

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

PREE MARTIN, individually,	)	
and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Case Number 20SL-CC04219
	)	
v.	)	Division 1
	)	
LVNV FUNDING. LLC	)	
	)	
Defendant.	)	

**PLAINTIFF’S MOTION AND MEMORANDUM IN SUPPORT OF UNOPPOSED  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Pree Martin, through her counsel, submits this Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement. Plaintiff respectfully requests that the Court preliminarily approve the parties’ settlement.

The Court should grant preliminary approval of the parties’ settlement. The parties’ settlement agreement is attached as an exhibit to this memorandum. Also attached this memorandum is the proposed class notice agreed to by the parties.

The Court should preliminarily approve the settlement because this case satisfies the requirements necessary to certify a class under Missouri Supreme Court Rule 52.08. *See* Mo. S. Ct. 52.08(a)-(c) (noting that the elements necessary to certify a class and that the court shall determine whether a case can be maintained as a class action).

Moreover, the Court should also preliminarily approve the settlement because the settlement is “fair, reasonable and adequate” as it provides substantial relief to the settlement class members, particularly in light of the uncertainty of the legal issues presented in this case. *See generally Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011) (noting that a

class settlement must be “fair, reasonable and adequate” to be approved). The Court should therefore grant the Motion for Preliminary Approval of Class Action Settlement.

## **I. Background**

Plaintiff had a default judgment entered against her in a collection case filed against her by Defendant. The return of service was signed by a special process server who was not appointed to serve process. Plaintiff later paid a lawyer to set aside the judgment.

In August 2020, Plaintiff filed a class action suit on behalf of herself and others who had default judgments entered against them by Defendant in Missouri collection cases in which the process server who signed the return of service was not appoint by the court to serve process. The parties heavily litigated the case – including a motion to dismiss, motions challenging removal, discovery disputes, and class certification.

On November 13, 2024, the Court granted Plaintiff’s Motion for Class Certification. After that time the parties held pre-trial conferences/settlement conferences with the Court. The parties then reached a classwide settlement of the case. Plaintiff now seeks preliminary approval of the settlement.

Plaintiff now seeks to certify the following class for settlement purposes:

Plaintiff and the 288 persons who were served with process in a Missouri court by a person not appointed by the court as a special process server in a collection lawsuit filed by LVNV and subsequently had a default judgment entered against them in those cases as identified by LVNV in its supplemental answers to interrogatories.

As Plaintiff has satisfied the necessary class certification requirements, the Court should certify the class.

## **II. Legal Standard**

Whether a class should be certified is “based primarily upon the allegations in the petition.” *Elsa v. U.S. Eng’g Co.*, 463 S.W.3d 409, 417 (Mo. App. 2015). Plaintiff’s allegations are accepted

as true when determining whether to certify a class. *Id.* A class is properly certified if the evidence in the record, taken as true, satisfies each requirement to certify a class under Rule 52.08. *Id.* While the instant case is a quintessential case to be certified as a class action, “courts should err in close cases in favor of certification because the class can be modified as the case progresses.” *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 715 (Mo. banc 2007).

A class is properly certified when it meets the requirements of Rule 52.08(a) and the requirements of Rule 52.08(b)(1), (2) or (3). Rule 52.08(a) requires that the class be sufficiently numerous (numerosity), that questions of law or fact are common to the class (commonality), that the claims or defenses of the class representatives are typical of the claims or defenses of the class (typicality) and the class representatives will adequately represent the interest of the class (adequacy). MO. S. CT. R. 52.08(a)(1)-(4).

Here, Plaintiff previously filed a Motion for Class Certification, and the Court granted said motion. Plaintiff now seeks to certify a Rule 52.08(b)(3) class for settlement purposes. Rule 52.08(b)(3) requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” (predominance) and that a class action be “superior to other available methods for the fair and efficient adjudication of the controversy” (superiority). MO. S. CT. R. 52.08(b)(3).

