UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

HEATHER VENERUS,

Plaintiff,

v. **Case No: 6:13-cv-921-Orl-41GJK**

AVIS BUDGET CAR RENTAL, LLC and BUDGET RENT-A-CAR SYSTEM, INC.,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Defendants' Dispositive Motion to Dismiss for Lack of Article III Standing (Doc. 350) and on Defendants' Motion for Relief from Final Judgment (Doc. 351). This cause is also before the Court on Plaintiff's Renewed Motion for Class Certification (Doc. 343) and Plaintiff's Motion for Extension of Time to File Motion for Taxation of Costs (Doc. 341). As set forth below, Defendants' motions will be denied, Plaintiff's motions will be granted.

I. BACKGROUND

Defendants are car rental companies.[1] They sell bundled rentals to international inbound customers. Under these bundled rentals, the customers pay one flat fee in exchange for the rental of a car along with certain other inclusions, such as unlimited mileage, loss damage waivers, taxes, airport fees, and third-party liability coverage—known as Supplemental Liability Insurance ("SLI") or Additional Liability Insurance ("ALI"). It is undisputed that SLI and ALI are the same

[1] Defendant Budget Rent-A-Car System, Inc. is owned by Defendant Avis Budget Car Rental, LLC, and at least some of the relevant decision-makers set business policies for both companies. The facts and analysis herein apply equally to both companies, and they will be addressed collectively as "Defendants."

thing and the terms are interchangeable. The purchasers receive a rental voucher, which contains all of the relevant information regarding their rental bundle and which they turn in at the rental counter in exchange for the rental vehicle.

Plaintiff purchased one of these rentals, which included $1 million in SLI/ALI. When she picked up her rental car in Florida, she was given a Rental Receipt, which contained a line that reads, "SLI .00/Day Accepted." She was also given a Rental Jacket, which was specific to Florida and further explained certain items on the Rental Receipt. Specifically, it stated:

> Supplemental Liability Insurance (SLI) & Exclusions: You'll pay for SLI if available and, if you accept it. In that case, the coverage provided by us according to paragraph 17 above will be primary and the combined limits of liability protection will be $1,000,000 or $2,000,000 depending on the place of rental for bodily injury, death, or property damage for each accident, but not for more than the contracted $1,000,000 or $2,000,000 limit for each accident instead of the basic limits stated in paragraph 17 above. This additional coverage will be provided to an authorized driver, as defined in paragraph 16 above, under a separate policy of excess liability insurance more fully described in the available brochure and is subject to all of the conditions and limitations described in paragraph 17 above, except that notwithstanding anything contained in this agreement, the terms of the policy will at all times control. SLI does not apply to liability for bodily injury or property damage arising out of any "prohibited use of the car" as described in paragraph 15 of this rental agreement. Other exclusions to SLI are listed in the SLI policy. You understand that you will be charged the rate per day for a full day even if you don't have the car for the entire day.

The Rental Jacket also has an information section regarding SLI, which states:

> What is Supplemental Liability Insurance (SLI)?
>
> Budget has Supplemental Liability Insurance (SLI) available at all Florida locations. SLI is a special optional service offered by Budget when you rent a car from Budget. It's an "Excess Automobile Liability Insurance Policy" that provides Supplemental Liability Insurance, within specified limits, above the limits provided in this Rental Agreement. SLI insures you, and authorized operators as defined in this Rental Agreement against claims made by third parties against you, the customer, for bodily injury/death and property damage caused by the use or operation of a[] Budget rental vehicle as permitted in this Rental Agreement. SLI is a separate

> insurance policy issued to Budget by ACE American Insurance Company. If you elect to accept SLI for a[] Supplemental daily charge as shown on this Rental Agreement. The purchase of SLI is not required in order to rent a car from Budget.

Finally, the Rental Jacket goes on to state that the information provided is only a summary of the SLI and that the specific terms, conditions, and exclusions are contained in the Rental Agreement and the SLI policy issued by Ace American Insurance Company ("ACE").

