

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR POLK COUNTY
CIVIL DIVISION**

RAYMOND PEÑA JR.,
individually and on behalf of all
similarly situated persons,

Plaintiff,

Case No.: 2020-CA-002588

vs.

**THE KOLTER GROUP, LLC.;
OZRE; OK TERRALARGO, LLC;
OK TERRALARGO CLUB, LLC;
OK JV2 LLC; OK JV2
HOLDINGS LLC; and KC
9W57TH 2 LLC,**

Defendants.

**STIPULATED AND AGREED ORDER ON CLASS
CERTIFICATION**

Pursuant to stipulation and agreement of the parties, the Court certifies a class under Florida Rule of Civil Procedure 1.220(b)(3).

**BACKGROUND, PROCEDURAL HISTORY,
AND CLASS ALLEGATIONS**

TerraLargo, located in Lakeland, Florida, is a residential community in which the declarations recorded against all of the community's residential parcels included the obligation to pay Club Membership Fees.

This class action was initially filed on August 19, 2020 to challenge the legality of collecting a Club Membership Fee in the TerraLargo community. Plaintiff amended his Complaint on December 6, 2024, to add claims related to the alleged unlawful transfer of funds from TerraLargo Club to other Defendants.

On June 24, 2025, the parties entered into an agreement whereby Defendants stipulate to class certification as to Counts I (Homeowners' Association Act, Violation of Section 720.308, Florida Statutes), Count III (Violation of Section 726.105, Florida Statutes), and Count IV (Violation of Section 726.106, Florida Statutes) of the Amended Complaint.¹²

Defendants deny all of these allegations and reserve all substantive defenses, which are unaffected by this Stipulation and thus preserved.

Pursuant to this stipulation, the parties agree to certification of a class on Counts I, III, and IV of the Amended Complaint as follows:

THE CLASS DEFINITION

The parties agree to certification of the following class:

¹ The parties have also agreed to a stipulated dismissal without prejudice of Count II (FDUTPA) as part of the stipulation. Further, Plaintiff may seek leave to amend his class action complaint, and further modify this stipulation and agreed order on class certification, to include other defendants as discovery is ongoing. Defendants do not waive and instead fully reserve all rights to oppose any requested amendment or modification.

² The Second District Court of Appeal ordered the certification of a similar class in *Gundel v. AV Homes, Inc.*, 290 So. 3d 1080 (Fla. 2d DCA 2020) (affirming order on class certification and revising class, as to count for damages, to include all current and former homeowners who paid the Club Membership Fee).

All persons who currently own, or previously owned, during the time period August 19, 2016 through present, a home in TerraLargo and have paid, or have been obligated to pay, a Club Membership Fee under the Club Plan.

STANDING

The parties agree and the Court finds that Plaintiff has standing to represent the proposed class in this case. Plaintiff and the class members allege that they have suffered an actual injury through Defendants' collection of Club Membership Fees—a purportedly unlawful assessment under Section 720.308, and later as a result of purportedly unlawful transfers in violation of Sections 726.105 and 726.106, Florida Statutes. Plaintiff seeks to recover for the proposed class damages consisting of previously collected Club Membership Fees and avoid allegedly fraudulent transfers.

THE CLASS IS ADEQUATELY DEFINED AND CLEARLY ASCERTAINABLE.

Rule 1.220(c)(2)(D)(ii) requires “a definition of the alleged class,” which contains “some degree of certainty.” *Harrell v. Hess Oil and Chem. Corp.*, 287 So. 2d 291, 294 (Fla. 1973); *Paradise Shores Apartments, Inc. v. Practical Maint. Co., Inc.*, 344 So. 2d 299, 302 (Fla. 2d DCA 1977). That is, the proposed class should be “adequately defined” and “clearly ascertainable.” *See, e.g., Alderwoods Grp., Inc. v. Garcia*, 119 So. 3d 497, 507 n.8 (Fla. 3d DCA 2013); *Little v. T-Mobile*

USA, Inc., 691 F.3d 1302, 1304 (11th Cir. 2012). “Clearly ascertainable” means that the class’s “membership is ‘capable of being’ determined.” *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1303 (11th Cir. 2021).

Here, the proposed class consists of current and former TerraLargo homeowners who paid Club Membership Fees under the Club Plan within four years preceding the filing of the original complaint. *See* Complaint at ¶ 57. The parties agree and the Court finds that this definition provides a sufficient degree of certainty and objective criteria which allows the identities of potential class members to be readily ascertained and otherwise satisfies the requirements of Rule 1.220(c)(2)(D)(ii). *See, e.g., Harrell*, 287 So. 2d at 294; *Paradise Shores*, 344 So. 2d at 302.

THE CLASS MEETS THE REQUIREMENTS OF RULE 1.220(A).

A. Numerosity

Numerosity is satisfied because TerraLargo contains more than 500 homes, and each homeowner was obligated to pay the Club Membership Fee assessments. *See, e.g., Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 266 (Fla. 5th DCA 2002) (50 class members is sufficient to establish impracticability of joinder).

B. Commonality

Commonality means “there are common questions of law or fact among the members of the class.” Fla. R. Civ. P. 1.220(a)(2). Plaintiff’s

claims for damages are based on TerraLargo Club's collection of the Club Membership Fees. Plaintiff also seeks to avoid transfers he claims violate Sections 726.105 and 726.106 to compensate the class. The parties agree that Plaintiff's claims raise a question of common interest and seek the same result for himself as the class members—a determination that the Club Membership Fees are unlawful under the HOA Act, damages as a result of that alleged statutory violation, and, to the extent necessary, to avoid allegedly fraudulent transfers under Sections 726.105 and 726.106, Florida Statutes.

