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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CAROLYN NOLEN, WINDY KELLEY, CARA KELLEY and PAULA LITTON,

Plaintiffs,

v. **Case No: 6:20-cv-330-PGB-EJK**

FAIRSHARE VACATION OWNERS ASSOCIATION,

Defendant.
_____/

ORDER

This cause comes before the Court on Plaintiffs' Amended Motion for Class Certification (Doc. 92 (the "**Motion**")) and Defendant's Opposition (Doc. 89). Upon consideration, Plaintiff's Motion is due to be granted.

I. BACKGROUND

Wyndham Vacation Resorts ("**WVR**"), a dropped defendant in this case, sells, finances, and manages timeshare purchases and properties. (Doc. 45, ¶ 12). Plaintiffs are timeshare owners who purchased their ownership interests from WVR and assigned their ownership rights as part of the Trust Properties. (*Id.* ¶¶ 22–27).

Named Plaintiffs, Carolyn Nolen, Windy Kelley, Cara Kelley, and Paula Litton, bring suit on behalf of themselves and all others similarly situated, alleging breach of fiduciary duty and a declaratory action arising out of WVR's timeshare

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business. Initially, Plaintiffs brought suit against multiple distinct entities in the Wyndham family, but dropped all Defendants except Fairshare Vacation Owners Association ("**Fairshare**") in their most recent Amended Complaint.[1]

WVR settled an Arkansas Trust, governed by the Fairshare Vacation Plan Use Management Trust Agreement (the "**Trust**"), and formed Fairshare to serve as its Trustee. The Trust forms the foundation of the Club Wyndham Plus ("**CWP**") program, an internal timeshare exchange program that allows timeshare owners to exchange the use rights to their particular timeshare interest with other owners in the same program. When consumers purchase a timeshare interest, they can assign their use rights to the Trust. Only through this assignment can a timeshare owner participate in CWP. (*Id.* ¶ 10). By virtue of assigning a timeshare interest or use rights to the Trust, timeshare owners become beneficiaries of the Trust. (*Id.* ¶ 11). The CWP program effectively expands a timeshare owner's vacation options and allows owners to stay at many different Wyndham resorts, instead of just their own "home resort."

Fairshare is governed by a Board of Directors composed solely of high-ranking WVR executives. (*Id.* ¶ 15). These executives control the activity and decision-making authority of Fairshare. (*Id.*). Additionally, Defendant entered into a Management Agreement with WVR that allows WVR to serve as the "Plan Manager" for all Trust Properties. (*Id.* ¶ 18). As such, Defendant and WVR collect

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[1] Plaintiffs filed a Second Amended Complaint (Doc. 69), which was stricken by the Court. (*See* Doc. 76). Consequently, this action proceeded on Counts I and VI of the Amended Complaint. (*See* Doc. 45).

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fees from the Plaintiffs and other beneficiaries of the Trust. (*Id.* ¶ 19). Plaintiffs allege that the fees "greatly exceed[] the amount necessary to cover the cost of the operation and administration of the Trust and the operation, maintenance, repair, and replacement of the Trust Properties." (*Id.* ¶ 20). Plaintiffs further allege that such "excess fees" "result[] in substantial profits to [Defendant]." (*Id.*).

II. LEGAL STANDARD

"Questions concerning class certification are left to the sound discretion of the district court." *Griffin v. Carlin*, 755 F.2d 1516, 1531 (11th Cir. 1985). To certify a class action, the moving party must satisfy a number of prerequisites. First, the movant must demonstrate that the named plaintiffs have standing and the class is clearly ascertainable. *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009). Second, the putative class must meet all four requirements enumerated in Federal Rule of Civil Procedure 23(a). *Little*, 691 F.3d at 1304. Those four requirements are "numerosity, commonality, typicality, and adequacy of representation." *Id.* (quoting *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1188 (11th Cir. 2003)). Third, the putative class must fit into at least one of the three class types defined by Rule 23(b). *Id.*

Certifying a class involves "rigorous analysis of the [R]ule 23 prerequisites." *Vega*, 564 F.3d at 1266 (quoting *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 740 (5th Cir. 1996)). This inquiry is not a merits determination, though the Court "can and should consider the merits of the case [only] to the degree necessary to

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determine whether the requirements of Rule 23 will be satisfied." *Id.* (quoting *Valley Drug*, 350 F.3d at 1188 n.15).

