IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

MINNIE PEARL LANDRUM, Plaintiff, v. MEADOWS CREDIT UNION, Defendant.	)))))))))	No. 08-441-CV-W-DW

ORDER

Before the Court is Plaintiff Minnie Pearl (Poe) Landrum's ("Landrum"), individually and on behalf of a class of all others similarly situated (collectively "Plaintiffs" or "class members"), Motion for Class Certification, filed pursuant to Fed. R. Civ. P. 23(b)(3). (Doc. 38). Defendant Meadows Credit Union ("Defendant" or "Meadows") filed Suggestions in Opposition to the Motion (Doc. 54). For the reasons set forth below, Landrum's Motion for Certification is GRANTED in part and DENIED in part.

I. Factual Background[1]

This proposed class action lawsuit is brought by persons who obtained motor vehicle loans from motor vehicle dealers. The loans made to Plaintiff Landrum and the proposed class members were all made for the purchase of motor vehicles which were used primarily for personal, family, household and/or consumer purposes. After their origination, the loans in question were later sold or assigned to Defendant as the secured party or lienholder pursuant to a

[1]The facts stated herein are taken from Plaintiff's Class Action Petition for Damages (Doc. 1-1).

"Portfolio Management Program" ("PMP") administered by Centrix Financial, LLC ("Centrix"). Landrum is the proposed class representative. She asserts claims arising under Missouri law that stem from Defendant's alleged failure to comply with Missouri consumer protection laws when repossessing Plaintiffs' motor vehicles.

Landrum financed the purchase of a motor vehicle. The financing was obtained through the use of a retail installment contract and security agreement originated by Centrix. Centrix then sold or assigned its rights under the installment contract and security agreement to Defendant pursuant to the PMP. Pursuant to the PMP and a standard loan placement agreement, Centrix acted as Defendant's exclusive agent for originating such consumer loans from dealers, which, in turn, would then be sold or assigned to Defendant upon completion of the underlying sale of the motor vehicles. Financing for Plaintiff's loan was provided by Meadows. Centrix, however, continued to act as the servicer of the loans. Landrum asserts Defendant retained a security interest and lien on all motor vehicles purchased by Plaintiffs, which represented a security interest in consumer goods. Landrum alleges Centrix acted aggressively when servicing loans for its credit union principals, such as Defendant, because of the high-risk, subprime nature of the loans.

In September 2005, Defendant, through its alleged agent, Centrix, caused Landrum's motor vehicle to be repossessed. In November 2005, Meadows obtained a repossession title from the Missouri Department of Revenue transferring ownership of Landrum's motor vehicle to Meadows. Around the same time, Centrix sent Landrum a computer generated pre-sale notice governed by the provisions of Missouri's Commercial Code,(the "MoUCC"), and consumer protection laws. Landrum alleges this notice and the notices sent to other class members were

defective under the MoUCC because:

A) the notices do not identify or describe the secured party, as required by Mo. Rev. Stat. §§ 400.9-613(1)(A) and 400.9-614(1)(A);

B) the notices misrepresented the secured party as Centrix, rather than Defendant, contrary to the requirements of Mo. Rev. Stat. §§ 400.9-613(1)(A) and 400.9-614(1)(A);

C) the notices did not state the intended method of disposition of the collateral, as required by Mo. Rev. Stat. §§ 400.9-613(1)(C) and 400.9-614(1)(A);

D) the notices failed to inform Landrum that she was entitled to an accounting of the unpaid indebtedness, as required by Mo. Rev. Stat. §§ 400.9-613(1)(D) and 400.9-614(1)(A);

E) the notices did not state the intended time and place of a public disposition of the collateral or the intended time after which any other disposition was to be made, as required by Mo. Rev. Stat. §§ 400.9-613(1)(E) and 400.9-614(1)(A);

F) the notices did not provide a phone number where Landrum could inquire to determine the redemption amount, as required by Mo. Rev. Stat. § 400.9-614(1)(c)[2].

G) The notices contain content not allowed or authorized by Missouri law rendering the notices misleading and/or unreasonable, such as a purported redemption requirement which obligates the class members to provide proof of "verifiable employment" to redeem their motor vehicles; and

---

[2]The allegation listed at (f) and (g) on page 14 of Plaintiff's Class Action Petition for Damages (Doc. 1-1) appear to be the same, therefore the Court has included the allegation only once.

