IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA

CASE NO: 2012-CA-1348

VAUGHN R. HARRIS and **CHERYL M. HARRIS**, as husband and wife, **ART SPENGLER**, **JERRY NEAVEILL** and **CONNIE NEAVEILL**, as husband and wife, and **TERRANCE PIOTROWICZ** and **SUZANNE PIOTROWICZ**, as husband and wife,

Plaintiffs,

v.

WILDWOOD VILLAGES, LLC, a Florida limited liability company, **QUEST INDUSTRIES, LC**, a Florida limited liability company, and **UNITY LAND MANAGEMENT**, a Florida limited liability company,

Defendants.
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ORDER ON PLAINTIFFS' MOTION TO ADD ADDITIONAL PARTY PLAINTIFFS AND FOR CLASS CERTIFICATION AND MEMORANDUM OF LAW

THIS CAUSE came before the Court for hearing on January 17, 2017, and after review of the entire record, those matters and cases judicially noticed, all relevant facts, circumstances, the argument of counsel and all evidence and testimony, the Court certifies the class and finds as follows:

I. PROCEDURAL HISTORY

1. The original Plaintiffs, VAUGHN R. HARRIS and CHERYL M. HARRIS (the "Harrises"), filed the underlying Complaint on September 14, 2012 ("Original Complaint") against Defendants, WILDWOOD VILLAGES, LLC ("Wildwood Villages") and QUEST INDUSTRIES, LC ("Quest").[1] On or about March 14, 2014, Plaintiffs filed the First Amended Complaint, in which Plaintiffs assert class claims.[2] On or about August 25, 2014, Plaintiffs filed the Second Amended Complaint, which includes the following counts: (I) Declaratory Action; (II) Equitable Accounting; (III) Fraud; (IV) Unjust Enrichment; (V) Quantum Meruit; (VI) Breach of Contract as to Hearty Host; (VII) Breach of Contract as to Water Wheel; (VIII) Breach of Contract as to Heritage Wood; (IX) Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"); (X)

[1] Court Docket Number ("Doc. #") 4.
[2] Doc. # 44-46.

Breach of Implied Fiduciary Duty; (XI) Constructive Fraud; and (XII) Imposition of Equitable Lien.[3] In Count I for Declaratory Action, the Plaintiffs seek twelve declarations from the Court.[4] In Counts III, IV, V, VI, VII, VIII, IX, X, XI, Plaintiffs seek both monetary *and* injunctive relief.[5] Plaintiffs' filed their Motion to Add Additional Party Plaintiffs and for Class Certification and Memorandum of Law ("Motion for Class Certification") on September 24, 2015.[6]

2. On February 15, 2016, Defendants filed their Opposition to Plaintiff's Motion for Class Certification.[7] Defendants filed an Amended Response in Opposition to Plaintiffs' Motion for Class Certification on May 4, 2016.[8] This Court held an evidentiary hearing on Plaintiffs' Motion for Class Certification on January 17, 2017 ("Class Certification Hearing").[9] A transcript of the Class Certification Hearing has been filed with the Court.[10]

3. At the Class Certification Hearing, Plaintiffs sought certification of a class and of potential sub-classes, as defined in the Motion for Class Certification, for all counts alleged in the Second Amended Complaint,[11] with the exception of Count II for Equitable Accounting.[12] In addition, Plaintiffs no longer sought any declarations from the Court on a class-wide basis as to whether the Defendants are subject to Section 720.3086, Florida Statutes.[13]

II. BACKGROUND

a) The Subdivisions and Their Declarations

4. This action involves property located in three adjacent, contiguous deed restricted 55-and-over subdivisions, which share common areas and facilities. Those subdivisions are: Hearty Host Lake Resort ("Hearty Host"),[14] Heritage Wood 'n Lakes Estates ("Heritage Wood"),[15] and "Water Wheel Adult Mobile Home Community and RV Park Unit No. 1 ("Water Wheel"),[16] which are hereafter collectively referred to as the "Subdivisions."

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[3] Doc. # 62.
[4] Doc. # 62.
[5] Doc. # 62.
[6] Doc. # 108.
[7] Doc. # 145.
[8] Doc. # 164.
[9] Doc. # 184.
[10] Doc. # 220.
[11] Doc. # 108 at ¶ 5.
[12] Transcript of January 17, 2017, Hearing on Motion for Class Certification (Transcript) at page 11, lines 22-25. Hereinafter, the Transcript will be cited to as Trans. Page:Lines (*i.e.*, Trans. 11:22-25).
[13] Trans. 6:1-4.
[14] Hearty Host is a platted subdivision located in Sumter County, Florida, as set forth in the plat dated December 19, 1974 in Plat Book 3, Page 57, of the Public Records of Sumter County, Florida ("Hearty Host Plat"). A true and correct photocopy of the Hearty Host Plat is attached to the Second Amended Complaint, Doc. # 62, as Exhibit "A."
[15] Heritage Wood is a platted subdivision located in Sumter County, Florida, as set forth in Plat Book 4, Page 61 and 61-A, of the Public Records of Sumter County, Florida ("Heritage Wood Plat"). A true and correct photocopy of the Heritage Wood Plat is attached to the Second Amended Complaint, Doc. # 62, as Exhibit "C."
[16] Water Wheel is a platted subdivision located in Sumter County, Florida, as set forth in Plat Book 4, Page 40, of the Public Records of Sumter County, Florida ("Water Wheel Unit 1 Plat"). A true and correct photocopy of the Water Wheel Unit 1 Plat is attached to the Second Amended Complaint, Doc. # 62, as Exhibit "F."

5. A detailed history of the Subdivisions' respective Declarations of Restrictions, is set forth in the Second Amended Complaint.[17] The "Declarations," as used herein, refers collectively to the Declarations of Restrictions and similar documents, as discussed in the Second Amended Complaint Paragraphs 17 through 38, for the Subdivisions.[18] The Subdivisions' respective Declarations and related governing documents are nearly identical as regards the relevant, substantive issues that are material to this action.[19]

b) The Class Plaintiffs[20]

6. The Harrises are senior citizens who reside in Hearty Host Lake Resort, and who took ownership of a Hearty Host lot (Lot 10, Block A) and mobile home bearing the following physical address, 5396 Columbus Circle, Wildwood, Florida 34785, by virtue of that General Warranty Deed dated September 17, 2010, recorded on October 11, 2010 in Official Records Book 2239, Page 614, of the Public Records of Sumter County, Florida.[21]

7. ART SPENGLER ("Spengler") is a senior citizen who resides in Heritage Wood, and who took ownership of a Heritage Wood lot (Lot 9, Block A) and mobile home bearing the physical address of 5462 Heritage Blvd, Wildwood, FL 34785, by virtue of that Statutory Warranty Deed, dated November 16, 2012, and recorded on December 28, 2012, in Official Records Book 2542, Page 129, of the Public Records of Sumter County, Florida.[22]

8. TERRANCE PIOTROWICZ and SUZANNE PIOTROWICZ (the "Piotrowiczes") are senior citizens who reside in Water Wheel, and who took ownership of a Water Wheel lot (Lot 11, Block E) and mobile home bearing the physical address of 5520 Lansing Dr., Wildwood, Florida, 34785, by virtue of that Statutory Warranty Deed, dated May 5, 2011, and recorded on May 11, 2011, in Official Records Book 2315, Page 40, of the Public Records of Sumter County, Florida.[23]

9. Collectively the Harrises, the Piotrowiczes, and Mr. Spengler are referred to herein as the "Class Plaintiffs."

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[17] In *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91, 116 (Fla. 2011), the Florida Supreme Court acknowledged that the trial court is not restricted solely to consideration of evidence and may also consider based the parties' arguments, pleadings, and documents in determining whether class certification is appropriate.

[18] *See* Doc. # 62. The Declarations are attached to the Second Amended Complaint as Exhibits "I" through "M" and were admitted into evidence as Plaintiffs' Exhibits 1 through 5 at the Class Certification Hearing. Hereinafter, the Declarations will be cited to herein as "Plaintiffs' Exhibits 1-5."

[19] Trans. 13:1-3; Trans. 56:7-12.

[20] JERRY NEAVEILL and CONNIE NEAVEILL (the "Neaveills") are senior citizens residing in Hearty Host. On April 21, 2016, Class Plaintiffs withdrew the class claims of the Neaveills due to Mr. Neaveill's poor health and Ms. Neaveill's responsibilities caring for him.

[21] A true and correct photocopy of the Harrises' General Warranty Deed is attached to Doc. # 62 as Exhibit "B."

[22] WILLIAM ABRAHAM and CLAUDEAN ABRAHAM (the "Abrahams") were named in the Second Amended Complaint, rather than Mr. Art Spengler ("Mr. Spengler"). On January 26, 2016, due to Plaintiff William Abraham's deteriorating health and Plaintiff Claudean Abraham's duties as her husband's primary caregiver, Class Plaintiffs moved the Court to substitute Mr. Spengler as Plaintiff in the place of the Abrahams. The Court granted the Motion on February 17, 2016.

[23] A true and correct photocopy of the Piotrowiczs' Warranty Deed is attached to Doc. # 62 as **Exhibit "G."**

10. Collectively, the Class Plaintiffs and other similarly situated lot owners in the Subdivisions (the potential class members) are referred to herein as the "Lot Owners."

c) The Defendants and their Agents

11. The "park owner" discussed in the Declarations is now Wildwood Villages. Wildwood Villages is a Florida limited liability company that is licensed as a developer by Florida's Department of Business and Professional Regulation, and is the owner of the "Common Areas" of the Subdivisions, together with other certain parcels in and adjacent to the Subdivisions, including residential lots, pursuant to that Warranty Deed dated June 11, 2003 and recorded on June 23, 2003 in Official Records Book 1084, Page 741, of the Public Records of Sumter County, Florida. [24]

12. Quest is a dissolved Florida limited liability company that has collected, accepted, and received the assessments, including the so-called monthly maintenance fees, that Wildwood Villages charges the Lot Owners for maintenance of the "Common Areas."

13. UNITY LAND MANAGEMENT ("Unity") is a Florida limited liability company and a Community Association Management (CAM) Firm under Section 468.431(3), Florida Statute, licensed with Florida's Department of Business and Professional Regulation. It is an agent of Wildwood Villages. [25] Like Quest, Unity has collected, accepted, and received assessments, including the so-called monthly maintenance fees, that Wildwood Villages charges Lot Owners for maintenance of the "Common Areas."