III. DISCUSSION

Plaintiffs seek to certify the following class pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), (b)(3), and/or (c)(4)[2]:

> All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.

(Doc. 45, ¶ 29; Doc. 92, p. 4). The Court will review each of the requirements for class certification in turn.

A. Unpled Theories and Viable Claims

Defendant first argues that: (1) "Plaintiffs should not be permitted to seek certification on the basis of an unpled theory of liability"; and (2) the class cannot be certified because neither the declaratory judgment nor the fiduciary duty claims are viable. (Doc. 89, pp. 7–10).

1. Unpled Theories

Defendant directs the Court to its previous Order, which observed in a footnote that Plaintiffs' previous class certification motion (Doc. 62) contained unpled theories. (*See* Doc. 76, p. 7 n.5). While Plaintiffs' current Motion contains

[2] The Court finds that Plaintiffs satisfy Rule 23(b)(3)'s requirements. Therefore, it is unnecessary to discuss Rule 23(b)(2) or (c)(4).

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language that does not appear in the Amended Complaint, the Court understands that class certification motions are driven by the claims pled. Thus, in addressing each element of class certification below, the Court will address only those claims that are actually pled in Plaintiffs' Amended Complaint.

2. Viable Claims

Defendant points to another footnote in the Court's previous Order which generally stated:

> The Court appreciates that Count I (Declaratory Judgment) depends on Counts 2–5 which have been dismissed, and that Count 6 (Breach of Fiduciary duty) similarly relies on the dismissed Counts. While this *may* preclude Plaintiffs from successfully defending *summary judgment*, those two Counts are procedurally viable at this juncture.

(*Id.* at p. 8 n.7) (emphasis added). Defendant maintains that the Court must conduct a merits-based inquiry into Plaintiffs' claims before certifying a class, because their claims are not viable. (Doc. 89, pp. 9–10).

To be sure, "[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. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). Defendant argues that this proposition supports the Court's premature inquiry into the merits of the case. The Court does not agree. Defendant's position would mean that the Court must resolve all merits-based issues in every case before certifying any class. This cannot be.

Moreover, Defendant does not cite to any relevant case law stating that Plaintiffs cannot assert common law claims for breach of fiduciary duty supporting

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Counts I and VI of the Amended Complaint. Therefore, the Court declines Defendant's request to make a merits-based finding at this point in the litigation.

B. Standing

A plaintiff's standing to bring and maintain a lawsuit is a fundamental component of a federal court's subject matter jurisdiction. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 407 (2013). To establish standing, the plaintiff bears the burden of demonstrating that he suffered an actual injury, that a causal connection exists between the injury and the defendant's conduct, and that the injury is likely to be redressed by a favorable decision. *Harrell v. Fla. Bar*, 608 F.3d 1241, 1253 (11th Cir. 2010). Prior to summary judgment, meeting these elements is not a particularly onerous task, and will be completed by asserting "general factual allegations of injury resulting from the defendant's conduct." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

In the Amended Complaint, Plaintiffs allege that they purchased timeshare interests subject to Fairshare's Program and, by virtue of this transaction, became beneficiaries of the Trust. (Doc. 45, ¶¶ 22–27). Plaintiffs allege that Defendant, as Trustee, violated its fiduciary duties, causing Plaintiffs damage. (*Id.* ¶¶ 39–44, 83–87). Defendants do not challenge Plaintiffs' standing. Accordingly, Plaintiffs allege facts sufficient to demonstrate their standing to bring and maintain their claims.

C. Rule 23(a)

"The burden of proof to establish the propriety of class certification rests with the advocate of the class." *Valley Drug Co.*, 350 F.3d at 1187. As a threshold

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matter, "the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a)." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004).