H) the notices do not advise the debtor of a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available, as required by Mo. Rev. Stat. § 400.9-614 (1)(D).

In addition to Landrum's claims under the MoUCC, Landrum has asserted claims arising under the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010, et seq. These claims include allegations that Defendant and Centrix engaged in unfair practices relating to Plaintiffs' loans, including allegations that Defendant failed to disclose to Plaintiffs certain fees included in their loan agreements for premiums for default protection and other insurance policies on the loans. The petition also includes common law tort claims for conversion of Plaintiffs' motor vehicles. Landrum claims damages in excess of fifteen-thousand-dollars ($15,000).[3] Landrum now seeks to certify the following defined class of Plaintiffs: All persons who

1) obtained a motor vehicle loan or financing from Defendant in conjunction with the PMP administered by Centrix;

2) obtained a Missouri Certificate of Title for that motor vehicle identifying Defendant as the lienholder; and

3) had said motor vehicle repossessed (Doc. 38).

Landrum's Suggestions in Support of Class Certification allege that approximately 449 individuals fall within the aforementioned class definition. Defendant's Suggestions in Opposition (Doc. 54) sets forth numerous objections to Landrum's proposed certification.

[3] This figure is taken from Defendant's Notice of Removal (Doc. 1) and is based on calculations made under Mo. Rev. Stat. § 400.9-625(c)(2).

II. Rule 23 Standards

A claimant may sue on behalf of a class only if he or she meets the four threshold requirements of Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b). Fed. R. Civ. P. 23; In re Aquila ERISA Litig., 237 F.R.D. 202, 207 (W.D. Mo. 2006). The claimant bears the burden of proving that her case is appropriate for class certification under Rule 23. Blades v. Monsanto, 400 F.3d 562, 569 (8th Cir. 2005).

The requirements of Rule 23(a) are as follows:

1) the class is so numerous that joinder of all members is impracticable;

2) there are questions of law or fact common to the class;

3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

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

Landrum seeks certification under Rule 23(b)(3). As such, Landrum must demonstrate that: (1) "questions of law or fact common to class members predominate over any questions affecting only individual members", and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." In evaluating Rule 23(b)(3)'s requirement that common issues predominate over individual issues, the Court conducts a preliminary inquiry into the facts and determines whether, if Landrum's general allegations are true, common evidence could suffice to make out a prima facie case for the class. Blades, 400 F.3d at 566.While a plaintiff has the burden of demonstrating the appropriateness of class certification, doubt that the requirements are met should be resolved in favor of certification. Aquila, 237 F.R.D at 207. Further, if it becomes necessary, a court may modify a class

certification. Fed. R. Civ. P. 23(c)(1)(C). For purposes of class certification, "the Court liberally construes Rule 23(a) and does not resolve the merits of the dispute." Doran v. Mo. Dep't of Soc. Servs. 251 F.R.D. 401, 404 (W.D. Mo. 2008).

III. Discussion

A. RULE 23(a)(1): NUMEROSITY[4]

Rule 23(a)(1) requires that the class be so numerous that joinder of all members would be impracticable. This requirement is met is this case. The proposed class consists of approximately 449 class members, which is a sufficiently numerous class. See Bradford v. AGCO Corp., 187 F.R.D. 600, 604 (W.D. Mo. 1999) (finding that a class of twenty to sixty-five members is sufficiently numerous under Rule 23).

B. RULE 23(a)(2): COMMONALITY

Rule 23(a)(2) requires that there be questions of law or fact common to the class. This commonality threshold "does not require that every question be common to the class, but merely that one or more significant questions of law or fact are common to the class." TBK Partners v. Chomeau, 104 F.R.D 127, 130 (E.D. Mo. 1985). The requirement is generally met if the class members' claims "derive from a 'common nucleus of operative facts.'" Id. (citing Cohen v. Uniroyal, Inc., 77 F.R.D. 685, 690 (E.D. Pa. 1977)). "Commonality may be satisfied 'where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated.'" In re Aquila ERISA Litig.,

[4]Defendant's Suggestions in Opposition to Plaintiff's Motion for Class Certification (Doc. 54) does not directly address the numerosity and typicality requirements set forth in Rule 23(a)(1) and (3), and references the Rule 23(a)(2) commonality requirement only in conjunction with the predominance requirement set forth in Rule 23(b)(3). The Court further addresses Defendant's arguments regarding predominance as necessary in the latter part of this Order.

