977) 23-92 to 23-93, § 23.24[1].

In Ohio, "...a plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Baughman v. State Farm Mut. Auto. Ins. Co.*, (2000), 88 Ohio St.3d 480, 485, 2000-Ohio-397, 77 N.E.2d 1265. In the instant case, the claims of Plaintiffs and

⁶⁰ Defendants asserted that "[e]xhibits 1 and 2 are pretty clearly lawful leases with an option to buy... Exhibits 3 and 4 are arguably the 'seller finance residential mortgage agreements' described in Plaintiffs' proposed class... there is no commonality between the two types of contracts, and the claims and defenses of those who have leases with options would be different from the claims and defenses of those who have rent-to-own agreements." See Defendants' Memorandum Contra Motion for Class Certification, p. 12.

⁶¹ For example, this argument does not explain why these residential leases abrogate the provisions of the Ohio Landlord Tenant Act or why Defendants called the Waldman's Lease With Option to Buy Contract (Exhibit 8) a "seller financed mortgage" (Exhibit 5). Nor do Defendants explain why Plaintiff Diana Waldman, who would be operating under a "lease" under Defendants' reasoning, received Form 1098 documents from Defendants setting forth the amount of "mortgage interest" paid in the calendar years 2015 and 2016 (Exhibit 9).

⁶² See Appendix, note 1.

all class members are based upon the same Contracts and course of conduct of the Defendants. The *Baughman* Court stressed that the defenses or claims of the representative class need not be even substantially identical to those of the class. In citing *1 Newberg On class Actions* (3rd Ed. 1992), the Court described this requirement as follows.

‘The rationale for this provision is that a plaintiff with typical claims will pursue his or her own self-interest in the litigation and in so doing will advance the interests of the class members, which are aligned with those of the representative. In such a case, the adjudication of the plaintiff’s claim regarding defendant’s wrongdoing would require a decision on the common question of the defendant’s related wrongdoing to the class generally.’

‘Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. In other words, when such a relationship is shown, a plaintiff’s injury arises from or is directly related to a wrong to a class, and that wrong includes the wrong to the plaintiff. Thus, a plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. **When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.**’

Id., at 88 Ohio St.3d 485. (Emphasis added). Applied to this case, Defendants’ acts in entering into and administering the Contracts as described above were unquestionably “directed at” and “affected both the named Plaintiffs and class sought to be represented” in the same manner. Consistent with *Baughman*, and again, without deciding the merits, the typicality requirement has been met.

6. The Representative Parties Will Fairly and Adequately Protect the Interests of the Class.

Defendants did not oppose this requirement. Nevertheless, the Court must make an independent assessment of this requirement. The facts do establish this requirement for both the

named Plaintiff representatives and counsel. Rule 23(A)(4) requires that the “the representative parties will fairly and adequately protect the interests of the class.” The analysis under this requirement is divided into a consideration of the adequacy of the representatives and the adequacy of counsel. *Warner v. Waste Mgmt.*, 36 Ohio St. 3d 91, 98, 521 N.E.2d 1091, 1097, 1988 Ohio LEXIS 114, *19. Thus, in order to establish adequacy of representation of the class: (1) the interests or claims of the class representatives must not be antagonistic to the interests of the class;⁶³ and (2) the counsel for the representatives must be qualified, experienced, and able to conduct the proposed litigation.

There is no evidence to suggest that the claims of the class representatives are antagonistic to the claims of the class. The testimony displayed each Plaintiff’s awareness of his or her obligations to the class.⁶⁴ Each of the named Plaintiffs testified at the hearing that they are committed to vigorously pursuing the litigation on behalf of the absent class members and have committed to the Court under oath that will protect those interests and will not compromise this case in a manner that would disadvantage the class.

Counsel for Plaintiffs have provided this Court with information establishing each attorney’s background and experience in handling class actions and other complex litigation sufficient to convince this Court that each is capable of properly and adequately prosecuting this litigation.⁶⁵ Counsels’ work on this case to date also supports this finding.