14. Jonathan Woods ("Woods") Woods is licensed with Florida's Department of Business and Professional Regulation as a Community Association Manager under Section 468.431(4), Florida Statute,[26] and he directs the day-to-day operations in the Subdivisions. Mr. Woods and his wife have fifty percent ownership of Unity and also purchased and own a mortgage and related promissory note for the Subdivisions, and earn six percent interest on the line of credit, which is passed through to the Lot Owners as an expense.[27]

15. At all relevant times, Woods is, or was, the Manager of all three Defendant entities: Wildwood Villages, Quest, and Unity.[28]

16. Wildwood Villages pays Unity – ostensibly out of the assessments it collects from the Class Plaintiffs and other similarly situated lot owners – for collecting, accepting, and receiving assessments on behalf of Wildwood Villages. In short, one of Woods' companies (Wildwood Villages) assesses the Class Plaintiffs and other similarly situated lot owners, and then that company pays another one of Woods' companies (Unity) a portion of those assessments

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[24] A true and correct photocopy of the Wildwood Villages Deed is attached to Doc. # 62 as **Exhibit "H."** *See also* Trans. 161:2-11.
[25] Trans. 16:16-23; 159:14-17.
[26] Trans. 102: 3-10.
[27] Trans. 104-105.
[28] *See* records filed with the Florida Division of Corporations for the respective Defendants.

to collect the assessments.[29] Woods testified that Unity makes profit for this service, because "That's why they're in business."

d) The Monthly Maintenance Fee

17. Class Plaintiffs' allegations in this matter largely center on the monthly maintenance fee they are charged by Wildwood Villages and/or its agents or designees, as lot owners in the Subdivisions for Wildwood Villages' ownership and maintenance of the Recreational Facilities (hereinafter, the "monthly maintenance fee" or "assessment").[30]

18. It is Wildwood Villages and/or its agents or designees' practice or course of conduct to charge this monthly maintenance fee to all Lot Owners equally and uniformly by amount and method, regardless of any individual factors or considerations.[31]

19. The Declarations contain the same basic provisions with regard to monthly maintenance fees. Each of the Declarations: (1) identify the services the park owner is to provide and the duties the park owner is to perform on behalf of the residents and Lot Owners; (2) allow for a monthly maintenance fee to be used to finance the park owners duties and services to the Subdivisions; (3) provide that the monthly maintenance fee can be adjusted annually based on actual increases or decreases in the expenses incurred in providing the services and maintaining the facilities; and (4) state that the park owner can also include in the maintenance fee a reasonable profit margin, not to exceed ten (10%) percent of the fair market value of the common or recreational facilities ("Recreational Facilities") that the park owner operates and maintains on behalf of the Subdivisions' lot owner.[32]

20. By way of example, the Amendment to Declaration of Restrictions for Water Wheel, which was recorded on August 26, 1986 in Official Records Book 330, Page 212, in the Public Records of Sumter County, contains the following provisions:

> *The owner of the park shall provide the following services: to maintain the streets, to furnish sewage disposal and maintenance of the sewer plant and lines, lawn mowing of the common areas, landscaping of the common areas, lighting for the common areas, garbage pick up, water and maintenance of the water plant and lines, T.V. tower, head end equipment, cable lines, recreational facilities (including club house with equipment and furnishings inside, two pools, Jacuzzi, pool locker facility, tennis courts, arts and crafts building, lake area dock, barbecue, and benches) payment of taxes and insurance relating to the recreational facilities and their operation, and payment of expenses for legal services, accounting services, and the employment of a park manager and maintenance personnel.*

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[29] Trans. 199:2-25; 200:1-11.
[30] Trans. 8:10-22
[31] Trans. 111:8-25; Trans. 112:1-24.
[32] Trans. 56:7-25; Trans. 57:1-21; *see also* Plaintiffs' Exhibits 1-5.

> *To finance the performance of the duties set forth above, and to assure the continued operation and maintenance of the facilities described above, all lots within the subject property shall be subject to a monthly maintenance charge as described herein. Effective July 1, 1986, and for each month thereafter until the monthly maintenance fee is amended as provided for herein, the monthly maintenance fee shall be $65.00 per lot within the subject property. Each lot owner shall pay said fee to the owner, or the owner's duly authorized representative, on or before the first day of each month.*
>
> ***The monthly maintenance fee shall be adjusted annually based upon actual increases or decreases in the expenses incurred in providing the services and maintaining the facilities described above, plus a reasonable profit margin not to exceed ten (10%) percent of the fair market value of the facilities operated and maintained by the owner on behalf of the owners of lots within the subject property.*** Adjustments to the monthly maintenance fee shall become effective on July 1 of each year, and the owner shall notify lot owners at least the thirty (30) days prior to July 1 of any adjustment in the monthly maintenance fee.

(emphasis added). [33]

i. Uniformly Assessed

21. The Lot Owners pay the same amount for their monthly maintenance fee, regardless of which subdivision they reside in or which services are provided. [34] The Lot Owners also all receive the same notices regarding the monthly maintenance fee coming due or being increased.[35] In short, the monthly maintenance fee is a flat fee that is equally borne by all Lot Owners, regardless of their respective subdivision or any other individualized consideration.

ii. Incorrectly Increased

22. Wildwood Villages has regularly increased the monthly maintenance fee.[36]

23. The Declarations only allow the monthly maintenance fee to be increased annually on the first of July.[37]

24. However, Wildwood Villages has raised the monthly maintenance fee more than annually and on dates other than the first of July (i.e., there was an increase from $232.00 to $247.00 in January of 2012, and from $247.00 to $260.00 in August of 2012).[38]

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[33] Plaintiffs' Exhibits 4-5. *See also* Trans. 166:6-25 and Trans. 167:1 (containing Woods' discussion of where descriptions of the "services to be performed by developer" and the allowable profit calculation can be found in the Declarations.)
[34] Trans. 112:2-24.
[35] Trans. 18:1-19; Trans. 71-72; Trans. 108:15-25; Trans. 109:1-6.
[36] Trans. 108:2-5; Trans. 109:15-24.
[37] Trans. 10:1-2. *See also* Plaintiffs' Exhibits 1-5.
[38] Trans. 10:2-5; Trans. 109:19-24.

iii. Inappropriately Spent

25. As the language above makes clear, the Declarations give Wildwood Villages limited authority to charge a monthly maintenance fee to the Lot Owners in order to cover the ***actual*** costs of providing certain specific services—such as maintaining the pools, the locker rooms, and the tennis courts or arranging for garbage pick-up or landscaping for the common areas.[39]

26. Defendants argue that the Lot Owners "all have a very different idea[s] as to what Wildwood should be providing in terms of service"[40] and that Class Plaintiffs find the Declarations confusing.[41] However, the terms of the Declarations are clear and unambiguous regarding the services that Wildwood Villages is to provide and the profit it is allowed to make for its services. The Declarations apply uniformly to all Lot Owners and are not subject to interpretation in this regard. Defendants arguments are unconvincing: Contracts – including the Declarations – are not rendered ambiguous and subject to parol evidence or the Court's interpretation each time a lay person needs some clarification as to the meaning of a contract's terms.

27. In that same regard, the Court is unmoved by Defendants' arguments that Class Plaintiffs and other Lot Owners, most of whom are Senior Citizens, may not have a holistic understanding of legal terms of art, causes of action, or the application of conclusions of law to their everyday lives. For example, the Court finds irrelevant the testimony of certain Class Plaintiffs regarding their understanding of the term "fiduciary," and whether the Defendants stand in a *position* of trust and confidence to Class Plaintiffs and Lot Owners.[42] The Court is similarly not persuaded that slightly varying understandings of such matters amongst Class Plaintiffs and/or other Lot Owners would defeat class certification.

28. Class Plaintiffs allege that Defendants use the monthly maintenance fees in a manner and for purposes not authorized by the Declarations, including without limitation: on legal expenses incurred defending this litigation and other lawsuits; equipment not necessary or used for the maintenance of the Recreational Facilities; payments and/or interest payments made upon a loan debt for which the Lot Owners are not responsible, and which is secured by real property not part of the Common Areas or Recreational Facilities; expenses for maintenance and/or service that was not actually provided; payment of personal expenses; and wages for staff engaged in sales roles for the Defendants. Class Plaintiffs also maintain that: (1) Defendants have sold items purchased or financed with Class Plaintiffs' monthly maintenance fees and failed to properly apply those revenues to the financial statements to reduce the monthly assessment amounts; (2) that Wildwood Villages has failed to pay assessments on the individual lots it owns within the Subdivisions; (3) that Defendants have financed their operations through improperly assessing Class Plaintiffs; (4) that Wildwood Villages has artificially inflated or miscalculated the fair market value in determining the "reasonable profit margin"; and (5) Wildwood Villages

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[39] Plaintiffs' Exhibits 1-5.
[40] Trans. 39:8-10.
[41] Trans. 40:22.
[42] The Court recognizes that certain elected officials, for example, may be elected to a position of trust and confidence, but that many of their constituents may, nonetheless, not fully trust them or have confidence in them.

has artificially high monthly maintenance fees, fabricated and falsely inflated Wildwood Villages' "expenses," and failed to credit rental "revenues" derived from renting out the clubhouse and other Recreational Facilities to reduce the monthly maintenance fee amounts.[43]

iv. Arbitrarily Calculated

29. Chief among Class Plaintiffs' allegations is that the monthly maintenance fees are not calculated in accordance with the Declarations. How much profit margin Wildwood Villages can charge the Lot Owners as a "reasonable profit margin" depends on the fair market value of the Recreational Facilities that Wildwood Villages operates and maintains on behalf of the Lot Owners. Wildwood Villages refers to this profit margin as its "management fee." However, Wildwood Villages has never had all of the Recreational Facilities appraised. [44] Instead, Woods explains: "Every year we make the calculation, we make our own appraisal, our approved method of determination."[45] For the years, including without limitation, 2007, 2008, 2009 and 2010, Wildwood Villages charged a management fee of $210,000.00 per year, indicating that the fair market value of the Recreational Facilities was $2,100,000.00.