Plaintiff has satisfied all of the requirements of Rules 52.08(a) and 52.08(b)(3). The court should therefore certify the case as a class action for settlement purposes. Notably, for the reasons set forth in Plaintiff’s previously filed class certification papers, the Rule 52.08 requirements still remain satisfied, as the case has not materially changed since the time the Court entered its order granting class certification.

**III. The Court should preliminarily approve the settlement because each of the Rule 52.08 requirements necessary to certify a class are satisfied.**

**A. Each Rule 52.08(a) requirement is satisfied.**

**1. Numerosity is satisfied.**

Numerosity is satisfied when “the class is so numerous that joinder of all members is impracticable.” MO. S. CT. R. 52.08(a)(1). There is no specific number of class members that makes a class sufficiently numerous. However, numerosity has been found to have been satisfied with as few as eighteen class members. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 168 (Mo. App. W.D. 2006) (citing cases).

Here, there are 289 people in the settlement class including the Plaintiff, who are part of the putative class. This is a sufficient number of class members. Moreover, joinder of all these persons would be impracticable. Thus, the numerosity requirement is satisfied.

**2. Commonality is satisfied.**

Commonality is satisfied when “there are questions of law or fact common to the class.” MO. S. CT. R. 52.08(a)(2). The rule “does not require that all issues in the litigation be common, only that common questions exist.” *Elesa*, 463 S.W.3d at 419. Commonality exists if “a single common issue [overrides] the litigation, despite the fact that the suit also entails numerous remaining individual issues.” *Id.* quoting *Meyer*, 220 S.W.3d at 716 (emphasis omitted). In other words, what matters most in class certification “is not the raising of common questions, but the ability of a classwide proceeding to generate common answers apt to drive resolution of the litigation.” *Id.* (internal quotation and citations omitted). The overarching legal issues applicable to Plaintiff and the settlement class members arise from whether default judgments were properly obtained when returns of service that were filed with Missouri courts were signed by special process servers who were not appointed to serve process.

As set forth in Plaintiff's class certification papers and the Court's class certification order, commonality is satisfied. Here, the common factual issue is that Plaintiff and the settlement class members had default judgments entered against them and the judgments were based on returns of service signed by special process servers who were not appointed by the court to serve process. Thus, the commonality requirement of Rule 52.08(a)(2) is satisfied.

**3. Typicality is satisfied.**

Typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." MO. S. CT. R. 52.08(a)(3). As set forth in Plaintiff's class certification papers and the Court's class certification order, typicality is satisfied. The claims and defenses that apply to Plaintiff and the putative class members are the same, if not identical.

**4. Adequacy is satisfied.**

Adequacy is satisfied when "the representative parties will fairly and adequately protect the interests of the class." MO. S. CT. R. 52.08(a)(4). The adequacy requirement applies to the class counsel and class representatives. Adequacy is satisfied where "class counsel is competent and qualified to conduct the litigation" and the proposed class representatives have "no interests antagonistic to the other proposed class members." *Lucas Subway MidMo, Inc. v. Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 130 (Mo. App. 2017).

As set forth in Plaintiff's class certification papers and the Court's class certification order, adequacy remains satisfied. Each of the Rule 52.08(a) requirements have been satisfied and this case should be certified as a class action.

**B. The Requirements of Rule 52.08(b)(3) are satisfied.**

**1. Common issues of law or fact predominate over individual issues.**

The predominance requirement of Rule 52.08(b)(3) is satisfied. Rule 52.08(b)(3) provides that a class may be certified if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” MO. S. CT. R. 52.08(b)(3).

The predominance inquiry simply requires the court to determine whether the class seeks “to remedy a common legal grievance.” *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577, 580 (Mo. App. 2010) quoting *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 175 (Mo. App. 2006). Predominance does not require that all questions of law or fact be common to the class, but that “common issues substantially predominate over individual ones.” *Id.* at 581. To determine whether a question is common or individual, the court looks at the “nature of the evidence required to show the allegations of the petition.” *Id.* A question is common, and therefore predominates, if the same evidence is necessary to answer the pertinent question of law or fact for each class member. *Id.*

The same evidence is necessary to answer the question of whether Plaintiff and the class members improperly had default judgments entered against them. Specifically, Defendant’s records and Case.net records identify such persons.