It does not matter that Defendants may assert a defense unique to one or more of the named plaintiffs or the class. “[A] unique defense will not destroy typicality or adequacy of representation unless it is ‘so central to the litigation that it threatens to preoccupy the class

⁶³ *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 77-78, 694 N.E.2d 442, 452 (1998).

⁶⁴ Tr. 44 (Tyrea Bragg); 82 (Betty Curless); 130-131 (Diana Waldman); 180-181; 187-188 (Cody Rutherford); and 228-229 (Tina Marck).

⁶⁵ See Plaintiffs’ Memorandum in Support of Motion for Class Certification, p. 13-14.

representative to the detriment of the other class members." *Hamilton v. Ohio Sav. Bank, supra*, 82 Ohio St. 3d at 78, 694 N.E.2d at 453 (1998), *quoting*, 5 Moore's Federal Practice (3 Ed.1997), 23-126, Section 23 .25 [4] [b] [iv], and at 23-98, Section 23 .24[6].

The Court concludes that both counsel and the named Plaintiffs are adequate class representatives.

7. The Criteria For Both Civ. R. 23(B)(2) and Civ. R. 23(B)(3) are Both Met.

a. Rule 23(B)(2)

Rule 23(B)(2) provides for class treatment of cases where the actions of the parties opposing the class "have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole..." In this action, Plaintiffs seek significant equitable remedies, including both declaratory and injunctive relief. In their request for relief, Plaintiffs ask the Court for declaratory and injunctive relief with respect to: Defendants' violations their obligations as landlords set out in R.C. 5321.04 and 5321.13; Defendants' violations of RC. 5313.02 and all other statutory provisions protecting the rights of vendees under the Ohio Land Installment Contract Laws; Defendants violations of their obligations as both mortgage lender and mortgage broker under RC. 1322.01; R.C. 1322.07; and R.C. 1322.40; Defendants' unconscionable acts or practices concerning real estate mortgages in violation of R.C. 1345.031; and Defendants' practice of charging and collecting insurance premiums without providing any actual insurance policy constitutes, both a deceptive and unconscionable practice in violation of R.C. 1345.02 and R.C. 1345.03; (Second Amended Complaint, Request for Relief, ¶¶ 2, 3, 5, 6 and 7, p. 25-26).

If the declaratory and injunctive relief were merely incidental to the damage relief sought, then Rule 23(B)(2) would not apply. *Wilson v. Brush Wellman Inc.*, (2004), 103 Ohio

St.3d 538, 2004-Ohio-5847, 817 N.E.2d 59, ¶13; also see *Blankenship v. CFMOTO Power Sports, Inc.*, 166 Ohio Misc. 2d 21, 961 N.E.2d 750, 2011-Ohio-6946, ¶ 52 (2011). In this action, if the Plaintiffs successfully prove the underlying claims, the declaratory and injunctive relief will not be *de minimus* or incidental. By Defendants' own testimony, practices, and documents, the legal status of all class members is replete with ambiguities which ultimately this Court will be required to address.⁶⁶ By illustration, Defendants refer to Plaintiffs and the class as "tenants," yet require these "tenants" to pay a "down payment;" real estate taxes; and casualty insurance; and amortize the claimed "rent" obligation at a twelve percent (12%) interest rate over thirty years. But Defendants never assume the basic statutory obligation of a residential landlord to keep the premises fit and habitable.⁶⁷ Similarly, at times in each transaction Defendants act in part as if these transactions were some form of a real estate sales agreement;⁶⁸ however these agreements are never recorded and Defendants retain the power to evict similar to a residential landlord.⁶⁹

All of these contractual ambiguities and Defendants' actions raise significant questions regarding compliance or non-compliance with real property laws; landlord tenant laws; and mortgage finance laws make it clear that all members of the class are in need of declaratory relief. If the proposed subclass of those Plaintiffs and class members who are still operating under the Rent to Own or Lease With Option To buy Contracts are successful, it may, without deciding, make injunctive relief equally appropriate. If the Plaintiffs prevail, every member of this subclass will need clarity to establish their potential rights as a residential home buyer as well

⁶⁶ This Court had occasion to comment on these ambiguities previously. See fn. 54. Even Steven Partin admitted that "[i]t could be confusing." Tr. 305 (Steven Partin).

