IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

RIGHT BY YOU,	)	
	)	
Plaintiff,	)	
	)	Case No. 2516-CV13783
v.	)	
	)	
STATE OF MISSOURI, *et al.*,	)	
	)	
Defendants.	)	

STATE DEFENDANTS' SUGGESTIONS IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

This Court should reject the motion to certify a defendant class of all 115 local Missouri prosecuting attorneys (hereinafter "Proposed Class"). Certification of a defendant class of all Missouri prosecuting attorneys is inappropriate in this case because the Proposed Class fails to meet the requirements of the Missouri Supreme Court Rule 52.08(a), (b)(1)(A), (b)(2), and (b)(3). In particular, a single prosecuting attorney is an inadequate representative for all Missouri prosecuting attorneys of the state.

BACKGROUND

Whether a class should be certified is "based primarily upon the allegations in the petition." *Elsea v. U.S. Eng'g Co.*, 463 S.W.3d 409, 414 (Mo. App. W.D. 2015). The Petition in this case makes only eight allegations to address class certification. Pet. ¶¶ 29–36. The Petition alleges that Jackson County Prosecutor Melesa Johnson, like other prosecuting attorneys in the state, has the authority to enforce the Missouri criminal laws at issue. *Id.* at ¶¶ 30–31. The Petition alleges a common nucleus of

operative facts and law regarding the conduct of the proposed class, *id*. at ¶ 33, and common defenses to all defendant classes. *Id*. at ¶ 34.

In a failed attempt to address fair and adequate representation, the Petition merely states in full, "Defendant Johnson will fairly and adequately protect the interests of the prospective defendant class." *Id*. at ¶ 35. The Petition makes no attempt to address whether Defendant Johnson has the resources to represent the interests of the proposed defendant class or to otherwise provide affirmative evidence that she is an adequate class representative.

Right By You seeks to join all 115 Missouri prosecuting attorneys in its class of defendants. However, it fails to identify any efforts whatsoever to even attempt to effectuate proper notice on any of the class members aside from Johnson.

LEGAL STANDARD

Before any case can be certified as a class action, "all the requirements of [Rule 52.08] must be satisfied. As to these requirements, the party seeking class certification has the burden of proof." *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 164 (Mo. App. W.D. 2006).

Certification requires, "at a minimum," that:

> (1) the class be so numerous that joinder of all members is impracticable, (2) questions of law or fact common to the class exist, (3) the claims of the representative parties are typical of the claims of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

State ex rel. Am. Fam. Mut. Ins. Co. v. Clark, 106 S.W.3d 483, 486 (Mo. banc 2003) (citing M. S. Ct. R. 52.08(a)). "These procedural rules are mandatory." *Id.* In "addition

to the elements of Rule 52.08(a), plaintiffs must also satisfy one of the three requirements of Rule 52.08(b)." *Id.* That is, Right By You must prove that a class action "may be maintained" under Rule 52.08(b)(1), (b)(2), or (b)(3). Mo. S. Ct. R. 52.08(b).

"Because class actions determine the rights of absent members," all class actions raise important "due process" considerations. *Dale*, 204 S.W.3d at 172. These due process concerns are especially acute in cases involving defendant class actions "because of the risk that plaintiff in selecting the named representatives will seek out weak adversaries to represent the class." *City of Excelsior Springs v. Elms Redevelopment Corp.*, 18 S.W.3d 53, 60 (Mo. App. W.D. 2000) (alteration omitted) (quoting 7A Charles A. Wright, Arthur Miller and Mar Kane, *Federal Practice and Procedure* § 1770 (2d ed. 1986)).

Because "Rule 23 and Rule 52.08 are essentially identical," "it is well settled that federal interpretations of Rule 23 are relevant in interpreting Rule 52.08." *Dale*, 204 S.W.3d at 161; *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 736 n.5 (Mo. banc 2004) (same); *Koehr v. Emmons*, 55 S.W.3d 859, 864 n.7 (Mo. App. E.D. 2001). This Court must "evaluate carefully the legitimacy of" Right By You's claim that Defendant Johnson "is a proper class representative" and must insist on "actual, not presumed, conformance with" the obligations for class certification. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982).