237 F.R.D. 202, 207 (W.D. Mo. 2006)(citing Bublitz v. E.I. DuPont De Nemours & Co., 202 F.R.D. 251, 256 (S.D. Iowa 2001)(quoting Paxton v. Union Nat. Bank, 688 F.2d 552, 561 (8th Cir. 1982))). The commonality requirement under Rule 23(a)(2) is satisfied in this case. Here, the proposed class members present the common questions of whether Defendant's notices complied with the notice requirements of the MoUCC. There are other common questions, but this question is sufficient to meet the requirements of Rule 23(a)(2).

C. RULE 23(a)(3): TYPICALITY

Rule 23(a)(3) requires the claims or defenses of the representative parties be typical of the claims or defenses of the class. Under Rule 23(a)(3), "typicality" means "that there are 'other members of the class who have the same or similar grievances as the plaintiff.'" Alpern v. UtiliCorp United, Inc., 84 F.3d 1525, 1540 (8th Cir. 1996) (citing Donaldson v. Pillsbury Co., 554 F.2d 825, 830 (8th Cir. 1977)). This requirement is "fairly easily met so long as other class members have claims similar to the named plaintiff." Id. (quotations and citation omitted). "Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." Id.. (citing Donaldson, 554 F.2d at 831). In this case, all Plaintiffs share many of the same grievances. All Plaintiffs claim harm resulting from Defendant's allegedly deficient pre-sale notices and allegedly improper sales thereafter. The proposed class members' claims, while not wholly identical, are similar to Landrum's. The Court therefore finds that the typicality requirement of Rule 23(a)(3) is met.

D. RULE 23(a)(4): ADEQUACY OF REPRESENTATIVE

The final requirement under Rule 23(a) is that the representative parties will fairly and

adequately protect the interests of the class. "To satisfy this requirement, the interests of the representative parties must coincide with those of the rest of the class, and class counsel must be prepared and able to prosecute the action effectively." CE Design Ltd. v. Cy's Crabhouse North, Inc., 259 F.R.D. 135, 141-142 (N.D. Ill. 2009). Defendant argues that Plaintiff Landrum will not adequately represent the class in that the proposed class consists of individuals who received one of four different versions of a pre-sale notice letter, and as such, some of the Class Members received a different version of the letter than Plaintiff Landrum[5]. While it is true that some class members received a different version of the letter than Plaintiff Landrum, the deficiencies alleged by the class in regards to each of the pre-sale notice letters are the same. Plaintiff Landrum's claims present the same common issues of law and fact as the Class Members regardless of the version of the letter each individual received. The Court therefore finds that Landrum's interests coincide with those of all other class members. Landrum, like the other class members, has an interest in determining the adequacy of the pre-sale notices that they received from Defendant and any harm that may have resulted if such notices are proved deficient under the MoUCC. Finally, nothing demonstrates Landrum and her attorney will have difficulty prosecuting the action in a proper manner. The Court finds Landrum's proposed Class Counsel, attorneys with the law firm Walters, Bender, Strohbehn & Vaughan, P.C., have sufficient experience representing plaintiffs in class action litigations and will properly represent Landrum and the class members in this action. The Court finds that the adequacy requirement of Rule 23(a)(4) is

[5]The parties also present conflicting arguments regarding Plaintiff's State of residency and how her residency bears on her ability to adequately represent the class. The Court finds that Plaintiff's current State of residency does not impact her ability to adequately represent the Class.

met in this case.

E. RULE 23(b)(3)

Rule 23(b)(3) requires Landrum to demonstrate two things: (1) that questions of law or fact common to class members predominate over any questions affecting only individual members, and (2) that a class action is superior to other available methods of adjudication.