⁶⁷ R.C. 5321.04

⁶⁸ Defendants also refer to themselves as "Seller" and Plaintiffs as "Purchaser" in the agreements and charge a down payment and finance the balance due while requiring Plaintiffs to pay property taxes and insurance.

⁶⁹ See Appendix, note 1. This Court's examination of the documents establishes that, on multiple occasions, Defendants brought eviction actions. Appendix, note 3.

as establishing the rights and obligations of these members of this particular subclass and of Defendants.

This Court is mindful that Rule 23(B)(2) states: “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief **or corresponding declaratory relief** is appropriate respecting the class as a whole.” (Emphasis added). By its own terms, Rule 23(B)(2) does not require both remedies of injunctive and declaratory relief. Both subclasses, which include those individuals no longer operating under these agreements, will benefit from the requested declaratory relief.⁷⁰ The Twelfth Appellate District Court approved the establishment of subclasses in an action challenging a village’s use of automatic traffic cameras. *Barrow v. New Miami*, 12th Dist. 2016, No. CA. 2015-03-043, 2016-Ohio-340, 58 N.E.3d 532. Both subclasses in *Barrow* would benefit from the declaratory relief as to the constitutionality of this practice. *Id.* ¶ 40. This appellate court recognized that monetary damages constituted appropriate relief for the subclass seeking damages.

Defendants have argued that the subclass of those persons no longer operating under these contracts would not benefit from injunctive nor declaratory relief thereby making certification of that subclass under Civ. R. 23(B)(2) inappropriate. The Twelfth District Court of Appeals addressed this. The *Barrow* Court held that even if the primary remedy of one subclass is the recovery of monetary damages, and certification for that subclass under Civ. R. 23(B)(2) were not appropriate, then certification under Civ. R. 23(B)(3) would be appropriate. *Id.*, at ¶ 42 (citing *Hamilton v. Ohio Sav. Bank*, 82 Ohio St. 3d 67, 87, 1998-Ohio-442, 694 N.E. 2d 442).

⁷⁰ By illustration, the subclass of persons who have abandoned their homes, been evicted, or otherwise dispossessed, might be declared to still possess property rights. It would be premature for this Court to address whether this form of relief exists. This Court’s declaration on the status of Defendants (i.e. residential landlord; vendor of real property; mortgage lender; etc.) impact the rights and remedies of this subclass.

Similarly, in *Warner v Waste Management MGT., Inc.* (1988), 36 Ohio St. 3d 91, 521 N.E.2d 1091, the Ohio Supreme Court did not foreclose a finding that both Rule 23(B)(2) and (B)(3) could be applicable in the same action. *Warner*, 36 Ohio St.3d, at 95. The Court suggested that establishing subclasses would properly address the different forms of relief. Such would certainly be appropriate here, rendering certification under (B)(2) of a subclass of individuals currently under contract fully appropriate even with the possibility that this subclass might also recover damages. *Id.*

b. Rule 23(B)(3)

Rule 23(B)(3) requires two findings by the court: (1) that the common questions predominate over questions affecting only individual members; and (2) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. “[t]he key should be whether the efficiency and economy of common adjudication outweigh the difficulties and complexity of individual treatment of class members' claims.” *Warner v. Waste Mgmt., supra*, 36 Ohio St. 3d at 96, 521 N.E.2d at 1095-1096, quoting *See 7A Wright, Miller & Kane, Federal Practice & Procedure (1986)*, Section 1760. “The Rule 23(b)(3) predominance inquiry” is meant to “[t]est whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 376 (2011), quoting, *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997). “To meet the predominance requirement [of Federal Rule 23(b)(3)], a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof.” *Randleman v. Fidelity National Title Ins. Co.*, 646 F.3d 347, 352-53 (6th Cir. 2011). Each class claim asserted by Plaintiffs is subject to proof applicable to the class as a whole as outlined below.