ARGUMENT

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). Within the exception of class actions, it is even more exceptional to certify a class of defendants proposed by a plaintiff. *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 853 (7th Cir. 2002). "Suits against defendant classes, though authorized, . . . are rare birds. We have called them 'exceptional.'" *Id.*

Class certification should be denied for three independent reasons: (1) Right By You failed to provide constitutionally required notice to absent class members; (2) Johnson cannot adequately represent 115 other independently-elected prosecutors while serving Jackson County with limited resources and defending two other statewide classes; and (3) Right By You cannot satisfy any pathway under Rule 52.08(b). Defendant class actions are exceptional procedural devices requiring strict adherence to due process. This case fails to meet those demanding standards.

I. Class certification would violate due process due to Right By You's failure to provide notice to potential class members.

Class certification would violate due process. Right By You's motion for certification does not identify any attempt to provide notice of the class certification to the other members of the purported class. No notification or attempted notification is contained in the record. Unlike plaintiff class actions where members voluntarily join to seek relief, defendant class actions impose unwanted litigation burdens on absent members who may face adverse judgments without any voice in their defense.

This is an insurmountable problem. As courts have emphasized, "notice is a function of adequate representation: Notice's function is to ensure effective representation." *City of Excelsior Springs*, 18 S.W.3d at 59. Failure to provide that notice is fatal here. The dangers are heightened in light of the lack of adequate protection of the class defendants' interests. "The essential requirements of due process . . . are notice and an opportunity to respond." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). Plaintiffs here have denied the putative class that basic obligation to notice.

Importantly, the court in *City of Excelsior Springs* emphasized that "defendant class actions" "present special due process concerns and require the court to be more diligent in assuring that the class is adequately and fairly represented." 18 S.W.3d at 60. "[C]loser scrutiny is necessary in determining the adequacy of the representation of a defendant class because of the risk that plaintiff in selecting the named representatives will seek out weak adversaries to represent the class." *Id.* (alteration omitted) (quoting 7A Charles A. Wright, Arthur Miller and Mar Kane, *Federal Practice and Procedure* § 1770 (2d ed. 1986)). The "selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties which due process requires." *Hansberry v. Lee*, 311 U.S. 32, 45 (1940). Here, Right By You has failed to provide sufficient notice of this action to the members of the defendant class, denying them due process.

II. Right By You has failed to show that the Jackson County Prosecutor can adequately protect the interests of other independently-elected prosecutors under Rule 52.08(a)(4).

An inescapable requirement of certification is that the representative party must "fairly and adequately protect the interests of the class." Mo. S. Ct. R. 52.08(a)(4). The burden is on Right By You to prove fairness and adequacy, *Dale*, 204 S.W.3d at 164, but Right By You fails to make this showing.

This Court bears responsibility to ensure that Missouri's class action device is not abused. "Rule 52.08 gives overall responsibility to the trial judge to protect the members of the class" and the "'trial court has a continuing duty in a class action case to scrutinize the class attorney to see that he or she is adequately protecting the interests of the class.'" *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 738 (Mo. banc 2004) (quoting 4 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 13:20 (4th ed. 2002)). "The inquiry into adequacy of representation in particular, requires the [trial] court's close scrutiny, because the purpose of Rule 23(a)(4) [and, by extension, Rule 52.08(a)(4)] is to ensure due process for absent class members, who generally are bound by a judgment rendered in a class action." *Rattray v. Woodbury Cnty., IA*, 614 F.3d 831, 835 (8th Cir. 2010).