1) Predominance

While commonality under Rule 23(a)(2) and predominance under Rule 23(b)(3) are related, the Rule 23(a)(2) prerequisite merely requires that common questions of law or fact exist among the members of the class; Rule 23(b)(3) requires that common questions predominate over individual questions. Smith v. Brown & Williamson Tobacco Corp., 174 F.R.D. 90, 94 (W.D. Mo. 1997). Thus, simply showing that common questions of law or fact exist under Rule 23(a)(2) is insufficient to satisfy Rule 23(b)(3)'s predominance requirement. Id. To determine whether the more stringent requirement of predominance is met, a court must inquire into the nature of the evidence required to prove the case. Blades v. Monsanto Co., 400 F.3d 562, 566 (8th Cir. 2005). If, to make a prima facie showing on a given question, the members of a proposed class must present evidence that varies from member to member, then it is an individual question for purposes of Rule 23(b)(3); if the same evidence will suffice for each member to make a prima facie showing, then it becomes a common question. Id. Accordingly, just because the legal issues or underlying theories of recovery involved may be common to all class members does not mean that the proof required to establish these same issues is sufficiently similar to warrant class certification. Id. "To determine whether common questions predominate, a court must conduct a limited preliminary inquiry, looking behind the pleadings. In conducting

this preliminary inquiry, however, the court must look only so far as to determine whether, given the factual setting of the case, if the plaintiff's general allegations are true, common evidence could suffice to make out a prima facie case for the class." Id. (internal citations omitted).

In this case, Landrum has pled three separate causes of action. Therefore the court must examine each cause of action separately for purposes of making a determination regarding Rule 23(b)(3) predominance.

A) MoUCC Claims

All of Plaintiffs' claims under the MoUCC raise the same legal question: Do the pre-sale notices Defendant sent to Plaintiffs fall short of the MoUCC requirements.[6] To prove this claim, Landrum must produce evidence of the pre-sale notice that she received, which the Court may use to determine whether the notice complies with the MoUCC.[7] While it is clear not all Plaintiffs received the exact same presale notice Landrum received, all Plaintiffs will rely on the same basic evidence to prove their case (i.e., whatever version of pre-sale notice they received). Resolution of the issue of whether the pre-sale notices were deficient will resolve all class members' claims.

---

[6]Defendant argues that predominance as to the UCC claims is defeated due to choice of law issues that will require individualized inquiries. The Court disagrees. It appears that the MoUCC will apply to the vast majority, if not all of the Plaintiff's UCC claims. Furthermore, the Court declines to further address this choice of law issue at this state of the litigation, as these issues are better suited for resolution in a motion for summary judgment.

[7] In the "Factual Background" section of its Suggestions in Opposition to Plaintiff's Motion for Class Certification (Doc. 54), and again in later briefing (Docs. 137 and 142) Defendant argues that the Court should deny class certification based on Defendant's contention that the letter Plaintiff received fully complies with the requirements set forth under applicable Missouri law. Defendant's contentions go to the merits of Plaintiff's claim and not to the issue of Class Certification. These arguments are more properly raised in a motion for summary judgment.

Common questions of law and fact do predominate the claims under the MoUCC. There are some individualized issues that apply to various class members, such as a given Plaintiff's damages calculation, but such issues are not central to Plaintiffs' claims and do not undermine the predominance requirement. Rule 23(b)(3) does not require every issue be common among all Plaintiffs; rather, it only requires that material, substantial issues predominate over individual issues.

B) MMPA Claims

Common questions of law and fact predominate Plaintiffs' claims under the MMPA. Each class member may attempt to prove Defendant engaged in an unfair practice in violation of the MMPA through use of the following common evidence: (1) the documents and other evidence demonstrating the relationship between Defendant and Centrix, including the PMP; (2) industry practice among lenders and loan servicers; (3) that they entered into an agreement, similar in nature to all other Plaintiffs and evidenced by standardized Retail Installment Contracts and Security Agreements, for the purchase of a motor vehicle that was eventually used as security for a loan held by Defendant as a secured party; (4) the pre-sale notice he or she received; and (5) any lien records. Again, the largest individualized question this claim presents is the determination of a given class member's individual damages if liability is established. Such individualized issues do not undermine the predominance requirement.