The claims brought under the Ohio Land Installment Contract Laws, R.C. 5313.01, *et seq.*, are subject to generalized proof. These claims turn upon the determination by this Court of whether the definitions set forth in R.C. 5313.01 apply to all of these virtually identical contracts. If this Court were to determine that the definitions fit as to all the contracts, then Defendants' identical actions and omissions would result in a determination of whether the minimum requirements for land installment contracts set forth in R.C. 5313.02 were found to exist.⁷¹

The claims brought under Ohio's Landlord Tenant laws, R.C. 5321.01, *et seq.*, are also subject to generalized proof by reason of the identical contractual provisions and actions of Defendants. If this Court were to determine that these laws were applicable to all Contracts, then Defendants' failure to keep the premises fit and habitable in all cases applies on a class wide basis. See R.C. 5321.04.

The claims brought under the Ohio Consumer Sales Practices Act are subject to generalized proof for the entire class. Similar to the above described issues, this Court would be able to determine on a class wide basis whether various definitions set forth in R.C. 1345.01 are applicable to all contracts.⁷² The applicability of the provisions governing residential mortgage loan practices set forth in R.C. 1345.031 can be made on a class wide basis.⁷³ The question of class certification of claims brought under the Ohio Consumer Sales Practices Act generally turns on whether the class wide claims implicate violations of established regulations or state

⁷¹ By illustration, Defendants readily acknowledged that these Contracts are never recorded. See R.C. 5313.02(A)(14) and R.C. 5313.02(C).

⁷² The definitions and applicability of the following terms would apply to all contracts: "residential mortgage," "mortgage broker," and "nonbank mortgage lender."

⁷³ R.C. 1345.031(B)(14) and OAC 109 4:4-3-27 discusses the unconscionable practice of entering into this type of transaction with the lender knowing there is no reasonable probability of payment of the obligation by the consumer. Steven Partin testified that there was no determination of the prospective tenant/purchaser's ability to pay what is a thirty year finance agreement. Tr. 319 (Steven Partin). He stated that prior to COVID, the turnover rate was about thirty percent per year. Tr. 313-314. Whether a violation of R.C. 1345.031(B)(16) exists is also a class wide determination. Steven Partin stated that never were any notices mandated by the Ohio Attorney General given. Tr. 320. See OAC 109 4:4-3-23 and OAC 109 4-3-29.

court decisions. Compare *Blankenship v. CFMOTO Powersports, Inc.*, 2011-Ohio-6946, 166 Ohio Misc. 2d 21, 861 N.E.2d 750, at ¶ 7 with *Marrone v. Phillip Morris USA, Inc.*, 110 Ohio St.3d 5, 2006-Ohio-2869, 850 N.E.2d 31, at ¶ 2. These claims will turn on a showing that Defendants' actions violated established regulations or state court decisions.

The same class wide analysis applies to Plaintiffs' claims brought under R.C. Chapter 1322. As with the other Ohio statutes referenced above, this Court will determine if the definitions in R. C. 1322.01 apply to all of Defendants' contracts, and if so, whether Defendants' actions and contracts violate R.C. 1322.40 and R.C. 1322.45.

Plaintiffs' claim that each transaction between Defendants and each class member violates the provisions in R.C. 1349.41 will hinge upon a determination that these transactions constitute a mortgage and whether each Defendant is a "lender" as defined by that statute. Once again, this would be a class-wide determination.

Plaintiffs' claims under federal laws and regulations are equally amenable to class wide determinations. Various statutory definitions under federal law apply to all the contracts, to wit: whether Defendants are "creditors" and the transactions are "credit sales" under 15 U.S.C. § 1602 (g) and (h); whether these contracts are "residential mortgage transactions" and "residential mortgage loans" under 15 U.S.C. §§ 1602(x) and 1602(dd)(5); and due to the high rate of interest charged in all cases (12%), whether all of these contracts constitute "high-cost mortgages" under 15 U.S.C. § 1602(bb). Plaintiffs claim that on a class wide basis: Defendants failed to provide specific disclosures require for high-cost mortgages under 15 U.S.C. § 1639(a); Defendants extended credit in high-cost mortgages without regard to the ability of the class to pay the debt in violation of 15 U.S.C. § 1639(h); Defendants violate 15 U.S.C. § 1639(k) by charging an excessive late fee in too early a period; Defendants structure these contracts to evade the