30. Even so, Woods testified that when Wildwood Villages purchased the entire 330-acre compound in 2003, the purchase price was $2,400,000.00.[46] That purchase was not for the Recreational Facilities alone. Instead, as Woods described it, the $2,400,000.00 purchase "encompassed everything. Dock, everything. Lots, plats, common areas, roads, retention, clubhouse, tennis courts, everything." "Everything" also included approximately 78 lots in in the Subdivisions. [47] Nonetheless, for four years after purchasing "everything" for an alleged $2,400,000.00, Woods and Wildwood Villages used their own "approved method of determination" to arrive at an ostensible fair market value of $2,100,000.00 for the Recreational Facilities alone. This "determination" was made despite the large amount of acreage included in the original purchase, which was not used for the benefit of the Lot Owners in any way.

31. Additionally, despite the crash of the real estate market, circa 2008, the alleged "reasonable profit" charged to the Lot Owners never fluctuated.[48]

32. Plaintiff's alleged that in 2011, Wildwood Villages increased the management fee to $315,000.00, indicating the Recreational Facilities had a fair market value of $3,150,000.00. In the 2013 Schedule of Income and Expenses, "10% of Facilities Maintained and Operated" was equated with $320,000.00, which would indicate the Recreational Facilities had a fair market value of $3,200,000.00.

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[43] *See generally*, Second Amended Complaint, Doc. #62. *See also* Trans. 8:20-25; Trans. 9:1-3; Trans. 8:20-25; Trans. 9:1-3; Trans. 46: 8-21; Trans. 96:19-25; Trans. 97:1-7. *See also* Doc. # 62 at ¶¶ 82, 83, 120, 121,155, 156, 166, 167, 200, and 233.

[44] Trans. 201: 8-23.

[45] Trans. 207: 22-25.

[46] Pursuant to § 90.202(12), Fla. Stat., the Court takes judicial notice of the fact that the Sumter County Property Appraiser's website lists a the purchase price as $2,063,000.00.

[47] Trans. 205:1-6.

[48] Trans. 108:2-8.

III. STANDING

33. Under Florida law, standing is a threshold requirement for class certification.[49] "To satisfy the standing requirement for a class action claim, the class representative must illustrate that a case or controversy exists between him or her and the defendant, and that this case or controversy will continue throughout the existence of the litigation."[50] In order to do so, the class representative must allege a legal or actual injury, which "includes an economic injury for which the relief will grant redress[,]" that is "distinct and palpable, not abstract or hypothetical."[51] Class Plaintiffs allege actual injuries as part of this action. More specifically, Class Plaintiffs allege Wildwood Villages has improperly charged and improperly increased the monthly maintenance fees charged to the Lot Owners, including Class Plaintiffs, in violation of the Declarations.[52] Class Plaintiffs also allege economic injury that can be redressed by the relief requested in this action. Accordingly, because Class Plaintiffs allege both actual and economic injury and such injuries are not abstract or hypothetical, this Court finds Class Plaintiffs have standing to represent the putative class and sub-classes.

IV. LEGAL STANDARD FOR CLASS ACTIONS

34. The purpose of the class action "is to save a multiplicity of suits, to reduce the expense of litigation, to make legal processes more effective and expeditious, and to make available a remedy that would otherwise not exist."[53] Florida Rule of Civil Procedure 1.220 ("Rule 1.220") directs the trial court to enter an order, at the request of any party, as to whether a claim can be maintained as a class action "[a]s soon as practicable after service of any pleading alleging the existence of a class."[54] Because an order certifying a class "may be altered or amended at any time before the entry of a judgment on the merits,"[55] any doubts as to class certification should be resolved "in favor of certification, especially in the early stages of litigation."[56] Furthermore, "[w]hen determining whether to certify a class a trial court should focus on the prerequisites for class certification and not on the merits of the cause of action."[57]

35. To obtain class certification, the Court must conclude the proponent met all requirements of Rule 1.220 (a):

> *(1) the members of the class are so numerous that separate joinder of each member is impracticable,*
> *(2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or*

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[49] *Sosa,* 73 So.3d at 116.
[50] *Id.*
[51] *Id.* at 117.
[52] *See* Second Amended Complaint, Doc. # 62, at ¶¶ 49, 50, 60, 81, 118, 144, 155, 166, 200, and 222.
[53] *Broin v. Philip Morris Companies, Inc.*, 641 So.2d 888 (Fla. 3d DCA 2010).
[54] Fla. R. Civ. P. 1.220(d)(1).
[55] *Canal Ins. Co. v. Gibraltar Budget Plan, Inc.*, 41 So.3d 375, 377 (Fla. 4th DCA 2010). Likewise, "trial courts are permitted to redefine a proposed class in a manner which will allow utilization of the class action." *Id.*
[56] *Sosa*, 73 So.3d at 105.
[57] *Id.*

fact raised by the claim or defense of each member of the class,

(3) the claim or defense of the representative party is typical of the claim or defense of each member of the class, and

(4) the representative party can fairly and adequately protect and represent the interest of each member of the class.

6. In addition, the movant must satisfy ***one*** of Rule 1.220(b)'s subdivisions:

(1) The prosecution of separate claims or defenses by or against individual members of the class would create a risk of either:

(A) Inconsistent or varying adjudications concerning individual members of the class, which would establish incompatible standards of conduct for the party opposing the class; or

(B) Adjudications concerning individual members of the class, which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to all members of the class, thereby making final injunctive relief or declaratory relief concerning the class as a whole appropriate; or

(3) The claim or defense is not maintainable under either (b)(1) or (b)(2), but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

V. RULE 1.220(A) REQUIREMENTS

a) Numerosity

36. The first requirement of Rule 1.220(a) is: "(1)the members of the class are so numerous that separate joinder of each member is impracticable." This requirement is generally referred to as "numerosity." Florida Courts hold "[n]o specific number and no precise count are needed to sustain the numerosity requirement."[58] However, while there is no magic number of

[58] *Sosa*, 73 So.3d at 114.

class members that will support certification, classes of more than forty members are generally deemed to satisfy the numerosity requirement.[59] Members of the class and the numbers therefore also "may be ascertained through discovery."[60] Additionally, "class certification is proper if the class representative does not base the projected class size on mere speculation,"[61] and "projected class size is not speculative when it can be determined by geographical and chronological boundaries.[62]

37. At the Class Certification Hearing, Defense counsel stated: "I think [Class Plaintiffs are] probably going to be able to establish numerosity for today's purpose."[63]

38. Even without Defendants' counsel' concession that numerosity is established, Class Plaintiffs still demonstrate numerosity in that Class Plaintiffs have chronologically confined the putative classes and sub-classes to only those persons whose claims are not barred by the applicable statute of limitations. According to the Sumter County Property Appraiser's website, the Subdivisions have approximately one hundred forty seven (147) lots owned by a person other Wildwood Villages or its related entities, and Class Plaintiffs estimate that approximately 100 Lot Owners in the Subdivisions are over age sixty.' [64] Additionally, the exact class size figures should be easily ascertainable via discovery from Defendants' billing records and the public records of Sumter County, Florida.[65]

39. Accordingly, this Court finds Class Plaintiffs have satisfied the numerosity requirement.

b) Commonality

40. The second requirement of Rule 1.220(a) is: "(2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class." This is requirement is generally referred to as "commonality." The commonality requirement presents a low hurdle and "only requires that resolution of a class action affect all or a substantial number of the class members, and that the subject matter of the class action presents a question of common or general interest."[66] Commonality exists if the plaintiff's claims arise from the same practice or course of conduct that gave rise to claims of the all class members, and the claims are based on the same legal

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[59] *Kuehn v. Cadle Co., Inc.*, 245 F.R.D. 545, 548 (M.D. Fla. 2007). Because Florida Rule of Civil Procedure 1.220 was modeled after Federal Rule of Civil Procedure 23, "Florida courts often look to federal cases for guidance as persuasive authority on issues regarding class actions." *Barnhill v. Fla. Microsoft Anti-Trust Litigation*, 905 So.2d 195, 198 (Fla. 3d DCA 2005).

[60] *Frankel v. City of Miami Beach*, 340 So.2d 463, 470 (Fla. 1976).

[61] *Sosa*, 73 So.3d at 114.

[62] *Id.*

[63] Trans. 38:14-16.

[64] Using plats of the Subdivisions and assumptions regarding the age of Lot Owners in the age-restricted Subdivisions, Class Plaintiffs estimate the class is approximately 147 members and the sub-classes range from 26 members to 117 class members. *See* Doc. # 108 at page 6.

[65] For example, during his testimony at the Class Certification hearing, Woods testified that he sends out an "audit every couple of years. . . and in there the resident either attests that they're 55 or older . . . . When we sell to somebody . . . [w]e've known their age." Trans. 110: 8-25.

[66] *Sosa*, 73 So.3d at 107.

theory.[67] In short, a defendant's standardized conduct towards class members is sufficient to satisfy commonality.[68]

41. Commonality "is satisfied if the questions linking the class members are substantially related to the resolution of the litigation, even if the individuals are not identically situated."[69] Indeed, "[a] mere factual difference between class members does not necessarily preclude satisfaction of the commonality requirement."[70] Likewise, "nuanced factual differences [as] to each individual damage determination . . . [do] not preclude a finding of commonality."[71] In short, the same practice or course of conduct must gave rise to the class claims and "[t]here must be a common right of recovery based on the same essential facts."[72]

42. Class Plaintiffs' claims, and the claims of all Lot Owners, arise from the same course of alleged conduct by Defendants, namely, that Defendants uniformly charge each Lot Owner a monthly maintenance fee allegedly based on, amongst other things, false or fabricated expenses, an inflated value of the Recreational Facilities, improper budgeting of expenses unrelated to the maintenance of the Recreational Facilities, or for maintenance and/or services not actually provided. The same misconduct impacts each Lot Owner in precisely the same way.[73]

43. Class Plaintiff's also claim the monthly maintenance fees are artificially high because Wildwood Villages owns a large number of the Wildwood Country Resort lots, but fails to pay any monthly maintenance fees. [74]

44. Wildwood Villages assesses the allegedly improperly calculated monthly maintenance fees against all Lot Owners in a uniform manner and at essentially the same rate, and provides all Lot Owners the same or substantially similar notices regarding the monthly maintenance fees. These actions are taken as a part of Defendants' standardized conduct and/or generalized policy. [75]