1. Ascertainability

"Before a district court may grant a motion for class certification, a plaintiff seeking to represent a proposed class must establish that the proposed class is adequately defined and clearly ascertainable." *Little*, 691 F.3d at 1304; *see also John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007). To prove ascertainability, "the class definition [must] contain[] objective criteria that allow for class members to be identified in an administratively feasible way." *Karhu v. Vital Pharm., Inc.*, 621 F. App'x 945, 946 (11th Cir. 2015). "Identifying class members is administratively feasible when it is a 'manageable process that does not require much, if any, individual inquiry.'" *Id.* (quoting *Bussey v. Macon Cnty. Greyhound Park, Inc.*, 562 F. App'x 782, 787 (11th Cir. 2014) (per curiam)).[3] The plaintiff must offer more than general assertions that class members can be identified through the defendant's records; "the plaintiff must also establish that the records are in fact useful for identification purposes, and that identification will be administratively feasible." *Id.* at 948. The Court "need not know the identity of each class member before certification; ascertainability requires only that the

[3] "Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants." *Bonilla v. Baker Concrete Const., Inc.*, 487 F.3d 1340, 1345 (11th Cir. 2007).

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[C]ourt be able to identify class members at some stage of the proceeding." *Id.* at 952 (Martin, J., concurring) (quoting Newberg on Class Actions § 3.3 (5th ed.)).

Plaintiffs contend that Defendant can identify "every owner that has ever been a part of the Trust, including contact information, and it can determine the total amount any such individual paid in Program Fees." (Doc. 92, pp. 17–18). Defendant does not challenge this requirement. The Court finds that Plaintiffs have demonstrated that the Class is adequately defined and readily ascertainable.

2. Numerosity

Numerosity requires that "the class is so numerous that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). The general rule is that more than forty members is sufficient to demonstrate that joinder is impracticable. *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). While the party seeking certification need not identify the exact number of members in the proposed class, he cannot rest on "mere allegations of numerosity." *Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 930 (11th Cir. 1983). Rather, the movant must provide the court with sufficient proof to support a reasoned finding that the certified class would meet the numerosity requirement. *Vega*, 564 F.3d at 1267.

Here, Plaintiffs assert that "there were approximately 400,000 members of the Fairshare Program annually." (Doc. 92, p. 12). Defendant does not contest this element. The numerosity requirement is easily met through this number alone. *See Marcus*, 687 F.3d at 595.

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3. Commonality

Commonality requires that "there are questions of law or fact common to the class." FED. R. CIV. P. 23(a)(2). This prerequisite does not demand that all questions of law or fact be common among the class members, only that all members base their claims on a common contention that is "capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011). One common question of law or fact is sufficient so long as answering the question is central to determining the validity of all of the class members' claims and will aid in the resolution of the case. *Id.* at 359.

Plaintiffs maintain that the existence of the common question of "whether [Defendant] violated its fiduciary duties by engaging in transactions with a related entity, and in its handling of the Fund Balance" satisfies this element. (Doc. 92, pp. 12–15). Plaintiffs additionally point out that the answer to this common question will be revealed through common evidence of Defendant's uniform conduct. (*Id.* at p. 14). Defendant argues that this question is "too abstract to satisfy the commonality requirement." (Doc. 89, p. 16).

The Court finds that Plaintiffs have satisfied the commonality requirement. The question of whether Fairshare violated its fiduciary duties by engaging in the *specific* acts Plaintiffs reference is common to all putative class members and "capable of classwide resolution." *See Dukes*, 564 U.S. 338, 349–50.

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4. Typicality

Typicality demands that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). This element of certification "focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999) (quoting *Lightbourn v. Cnty. of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997)), *cert. denied*, 528 U.S. 1159 (2000). The named plaintiffs' claims do not need to be identical to the claims of the absent class members, but they should "share the same essential characteristics" such that it would make sense for the plaintiffs to act as the class's representatives. *Haggart v. United States*, 89 Fed. Cl. 523, 534 (Fed. Cl. 2009) (quoting *Curry v. United States*, 81 Fed. Cl. 328, 335 (Fed. Cl. 2008)).

Here, Plaintiffs assert that the purported class "easily meet[s] the typicality test: they each purchased timeshares after March 14, 2008, their timeshare interests were subject to the Trust, and each paid the Program Fee as part of their monthly assessments." (Doc. 92, pp. 15–16). Defendant responds that "there is no record evidence, expert or otherwise, that a typical member of the proposed class desires the dramatic changes to the Wyndham timeshare system that Plaintiffs demand" and therefore, their claims are not typical of the purported class. (Doc. 89, pp. 12–15). Defendants also take issue with named Plaintiffs' knowledge and familiarity with the allegations of the case. (*Id.*).