statutory provisions in violation of 15 U.S.C. § 1639(r); Defendants violate 15 U.S.C. § 1639(u) by not getting certification that each the class member received pre-loan counseling and 15 U.S.C. § 1639c(a) without obtaining verified documentation of the class member's ability to repay the debt; Defendants violate 15 U.S.C. § 1639h by extending credit on a high-risk mortgage without first obtaining a property appraisal; and Defendants violate 15 U.S.C. § 1639d by failing to maintain a separate escrow account for property taxes and insurance paid by each class member. The Court finds that Defendants' contracts and practices make all of these legal questions applicable on a class wide basis, because the interest rates charged in every contract are virtually identical; Defendants never made a determination of the class member's ability to repay the debt; Defendants' imposition of late fees is the same for all class members;⁷⁴ and Defendants never maintain a separate escrow account for property taxes and insurance payments.

This Court finds that all of the legal issues described above predominate over any questions affecting individual class members, because every element is proved by generalized proof without need to examine each class member's individual situation.

"...a claim will meet the predominance requirement when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, because proof obviates the need to examine each class member's individual position."

Cope v. Metro. Life Ins. Co. (1998) 82 Ohio St.3d 426, 429-430, 696 N.E.2d 1001.

The next Civ. R. 23(B)(3) requirement that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The superiority requirement of Rule 23(B)(3) tests whether "class wide litigation of common issues will reduce litigation costs and promote greater efficiency." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.

⁷⁴ Set forth in the Appendix is Defendants' documentation of many times late fees have been charged. See Appendix, note 2.

1996). The test "is meant to ensure that aggregation will materially advance the solution of multiple claims." *Newberg on Class Actions*, § 4:49."Class actions . . . may permit the plaintiffs to pool claims which would be uneconomical to litigate individually." *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001).

In a case similar to the instant case, class plaintiffs alleged that the disclosure statements provided by the developers failed to accurately disclose to the condominium purchasers the amount of monthly fees that would be necessary to maintain the association. The trial court certified the action to proceed as a class pursuant to both 23(B)(1) and (B)(3). The Franklin County Court of Appeals affirmed.

"Because the trial court found that evidence of the *method used by appellantsto calculate the monthly assessments, as well as evidence of the disclosure statements actually disseminated*, would either prove or disprove the claims of all of the members of the putative class, that particular factual issue predominated over the entire action. Furthermore, without specifically stating so, it is evident that the trial court believed, based upon its analysis of all of the other factors, that a class action was the superior and preferred method for adjudicating this controversy, and thus, the requirements of Civ.R. 23(B)(3) had been met."

New Albany Park Condo. Ass'n v. Lifestyle Cmtys., LTD, 195 Ohio App. 3d 459, 476, 2011-Ohio-2806, ¶58, 960 N.E.2d 992, 1005, (10th Dist. 2011). (Emphasis added). The same holds true here.

"One inquiry into whether a class action is superior to other available methods, i.e. individual actions. 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."

Hamilton, 82 Ohio St.3d at 80, 694 N.E.2d 442. This same Court recognized the danger of varying or inconsistent judgments. *Hamilton*, at 80. This Court finds that there is a very small likelihood that members of the class would be able to bring individual actions as the cost of individually prosecuting this type of action would make it extremely impractical. All parties, particularly Defendants, will benefit from avoiding the risk of courts issuing inconsistent judgments.

It is recognized that the various class claims will contain different statutes of limitation. In addition, some class members' claims will be foreclosed on some claims.⁷⁵ Statute of limitation issues are not impediments to class certification.

"Last, Ohio Savings argues, and the court of appeals agreed, that the trial court did not abuse its discretion in denying certification to **457'a class consisting of members who must rely upon equitable tolling to overcome a statute of limitations.' According to Ohio Savings, '[t]he complexity and pervasiveness of the timeliness problem dominated the [Truth in Lending] claims and wholly justified the Trial Court's discretionary denial of class certification.' We disagree.