45. Moreover, the claims of Class Plaintiffs and other Lot Owners share common questions of law. The various subdivisions' respective Declarations and related documents are nearly identical or, at the very least, extremely similar on the relevant, substantive issues.[76] The common questions of law thus include, without limitation, the meaning of "Common Facilities," "Recreational Facilities," and "Facilities" as used in the Declarations, whether said Declarations are valid and enforceable, whether Defendants fave a fiduciary relationship to the Lot Owners,

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[67] *Id.* at 114; *see also Olen Props. Corp.*, 981 So. 2d 515, 519 (Fla. 4th DCA 2008); *Smith v. Glen Cove Apts. Condos. Master Ass'n Inc.*, 847 So. 2d 1107, 1110 (Fla. 4th DCA 2003).
[68] *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998); *see also Gen. Tele. Co. of Sw. v. Falcon*, 457 U.S. 147, 159 (1982).
[69] *Id.* at 108.
[70] *Id.* at 107.
[71] *Id.* at 108.
[72] *Id.* at 890.
[73] Trans. 18:1-19; Trans. 74:24-25; Trans. 75:1-4; Trans. 99:2-10; Trans. 100:15-21; Trans. 111:8-13; Trans. 122:9-11.
[74] Trans. 30:9-11; Trans. 193:9-17.
[75] Trans. 18:1-19; Trans. 71-72; Trans. 99:2-10; Trans. 100:15-16; Trans. 111:8-13; Trans. 142:2-7.
[76] Trans. 13:1-3; Trans. 56:7-12.

whether Wildwood Villages is required to pay the monthly maintenance fees on lots it owns in the Subdivisions, what charges are properly assessed as obligations of the Lot Owners, and what credits are to be applied on account for the Lot Owners.

46. Accordingly, this Court finds Class Plaintiffs have satisfied the commonality requirement.

c) Typicality

47. The third requirement of Rule 1.220(a) is: "(3) the claim or defense of the representative party is typical of the claim or defense of each member of the class." This is requirement is generally referred to as "typicality."

48. The typicality requirement is not demanding and "focuses generally on the similarities between the class representative and the putative class members."[77] The typicality requirement is satisfied "if the claims or defenses of the class and class representative arise from the same event or pattern or practice and are based on the same theory."[78] Typicality also exists when "the class representative possesses the same legal interest and has endured the same legal injury as the class members."[79] A plaintiff can also satisfy the typicality requirement "when the claims of the class representative and class members are not antagonistic to one another."[80] Moreover, "[m]ere factual differences between the class representative's claims and the claims of class members will not defeat typicality."[81]

49. As described above, the Declarations give Wildwood Villages ***limited*** authority to charge a monthly maintenance fee to the Lot Owners. More specifically, Wildwood Villages may only use monthly maintenance fees to cover the ***actual*** costs of providing certain services and maintaining the Recreational Facilities.[82] Additionally, Wildwood Villages may not build a profit margin into the assessments that exceeds 10% of the fair market value of the Recreational Facilities.[83]

50. Wildwood Villages charging a uniform monthly maintenance fee to Lot Owners, and Class Plaintiffs' claims that Wildwood Villages violated the Declarations by exceeding or misusing its limited assessment authority, arise from the same pattern and practice giving all Lot Owners similar claims. Similarly, because Quest and Unity acted, or continue to act, on behalf of Wildwood Villages, claims Defendants have improperly collected and continue to improperly hold money and other assets that rightfully belong to the Lot Owners arise from the same pattern and practice as to all Lot Owners. Accordingly, this Court finds Class Plaintiffs have satisfied the typicality requirement.

d) Adequacy

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[77] *Sosa*, 73 So.3d at 114.
[78] *Agan v. Katzman & Korr, P.A.*, 222 F.R.D. 692, 698 (S.D. Fla. 2004).
[79] *Sosa*, 73 So. 3d at 114.
[80] *Id.* at 114-15.
[81] *Id.* at 114.
[82] *See* Plaintiffs' Exhibits 1-5.
[83] *Id.*

51. The fourth requirement of Rule 1.220(a) is if: "(4) The representative party can fairly and adequately protect and represent the interests of each member of the class." This requirement is generally referred to as "adequacy." A determination as to whether the adequacy requirement is met involves a two-part inquiry: (1) whether class counsel has the ability to advocate effectively on behalf of the class, and (2) whether the class representatives' interests are antagonistic to the interests of the class.[84]

52. Defendants have stipulated to the adequacy of class counsel and there was sufficient testimony in regard to the same at the Class Certification Hearing;[85] thus the first part of the two-party adequacy injury is satisfied.

53. As to the second part of the inquiry, to meet the adequacy requirement, "[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members."[86] However, ***a class representative does not need a sophisticated understanding of the legal system or underlying legal theories.***[87] ***Rather, a class representative can provide adequate representation for the class with only a basic understanding of the facts that form the basis of the class action lawsuit.***[88]

54. In addition, there is evidence Class Plaintiffs can finance the litigation.[89]

55. Courts have summarized the "relevant inquiry" in an adequacy determination as "whether the plaintiffs maintain a sufficient interest in, and nexus with, the class so as to ensure vigorous representation."[90] Thus, the adequacy inquiry "serves to uncover conflicts of interest between the presumptive class representative and the class he or she seeks to represent."[91]

56. Satisfaction of the commonality and typicality requirements provides "strong evidence that [the named plaintiffs] adequately represent the class."[92] Additional proof that the named plaintiffs will adequately represent the class exists where the same relief is sought for the named plaintiffs and all class members.[93] Likewise, when the named plaintiff is "willing and able to take an active role as class representative and advocate on behalf of all class members[, his] interests [are] not antagonistic to those of the rest of the class."[94]

57. Because each of Class Plaintiffs is a lot owner within the Subdivisions, Class Plaintiffs are clearly members of the putative class and proposed sub-class and have suffered the same injury as all other putative class and sub-class members. Class Plaintiffs share the same interests as all other putative class and proposed sub-class members in determining whether they have been harmed by Defendants' acts or omissions or the relationship among and between

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[84] *Sosa*, 73 So. 3d at 115.
[85] Trans. 76:25, Trans. 77:1.
[86] *Addison*, 979 So.2d at 253.
[87] *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 370 (1966).
[88] *Alfred v. Okeelanta Corp.*, No. 89-8285-Civ, 1991 WL 177658, *14 (S.D. Fla. 1991).
[89] Trans. 47:16.
[90] *Roper v. Consurve, Inc.*, 578 F.2d 1106, 1112 (5th Cir. 1978).
[91] *Sosa*, 73 So.3d at 115.
[92] *Henderson*, 289 F.R.D. at 511.
[93] *Broin*, 641 So.2d at 892.
[94] *Sosa*, 73 So.3d at 115.

Defendants. In addition, the relief sought by Class Plaintiffs will similarly benefit all putative class and sub-class members.[95]

58. Accordingly, this Court finds Class Plaintiffs have satisfied the adequacy requirement.

VI. RULE 1.220(b) REQUIREMENTS

59. In addition to satisfying "numerosity, commonality, typicality, and adequacy, a class must meet any of the three categories listed in subjection (b) of rule 1.220."[96] In this matter, all three categories are satisfied.

a) Rule 1.220(b)(1)

60. Class certification is appropriate under Florida Rule of Civil Procedure 1.220(b)(1) when "the prosecution of separate claims or defenses by or against individual members of the class would create a risk of either: (A) inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of other members of the class who are not parties to the adjudications to protect their interests."

61. This matter rests on Wildwood Villages' uniform patterns, practices, and courses of conduct toward all of the Lot Owners in the Subdivisions. If each Lot Owner pursues a separate lawsuit, there is a substantial risk that each court may answer the above-stated common questions differently, thus creating similar, but not identical, standards, under which Defendants will be forced to delicately comply with each separate judgment but violate none. Moreover, because Class Plaintiffs and the other Lot Owners are similarly situated, if Class Plaintiffs proceed with individual claims, this Court's judgment would, as a practical matter, be dispositive for all other Lot Owners who are all paying the same monthly maintenance fees.

62. Accordingly, there is a risk that separate claims by individual class members would result in inconsistent adjudication and be dispositive of the interests of other class members.

b) Rule 1.220(b)(2)

63. Class certification is appropriate under Florida Rule of Civil Procedure 1.220(b)(2) when the "party opposing the class has acted or refused to act on grounds generally applicable to all the members of the class, thereby making . . . declaratory relief concerning the class as a whole appropriate."[97]

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[95] Trans. 46-47; Trans. 71:11-12.
[96] *Baldwin*, 97 So.3d at 852.
[97] Fla. R. Civ. P. 1.220(b)(2).

64. Because Wildwood Villages engages in a pattern, practice, and course of conduct of charging a uniform monthly maintenance fee to all Lot Owners,[98] if this Court ultimately finds Wildwood Villages violated the Declarations by improperly inflating and misusing the monthly maintenance fees, such conduct will be improper as to all Lot Owners.[99] Likewise, because Quest and Unity have collected, or continue to collect, monthly maintenance fees from all Lot Owners on behalf of Wildwood Villages, if this Court determines Quest and Unity have improperly collected and continue to improperly hold money and other assets that rightfully belong to Class Plaintiffs, such conduct will be improper as to all other Lot Owners.[100]

65. Accordingly, Defendants' conduct is applicable to all Lot Owners as potential class or sub-class members.

c) Rule 1.220(b)(3)

66. Class certification is appropriate under Florida Rule of Civil Procedure 1.220(b)(3) when "the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy."[101]

d) Class Plaintiffs seek more than monetary damages

67. Defendants argue Class Plaintiffs' claims should not be certified for class under any of Rule 1.220(b)'s subsections based on an argument that "what . . . these plaintiffs are really after here, the heart of this, is . . . monetary damages."[102] In Counts VI, VII, and VIII, Class Plaintiffs seek both monetary *and* injunctive relief. [103] Class Plaintiffs also seek declaratory relief in this action. Defendants' argument that Class Plaintiffs "are really after" relief other than that relief pled in the Second Amended Complaint is not well taken. To the extent Defendants intend to suggest that seeking monetary relief bars class claims altogether, by adopting such a stance this Court would produce an illogical result and effectively eviscerate class action lawsuits.

i. Common Questions of Law or Fact Predominate Over Individual Questions of Law or Fact Class Representation is the Superior Method for Adjudicating this Dispute

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[98] Any variance in the amount of uniform assessments Wildwood Villages charged to the putative Class and Sub-Class can be addressed by dividing the putative class members into sub-classes. *Broin*, 641 So.2d at 891.