**2. A class action is a superior method of adjudicating this dispute.**

The superiority requirement of Rule 52.08(b)(3) is also satisfied. Rule 52.08(b)(3) provides that a class may be certified if that a class action is “superior to other available methods for the fair and efficient adjudication of the controversy.” MO. S. CT. R. 52.08(b)(3).

The court considers the following factors when analyzing the superiority element:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,
- (D) the difficulties likely to be encountered in the management of a class action.

MO. S. CT. R. 52.08(b)(3)(A)-(D); *see generally* *Karen S. Little, L.L.C.*, 306 S.W.3d at 583. The ultimate question, however, is whether it is more a class action is more efficient than other methods of adjudication. *Dale*, 204 S.W.3d at 182. Here, each of the Rule 52.08(b)(3) factors establish that a class action is the most efficient mechanism of adjudicating this dispute.

A class action is superior because it is in the interest of the members of the class to adjudicate this case on a class basis rather than by way of hundreds of individual actions. MO. S. CT. R. 52.08(b)(3)(A). To this end, the court considers “the inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually.” *Elsea*, 463 S.W.3d at 417 quoting *Dale*, 204 S.W.3d at 182. As set forth in Plaintiff’s class certification papers and the Court’s class certification order, superiority remains satisfied.

Each of the Rule 52.08(b)(3) requirements have been satisfied and this case should be certified as a class action.

**IV. The Court should preliminarily approve the settlement because the settlement is fair, reasonable and adequate.**

This settlement should be approved as it provides outstanding relief to the class. The settlement provides that Defendant will move to set aside each judgment entered against the settlement class members. Settlement Agreement, Section 7. If the court declines to set aside the

judgment, Defendant will then file a satisfaction of judgment. *Id.* Defendant also agrees to then dismiss the cases without prejudice, and to no longer engage in collection activities on the account *Id.* In addition, each class member who paid any monies to Defendant will have those monies refunded to them. *Id.* Defendant will also pay for attorneys' fees, a representative service award and the cost of settlement administration. *See id.* at Sections 9 and 10.

Ultimately, the Court's primary concern in determining whether to approve a settlement is to determine whether the settlement is "fair, reasonable and adequate." *Bachman*, 344 S.W.3d at 266. To make this determination, the Court considers:

(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of potential recovery; and (6) the opinions of class counsel . . . ."

*Id.* Each of these factors support a finding that the settlement is "fair, reasonable and adequate."

First, there is no fraud or collusion behind the settlement. Rather, the settlement was the product of extensive arm's length negotiations, including settlement conferences with the Court.

Second, this case presented an unsettled issue of law as to whether Defendant violated the law in light of the various local rules in various Circuit Courts throughout Missouri. In short, this is an excellent result for the class in light of the uncertainties presented by this case.

As to the third factor, the parties only reach the terms of a settlement after completing written class-wide discovery and a class was certified. As such, this factor also supports approval of the settlement.

The fourth factor, probability of success on the merits, also supports approval of the settlement. Again, as discussed above, Plaintiff presented issues that have not been clearly resolved by courts.



The fifth factor, the range of potential recovery, also supports approval of the settlement. Here, class members are receiving full relief – having their judgments set aside, having collection efforts cease by Defendant and receiving a refund of any amounts paid to Defendant.

Finally, as to the final factor, class counsel recommends approval of the settlement.

In short, the settlement is “fair, reasonable and adequate” and should be approved by the Court.

## **V. Conclusion**

For the reasons stated in this memorandum, the Court should therefore grant preliminary approval of the parties’ settlement.

### **BUTSCH ROBERTS & ASSOCIATES LLC**

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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2025, a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court’s electronic filing system upon all counsel of record.

/s/ Christopher E. Roberts