'That a statute of limitations may bar the claims of some, but not all, class members does not compel a finding that individual issues predominate over common ones. * * * Rather, as long as there is a sufficient nucleus of common issues, differences in the application of a statute of limitations to individual class members will not preclude certification under Rule 23(b)(3).' 5 Moore's Federal Practice, *supra*, at 23-210 to 23-211, Section 23.46[3]."

Hamilton, 82 Ohio St.2d, at 84.

The damage amount for Plaintiffs and class members will vary on some of the claims. However, the method of calculation damages on many of the claims is constant. Some of the claims involve a set statutory damage amount and for each class member, if he or she is within

⁷⁵ Plaintiffs proposed class is limited to persons who have been operating under one of the two types of contracts since August 11, 2016, which is four years prior to the filing date of this action. Some of the class claims would be likely less than four years.

the appropriate statute of limitations, that class member would be entitled to an exact statutory amount.⁷⁶ Other damage claims, such as R.C. 1349.41 claims, while established by statute, will vary based upon the amount of payments the class member made. Significantly, detailed records of the total amount of payments made by each Plaintiff and each class member exist in the documents reviewed by this Court.⁷⁷ Therefore, if a violation of R.C. 1349.41 is found to exist, the determination of the damage claims of Plaintiffs and each class member already exists within Defendants' records.

The determination whether to certify a class for claims brought under the Ohio Consumer Sales Practices Act (R.C. Chapter 1345) depends upon whether the claimed violation is based upon an already existing rule or a previously existing court ruling regarding the same practice. *Amato v. Gen. Motors Corp.* (1982), 11 Ohio App. 3rd 124, 463 N.E.2d 625; and *Cope v. Metro Life Ins. Co.* (1998), 82 Ohio St.3rd 426, 429-430, 696 N.E.2d 1001 (involving a claimed violation of an established insurance regulation). In *Felix v. Ganley Chevrolet, Inc.* (2015), 145 Ohio St.3d 329, 2015-Ohio 3430, 49 N.E.2d 1224, the Ohio Supreme Court ruled that class certification involving a claimed violation under the Ohio Consumer Sales Practices Act should not be granted if many members of the proposed class did not suffer any actual damages.⁷⁸ *Id.*, at ¶ 31. Unlike the facts in *Felix*, it is asserted that all members suffered damages from the point payments were made to Defendants and the Consumer Practices Act violations involved established regulations adopted under R.C. 1345.05. A disparity in damages among class members is not a basis for denial of class certification. *Ojalvo v. Ohio State Univ. Bd. Of Trustees* (1984), 12 Ohio St.3d 230, 232, 466 N.E.2d 875.

⁷⁶ For example, see 15 U.S.C. §§ 1639h(e) and 1640.

⁷⁷ For example, Exhibit 2, records each monthly payment, broken down by principal, interest, late fees, taxes and insurance. This form appears to exist for each Plaintiff and class member.

⁷⁸ The claimed CSPA violation was the inclusion of a mandatory arbitration clause which many class members would never face.

This Court has noted that the various named Plaintiffs necessarily all have different circumstances. This Court finds that none of these differences, including what occurred after signing Contracts with Defendants, would defeat predominance. The identical contractual provisions and Defendants' practices predominate because the elements of each of the class claims are subject to prove without consideration of individualized facts. "A class may be certified based upon a predominant issue even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Hicks v State Farm Fire & Cas. Co.*, 965 F. 3d 452, 460 (6th Cir. 2020) (citation and internal quotation marks omitted).

The Defense submitted three cases which they argue direct the Court to deny the Motion to certify the Class Action. The Court reviewed *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 2013-Ohio-3019, *Cullen v. State Farm Mut. Auto Ins. Co.* 2013-Ohio-4733, and *Felix v. Ganley Chevrolet*, 2015-Ohio-3430. The Court did conduct the rigorous analysis as is required. The Court finds that the Plaintiffs have met the burden of demonstrating by a preponderance of evidence that the proposed class meets each of the requirements set forth in Civil Rule 23. Each and every member of the Class has suffered some financial loss caused by the Defendants.

In sum, the Court finds that the plaintiffs have met their burden under both Rule 23 (A) (1) through (4) and 23 (b) (2) and (3).