[99] *See Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd.*, 541 So.2d 1121 (Fla. 1989) (finding that when a mobile home park owner unilaterally increases rent across the board, such a "circumstance is shared equally by each member of the park[,] . . . [and] the alleged unconscionability of such an increase lends itself to proof in the class action format.")

[100] *See id.*

[101] Fla. R. Civ. P. 1.220(b)(3) (2014).

[102] Trans. 254:19-24.

[103] Doc. # 62.

68. The "predominance inquiry tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation."[104] The predominance requirement is satisfied when a named plaintiff demonstrates that "if he or she, by proving his or her own individual case, necessarily proves the cases of the other class members."[105] Indeed, "Florida courts have held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way." A finding of predominance is further bolstered where "any minor variance in factual circumstances would be with regard to the issue of damages and not liability . . . [and where] any variance in damage recovery between the class members is calculable by using a systematic formula . . . ."[106]

69. Because Wildwood Villages engages in a pattern, practice, and course of conduct of charging a uniform monthly maintenance fee to all Lot Owners,[107] Class Plaintiffs and each other Lot Owner share the same common interest as to whether Wildwood Villages is violating the Declarations by improperly inflating and misusing the monthly maintenance fees.

70. Likewise, because Quest and Unity have collected, or continue to collect, monthly maintenance fees from all Lot Owners on behalf of Wildwood Villages, Class Plaintiffs and other Lot Owner share the same common interest as to whether Defendants have improperly collected and continue to improperly hold money and other assets that rightfully belong to putative class and sub-class members.

71. If Class Plaintiffs successfully prove Defendants' conduct is improper, such conduct will be improper as to all Lot Owners as potential class or sub-class members.

72. Accordingly, Class Plaintiff satisfy the predominance requirement.

ii. Class Representation is the Superior Method for Adjudicating this Dispute

73. The purpose of the superiority requirement is to ensure the "class action would achieve economies of time, effort, and expense, and promote uniformity of decisions as to persons similarly situated, without sacrificing procedural fairness."[108] In determining whether a class action is the superior method of adjudicating a controversy, the court considers "(1) whether a class action would provide the class members with the only economically viable

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[104] *Chase Manhattan Mortg. Corp. v. Porcher*, 898 So.2d 153, 157 (Fla. 4th DCA 2005).
[105] *Sosa*, 73 So.3d at 112.

[107] Any variance in the amount of uniform assessments Wildwood Villages charged to the putative Class and Sub-Class can be addressed by dividing the putative class members into the sub-classes described above. *Broin*, 641 So.2d at 891.
[108] *Braxton v. Farmer's Ins. Group*, 209 F.R.D. 654, 662 (N.D. Ala. 2002).

remedy; (2) whether there is a likelihood that the individual claims are large enough to justify the expense of separate litigation; and (3) whether a class action cause of action is manageable."[109]

74. Individual claims of putative class or sub-class members can range from less than $300.00 to several thousand dollars depending on how long each Lot Owner has owned a lot within the Subdivisions.[110] Several of the class members would likely find it challenging to pay the legal expense of contesting the propriety of Defendants' alleged conduct on their own, but class representation provides each putative class or sub-class member with an economically viable means of protecting his or her shared interest.

75. Additionally, and as previously discussed, joinder of at least 147 separate plaintiffs would be impracticable and contrary to Rule 1.220's purpose of promoting judicial economy.

76. Furthermore, there are no "insurmountable difficulties"[111] involved with this lawsuit that would prevent the Court from utilizing the class notification procedures contained in Rule 1.220(d)(2), or any other class management tool, to adequately manage the class.

77. In addition, "the predominance analysis has a tremendous impact on the superiority analysis for the simple reason that, the more common issues predominate over individual issues, the more desirable a class action lawsuit will be as a vehicle for adjudicating the plaintiffs' claims, both relative to other forms of litigation such as joinder or consolidation, and in absolute terms of manageability."[112]

78. As stated above, Wildwood Villages engages in a pattern, practice, and course of conduct of charging a uniform monthly maintenance fee to all Lot Owners, and thus Class Plaintiffs and each other Lot Owner share the same common interest as to whether Wildwood Villages is violating the Declarations by improperly inflating and misusing the monthly maintenance fees. Accordingly, common issues predominate over individual issues and a class action lawsuit is desirable as a vehicle for adjudicating Class Plaintiffs' claims.

79. Accordingly, this Court should find that Class Plaintiffs have satisfied the superiority requirement and grant certification under Florida Rule of Civil Procedure 1.220(b)(3).

VII. THE LOT OWNERS ARE NOT SUBJECT TO DIFFERENT DEFENSES AND ISSUES SUCH THAT CLASS CANNOT BE CERTIFIED

80. Defendants' main argument against class certification is that common issues do not predominate in this action for two alleged reasons: **1)** a now non-existent entity called the

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[109] *Sosa*, 73 So.3d at 116. Yet, the final factor – manageability – is rarely a concern as "[e]ven potentially severe management issues have been held insufficient to defeat class certification." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1273 (11th Cir. 2004).

[110] *See* Second Amended Complaint, Doc. # 62, at ¶¶ 58-59.

[111] *Klay*, 382 F.3d at 1273.

[112] *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Svcs., Inc.*, 601 F.3d 1159, 1184 (11th Cir. 2010).

"Wildwood Country Resort Homeowners Association, Inc.," ("WCR") ("The WCR Argument");[113] and **2)** a prior lawsuit against Wildwood Village's predecessor in interest that was voluntarily dismissed pursuant to a settlement agreement approximately ten years ago ("The Prior Lawsuit Argument"). More specifically, Defendants argue that Lot Owners who were members of the WCR are "bound by" any alleged agreements WCR made with Woods,[114] even if lot owners were *not* members of the WCR. Defendants also argue, the Lot Owners are "subject to dramatically different issues and defenses"[115] based on the prior lawsuit, their relationship to the WCR[116] and/or to what Defendants refer to as the WCR's "Board of Directors, and its negotiating committee,"[117] and thus cannot demonstrate numerosity (i.e., not enough prospective class members were not members of the WCR)[118], commonality (i.e., different individuals have different defenses based their relationships to the WCR or the prior lawsuit)[119], typicality (for the same reasons as commonality), or adequacy (i.e., Class Plaintiffs' claims are barred because they are members of WCR and/or negotiating committee).[120]

The WCR Argument

a) Background of the WCR Argument

81. Chapter 723, Fla. Stat. ("Chapter 723") was passed in 1984.[121] Chapter 723 "appl[ies] to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease."[122] The lots in question are neither rented or leased, but are instead owned by Class Plaintiffs and the prospective class members. As such, this Court must look only to those sections of Chapter 723 identified in § 723.002(2), which states: "The provisions of §§ 723.035, 723.037, 723.038, 723.054, 723.055, 723.056, 723.058, and 723.068 are applicable to mobile home subdivision developers ***and the owners of lots in mobile home subdivisions***."[123]

82. In 1992, Wildwood Estates Residents Club, Inc. filed its Articles of Incorporation ("Articles").[124] Its stated purpose was the "pleasure and recreation of the homeowners and guests of Wildwood Estates Park."[125] In 1995, the Wildwood Estates Residents Club, Inc. amended the Articles to change the name of the group to "Wildwood Estates Home Owners Association,

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[113] *See* Defendant's Amended Response in Opposition to Plaintiff's Motion for Class Certification, Doc. # 164 at ¶¶ 1, 2.
[114] *See* Doc. # 164 at ¶ 3-4.
[115] *See* Doc. # 164 at ¶ 3.
[116] *See* Doc. # 164 at ¶ 4.
[117] Trans. 32:6-22; Trans. 41:13-17; *see also* Doc. # 164 at ¶ 15.
[118] *See* Doc. # 164 at ¶ 14.
[119] *See* Doc. # 164 at ¶¶ 15, 18.
[120] *See* Doc. # 164 at ¶ 20.
[121] Unless otherwise indicated, the language of Chapter 723 that is used herein is the 2007 version of that statute. The 2007 statute is used because it was in effect at the time damage first occurred inside the relevant period pursuant to the statute of limitations.
[122] § 723.002(1), Fla. Stat.
[123] Emphasis added.
[124] *See* Articles of Incorporation of Wildwood Estates Residents Club, Inc., admitted into evidence as Plaintiffs' Exhibit 6 at the Class Certification Hearing, at Article III ("Plaintiffs' Exhibit 6").
[125] *See* Plaintiffs' Exhibit 6, Article III. *See also* Trans. 23:20-22; Trans. 120:17-23.

Inc."[126] Later that year, "WHWH—Homeowners Association, Inc.," merged with Wildwood Estates Home Owners Association, Inc. and residents of all of the Subdivisions were permitted to become involved with the merged entity.[127] The Articles and Plan of Merger filed with the Secretary of State on June 26, 1995, specifically state: "The by-laws and board of directors of the new corporation will be the by-laws and board of directors of Wildwood Estates Home Owners Association, Inc. . . . *There are no changes to the 'Articles of Incorporation'* of Wildwood Estates Home Owners Association, Inc."[128] (emphasis added). In October 2003, the name of the entity was amended to WCR, but no substantive changes were made to the Articles.[129] Thus, until it was dissolved in 2016, the purpose of the WCR was merely to further the "pleasure and recreation of the homeowners and guests of Wildwood Estates . . . " and membership in the WCR was always entirely voluntary.

b) *Application of Chapter 723*

83. Defendants' overall argument is dependent on the assumption that the WCR was a homeowners' association organized pursuant to Chapter 723 that had the power to bind its members with regard to the amount of monthly maintenance fees that would be levied. This is erroneous; the WCR was not a "homeowners association" as defined by Chapter 723, and instead was a mere voluntary social organization. Pursuant to Florida case law and Florida statutes, when bylaws and articles of incorporation contradict each other, articles of incorporation control.[130] Thus, to the extent the WCR's Bylaws in any way contradict the Articles of Incorporation and their statement that the purpose of the WCR is merely the "pleasure and recreation of the homeowners and guests of Wildwood Estates Park," the Articles of Incorporation control.[131]

84. Nonetheless, the primarily social nature of the WCR was reinforced by the 2003 version of the WCR Bylaws, which identifies the purpose for establishing WCR as "uphold[ing] its members rights and foster[ing] a friendly, sociable environment for the residents of the subdivision . . . ."; by the 2009 version of the WCR Bylaws, which identify the purpose for establishing WCR as "uphold[ing] its members' rights and foster[ing] a friendly, sociable environment for the pleasure and recreation of homeowners and their guests"; and by the 2015 version of the WCR Bylaws, which identifies the purpose for establishing WCR as "promot[ing] a friendly, sociable environment for the pleasure and recreation of [the WCR's] members and residents."[132]

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[126] *See* Plaintiffs' Exhibit 6.