The adequacy requirement springs from the constitutional requirement of due process. *Dale*, 204 S.W.3d at 172. As the U.S. Supreme Court said in *Hansberry*, an inadequate representative "no more satisfies the requirements of due process than a trial by a judicial officer who is in such situation that he may have an interest in the outcome of the litigation in conflict with that of the litigants." *Hansberry*, 311 U.S. at

45; *see also E. Texas Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 405 (1977) (linking *Hansberry* and adequacy under Rule 23(a)(4)).[1]

The rule's "adequacy requirements provide critical safeguards against the due process concerns inherent in all class actions. But they are especially important for a defendant class action where due process risks are magnified." *Bell v. Brockett*, 922 F.3d 502, 511 (4th Cir. 2019) (citations omitted); *Ameritech Benefit Plan Comm. v. Commun. Workers of Am.*, 220 F.3d 814, 820 (7th Cir. 2000) ("Defendant classes, initiated by those opposed to the interests of the class, are more likely than plaintiff classes to include members whose interest diverge from those of the named representatives.").

Plaintiffs cannot establish the "adequacy" prong under Rule 23(a)(4) for a fundamental reason. This reason was discussed in a decision from the Western District of Texas denying certification. Each local prosecutor is "hired on municipal funds solely to defend their respective municipalities." *Fund Tex. Choice v. Deski*, 738 F. Supp. 3d 835, 841 (W.D. Tex. June 26, 2024). In other words, the scope of their representation is "only to defend their client with that limited scope of representation." *Id.* The court highlighted the practical import of this limitation: "[t]he financial inability of a defendant and their counsel to represent the class is a

[1] *See also Pelt v. Utah*, 539 F.3d 1271, 1284 (10th Cir. 2008) (noting that "subsection (a)(4)"—"requir[ing] that the class be adequately represented"—is designed to uphold the standard for adequacy under *Hansberry*); *Rattray*, 614 F.3d at 835 (linking *Hansberry* to the adequacy requirement); *Spano v. The Boeing Co.*, 633 F.3d 574, 586–87 (7th Cir. 2011) (same); *Redmond v. Com. Tr. Co.*, 144 F.2d 140, 151 (8th Cir. 1944) (same).

valid basis to deny certification." *Id.* Forcing one county to litigate as the representative of every county, the court emphasized, poses the inherent risk of detracting from representation, "given that Defendants operate on a limited budget, they may lack proper incentives to fully defend the class." *Id.*

The Seventh Circuit has also emphasized the problem of this representation in municipal defendant class actions.

> The law firm retained by one Illinois township of modest size is being asked to shoulder responsibility for defending the interests of hundreds of others, which by the same token are being asked to place the responsibility for a litigation vital to the discharge of their essential and financially burdensome public functions in lawyers they may never have heard of. Indeed, "told" rather than "asked."

Henson v. E. Lincoln Twp., 814 F.2d 410, 415 (7th Cir. 1987) (Posner, J.). A "lack of adequate representation denies absentee class members due process of law and prevents the court from assuming personal jurisdiction over the absentee members." *Nat'l Ass'n for Mental Health, Inc. v. Califano*, 717 F.2d 1451, 1457–58 (D.C. Cir. 1983) (internal quotations omitted).

The named prosecutor in this case, Melesa Johnson, is the Prosecuting Attorney of Jackson County. Missouri law limits Johnson's authority and funding to Jackson County matters. Her duties are defined by Missouri law as specific to her assigned county; for example, it is her responsibility "to commence and prosecute all civil and criminal actions in the prosecuting attorney's county in which the county or state is concerned[.]" § 56.060 RSMo.

Johnson's defined responsibility, and the funding for which she is provided pursuant to state law, is not to defend every county but to enforce the laws of Missouri

in Jackson County. Other prosecutors have the same responsibility in their respective counties. As a simple matter of the authority and resources she has been provided, defending every county in the state is beyond the scope of the resources she is given under law. Johnson receives no state funding to defend other counties, has no legal authority over their enforcement policies, and employs staff hired specifically for Jackson County's needs.