The Rental Receipts and Rental Jackets are uniform—all of Defendants' customers who purchase a bundled rental that includes SLI/ALI are provided with the same information.[2] Further, despite the promises contained in the Rental Receipt and Rental Jacket, it is undisputed that Defendants did not actually procure an insurance policy from ACE or any other insurance company on behalf of the renters. Instead, Defendants claimed that they would "self-insure"—i.e., that they would pay out-of-pocket any claims that would have been paid under the insurance policy.

Based on this practice, the Court granted summary judgment in favor of Plaintiff on her individual breach of contract claim. (Sept. 29, 2016 Order, Doc. 302). However, the Court denied Plaintiff's motion to certify a class for the breach of contract claim because under Florida law the vouchers are part of the rental contract, and the terms of those vouchers vary. (Sept. 25, 2015 Order, Doc. 149). The Eleventh Circuit disagreed and held that, despite the fact that the vouchers may be a part of the contract under Florida law, the Court did not need to consider them to decide the breach of contract issue. The Eleventh Circuit then remanded the case for a class certification analysis under Federal Rule of Civil Procedure 23.

II. FDUTPA CLAIM

[2] The only difference is that documents associated with Avis-brand rentals use the term ALI in place of SLI.

As an initial matter, the Court must define the parameters of the claims at issue for certification. In their motions, the parties make various arguments regarding Plaintiff's FDUTPA claim. But, judgment has already been entered in favor of Defendants on that claim. (Doc. 311 at 1). After this Court's Order addressing the parties' cross motions to reconsider, the only claims remaining were Plaintiff's breach of contract claim (Count I) and her FDUTPA claim (Count IV) insofar as it related to the breach of contract allegations. (*Id.* at 11 (granting summary judgment in favor of Plaintiff as to her liability on her individual breach of contract claim; granting summary judgment to Defendants on, *inter alia*, the FDUTPA claim insofar as it was "based on a violation of section 624.401" of the Florida Statutes; and denying the motion in all other respects).

Thereafter, the parties filed a Joint Stipulation (Doc. 306) "to avoid the cost and burden" of trial. In the Joint Stipulation, the parties indicated that the sole issue remaining for trial was the matter of damages on Plaintiff's individual breach of contract claim. This appeared to mean that Plaintiff was abandoning her FDUTPA claim to avoid the cost of trial in light of the fact that she had prevailed on her breach of contract claim, which was likely duplicative of the FDUPTA claim. Based on this understanding, the Court directed the Clerk of Court to enter judgment in favor of Plaintiff on her breach of contract claim and "in favor of Defendants as to all other remaining claims." (Doc. 310 at 2–3). The Clerk did so. (Doc. 311 at 1). Plaintiff did not object at the time, she did not file a motion for reconsideration or a motion to vacate the judgment, and she did not pursue an appeal as to the entry of judgment in favor of Defendant. Thus, the valid judgment stands, and Plaintiff no longer has a viable FDUTPA claim. Accordingly, none of the arguments regarding the FDUTPA claim will be addressed.

III. MOTION TO DISMISS FOR LACK OF STANDING

In order to bring a case in federal court, the plaintiff must establish standing under Article III of the United States Constitution. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992). To establish such standing, the plaintiff must show: (1) she suffered an injury in fact; (2) "there

must be a causal connection between the injury and the conduct complained of"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 560–61 (internal quotation and citation omitted). It is not entirely clear whether Defendants are challenging the first element—injury in fact—or the last element—redressability. Regardless, the crux of Defendants' argument is that because Plaintiff incurred no damages from Defendants' actions, she cannot be awarded damages under the relevant law, and therefore, she lacks standing. Defendants' argument is without merit.

Defendants' argument is based on the fact that Plaintiff did not sustain any loss resulting from the lack of insurance. In other words, Plaintiff was not responsible for any monetary payments that would have been covered under the SLI Policy but were not covered because the policy was never procured. Defendants primarily rely on *Brooks v. Blue Cross & Blue Shield*, 116 F.3d 1364 (11th Cir. 1997). First, it is important to note that the *Brooks* decision per curiam affirms an unrelated portion of the district court opinion and states: "We have no occasion to reach the remaining issues addressed in other parts of [the district court order] and imply no view concerning any of them." *Id.* at 1365. The portion of the order cited by Defendants is not within the section affirmed by the Eleventh Circuit and is, thus, not binding precedent. *Brooks* is also factually different than this case because it involves the application of Medicare Secondary Payer statute, 42 U.S.C. § 1395y(b).