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Defendant's first argument is a misnomer. Defendant conflates "same injury" with "same interest" and state that "[e]ighty-five percent of Wyndham timeshare owners are satisfied with the Wyndham timeshare program as it is now." (Doc. 89, p. 12).[4] Timeshare owners' satisfaction says nothing about a trustee's fiduciary duty—the focus of the instant lawsuit.

Additionally, Defendant argues that the named Plaintiffs do not "possess a sufficient level of knowledge and understanding to be capable of 'controlling' or 'prosecuting' the litigation." (*Id.* at p. 14) (citations omitted). Defendant cites to two cases in support of this argument: *Berger v. Compaq Computer Corp.*, 257 F.3d 475 (5th Cir. 2001) and *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1254 (11th Cir. 2003).

Defendant first cites to *Berger*[5] for the proposition that, "it has long been clear that the typicality and adequacy requirements tend to merge." (Doc. 89, p. 14 n. 6). *Berger* discussed a securities fraud class action and held that "[a]ny lingering uncertainty, with respect to securities fraud class actions, has been conclusively resolved by the PSLRA's requirement that *securities class actions* be managed by active, able class representatives who are informed and can demonstrate they are directing the litigation." *Id.* at 483. The Court finds that this case is limited to the

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[4] Not only is this argument a red herring, but it references a statistic taken from Professor Randall Upchurch's Expert Report, the subject of a pending *Daubert* Motion. (*See* Doc. 93).

[5] This 5th Circuit case is not controlling on this Court, merely providing persuasive value, at best. And as detailed more clearly below, Defendant does not provide the Court with any Eleventh Circuit precedent in support for this proposition.

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securities context and notes that "neither the Eleventh Circuit nor the Supreme Court has established specific standards for Rule 23(a) [typicality]." *London*, 340 F.3d at 1254.

Next, Defendant cites to *London* in an attempt to bolster its argument about Plaintiffs' apparent lack of knowledge, but the Court finds that case equally inapposite. *Id.* In relevant part, the *London* case examined the named plaintiff's adequacy of representation and apparent conflict of interest with the class they sought to represent. The court held that "the district court abused its discretion by ignoring London and [Class Counsel's] significant personal and financial ties." *Id.* at 1255. In so holding, the court noted specifically that, "[t]he longstanding personal friendship of London and [Class Counsel] casts doubt on London's ability to place the interests of the class above that of class counsel" and that "*adequacy of representation* is primarily based on the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the class and whether plaintiffs have interests antagonistic to those of the rest of the class." *Id.* at 1254 (emphasis added). This case has nothing to do with the named plaintiff's level of knowledge, as Defendant wanted this Court to believe.[6]

The Court finds that Plaintiffs adequately demonstrated that they, like all other purported class members, purchased a timeshare subject to (or previously subject to) the Trust and paid a Program Fee. Consequently, Plaintiffs share the

[6] In fact, the word "knowledge" does not appear in the text of the opinion.

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same legal and remedial theories as the purported class. Typicality is therefore satisfied.

5. Adequacy of Representation

The final Rule 23(a) element, adequacy of representation, requires that that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). Adequacy of representation refers both to the named plaintiff who intends to represent the absent class members and to the lawyers who intend to serve as class counsel. London, 340 F.3d at 1253. Regarding the latter, class counsel will adequately represent the class if they are "qualified, experienced, and generally able to conduct the proposed litigation." *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985). This requires the court to evaluate a number of factors, including counsel's knowledge and experience with class action litigation, counsel's knowledge and experience with the substantive law governing the class's claims, the resources available to counsel to pursue the class's claims, the quality of counsel's litigation efforts so far, and any other relevant factor speaking to counsel's ability to represent the class's legal interests. *See* William B. Rubenstein, *Newberg on Class Actions*, §§ 3:73–3:79 (5th ed. 2011). Defendant does not take issue with the adequacy of Plaintiffs' counsel.