Johnson's existing class representation duties in *Planned Parenthood* and *School Librarians* further prove her inadequacy to represent another statewide class. Johnson is already defending all 115 counties in two ongoing defendant class actions using Jackson County's limited budget and staff. The *Planned Parenthood* and *Baker* courts certified a defendant class action despite the serious adequacy concerns that the class members highlighted. *See* Class Cert. Order, citing *Comprehensive Health of Planned Parenthood Great Plains, et al. v. State of Missouri, et al.*, No. 2416-CV31931 (16th Cir. Ct., Feb. 14, 2024), and *Mo. Ass'n of Sch. Librs. v. Baker*, No. 2316-CV5732 (16th Cir. Ct., June 23, 2023). The *Planned Parenthood* and *School Librarians* decisions demonstrate the lack of adequate representation in the current case. In the ongoing litigation in *Planned Parenthood* and *School Librarians*, Melesa Johnson is currently being required to, exert the resources of her office beyond their original purpose to defend every county in the state. Requiring her to do so yet again would stretch her resources even more thin, and ask her to represent the positions of 114 other elected prosecutors whose constituents did not elect Johnson. In short,

"given that Defendants operate on a limited budget, they may lack proper incentives to fully defend the class," *Deski*, 738 F. Supp. 3d at 841.

Adding a third statewide class action would create an impossible burden: one county prosecutor defending three separate constitutional challenges on behalf of every Missouri county. This cumulative obligation demonstrates that Johnson cannot "vigorously" defend any class, let alone multiple classes simultaneously. *See City of Excelsior Springs*, 18 S.W.3d at 60; *Rattray*, 614 F.3d at 836.

Right By You never discusses this adequacy problem in its briefing, nor does it articulate in its petition why a single prosecutor should be able to define the positions of 114 other independently-elected prosecutors across three different ongoing class actions. But the burden remains on Right By You to justify certification. By completely failing to address this adequacy problem, Right By You has failed to meet that burden. For example, Right By You has not provided any evidence that would provide any mechanism for cross-county funding, nor has it identified any sort of resources for Defendant Johnson to represent all counties.

Finally, the Seventh Circuit has emphasized the specific dangers of certifying local government class defendants: "because the defendant class consists of local governments and their officials, in effect the federal district court is being asked to override the state's allocation of powers among local governmental bodies." *Henson*, 814 F.2d at 415. A similar problem is evident here. The laws of Missouri give to each county prosecutor specific, defined responsibilities to administer the laws within their

county. Designating one county prosecutor to serve as legal representative for the entire state disrupts the state system.

This Court must find "actual, not presumed" adequacy under Rule 52.08(a)(4). *Falcon*, 457 U.S. at 160. Johnson's mere duty to enforce the law is not good enough; otherwise, a defendant would *always* be adequate. For purposes of adequacy, the question is whether she will "vigorously" and competently defend the class. *City of Excelsior Springs*, 18 S.W.3d at 60; *Rattray*, 614 F.3d at 836. "Of course, if there is *any* evidence that the defendant representative is not able to or will not vigorously defend the action, then the class should not be certified." *City of Excelsior Springs*, 18 S.W.3d at 60 (emphasis added) (quoting 7A Charles A. Wright, Arthur Miller and Mar Kane, *Federal Practice and Procedure* § 1770 (2d ed. 1986)). Right By You has failed to provide that crucial evidence here.

III. Right By You has failed to prove that certification is proper under Rule 52.08(b).

To succeed in certifying, Right By You must show that certification is proper under subpart (b)(1), (b)(2), or (b)(3). *See Clark*, 106 S.W.3d at 486. It cannot satisfy any of these specific requirements.

A. Rule 52.08(b)(1) has no relevance to this action.

Right By You claims that certification is warranted under Rule 52.08(b)(1)(A). This provision allows a class action when "the prosecution of separate actions . . . against individual members of the class would create a risk of [] inconsistent or varying adjudications," that have the effect of establishing "incompatible standards of conduct for the party opposing the class." Mo. S. Ct. R. 52.08(b)(1)(A). When Right

By You cites this rule, it omits the last term. But that term carefully defines the precise nature of the rule; its scope is to allow certification when there is a risk of incompatible standards that apply to the party opposing the class.