C. Typicality

“The key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members.” *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 114 (Fla. 2011) (citing *Morgan v. Coats*, 33 So. 3d 59, 65 (Fla. 2d DCA 2010)). Typicality is established if the class representative has based his claims on the same legal theories and suffered the same legal injury as those in the class. *Id.* at 114-15 (citations omitted).

The parties agree and the Court finds that typicality is satisfied. Plaintiff alleges that the Defendants used the same Club Plan to collect Club Membership Fees from the putative class and Plaintiff. Plaintiff

alleges the Club Membership Fees violate the HOA Act. Furthermore, Plaintiff's claims to avoid the allegedly fraudulent transfers are based on the same legal theories as the class's claims to avoid such transfers. Thus, Plaintiff, as a homeowner in TerraLargo, suffered the same alleged injury as all other members of the class, and his claims are based on the same legal theories as the class.

D. Adequacy

"A trial court's inquiry concerning whether the adequacy requirement is satisfied contains two prongs. The first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation. The second prong pertains to whether the class representative's interests are antagonistic to the interests of the class members." *Sosa*, 73 So. 3d at 115 (citing *City of Tampa v. Addison*, 979 So. 2d 246, 255 (Fla. 2d DCA 2007)).

The parties agree and the Court finds that Plaintiff and his counsel satisfy the adequacy requirement. Plaintiff is authorized and willing to serve as the class representative, he understands his duties and obligations, and he is willing to fulfill them. *See Sosa*, 79 So. 3d at 115 ("In this case, *Sosa* was willing and able to take an active role as class representative and advocate on behalf of all class members.").

The attorney competence prong evaluates whether the representative's counsel is qualified, experienced, and generally able to

conduct the proposed litigation. In *Gundel*, the same counsel was deemed adequate to represent the class in challenging, and ultimately invalidating, a Club Membership Fee. *See also, id.* at 115 (“Sosa’s legal team was competent and experienced, giving them the ability to advocate effectively on behalf of Sosa and the putative class members.”).

CERTIFICATION IS APPROPRIATE UNDER RULE 1.220(B)(3)

Plaintiff also seeks certification of his damages claims in Count I, III, and IV under subparagraph (b)(3). Rule 1.220(b)(3) requires predominance (common questions of law and fact predominate over “any question of law or fact affecting only individual members of the class”) and superiority (“class representation is superior to other available methods for the fair and efficient adjudication of the controversy”).

A. Common questions predominate.

“[C]ommon questions of fact predominate when the defendant acts toward the class members in a similar or common way. The predominance requirement is more stringent than commonality because, to satisfy this requirement, common questions must not only exist but also predominate and pervade.” *Sosa*, 73 So. 3d at 111 (citation omitted). This occurs when the plaintiff can prove the case of the other class members by proving his or her own individual case. *See id.* at 112-13; *Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004) (“Common issues of fact and law predominate if they have a direct impact on every

class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief." (internal quotations omitted)). Resolution of elements of the legality of the Club Membership Fee is the same for each class member and the same is true for elements of the alleged violations of Sections 726.105 and 726.106. These are key remaining issues in the litigation. Therefore, common issues predominate.

B. A class action is superior to other available methods.

Superiority is based on four factors: (a) the respective interests of each member of the class in individually controlling the prosecution of separate claims, (b) the nature and extent of any pending litigation to which any member of the class is a party and in which any question of law or fact controverted in the subject action is to be adjudicated, (c) the desirability of concentrating the litigation in one forum, and (d) any difficulties in the management of the claim on behalf of a class. Fla. R. Civ. P. 1.220(b)(3)(A)-(D). The parties agree and the Court finds that the considerations for superiority are satisfied.

In addition, the parties are not aware of any other similar class actions or other litigation against Defendants involving the TerraLargo Club Plan or the TerraLargo Club Membership Fee by any proposed class member, so there is no threat of inconsistent adjudications. *See* Fla. R. Civ. P. 1.220(b)(3)(B). Finally, litigating this action in one forum

will allow the parties and the Court to conserve resources, prevent duplication of effort, provide for efficient resolution, and prevent inconsistent results.

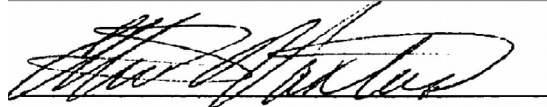
CONCLUSION

It is therefore ordered:

1. Class certification pursuant to the terms of this stipulation is granted.
2. Plaintiff Raymond Pena, Jr. is appointed as class representative.
3. Plaintiffs' counsel J. Daniel Clark, J. Carter Anderson, and John Marc Tamayo are designated as class counsel.
4. The parties agree, and the Court appoints AB Data, Ltd. as the class administrator for class notification and other administrative tasks as needed, pursuant to Rule 1.220.
5. The parties shall submit to the Court an agreed-to form of class notice and a notice schedule for approval within 30 days of the date of this Stipulated Class Certification Order.

ORDERED in Polk County, Florida on Thursday, July 10, 2025.

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A handwritten signature in black ink, appearing to read "Ellen Masters", is written over a horizontal line.

Ellen Masters, Circuit Judge
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