Additionally, to the extent the non-binding portion of *Brooks* stands for the proposition that Plaintiff cannot recover damages in this case, it is contrary to Florida law. Although Plaintiff did not have to pay money that would have been paid under the insurance policy had it been procured, she can still recover damages for the breach of contract. Under Florida law, "there is a legal remedy for every legal wrong and, thus, a cause of action exists for every breach of contract"; even where the "aggrieved party . . . has suffered no damage" she may be "entitled to a judgment for nominal damages." *Amc/Jeep of Vero Beach v. Funston*, 403 So. 2d 602, 605 (Fla. 4th DCA 1981); *see also*

In re Standard Jury Instructions-Contract & Bus. Cases, 116 So. 3d 284, 341 (Fla. 2013) (providing in Instruction 504.11, "If you decide that (defendant) breached the contract but also that (claimant) did not prove any loss or damage, you may still award (claimant) nominal damages such as one dollar").[3]

Further, the cases cited by Defendants that purport to support their arguments are inapposite. *See Cronin v. Washington Nat'l Ins. Co.*, 980 F.2d 663, 668 (11th Cir. 1993) (addressing the elements of a negligent procurement claim, not a breach of contract claim, and not addressing standing); *Am. K-9 Detection Servs., Inc. v. Rutherford Int'l, Inc.*, 6:14-cv-1988-Orl-37TBS, 2016 WL 2744958, at *11 (M.D. Fla. May 11, 2016) (addressing when the statute of limitations began to run where the plaintiffs were seeking to recover damages for the procurement of inadequate insurance); *Johnson & Towers, Inc. v. Corp. Synergies Grp.*, CIV. 14-5528 NLH/KMW, 2015 WL 3889438, at *6 (D.N.J. June 23, 2015) (determining in an ERISA case that the plaintiffs had standing because the plan suffered a diminution in value due to a failure to procure insurance but not addressing standing in a situation such as is presented in this case); *Mobro Marine Inc. v. Essex Ins. Co.*, 3:11-CV-622-J-12JBT, 2011 WL 6328255, at *5–6 (M.D. Fla. Dec. 15, 2011) (addressing whether a claim to recover damages was premature because the underlying litigation that would determine how much or if those damages would be awarded had not been concluded); *Southtrust Bank & Right Equip. Co. of Pinellas Cty., Inc. v. Exp. Ins. Servs., Inc.*, 190 F. Supp. 2d 1304, 1308 (M.D. Fla. 2002) (setting forth the elements necessary to state a claim for breach of an oral contract for failure to procure insurance, requiring the plaintiff to allege "the subject-matter; the risk insured against; the amount of insurance; the rate of premium; the duration of the risk; and the identity of the parties" but not discussing any allegation of damages); *D.R. Mead & Co. v. Cheshire of Fla., Inc.*, 489 So. 2d 830, 831 (Fla. 3d DCA 1986) (addressing a

[3] The Court is not holding that Plaintiff is only entitled to nominal damages. This language is cited only to say that even if she could only recover nominal damages, Plaintiff has standing.

claim for material misrepresentations). None of these cases address the precise issue before the Court—whether Plaintiff has standing to bring a breach of contract claim where Plaintiff did not incur a loss that would have been covered by the insurance policy. Defendants instead seem to argue that because a breach of contract to procure insurance typically arises in the context of a loss that would have been covered, it can only arise in such a circumstance. Defendants cite no binding authority that supports this proposition. And, as explained above, under Florida law, at a minimum, Plaintiff can recover nominal damages for Defendants' breach. Plaintiff has standing to bring her breach of contract claim.

IV. MOTION FOR RELIEF FROM JUDGMENT

Defendants argue that because Plaintiff lacks standing, the judgment entered in her favor is void. Because the Court finds that Plaintiff has standing, Defendants' argument fails.