[127] *See* Articles and Plan of Merger for the WCR ("Plan of Merger"), which was filed with the Florida Division of Corporations on June 26, 1995, and which the Court takes judicial notice of pursuant to § 90.202(12), Fla. Stat.

[128] *See* Plan of Merger.

[129] *See* Articles of Amendment to Articles of Incorporation admitted into evidence as Defendants' Exhibit 6 at the Class Certification Hearing ("Defendants' Exhibit 6").

[130] *New Mount Moriah Missionary Baptist Church, Inc. v. Dinkins*, 708 So. 2d 972, 974 (Fla. 3d DCA 1998) ("Any new bylaws, however, must be consistent with the articles of incorporation. §617.0206, Fla. Stat."); §617.0206, Fla. Stat. ("The bylaws may contain any provision for the regulation and management of the affairs of the corporation ***not inconsistent with law or the articles of incorporation.***") (emphasis added).

[131] Trans. 23:20-22 ; Trans. 24:8-17; Trans. 75:10-23; Trans. 92:19-25; Trans. 93:12-19; Trans. 95:1-4; Trans. 232-233.

[132] *See* Wildwood Country Resort Homeowners Association Bylaws, which were admitted into evidence as Defendants' Exhibits 7 and 8 at the Class Certification Hearing ("Defendants' Exhibits 7 and 8"). Hereinafter, all versions of the Bylaws will be collectively referred to herein as "WCR Bylaws."

85. Additionally, to the extent Defendants' look to §723.037, Fla. Stat., to argue that class certification is inappropriate, §723.037, which is titled "Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation," applies to disputes regarding lot rental increases, reductions in services or utilities, and changes in rules and regulations, but it does not apply to disputes regarding the maintenance fees that are the subject of this action.

i. Not a Chapter 723 Association per the Definition in §723.003(4)

86. The current version of §723.003(4) defines a "homeowners' association" as: "a corporation for profit or not for profit, which is formed and operates in compliance with ss. 723.075-723.079; or, ***in a subdivision*** the homeowners' association authorized in the subdivision documents ***in which all home owners must be members as a condition of ownership.***" (emphasis added). Section 723.003 has been amended numerous times since it was enacted in 1984, and the 2015 amendment was the first version of the statute to include a definition of a homeowners' association. Therefore, pursuant to the only definition of "homeowners' association" ever included in Chapter 723, the WCR is not a Chapter 723 homeowners' association because membership in the WCR was always voluntary, as indicated in Article II of the Bylaws.[133]

ii. Not a Chapter 723 Association per §723.075

87. Furthermore, although prior versions of Chapter 723 do not include a definition of "homeowners association," they do include §723.075, titled "homeowners' associations." Section 723.075 was enacted in 1984, it was amended in 2008,[134] and a second amendment took effect July 1, 2016. In 2007, the Statute read:

> *In order to exercise the rights provided in s. 723.071 [governing the sale of mobile home parks], the mobile home owners shall form an association in compliance with this section and ss. 723.077, 723.078, and 723.079, which shall be a corporation for profit or not for profit* ***and of which not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members*** *or shareholders.* ***Upon such consent*** *by two-thirds of the mobile home owners,* ***all consenting mobile home owners*** *in the park and their successors shall become members of the association and* ***shall be bound*** *by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant thereto. . . .* ***Upon incorporation and service of the notice described in s. 723.076,*** *the association shall become the representative of the mobile home owners in all matters relating to this chapter.*

[133] *See* Defendants' Exhibits 7 and 8. All versions of the Bylaws show that membership is voluntary; *see also* Trans. 93:12-19; Trans. 141: 6-11.

[134] The existing text of 723.075 remained the same, but subsection (3), which is not applicable to this action, was added.

(emphasis added).[135]

88. The WCR fails to meet Chapter 723's definition of "homeowners' association[(s)]." The WCR was not formed in compliance with §§ 723.077, 723.078, and 723.079. Defendants have not shown that "not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members" of the WCR or that the notice required by § 723.076 was served.[136]

89. The fact that the WCR was not formed in compliance with §723.077 speaks to the overall purpose and intent of the WCR and how it differs from a Chapter 723 Association. Section 723.077 requires "the articles of incorporation of a homeowners' association [to] provide: (1) That the association has the power to negotiate for, acquire, and operate the mobile home park on behalf of the mobile home owners. (2) For the conversion of the mobile home park once acquired to a condominium, a cooperative, or a subdivision form of ownership, or another type of ownership." The Articles of Incorporation, as amended, do not grant the WCR the powers required by §723.077 and, ostensibly, the WCR does not have these vital powers.

90. Similarly, with regard to §723.079, that section states that: "An association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the park property." Defendants, rather than the WCR, are responsible for maintaining, managing, and operating the park property. The powers and duties that Chapter 723 envisions as necessary to all homeowners' associations are not powers or duties that the WCR has.[137]

91. Therefore, the WCR was clearly never a Chapter 723 homeowners association as defined by either §723.003(4) or §723.075.

iii. Section §723.037 Does Not Apply

92. To the extent Defendants specifically use §723.037 to argue that any lot owners who are members of the WCR are barred from suing Defendants, again, that Statute only applies to "increase[s] in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations"—not maintenance fee increases.

93. Second, §723.037(1) also states: "The homeowners' association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected homeowners agree, in writing, to such representation." As such, even if §723.037 applied to increases in maintenance fee amounts and the WCR was a Chapter 723 homeowners association, the WCR could not have acted on behalf of the individual homeowners without a majority of the homeowners agreeing, in writing, to such representation. Defendants have not demonstrated that a majority agreed in

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[135] *See* §723.075.
[136] Trans. 23:22-25; Trans. 24:1-7; Trans. 113: 5-25; Trans. 143:5-22.
[137] *See, e.g.*, Trans. 94:15-25; Trans. 97:10-24.

writing, and letters dated April 25, 2014, and May 14, 2014, from Defendant Woods to the WCR show that Defendants never possessed such a writing.[138]

c) WCR's Negotiating Committee

94. Defendants also use the sometimes-existence of what they refer to as the WCR's "Negotiating Committee" to argue that some Class Plaintiffs – namely, Art Spengler – and some prospective class members were bound by the Negotiating Committee's alleged agreement to any change in the monthly maintenance fees and do not have the same legal defenses that lot owners who were not members of the WCR or the Negotiating Committee might have. [139]

95. The Negotiating Committee was removed from the WCR Bylaws in 2015, and again, the WSR is now dissolved.[140] However, in the prior iterations of the Bylaws, details regarding the Negotiating Committee are found at Article VII, Section 3. As discussed above, when bylaws and articles of incorporation contradict each other, articles of incorporation control.[141] Thus, to the extent the WCR's Bylaws in any way contradict the Articles of Incorporation and their statement that the purpose of the WCR is merely the "pleasure and recreation of the homeowners and guests of Wildwood Estates Park," the Articles of Incorporation control.[142]

96. Notwithstanding, before being removed entirely from the Bylaws in 2015, the Negotiating Committee was to meet with the developer or owner within 30 days "of having received notice of change in maintenance fees or rules and regulations or reductions in services or utilities to discuss the reasons for such proposed changes as per Florida Statutes." The WCR Bylaws also state that the Negotiating Committee shall act as mediator for members who have a dispute with management regarding, *inter alia*, "maintenance."[143] However, the Negotiating Committee is to act in this capacity only "**when requested**." [144] The language of the WCR Bylaws also suggests this "request" must be made each time a change is made; thus, even if someone requested that the Negotiating Committee "mediate" one year and claims for that year are somehow barred, all other years are still available for recovery.

97. Moreover, Article VII, Section 3 also states: "Nothing herein limits any statutory or common-law right of any individual homeowner or class of homeowners to bring any action that may otherwise be available."[145]

98. Additionally, to the extent Defendants look to §723.037(4) to argue the Negotiating Committee had the power to bind WCR members and bar them from bringing the

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[138] *See* Plaintiffs' Exhibits 8 and 9.
[139] *See* Doc. # 164 at ¶ 3, 4, 8, 27.
[140] Trans. 154:6-25; Trans. 155:1; *see also* Defendants' Exhibit 9; Plaintiffs' Exhibits 8 and 9.
[141] *New Mount Moriah Missionary Baptist Church, Inc.*, 708 So. 2d at 974); *see also* §617.0206, Fla. Stat.
[142] Trans. 24:8-17; Trans. 232-233.
[143] See Defendants' Exhibits 7 and 8 at Article VII, Section 3.
[144] *See* Defendants' Exhibits 7 and 8 at Article VII, Section 3.
[145] *See* Defendants' Exhibits 7 and 8 at Article VII, Section 3(d); *see also* Trans. 152:1-3; Trans. 216:16-20.

instant suit, as discussed above, §723.037 does not apply to disputes regarding increases in maintenance fees and does not apply.[146]

99. Perhaps most importantly, Woods has challenged the validity of the Negotiating Committee by verbal and written statements that it needed to have the approval of 51% of lot owners.

d) ***Dissolution of WCR***

100. On January 20, 2016, the WCR filed Articles of Dissolution, stating that the "corporation had not commenced to conduct its affairs" and was "authorized by a majority of its incorporators."[147]

101. Article XI of the WCR Bylaws govern dissolution. While the method of distributing the WCR's remaining assets upon dissolution has changed over the years, Article XI has remained consistently sparse and brief, merely stating that, "[i]n the case of dissolution," the balance of the assets shall be distributed. [148] Unlike the myriad of steps required to dissolve a *real* homeowners association, no additional steps are required and no steps to protect the lot owners were necessary. Moreover, no vote of the WCR's members was required.