IT IS THEREFORE ORDERED, that Plaintiffs' motion to certify this suit to proceed as a class action pursuant to Rule 23(B)(2) and (3) be and his hereby **GRANTED** as to the following class:

All persons who entered into a "Rent-to-Own" or "Lease with Option to Buy" agreement with any Defendant to rent and/or purchase of residential real property in Ohio, or entered into any other form of agreement in which any such class member is obligated to make periodic payments to any Defendant for the rent and/or purchase of residential real

property in Ohio. These contracts are best described as seller financed residential mortgage agreements but the sellers retain the right of a residential landlord to evict for non-payment. The class is limited to those individuals described above who are or were making payments to any of the defendants at any time since August 11, 2016, to the present. Plaintiffs' proposal that there would be two subclasses is well taken and is described as follows.

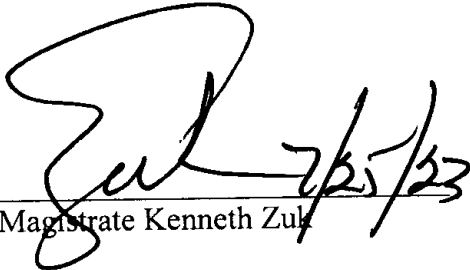
Subclass A Definition: All individuals who fit the Class Definition and who continue to perform under such contract.

Subclass B Definition: All individuals who fit the Class Definition and who abandoned such contracts or otherwise terminated performance under such contracts.

IT IS FURTHER ORDER, that Plaintiffs prepare and file with this Court no later than August 31, 2023, a proposed Notice to the Class informing them of the actions, describing in neutral terms the claims asserted on their behalf, and the relief sought, and further advising them of the defenses to this action asserted by the Defendants. The notice shall also inform each class member about the manner in which and deadline by when they may opt out of the 23 (B)(3) portion of this action.

IT IS FURTHER ORDERED, by that same date the Plaintiffs shall submit a proposal for sending the notices.

The Court encourages the Parties to agree on the content and manner of such notice. Absent agreement Defendants shall submit their own proposals within the deadlines set above. The Court has attached to this Decision some procedural ground rules for proceeding in this Case. Counsel is to refer to those ground rules with respect to all future proceedings.


Magistrate Kenneth Zuk

IT IS HEREBY ORDERED that the attached MAGISTRATE'S DECISION filed in this matter is approved and shall be the Order of the Court effective fourteen (14) days after the filing of the Decision of the Magistrate unless objections to the Decision of the Magistrate are appropriately and timely filed.



JUDGE SCOTT T. GUSWEILER

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53 (D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

TO THE CLERK: Please send copies of this Decision to:

1. John Woliver, *Attorney for Plaintiffs*, 204 North Street, Batavia, OH 45103
2. Michael J. O'Hara, Aaron M. Beck, *Attorneys for Plaintiffs*, O'HARA, TAYLOR, SLOAN & CASSIDY, 25 Town Center Boulevard, Suite 201, Covington, KY 41017
3. Konrad Kircher, *Attorney for Defendants*, RITTGERS & RITTGERS, 12 E. Warren Street, Lebanon, OH 45036
4. Richard L. Goettke, *Attorney for Defendants*, ROSE & DOBYNS CO., L.P.A., 97 N. South Street, Wilmington, OH 45177

APPENDIX*

1. Lease With Option To Buy - pages 13, 123, 263, 522, 557, 585, 799, 940, 968, 1023, 1040, 1341, 1368, 1391, 1454, 1610, and 1658, 1780, 1827, 2113, and 2245.

Rent To Own - pages 33, 57, 85, 105, 147, 167, 179, 197, 200, 210, 233, 280, 295, 360, 380, 404, 414, 450, 472, 605(a), 626, 630, 651, 689, 718, 729, 754, 771, 775, 828, 848, 885, 901, 963, 972, 999, 1068, 1091, 1106, 1116, 1144, 1152, 1172, 1202, 1224, 1228, 1233, 1256, 1262, 1300, 1316, 1374, 1434, 1450, 1495, 1507, 1528, 1551, 1577, 1629, 1637, 1710, 1743, 1817, 1895, 1908, 1913, 1927, 1946, 1972, 1980, 1993, 2005, 2038, 2055, 2066, 2146, 2163, 2197, and 2214.