Plaintiffs assert that if they "were required to sue each of the 115 Prosecuting Attorneys individually, they could receive inconsistent adjudications across the various jurisdictions. This would create a patchwork of varying interpretations, leading to incompatible standards of conduct across the state." SIS Class Cert. at 9–10. Right By You fundamentally misunderstands Rule 52.08(b)(1)(A) which applies only when "*the party opposing the class*"—here, Right By You itself—would face incompatible legal obligations from different courts. *See Green v. Fred Weber, Inc.*, 254 S.W.3d 874, 884 (Mo. banc 2008); 2 Newberg and Rubenstein on Class Actions § 4:11 (6th ed.).

Subpart (b)(1)(A) is designed for something completely different. It allows for certification in riparian-rights cases, where varying adjudications about the same water source would be impossible to simultaneously comply with. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). But Missouri courts have repeatedly denied certification of a Rule 52.08(b)(1)(A) class when the moving party moving fails to prove the possibility of truly incompatible judgments. *See, e.g., Green*, 254 S.W.3d at 884; *Smith v. Brown & Williamson Tobacco Corp.*, 174 F.R.D. 90, 99 (W.D. Mo. 1997) (holding that "[a]lthough individual lawsuits might end with different results, th[at] does not justify certification of the class" under subpart (b)(1)(A)).

"A Defendant will either be enjoined or not, and there is no risk that they will be subject to inconsistent judgments on this matter absent class certification." *Deski*, 738 F. Supp. 3d at 843. If one court in one county were to rule in the Plaintiff's favor and another court in a different jurisdiction were to rule against the Plaintiff, there would be no "incompatible judgment" within the terms of the rule. *See Deski*, 738 F. Supp. 3d at 844 ("While it could be inconvenient for Plaintiffs to have the laws enjoined in certain counties but not others, it would not be incompatible."). Different judgments in different jurisdictions are not in any way incompatible with one another; Right By You would face no risk whatever of inconsistent legal obligations.

B. Rule 52.08(b)(2) provides no path here either.

Right By You incorrectly asserts that certification is warranted under Rule 52.08(b)(2). That rule, however, requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *Id.* On its face, this rule only provides relief to classes through injunctive relief, not against them. This wording "suggests that the injunctive relief must be sought in favor of the class. As a result, an action to enjoin a class from pursuing or failing to pursue some course of conduct would not fall under Rule 23(b)(2)[.]" 7A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1775 (3d ed. 2023).

Plaintiff omits a crucial term from a quote from the U.S. Supreme Court and does so in a fashion that reveals the fundamental flaw of its argument. Plaintiff

claims that "This provision is applicable 'when a single injunction or declaratory judgment would provide relief' ***against*** each member of the class. *Cf. Dukes*, 564 U.S. at 360." SIS Class Cert. at 10 (emphasis added). In contrast, the Court actually stated, "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief ***to*** each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 338 (2011) (emphasis added). The word "to" is crucial. This provision, both in its federal version and its identical Missouri terms, provides only a route for relief when an injunction would benefit and provide relief to the members of the class, not against them. Accordingly, courts have consistently concluded that subpart (b)(2) does not apply to defendant class actions. *See Henson v. E. Lincoln Twp*., 814 F.2d 410, 414 (7th Cir. 1987) (interpreting identical language in Fed. R. Civ. P. 23(b)(2)); *Tilley v. TJX Companies, Inc.*, 345 F.3d 34, 39–40 (1st Cir. 2003) ("The language of Rule 23(b)(2) leaves no room for such a circumstance to ground certification of a defendant class."); *Thompson v. Bd. of Educ.*, 709 F.2d 1200, 1204 (6th Cir. 1983) ("As the Fourth Circuit indicated, the language in this rule contemplates certification of a plaintiff class against a single defendant, not the certification of a defendant class."); *Paxman v. Campbell*, 612 F.2d 848, 854 (4th Cir.1980) (en banc) ("To proceed under 23(b)(2) against a class of defendants would constitute the plaintiffs as 'the party opposing the class,' and would create the anomalous situation in which the plaintiffs' own actions or inactions could make injunctive relief against the defendants appropriate.").