The Prior Lawsuit Argument

102. Defendants also argue "Spengler and several other potential class members are subject to additional defenses based on their commencement, participation and settlement of a prior lawsuit [against the predecessor park owner] in the Fifth Judicial Circuit, Case No. 2000-CA-000844, . . . [and] are thus: (a) estopped from asserting facts and legal arguments in the current action that contradict those made in the prior lawsuit, including the Section 720.3086, Florida Statutes, applies to Wildwood Villages . . . . " [149]

103. Class Plaintiff's have withdrawn their request for class certification with regard to a declaration of the Court concerning Chapter 720's applicability to this action. Accordingly, no potential class members are subject to additional defenses, including estoppel, based on their involvement in the prior lawsuit.

104. Even if that request had not been withdrawn, the prior lawsuit would not subject any of the Lot Owners to additional defenses based on their involvement in same.

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[146] *See* §723.037(4)(a), Fla. Stat.: "A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board of directors of the homeowners' association, if applicable, and the park owner shall meet, at a mutually convenient time and place within 30 days after receipt by the homeowners of the notice of change, to discuss the reasons ***for the increase in lot rental amount, reduction in services or utilities, or change in rules and regulations***." (emphasis added).

[147] *See* Articles of Dissolution, which were admitted into evidence at the Class Certification Hearing as Defendants' Exhibit 9 (Defendants' Exhibit 9).

[148] *See* Defendants' Exhibits 7 and 8 at Article XI.

[149] *See* Doc. # 164 at ¶ 18.

105. After the filing of a Fourth Amended Complaint, the prior lawsuit was voluntarily dismissed.

106. In an Order on Defendant's Motion to Dismiss or Strike Portions of Plaintiffs' *Third Amended Complaint* ("Order"), the court in the prior lawsuit made the following relevant findings:

> *3. The application of Chapter 723 of the Florida Statutes . . . to mobile home subdivisions is prescribed by Florida Statutes § 723.002(2) . . . .*
> *4. This Court finds that this statutory section limits the application of Chapter 723 as relating to mobile home subdivisions to those specific subsections enumerated. With regard to the determination of rights and obligations of the various parties, this Court does however, find that the excluded subsections of Chapter 723 are pertinent in making an assessment as to the scope or ambit as to the parties respective duties and obligations based on the announced legislative intent.*[150]

107. In other words, in the prior lawsuit, the court found that some portions of Chapter 723 did apply to the Subdivisions. It did *not* find that *no* portions of Chapter 720 applied.

108. However, the Order states that it is based upon review of the pleadings, motions, legal memorandum, and applicable law ***and not evidence***. Therefore, the "findings" are mere conclusions of law.

109. In light of the foregoing, the collateral estoppel or res judicata impact of the Order is dubious. The Fifth District Court of Appeal has held that for "the doctrine of collateral estoppel to apply to bar relitigation of an issue," the following "five elements must be present: (1) an identical issue must have been presented in the prior proceedings; (2) the issue must have been a critical and necessary part of the prior determination; (3) there must have been a full and fair opportunity to litigate that issue; (4) the parties in the two proceedings must be identical; and (5) the issues must have been actually litigated."[151] Other Florida courts have similarly held, "The rule of collateral estoppel (or estoppel by judgment) requires that the matter sought to be interposed as a bar must have been litigated and determined by the judgment, or if not expressly adjudicated, essential to the rendition of the judgment."[152] Likewise, as to res judicata, in *Malunney v. Pearlstein*, the Second District Court of Appeal held that "a requirement of that doctrine [of res judicata], which is asserted as a bar to the instant action, is that the previous action must have been terminated by "a final judgment on the merits. . . . We cannot find, however, that dismissal of the complaint . . . resulted in an adjudication upon the merits. A dismissal on the pleadings does not constitute a final judgment on the merits of the case barring a second action." [153]

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[150] *See* Defendant's Exhibit 11.
[151] *Criner v. State*, 138 So. 3d 557, 558 (Fla. 5th DCA 2014).
[152] *United Auto. Ins. Co. v. Law Offices of Michael I. Libman*, 46 So. 3d 1101, 1104 (Fla. 3d DCA 2010). *See also Seaboard Coast Line R. Co. v. Indus. Contracting Co.*, 260 So. 2d 860, 865 (Fla. 4th DCA 1972) ("It is not enough for the court to apply collateral estoppel where the former cause involved the same issues if it cannot be shown that such issues were clearly adjudicated.")
[153] Malunney v. Pearlstein, 539 So. 2d 493, 495 (Fla. 2d DCA 1989) (internal citations and quotations omitted).

110. Finally, nothing about the voluntary dismissal of the prior lawsuit and any settlement pertaining thereto would preclude parties from filing actions against the park owner or its successors for any claims that accrued subsequently. Despite Defendants' suggestion that there was some type of release of future liability of the park owner or its successors, this would be antithetical to Florida law and public policy and no evidence supports such a position.

VIII. CLASS PLAINTIFF'S CAUSES OF ACTION DO NOT REQUIRE INDIVIDUALIZED INQUIRIES SUCH THAT A CLASS CANNOT BE CERTIFIED

111. To the extent Defendants argue that certain counts in the Second Amended Complaint are not causes of action that a court should certify as class claims, the Court rejects these arguments.

i. Fraud/Constructive Fraud

112. Count III of Class Plaintiffs' Second Amended Complaint is for Fraud, and Count XI is for Constructive Fraud. Defendants argue that these Counts should not be certified for class claims because individualized issues predominate. [154]

113. The Court denies Plaintiff's Motion on the fraud count.[155]

114. Constructive fraud is a different analysis: "Constructive fraud is the term typically applied where a duty under a confidential or fiduciary relationship has been abused, or where an unconscionable advantage has been taken. . . . ***Constructive fraud may be based on misrepresentation*** or concealment, or the fraud may consist of taking an improper advantage of the fiduciary relationship at the expense of the confiding party.[156]

115. Thus, the Court need only know if an unconscionable advantage has been taken or if Defendants or their agent were in a fiduciary relationship with the Lot Owner. The latter is all but answered in the affirmative by Wood's licensure with Florida's Department of Business and Professional Regulation as a Community Association Manager under Section 468.431(4), Florida Statute,[157] and by Unity's status as a Community Association Management (CAM) Firm under Section 468.431(3). Woods and Unity's legal, regulatory duties under Florida Statute and the Standards of Professional Conduct in Florida Administrative Code 61E14-2.001 place the Defendants in a fiduciary relationship with the Lot Owners. For instance, Florida Administrative Code 61E14-2.001 contains the following provisions:

> *Licensees shall adhere to the following provisions, standards of professional conduct, and such provisions and standards shall be deemed automatically incorporated, as duties of all licensees, into any written or oral agreement for the rendition of community*

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[154] Trans. 251:3-7.
[155] *See e.g.* Lance v. Wade, 457 So. 2d 1008, 1009 (Fla. 1984).
[156] *Beers v. Beers*, 724 So. 2d 109, 116–17 (Fla. 5th DCA 1998) (emphasis added).
[157] Trans. 102: 3-10.

association management services.

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(2) Professional Standards. During the performance of community association management services, a licensee shall do the following:

(a) Comply with the requirements of the governing documents by which a community association is created or operated.

(b) Only deposit or disburse funds received by the community association manager or management firm on behalf of the association for the specific purpose or purposes designated by the board of directors, community association management contract or the governing documents of the association.

(c) Perform all community association management services required by the licensee's contract to professional standards and to the standards established by Section 468.4334(1), F.S.

116. Florida Statute 468.4334(1), referenced by the Florida Administrative Code above, requires that, "A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees."

117. Defendant's apparent argument is that the Defendants could not have been in a position of trust or confidence because none of the Lot Owners had any trust or confidence in them; the argument that Defendants could somehow be relieved of their legal, regulatory, and fiduciary duties because they lost the goodwill of the Lot Owners is unpersuasive. If Defendants or their agent are in a regulatory or statutorily-based fiduciary relationship with the Lot Owners in the Subdivisions, that is a relationship that can be deduced without the need to resort to the "mini trials" Defendants' suggest.[158] Moreover, if the Court ultimately finds that Defendants or their agent made a "misrepresentation" as to the amount of monthly maintenance fees, the Court will be able to determine if constructive fraud had occurred.[159]

118. Thus, especially in light of this Court's obligation to resolve any doubts as to class certification in favor of certification, the Court certifies class as to Count XI of the Second Amended Complaint.

119. Moreover, for the foregoing reasons, class certification is also appropriate with regard to Count X for Breach of Implied Fiduciary Duty.

ii. FDUPTA

120. Count IX of Class Plaintiffs' Second Amended Complaint is for FDUPTA. Defendants argue that this count should not be certified for class claims because individualized

[158] Trans. 28:5; Trans. 255:19.
[159] *Beers*, 724 So. 2d. at 116.

questions will predominate. [160] Florida courts have concluded that there is "a critical difference between a deceptive trade practice claim and a claim of fraud. A party asserting a deceptive trade practice claim need not show actual reliance on the representation or omission at issue. Hence, the impediment to class litigation that exists for multiple intrinsic fraud claims does not exist in the present case."[161] As such, the Court need not determine if each individual Lot Owner actually relied the Defendants' deceptive behavior, if any, but must merely look to Defendants' allegedly deceptive practice to determine if liability exists.

121. Defendants rely upon *Black Diamond Properties, Inc. v. Haines* for their argument that "individual issues predominate over common issues and class representation is not practical."[162]

122. However, *Haines* is distinguishable from the instant case: "At the very core of [the complaint in that case] is the allegation that oral and written misrepresentations took place in 500 separate oral contract transactions spanning many years and involving numerous sales personnel. To prove these allegations, it [would have been] necessary that each plaintiff testify. Additionally, it [would have been] necessary for each plaintiff to offer proof that he or she was damaged as a result of the purported misrepresentations." Moreover, as the Haines Court itself recognized, it was "factually distinguishable [from a] situation wherein the alleged fraud was based on nondisclosure [such as sending out inflated monthly maintenance fee notices to unknowing citizens], rather than affirmative misrepresentation." As the Haines Court recognized, "under those circumstances, it was not necessary to call each plaintiff to establish that a misrepresentation had occurred. Moreover, all of the plaintiffs were similarly induced resulting in damages. Here, by contrast, although reliance might not be an element of one claim, each plaintiff still must demonstrate that the misrepresentation occurred and actually caused damage to him or her, which necessitates individual proof in each case."