V. RENEWED MOTION FOR CLASS CERTIFICATION

A. Class Definition

When Plaintiff first moved for class certification, her proposed class was as follows:

> All persons who rented a vehicle in Florida from Avis/Budget or Budget after June 12, 2008, pursuant to a prepaid voucher, where the rental purportedly included SLI or ALI coverage through a policy of insurance and where such coverage was not provided.
>
> Excluded from the Class are all such Florida renters who have been involved in accidents and who have outstanding claims for liability or UM/UIM coverage under the SLI or ALI coverage provided by Avis/Budget or Budget.

(Doc. 80 at 12–13).

Plaintiff now seeks to certify the following class:

> All individuals who (1) rented an Avis or Budget vehicle in the State of Florida after June 12, 2008, and (2) whose Rental Receipt contained the notation "SLI .00/Day Accepted" or "ALI .00/Day Accepted.
>
> Excluded from the Class are all such renters who have been involved in accidents and who have outstanding claims for liability or

> uninsured/underinsured motorist coverage, as well as all such renters who have received benefits under third-party liability coverage purportedly provided by Defendants.

(Doc. 343 at 5).

Defendants object to Plaintiff impermissibly expanding the class by removing an integral portion of the class definition—that members must have purchased their rental "pursuant to a prepaid voucher." From the inception of this case, the purchase of the rental through the prepaid voucher system has been central to the controversy. While Plaintiff is correct that the Eleventh Circuit determined that any language in the voucher was immaterial to the understanding of the contract at issue, it did not go so far as to say the prepaid voucher system had no bearing on the class claims.

All of the claims and evidence in this case have been focused on foreign renters who purchased bundled rentals via the voucher system. Indeed, the Eleventh Circuit recognized the parameters of this case as only including renters outside the United States. (*See, e.g.*, Doc. 339 at 2 ("This case arises out of [Defendants'] business practice of selling . . . SLI/ALI[] to rental customers *from countries outside the United States*." (emphasis added)), 16 ("The putative class members, *foreign renters* who were promised SLI/ALI and did not receive it, are readily identified by the notation "SLI .00/Day Accepted" or "ALI .00/Day Accepted" on their Rental Receipt.") (emphasis added)). Thus, Plaintiff's argument that the Eleventh Circuit's opinion mandates the elimination of the voucher requirement is without merit.

Additionally, removing the voucher requirement could broadly expand the class to a large number of domestic renters. However, whether Defendants' international business practices and domestic rentals operate in a similar enough manner to be part of a single class is unknown. All of the discovery and motion practice in this case has been based on this specific voucher system. Removing that limitation now would be akin to restarting the litigation. Plaintiff will not be permitted to alter the class definition in such a substantive manner at this stage in the litigation.

Also, the exclusion provided by Plaintiffs is somewhat confusing. To exclude the same group of people in a more understandable way, the Court will modify the exclusion. The bold portions of the Class Definition below reflect changes made by the Court. Thus, the Class Definition is as follows:

> All individuals who (1) rented an Avis or Budget vehicle in the State of Florida after June 12, 2008, **pursuant to a prepaid voucher,** and (2) whose Rental Receipt contained the notation "SLI .00/Day Accepted" or "ALI .00/Day Accepted.
>
> Excluded from the Class are all such renters who have been involved in accidents and who have outstanding claims for liability or uninsured/underinsured motorist coverage, **as well as all such renters whose liability or uninsured/underinsured motorist claims have been paid by Defendants**.[4]

B. Legal Standard

"The burden of proof to establish the propriety of class certification rests with the advocate of the class." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1187 (11th Cir. 2003). "For a district court to certify a class action, the named plaintiffs must have standing, and the putative class must meet each of the requirements specified in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements set forth in Rule 23(b)." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250–51 (11th Cir. 2004) (footnotes omitted), *abrogated in part on other grounds by Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008).

The requirements of Rule 23(a) are:

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

[4] The previous limitations imposed by the Court, including that the class members purchased their rentals from Affordable Care Hire and that they purchased the S8 Rate Code, are no longer necessary in light of the Eleventh Circuit's opinion.