These pages contain the contracts of the class members entitled "Lease With Option To Buy" and "Rent To Own." Each contract provides for the rent/purchase of residential property with one of the Defendants and contains the identical obligations to the contracts of the named Plaintiffs, to wit: a seven per cent down payment; rent/mortgaged financed over typically 30 years at twelve per cent interest; the obligation of the renter/purchaser to pay property taxes and insurance; the obligation of the renter/purchaser to keep the premises fit and habitable; a late fee penalty of \$50.00 after seven days in arrears; and the right of the Defendant (landlord/seller) to evict if any financial obligation is in arrears for ten days.

2. References Where Late Fees Were Charged - pages 29-32, 49-50, 84, 95-97, 127, 130, 132, 177-178, 216-217, 239-240, 303, 322-324, 333, 353, 359, 386-387, 390, 424, 438, 477, 475, 479, 481, 483, 502, 545, 546-547, 605(d), 628, 654, 713, 717, 770, 786, 820-821, 866, 871, 874, 888, 895, 913-915, 925- 926, 951-952, 955, 975, 979, 1002-1003, 1009-1011, 1061, 1071, 1136, 1259, 1261, 1305-1307, 1318, 1331, 1345, 1358, 1379, 1403, 1437, 1439, 1441, 1453, 1459-1460, 1462, 1465-1467, 1503-1504, 1506, 1524-1525, 1527, 1555, 1565-1567, 1576, 1586, 1587-1588, 1590-1591, 1698, 1753-1754, 1758, 1760, 1794, 1859, 1862, 1869, 1911-1912, 1942- 1944, 1977-1978, 1990-1991, 2003, 2012, 2033-2035, 2065, 2099, 2108, 2110, 2168, 2226, and 2239.

These pages reference instances when late fees of at least \$50 were charged during the period within four years of the filing of this litigation.

3. Records of Eviction Actions Taken by Defendants - pages 51-55, 73-77, 247-254, 300-306, 325-326, 425-432, 440-442, 496, 605(f), 619-623, 633-636, 643-648, 657- 667, 723-728, 749-753, 757-770, 991, 1062, 1482-1486, 1545-1551, 1554, 1675, 1689, 1778, 1789-1790, 1794, 1851-1854, 1860-1861, 1867-1869, 1890, 2025-2032, 2081-2095, 2122-2129, 2159-2161, 2167-2184, and 2258.

These contain references of Defendants pursuing evictions of class members.

*These documents are contained in Exhibit 1 of the Steven Partin deposition, February 22, 2022. The page numbers are the Bates numbers on these documents.

ADDENDUM

This Addendum is attached to the Court's Decision to certify the matter as a Class Action in Common Pleas Case No. 2020CVG0399, Marck, et al. v. Partin, et al., and is incorporated by reference into the Decision. The procedures outlined herein are subject to modification from time to time as directed by the Court.

1. There will not be an appointment of a Special Master as was suggested. The Court's Civil Magistrate will conduct all hearings as they are necessary. Any individualized hearings will be conducted on Tuesday afternoons at 1:00 p.m. Any hearings on liability issues or any other matters concerning the classes will be conducted on Tuesdays and Wednesdays throughout the day. Counsel should keep that schedule in mind when determining who will handle various issues.
2. Any time that a mailing or notice to class members is necessary, counsel for the Plaintiffs shall prepare the initial notice and submit it to counsel for the Defendants. If there is any disagreement on the contents of each notice, the Magistrate will resolve any such disputes.
3. Any time a notice is necessary, each side shall deposit the sum of \$300.00 with the Clerk of Courts of Brown County, Ohio to cover the costs of printing and mailing the notices. The amount of the deposit may be modified upward or downward depending on the experience of the Court in sending each notice.
4. Any party requesting that subpoenas be issued shall deposit the sum of \$100.00 with the Clerk of Courts of Brown County, Ohio for each person subpoenaed.
5. Before scheduling any hearings, counsel shall schedule phone conferences with the Court to determine if the issues can be resolved without a formal hearing.