123. Because Wildwood Villages engages in a pattern, practice, and course of conduct of charging a uniform monthly maintenance fee to all Lot Owners,[163] if this Court ultimately finds that Wildwood Villages violated the Declarations by deceptively inflating and misusing the monthly maintenance fees, such conduct will be deceptive as to all Lot Owners.[164] Thus, the Court certifies class as to Counts IX of the Second Amended Complaint.

iii. Equitable Lien

124. Count XII of Class Plaintiffs' Second Amended Complaint is for Imposition of Equitable Lien. The law in Florida on the criteria for establishment of an equitable lien is clearly stated in by the Florida Supreme Court in *Crane Company v. Fine*, which states in relevant part:

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[160] Trans. 261:8-9.
[161] *Davis v. Powertel, Inc.*, 776 So. 2d 971, 973 (Fla. 1st DCA 2000).
[162] 940 So. 2d 1176, 1179 (Fla. 5th DCA 2006).
[163] Any variance in the amount of uniform assessments Wildwood Villages charged to the putative Class and Sub-Class can be addressed by dividing the putative class members into the sub-classes described above. *Broin*, 641 So.2d at 891.
[164] *See Lanca Homeowners, Inc*, 541 So.2d at 1121 (finding that when a mobile home park owner unilaterally increases rent across the board, such a "circumstance is shared equally by each member of the park[,] . . . [and] the alleged unconscionability of such an increase lends itself to proof in the class action format.")

"An equitable lien is simply a right of a special nature over a particular property that may arise from a written contract . . . or it may be declared by a court of equity out of ***general consideration of right and justice as applied to the relations of the parties*** and the circumstances of their dealings in the particular case."[165] As previously stated, the Declarations allow Wildwood Villages limited authority to charge a monthly maintenance fee to the Lot Owners and Wildwood Villages charges a uniform monthly maintenance fee to all Lot Owners. Class Plaintiffs' claim that Wildwood Villages violated the Declarations by exceeding or misusing its limited assessment authority, and an equitable lien may be imposed as class-wide relief arise in consideration of the rights and justice due to the Lot Owners as a class.

125. The Court also relies on its Order on Plaintiffs' Motion to Extend Lis Pendens and the findings contained therein.[166]

126. Thus, the Court certifies class as to Counts XII of the Second Amended Complaint.

iv. Unjust Enrichment/Quantum Meruit

127. Count IV of Class Plaintiffs' Second Amended Complaint is for Unjust Enrichment and Count V of Class Plaintiffs' Second Amended Complaint is for Quantum Meruit. Defendants argue that these counts should not be certified for class claims because individualized questions will predominate and because Class Plaintiffs state causes of action for Breach of Contract.[167] In the event that the Court ultimately finds that express contracts exist between Class Plaintiffs and Defendants, Class Plaintiffs are still entitled to judgment as to their Unjust Enrichment and Quantum Meruit claims if such claims are extra-contractual or contain a different subject matter than the claims for Breach of Contract. [168]

128. Moreover, Defendants Quest and Unity are not parties to the Declarations, and thus any defense related to the Breach of Contract claims as to those Defendants is inapplicable.

129. With regard to Defendants' arguments regarding individualized questions, the Florida Supreme Court has stated that class can be certified even when "the individuals are not identically situated." [169] Additionally, in *Morgan v. Coats,* the plaintiffs stated claims for

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[165] *Crane Company v. Fine*, 221 So.2d 145 (Fla. 1969) (emphasis added).
[166] Doc. # 91.
[167] Trans. 267, 268:10-17
[168] *See Timberland Consol. P'ship v. Andrews Land & Timber, Inc.*, 818 So. 2d 609, 611 (Fla. 5th DCA 2002).
[169] *Sosa,* 73 So. 3d at 108. The *Sosa* Court also cites several cases were class certification is granted although there are factual differences to consider between the prospective class members. *See Broin*, 641 So. 2d at 891 ("It is of no moment . . . that different statutes of limitation may apply, or that different choice of law provisions may govern. Differences among the class members as to applicable statutes of limitations do not require dismissal of a class action. . . . Entitlement to different amounts of damages is not fatal to a class action. . . .") *(internal citations omitted); Olen Props. Corp.*, 981 So. 2d at 520 ("We find the trial court correctly determined there was commonality and typicality among the proposed members of the class. . . . Appellants argue that different fees were charged for different individuals based on their circumstances, thereby negating any common issue. We disagree, as the issue is not whether the three types of fees were the same, but whether or not Appellants' practice of charging liquidated damages rather than actual damages violated Florida law or whether Appellants were required to credit tenants' accounts with rent it received from re-letting the premises.").

quantum meruit and unjust enrichment, and class was nonetheless certified. The *Morgan* court held that "While it is true that there will be some factual variations among the class members' claims . . . such issues go to the determination of damages rather than to liability."[170] In short, in *Morgan*, as in the instant case, the question is not whether the causes of action of quantum meruit and unjust enrichment require the consideration of factual differences between prospective class members, but whether "each class member predicated a claim upon the same course of conduct by the [defendants], and had based his or her claim on the same legal theories."[171] The same course of conduct – namely, Wildwood Villages allegedly violating the Declarations and exceeding or misusing its limited assessment authority to the Lot Owners – predicates the claims of every Lot Owner as a potential class member.

130. Thus, the Court certifies class as to Counts IV and V of the Second Amended Complaint.

v. Breach of Contract Claims

131. Counts VI, VII, and VIII of Class Plaintiffs' Second Amended Complaint are for Breach of Contract with regard to the Subdivisions' respective Declarations. Defendants argue that these breach of contract counts, in particular, should not be certified for class claims under Rule 1.220(b) because "what these plaintiffs are really after here, the heart of this, is going to be monetary damages."[172] As discussed above, in Counts VI, VII, and VIII, Class Plaintiffs seek both monetary *and* injunctive relief. [173] Class Plaintiffs *also* seek declaratory relief in this action. Defendants' argument that Class Plaintiffs "are really after" relief other than that relief pled in the Second Amended Complaint is not well taken. To the extent that Defendants intend to suggest that seeking monetary relief bars class claims altogether, by adopting such a stance this Court would produce an illogical result and effectively eviscerate class action lawsuits.

132. Additionally, to the extent Defendants claim that the breach of contract counts will require individualized inquiries into what Lot Owners expected to receive pursuant to the Declarations, the Declarations in question are nearly identical as regards the relevant, substantive issues that are material to this action, and the terms of the Declarations are clear and unambiguous regarding the services that Wildwood Villages is to provide the Subdivisions and the profit it is allowed to make for its services. As such, the Declarations apply uniformly to all Lot Owners and are not subject to interpretation.

133. Thus, the Court certifies class as to Counts VI, VII, and VIII of the Second Amended Complaint.

IX. CONCLUSION

134. Class Plaintiffs' Motion is **DENIED** as to the class certification of the Fraud Count, but **GRANTED** in all other respects, except for those matters for which Class Plaintiffs no longer seek class certification.

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[170] *Morgan v. Coats*, 33 So. 3d 59, 65 (Fla. 2d DCA 2010).

[171] *Sosa*, 73 So. 3d at 108. *See also Ouellette v. Wal-Mart Stores, Inc.*, 888 So. 2d 90, 91–92 (Fla. 1st DCA 2004) (considering claims of quantum meruit and unjust enrichment and holding that "the individualized nature of their damages claims should not bar certification of the class").

[172] Trans. 254:13-24.

[173] Doc. # 62.

135. Class Plaintiffs have standing to bring this class action to challenge an alleged unlawful action on the part of the Defendants.

136. Class Plaintiffs satisfy all prerequisites for class certification and Plaintiffs' claims are maintainable as a class action.

137. The certified class is defined as follows:

> (1) All lot owners within Hearty Host, Heritage Wood and Water Wheel, except Defendants or any officer, director, manager, member, employee or agent thereof, who paid a monthly assessment to Defendants during the applicable statute of limitations (the "Class"); and
>
> (2) All lot owners within Hearty Host, Heritage Wood and Water Wheel, except Defendants or any officer, director, manager, member, employee or agent thereof, who was sixty (60) years of age or older when they paid a monthly assessment to Defendants during the applicable statute of limitations (the "FDUPTA Class").

138. VAUGHN R. HARRIS and CHERYL M. HARRIS, as husband and wife, ART SPENGLER, and TERRANCE PIOTROWICZ and SUZANNE PIOTROWICZ shall serve as Class Representatives of the class and Lieser Skaff Alexander, PLLC and Bowen & Schroth, P.A. are class counsel.

139. Pursuant to Florida Rule of Civil Procedure 1.220(d), Class Plaintiffs shall provide notice to the class in a form approved by the Court. The parties shall work on submitting a proposed notice to the Court for consideration and approval. If the parties cannot agree on the form of the Notice within 14 days from the date of this order, the parties shall each submit a motion and proposed notice to the Court for consideration. The Court may conduct a hearing on the matter if the Court desires.

140. Defendants shall, within 30 days of the date of this Order, provide Class Plaintiffs in an electronic format the last known address of each class member.

141. Class Plaintiffs shall, within 45 days after the Court approves the form notice, mail notice to each class member's last known address, publish the Notice in a newspaper of general circulation in Wildwood, Florida and publish the Notice on the Class Plaintiffs' counsels' websites.

142. The Court retains jurisdiction concerning all aspects and management of this class action case.

DONE AND ORDERED in Chambers at Sumter County, Florida, this 17 day of March, 2017.

THE HONORABLE WILLIAM H. HALLMAN, III
CIRCUIT COURT JUDGE

CASE NO.: 2012-CA-001348

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail, this 17 day of March, 2017 to:

Joseph N. Alexander, Esq.
jalexander@lieserskaff.com
efile@lierserskaff.com

Jeffrey P. Lieser, Esq.
jeff@lierserskaff.com

Derek A. Schroth, Esq.
dschroth@bowenschroth.com
jmyers@bowenschroth.com
ahasselbring@bowenschroth.com

Rachael M. Crews, Esq.
rachael.crews@gray-robinson.com;
darlene.dallas@gray-robinson.com

Gary S. Salzman, Esq.
gary.salzman@gray-robinson.com
cindi.garner@gray-robinson.com

By: _____
Judicial Assistant