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

Fed. R. Civ. P. 23(a). "These four prerequisites of Rule 23(a) are commonly referred to as numerosity, commonality, typicality, and adequacy of representation, and they are designed to limit class claims to those fairly encompassed by the named plaintiffs' individual claims." *Valley Drug Co.*, 350 F.3d at 1188 (quotation omitted). "Failure to establish any one of these four factors and at least one of the alternative requirements of Rule 23(b) precludes class certification." *Id.*

If Plaintiff satisfies the requirements of Rule 23(a), she "must also establish that the proposed class satisfies at least one of the three requirements listed in Rule 23(b)." *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012). Here, Plaintiff seeks certification pursuant to Rule 23(b)(3), which permits certification if "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." Fed. R. Civ. P. 23(b)(3).

C. Analysis

1. Commonality

The parties' most vehement dispute is over the commonality requirement. The Eleventh Circuit clearly weighed in on the commonality requirement, determining that, based on the record before it, the requirement was met. (Doc. 339 at 14). Plaintiff argues that the Eleventh Circuit's opinion is determinative. Defendants argue that there were matters that were not before the Eleventh Circuit that must now be considered. Defendants are correct that the Eleventh Circuit's opinion is not completely determinative. (*See id.* at 14 (addressing whether "the Vouchers were necessary to decide [the] common question" of "whether [Defendants] breached [their] contractual duty . . . to purchase SLI/ALI from ACE for the foreign renter"), 17 n.4 ("We are not deciding whether a class should be certified, but we remand to give the district court the opportunity to

conduct a full Rule 23 analysis.")). Regardless, Defendants' substantive arguments regarding commonality fail.

"[C]ommonality [is] the rule requiring a plaintiff to show that 'there are questions of law or fact common to the class.'" *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550–51 (2011) (quoting Fed. R. Civ. P. 23(a)(2)). Plaintiff must "demonstrate that the class members have suffered the same injury[.] This does not mean merely that they have all suffered a violation of the same provision of law." *Id.* at 2551. The class claims "must depend upon a common contention"; [w]hat matters to class certification is . . . the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.* (emphasis and quotation omitted).

Defendants assert that neither this Court nor the Eleventh Circuit considered the questions of whether Defendants materially breached the contract, whether the breach actually caused an injury, and whether the requested restitution—the per diem rate—is the appropriate remedy. As an initial matter, this appears to be a backdoor attempt by Defendants to attack the liability determination on Plaintiff's breach of contract claim. That door is closed. Summary judgment was granted, and judgment has been entered on that issue. Defendants did not pursue an appeal of the liability determination. It cannot be attacked now.

Insofar as Defendants' arguments actually relate to the commonality requirement, however, the Court will address them. All of these arguments turn on a notion that the putative class members received a benefit from Defendants.[5] This thing that Defendants describe as a "benefit" or as "coverage" is nothing more than Defendants' unilateral decision to breach every contract at issue and to pay the resulting damages out of pocket. Defendants made an internal business decision; their alleged commitment to pay out of pocket was not a binding promise that

[5] This so-called "benefit" has been described in many ways during the course of the litigation, such as "contractual liability coverage." Such descriptions were based on what the parties alleged was provided, not on evidence, and were not findings that Defendants provided anything of value to Plaintiff or the class members.

would be enforceable by the class members. An unenforceable and illusory after-the-fact justification is not a "benefit" conferred. And it is certainly not insurance coverage. [6]

Defendants argue that whether the breach was material necessitates an individualized inquiry. It does not. "To constitute a vital or material breach a defendant's nonperformance must be such as to go to the essence of the contract." *Beefy Trail, Inc. v. Beefy King Intern., Inc.*, 267 So. 2d 853, 857 (Fla. 4th DCA 1972). Defendants' own evidence established that the SLI coverage went to the essence of the contract. (Vitale Dep., Doc. 29-1, at 74:9–20 (testifying that Defendants could not get foreign business unless $1 million in SLI was provided)). Moreover, the Court already determined that Defendants' breach was material, and that determination was not pursued on appeal. Defendants do not get another bite at the apple.