Rule 52.08(b)(2) requires Right By You to show that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Mo. Sup. Ct. R. 52.08(b)(2) (emphasis added). The language of subpart (b)(2) "is obviously written with a plaintiff class and a single defendant in mind." See 2 Newberg and Rubenstein on Class Actions § 4:46 (6th ed.) (discussing identical language in Fed. R. Civ. P. 23). And federal courts have held, in construing the identical federal language, that defendant class actions are never permissible under subpart (b)(2) in light of its plain text. *See Henson*, 814 F.2d at 414.

Certification in contravention of Rule 52.08(b)(2)'s language violates due process: "the due process rights of unnamed class members of a defendant class are entitled to special solicitude, and their due process interests preclude altogether a defendant class under Rule 23(b)(2)." *Pabst Brewing Co. v. Corrao*, 161 F.3d 434, 439 (7th Cir. 1998).

C. Rule 52.08(b)(3) is equally inapposite here and applies only to monetary cases.

Finally, Right By You claims that certification is proper under Rule 52.08(b)(3), which provides for certification when "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Mo. S. Ct. R. 52.08(b)(3).

But subpart (b)(3) is only used in class actions seeking damages and does not apply to cases when the plaintiff seeks only equitable relief. *See Dukes*, 564 U.S. at

362 (noting that Rule 23(b)(3) is a class action device for "monetary" relief while Rule 23(b)(2) is a device for equitable relief); 2 Newberg and Rubenstein on Class Actions § 4:48 (6th ed.) ("[A] party might seek injunctive relief, entitling it to certification under Rule 23(b)(2), as well as money damages, requiring certification under Rule 23(b)(3)."); *Buchanan v. Tata Consultancy Servs., Ltd.*, 2017 WL 6611653, at *23 (N.D. Cal. Dec. 27, 2017) (noting that (b)(2) "concern[s] injunctive and declaratory relief" while (b)(3) concerns "monetary damages").

Furthermore, even if subpart (b)(3) applied to suits in equity, Right By You fails to carry its burden of proving that certification is warranted under subpart (b)(3). *Dale*, 204 S.W.3d at 164. To meet its burden, Right By You must point to "evidence in the record, which if taken as true, would satisfy each and every requirement of" Rule 52.08. *Id.* at 164–65. In its only paragraph discussing certification under subpart (b)(3), Right By You fails to provide any evidence showing "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Mo. S. Ct. R. 52.08(b)(3). Thus, even assuming that longstanding understandings of subpart (b)(3) are wrong, the Court should deny certification.

Finally, subpart (b)(3) is ill-suited to defendant class actions because it requires that each member of the defendant class has the opportunity to opt out of this lawsuit. See Mo. S. Ct. R. 52.08(c)(2). Rule 52.08(c)(2) is clear: "In any class action

maintained under Rule 52.08(b)(3)," the Court must require notice to the absent class members, and the notice "shall advise each member that:"

> (A) the court will exclude the member from the class if requested by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if desired, enter an appearance through counsel.

Id. This rule gives absent class members "the ability to opt out" of the class action. *Craft v. Philip Morris Companies, Inc.*, 190 S.W.3d 368, 380 (Mo. App. E.D. 2005). Further, the plain text of this rule includes no exception for defendant class actions. So, certification under subpart (b)(3) would be "a pointless judicial exercise." *In re Arthur Treacher's Franchise Litig.*, 93 F.R.D. 590, 595 (E.D. Pa. 1982) (denying certification of a defendant class action and noting that "[t]he Court completely agrees with defendants' argument that the proposed defendant-class members would undoubtedly opt out of the class thus rendering a (b)(3) certification, even if otherwise appropriate, a pointless judicial exercise."); *Wyandotte Nation v. City of Kansas City, Kansas*, 214 F.R.D. 656, 664 (D. Kan. 2003) (rejecting certification under Rule 23(b)(3) because the defendant class members could "opt out at any time, as allowed by Rule 23(b)(3)" and that "would inhibit efforts to achieve a resolution of the liability issues").

CONCLUSION

For the numerous reasons discussed above, this Court should deny the Plaintiff's motion for class certification.

Dated: June 27, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 27, 2025, the foregoing was filed electronically through the Court's electronic filing system to be served electronically on all parties.

/s/J. Michael Patton