As to the adequacy of the proposed class representative, a named plaintiff will be adequate as long as (1) he is qualified, and (2) he has no substantial conflict of interest with the class. *Valley Drug*, 350 F.3d at 1189. A named plaintiff is qualified if he holds a basic understanding of the facts and legal theories

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underpinning the lawsuit and is willing to shoulder the burden of litigating on the class's behalf. *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007). At the certification stage, inquiry into a proposed representative's qualifications is not especially stringent. *See Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 727 (11th Cir. 1987) (stating that certification should only be denied for inadequate representation where the plaintiff's lack of knowledge and involvement essentially amounts to abdication of his role in the case), *cert. denied*, 485 U.S. 959 (1988). A named plaintiff will have a substantial conflict of interest which precludes him from acting as class representative when his interests are so antagonistic to the interests of the absent class members that he cannot fairly pursue the litigation on their behalf. *See Griffin*, 755 F.2d at 1533; *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 989 (11th Cir. 2016).

Defendant recycles its argument on the typicality element and asserts that named Plaintiffs are "in fundamental conflict with the approximately 85% of Wyndham timeshare owners who are satisfied with the system as it is and would therefore be harmed by the relief Plaintiffs seek." (Doc. 89, p. 6). This conflict, Defendant maintains, means that Plaintiffs cannot be adequate class representatives. (*Id.* at pp. 15–18).

Defendant cites to an unreported Eleventh Circuit opinion affirming Judge Conway's denial of class certification. *See Grimes v. Fairfield Resorts, Inc.*, 441 F. App'x 630 (11th Cir. 2007). The Eleventh Circuit explained that "the focus of the inquiry is on whether some party members claim to have been *harmed* by the same

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conduct that *benefitted* other members of the class, and thus whether class members' interests are actually or potentially in conflict with the interests and objectives of other class members." *Id.* at 633 (emphasis in original).

The issue before the Court is whether Defendant breached its fiduciary duties to the class members, which is irrelevant to whether or not some class members were "satisfied" with the current timeshare program. Therefore, Defendant's evidence of the Plaintiffs' "conflict of interest" with the remainder of the class is lacking.

Therefore, the Court finds that Plaintiffs meet the adequacy element for the same reasons the Court found Plaintiffs meet the typicality element.

D. Rule 23(b)

In addition to satisfying standing and Rule 23(a)'s four prerequisites, a plaintiff must show that the putative class he wishes to certify falls into at least one of Rule 23(b)'s three class types.

Rule 23(b)(3) permits certification of a class where: (1) common questions of law or fact predominate over questions affecting class members individually, and (2) a class action is the superior method for resolving these common questions. FED. R. CIV. P. 23(b)(3). These two elements are referred to as "predominance" and "superiority," respectively, and the Court discusses them in turn.

a. Predominance

Predominance refers to the class's cohesion as a whole and examines whether adjudication of members' individual interests on a classwide basis would

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be appropriate. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). In determining predominance, the district court assesses the issues of law and fact likely to arise during the litigation and weighs whether issues common to the class predominate over issues which are unique to each individual class member. *Id.* at 622–23 & n.18. Ultimately, predominance revolves around the quality, rather than the quantity, of the class members' shared interests. *Stillmock v. Weis Mkts., Inc.*, 385 F. App'x 267, 272 (4th Cir. 2010). Where the litigation is defined by individualized inquiries regarding the defendant's possible liability to each class member, predominance is lacking and certification should be denied. *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010). However, where the class members seek answers to the same questions and those answers would "have a direct impact on every class member's effort to establish liability," common issues predominate and certification should be granted. *Id.* (quoting *Vega*, 564 F.3d at 1270) (internal quotation marks and emphasis omitted).

Plaintiffs argue that their claims are all governed by Arkansas law, they arise from Defendant's uniform conduct, and resolution of the claims "squarely favors a finding of predominance." (Doc. 92, pp. 18–21). Defendants do not argue this point, and the Court agrees with Plaintiffs. *See Klay*, 382 F.3d at 1262 ("[I]f a claim is based on a principle of law that is uniform . . . class certification is a realistic possibility."). The legal issues are the same for each purported class member; predominance is easily met.