C. Claims Under Common Law for the Tort of Conversion

The common law tort of conversion is defined as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." Restatement (Second)

of Torts § 222A (2009). Under this definition, conversion, if any, occurred at the time Defendant intentionally exercised dominion or control over Plaintiffs' vehicles. This implies that conversion occurred where and when Defendant originally repossessed Plaintiffs' vehicles. The facts indicate that some of Plaintiffs' vehicles where repossessed in states other than Missouri. Landrum's vehicle, for example, was repossessed in Minnesota. Missouri has a five (5) year statute of limitations for conversion of personal property. See Mo. Rev. Stat. §§ 537.010, 516.120**.** Missouri law deems statute of limitations as procedural in nature; thus, a federal court sitting in diversity within the State of Missouri is generally required to apply Missouri's statute of limitations to claims brought before it. See Rademeyer v. Farris, 284 F.3d 833, 836 (8th Cir. 2002). However, Mo. Rev. Stat. § 516.190, Missouri's borrowing statute, requires the application of another state's limitations period if the cause of action originated in the other state and is barred by that state's statute of limitations. Therefore, in this case, it would be necessary to individually determine in which state each class members's vehicle was repossessed to determine the applicable law. It would then be necessary to look at the time when each repossession occurred to determine whether the statute applicable to a particular class member bars recovery for conversion. Based on the above, these individualized questions would predominate the claims for conversion. Landrum's common law tort claim for conversion therefore fails to satisfy Rule 23(b)(3)'s predominance requirement and will not be certified.

2) Superiority

The last requirement for class certification is that the class action must be "superior to other available methods for fairly and efficiently adjudicating the controversy." Rule 23(b)(3). Rule 23(b)(3) reveals that the following four things are pertinent to determining whether a class

action is a superior method of adjudication: (1) the class members' interest in individual control of case prosecution or defense; (2) the extent and nature of any litigation a class member may have already begun; (3) the desirability, or lack thereof, of concentrating the litigation of the claims in this forum and (4) the potential difficulties in managing the class action. Each of the factors detailed above favors class certification of the MoUCC and MMPA claims. Recoveries in this case, while not trivial given Landrum's claim for damages in excess of fifteen thousand dollars ($15,000), might be considered to be of such a small size that prosecution of the case would be cost prohibitive if Plaintiffs were forced to litigate the remaining claims separately. In addition, if each of the class members were forced to bring an individualized suit, such suits would burden judicial resources and would create the risk of multiple inconsistent results for similarly situated parties. Concentrating the litigation of Plaintiffs' claims in this forum is also desirable and logical given the findings above indicating the predominance of common questions of law and fact between all Plaintiffs' claims. Furthermore, while this case is complex, the Court is satisfied that the Court's management methods, combined with counsel's professional cooperation, will make this case reasonably manageable.

IV. Conclusion

For the reasons stated herein, the Court hereby ORDERS that:

1) Plaintiff's Motion for Class Certification is GRANTED in part and DENIED in part. 2) Plaintiff's claims, as stated in her First Amended Class Action Petition for Damages, under the MoUCC and MMPA are hereby CERTIFIED to proceed under Rule 23(b)(3) with respect to the following class: All persons who:

a) obtained a motor vehicle loan or financing from Defendant in conjunction with

the PMP administered by Centrix;

b) obtained a Missouri Certificate of Title for that motor vehicle identifying Defendant as the lienholder; and

c) had said motor vehicle repossessed.

3) The Court DENIES Landrum's Motion for Class Certification for claims under the common law tort of conversion.

4) Plaintiff Landrum is hereby appointed as representative of the Class.

5) Within thirty (30) days of entry of this Order, the parties shall submit a proposed notice to the class. Both parties must agree on the form of the notice. Once the parties have determined the form of the notice and the Court has approved that notice, Landrum, as requested, shall be allowed to direct mail notices to each proposed class member using their last known address, and addresses updated by Class Counsel using third-party services.

6) Attorneys R. Frederick Walters, J. Michael Vaughan, Kip D.Richards, and Garrett M. Hodes of the law firm of Walters Bender Strohbehn & Vaughan, P.C. are hereby appointed as Class Counsel.

Date: August 4, 2010

/s/ Dean Whipple
Dean Whipple
United States District Judge