Defendants also argue that the causation element requires an individualized analysis. However, this argument is merely a rephrasing of the materiality argument and relies entirely on the concept that the Court must consider the purported benefit conferred by Defendants. The causation argument fails for the same reasons Defendants' materiality argument fails.

Finally, Defendants argue that using full restitution as the measure of damages would be a windfall and is inappropriate. This argument goes to the merits of the damages analysis, not whether there is a common question to be decided. The Court makes no decision at this time as to whether the measure of damages used with regard to Plaintiff's individual claim is appropriate for the class. This issue will have to be separately briefed. Regardless, this issue does not preclude class certification because whatever calculation is used for the class—whether it is the per diem rate or some other portion of the rental rate—it can be calculated on a class-wide basis.

1. Numerosity

[6] Indeed, this is the very basis that the Court determined Defendants were not insurers—they did not promise to provide insurance coverage themselves. Defendants now attempt to use that determination as a shield from liability under Florida's insurance laws while, simultaneously, using it as a sword to claim they provided "coverage." These two positions are irreconcilable.

To satisfy the numerosity requirement, Plaintiff must show that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Courts in the Eleventh Circuit have followed non-dispositive numerical guidelines, determining that less than twenty-one class members are insufficient for establishing numerosity but that over forty class members is generally adequate to do so. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1267 (11th Cir. 2009). While "'a plaintiff need not show the precise number of members in the class'" she "still bears the burden of making *some* showing, affording the district court the means to make a supported factual finding, that the class actually certified meets the numerosity requirement." *Id.* (quoting *Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 930 (11th Cir. 1983)). "[M]ere allegations of numerosity are insufficient to" establish the numerosity requirement. *Id.* (quotation omitted).

This Court's prior determination that the class is sufficiently numerous is applicable here. (Doc. 149 at 17). In opposition, Defendants merely repackage their commonality argument, which has been rejected. The class is sufficiently numerous.

2. Typicality

"[T]he claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). In other words, "[a] class representative must possess the same interest and suffer the same injury as the class members in order to be typical." *Vega*, 564 F.3d at 1275 (quotation omitted). "Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large." *Id.* "'[T]he commonality and typicality requirements . . . tend to merge. Both serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2551 n.5 (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982)).

Defendants make the same arguments as to typicality as they did for commonality. For the same reasons, those arguments fail. Plaintiff's claim is typical—indeed nearly identical—to those of the class.

1. Adequacy

Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." "This adequacy of representation analysis encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co.*, 350 F.3d at 1189 (quotation omitted). "If substantial conflicts of interest are determined to exist among a class, class certification is inappropriate." *Id.* Such conflicts "go[] to the specific issues in controversy." *Id.* "[T]he existence of minor conflicts alone will not defeat a party's claim to class certification." *Id.*

The Court can discern no conflict between Plaintiff and the class, and all evidence indicates that Plaintiff will adequately prosecute this action. Defendants' adequacy argument again mirrors its commonality argument and is, again, rejected.

2. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "In order to determine whether common questions predominate, we are called upon to examine the cause of action asserted in the complaint on behalf of the putative class." *Rutstein v. Avis Rent-A-Car Sys., Inc.*, 211 F.3d 1228, 1234 (11th Cir. 2000) (quotation omitted). The focus of the predominance inquiry is "on the legal or factual questions that qualify each class member's case as a genuine controversy." *Amchem*, 521 U.S. at 623. "Where, after adjudication of the classwide issues, plaintiffs must still introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual

claims, such claims are not suitable for class certification under Rule 23(b)(3)." *Klay*, 382 F.3d at 1255.

Staying on-theme, Defendants arguments regarding predominance are identical to those regarding commonality and, for the same reasons addressed above, the arguments are rejected. Common questions predominate the class claims.

3. Superiority

The determination of whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy" under Rule 23(b)(3), focuses on "'the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.'" *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1183–84 (11th Cir. 2010) (quoting *Klay*, 382 F.3d at 1269). The predominance analysis has a tremendous impact on the superiority analysis. "[T]he less common the issues, the less desirable a class action will be as a vehicle for resolving them." *Id.* at 1184.