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b. Superiority

Superiority refers to whether the class action mechanism "would be the best or the fairest way" to resolve the parties' dispute when compared to available alternatives. *Ungar v. Dunkin' Donuts of Am., Inc.*, 68 F.R.D. 65, 148 (E.D. Pa. 1975), *rev'd on other grounds*, 531 F.2d 1211 (3d Cir. 1976), *cert. denied*, 429 U.S. 823 (1976). Determining superiority requires the court to evaluate the four factors enumerated by Rule 23(b)(3). *See Vega*, 564 F.3d at 1278. These four factors are: (1) the class members' interests in individually controlling the prosecution of their own claims, (2) the extent and nature of litigation already initiated by individual class members, (3) the desirability of concentrating litigation in a single forum, and (4) whether there will be difficulties in managing a class action. FED. R. CIV. P. 23(b)(3)(A)–(D).

"The class[ ]action device was designed as 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 155 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). Class actions mitigate against the unlikelihood that individuals will pursue small claims "by aggregating the relatively paltry potential recoveries into something worth someone's . . . labor." *Amchem Prods.*, 521 U.S. at 617 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (1997)). The instant case exemplifies the class action purpose. Plaintiffs seek to certify a class of numerous timeshare owners to vindicate their rights as beneficiaries of the subject Trust. (Doc. 45). Additionally, Plaintiffs maintain that

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it would be "economically unreasonable for Plaintiffs and Class members to adjudicate their individual claims separately." (Doc. 92, p. 22).

Devoid of any legal citations, Defendant argues that a class action is not superior to other available methods of litigation because there are "antagonisms" inherent in the class that defeat superiority. Defendant also argues that Plaintiffs' complaints can be addressed within the Wyndham timeshare system by "convince[ing] their fellow [Beneficiaries] to vote to remove WVR as Plan Manager;" and "terminat[ing] their own Fairshare membership at any time." (Doc. 89, p. 19). These "methods of resolving any controversy between [the parties]," as Defendant argues, are not superior and do not resolve any controversy. Defendant misses the mark and ignores the central issues in this litigation: that Plaintiffs were allegedly harmed by Defendant's breached fiduciary duties.

The Court finds that a class action is the superior method for resolving the present issues. Classwide resolution of these issues outweigh potential difficulties in management of thousands of separate, individual claims, and allows access to the courts for those who might not gain such access alone. *See In re Checking Overdraft*, 286 F.R.D. 645, 659 (S.D. Fla. 2012) ("Separate actions by each of the class members would be repetitive, wasteful, and an extraordinary burden on the courts.").

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IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Amended Motion for Class Certification (Doc. 92) is **GRANTED;**
2. The Court hereby certifies a Class pursuant to FED. R. CIV. P. 23(b)(3) consisting of the following:

> All persons and entities who are citizens of the United States of America and who on or after March 14, 2008: (1) purchased a timeshare with a Property Interest (or the Use Rights therein) subject to Fairshare Vacation Plan Use Management Trust or (2) purchased (including upgrading or refinancing) a Property Interest (or the Use Rights therein) previously subject to the Fairshare Vacation Plan Use Management Trust.[7]

3. Carolyn Nolen, Windy Kelley, Cara Kelley, and Paula Litton are hereby certified as representatives of the Class;
4. John A. Yanchunis, Bradford D. Barron, James M. Terrell, Patrick A Barthle, and Rodney E. Miller are hereby certified as Class Counsel pursuant to Rule 23(g)(1); and
5. On or before August 2, 2021, the parties shall jointly file for approval by the Court a proposed notice to Class members. Alternatively, if the parties cannot agree on a proposed notice, Plaintiffs shall file a

[7] Excluded from the Class are members of the judiciary assigned to this case, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities. Also excluded from the above Class is Defendant, including any entity in which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by defendant, as well as the officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of Defendant.

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proposed notice on or before August 2, 2021, and Defendant shall file any objections within three (3) days of the filing of Plaintiffs' proposed notice.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

DONE AND ORDERED in Orlando, Florida on July 12, 2021.

Copies furnished to:

Counsel of Record
Unrepresented Parties


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