This case is particularly suited to class resolution. Per the Eleventh Circuit's analysis, the contract at issue is a form contract with the exact same provisions, and the breaches of those contracts are identical. The economic realities of litigation also make this matter well-suited for class certification. Each individual plaintiff can hope to recover only a small amount. Indeed, Plaintiff, who fully prevailed on her breach of contract claim, only recovered $174.16. Obviously the costs of litigating this case far exceed any potential individual recovery and render the individual prosecution of claims virtually impossible.

Defendants argue, however, that because the vast majority of the class members are foreign, this Court must consider whether a judgment rendered in a class action here would have a *res judicata* effect in the class members' home countries. First, Defendants cite a string of district court decisions out of the Southern District of New York stemming from a Second Circuit opinion rendered in 1975, *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2d Cir. 1975), *abrogated on*

other grounds by Morrison v. Nat'l Australia Bank Ltd., 561 U.S. 247 (2010). Defendants cite no binding precedent, and it does not appear that any court in the Eleventh Circuit has yet weighed in on this matter.

Regardless, the original rationale behind the foreign *res judicata* effect is rooted in a consideration of whether the jurisdictions would recognize a judgment *in favor of a defendant*. *See id.* at 996 (rationalizing "if defendants prevail against a class they are entitled to a victory no less broad than a defeat would have been"). And, indeed, Defendants acknowledge that several of the foreign jurisdictions at issue are likely to recognize judgments in favor of the class members. (Doc. 269 at 11–12). At this point, liability has already been determined in Plaintiff's favor on the breach of contract claim, and that determination is equally applicable on a class-wide basis.[7] Thus, given that any judgment entered will be in favor of the class members, the issue of *res judicata* in foreign jurisdictions, which is not determinative to begin with, *Ansari v. New York Univ.*, 179 F.R.D. 112, 116 (S.D.N.Y. 1998), holds even less sway in this litigation.

Given the virtual economic impossibility of each class member bringing his or her own individual breach of contract claim, and the identicality of the issues presented, class treatment is the superior vehicle for disposition of these claims.

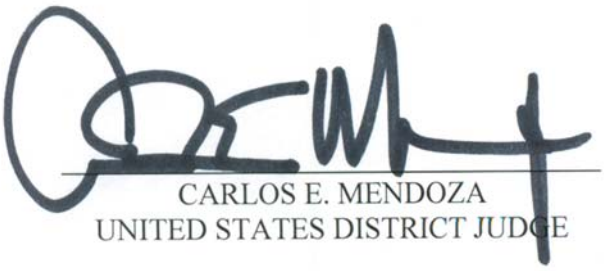
VI. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

[7] Regardless of whether the liability determination automatically inures to the benefit of the class or not, the contracts are form and the analysis is identical. Thus, whether by way of legal operation or because the Court is not inclined to reconsider its analysis, the class-wide liability determination will be the same as that on Plaintiff's individual claim. However, it is not clear, given the explicit limitations in the parties' joint stipulation, whether Plaintiff's individual damages determination has any impact on the class claims. Regardless, whether the class damages are identical to Plaintiff's damages does not undermine the Court's decision regarding class certification and, therefore, the issue will not be decided at this time.

1. Defendants' Dispositive Motion to Dismiss for Lack of Article III Standing (Doc. 350) and Defendants' Motion for Relief from Final Judgment (Doc. 351) are **DENIED**.
2. Plaintiff's Renewed Motion for Class Certification (Doc. 343) and Plaintiff's Motion for Extension of Time to File Motion for Taxation of Costs (Doc. 341) are **GRANTED**.
3. Plaintiff is designated as Class Representative.
4. Edmund Normand, Esq., Jacob Phillips, Esq., and Christopher J. Lynch, Esq. are designated as class counsel.
5. This matter is set for a telephonic hearing **on Wednesday, April 10, 2019, at 10:30 AM** to discuss the appropriate steps necessary to bring this litigation to a conclusion, including class notice, briefing of the damages issue, and whether the parties are inclined to engage in a settlement conference. Instructions on the telephonic hearing will be sent in a separate notice.

DONE and **ORDERED** in Orlando, Florida on March 29, 2019.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record