

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BBJL PROPERTIES, LLC, for itself and on)	
behalf of all other Illinois Citizens similarly)	
situated,)	
)	No: 2017 CH 02318
Plaintiff,)	
)	Calendar 8
vs.)	
)	CLASS ACTION
FLOOD BROS DISPOSAL CO., d/b/a)	
FLOOD BROTHERS,)	
)	
Defendant.)	

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF’S MOTION FOR CLASS CERTIFICATION**

This matter is before the Court on Plaintiff BBJL Properties, LLC’s (“Plaintiff” or “BBJL”) Motion for and Memorandum of Law in Support of Class Certification. The Court conducted a hearing on April 2, 2025. Having considered the full record, evidentiary submissions and arguments of counsel, the Court grants in part and denies in part Plaintiff’s Motion for Class Certification pursuant to 735 ILCS 5/2-801, *et seq.*

BACKGROUND

Defendant Flood Brothers Disposal Co. d/b/a Flood Brothers Disposal/Recycling Services (“Flood Brothers”) is a solid waste disposal company that provides hauling and disposal services to customers throughout Chicago and its surrounding suburbs for a contractually agreed upon service rate or base rate (“base rate”). But for a few immaterial changes over the years, these contracts are uniform and identical in all material respects for each class member. Flood Brothers’ contracts contain standard terms and conditions along with each customer’s base rate, container size, and service intervals.

Beginning in 2007, Flood Brothers began charging and collecting an “environmental & regulatory charge” (the “Fee”) from its Illinois customers in addition to the base rate, which forms the basis of Plaintiff’s class action allegations. The term “environmental & regulatory charge” is not listed, described, or disclosed anywhere in Flood Brothers’ contracts. Flood Brothers classifies customers by their line of business and charges the Fee to its commercial customers. Plaintiff is seeking certification for Flood Brothers’ commercial customers who executed a written contract and were charged and paid the Fee.

Plaintiff alleges that Flood Brothers deceived its customers into believing that they were paying a fee related to Flood Brothers’ actual environmental and regulatory costs but that the amount of the Fee bears no relation to its actual environmental or regulatory costs.¹ Flood Brothers’ employee who created the Fee, Brian Flood, testified that the percentage amount Flood Brothers charges for the Fee is solely determined by examining what its competitors charge and then attempting to charge 2% less.² Flood Brothers’ representatives testified that no other factors were considered in determining the percentage amount of the Fee.

Additionally, the evidence shows that the Fee is charged and collected automatically in the same uniform manner for each class member. Each month, the Fee percentage is entered into Flood Brothers’ customer and billing database (known as Soft-Pak) and this system automatically assigns the amount of the Fee for every class member. The amount of the Fee, and all other information appearing on each customer’s invoice, is automatically generated from the

¹ Flood Brothers may have also referred to this Fee as the “total/environmental recovery fee”, “environmental recovery” fee, or the “regulatory environmental fee”.

² However, this is not the case. Flood Brothers’ own expert testified that the industry standard is to charge from 10 to 18%, maybe 20% of the customer’s base rate while Flood Brothers charges 32% of its customers’ base rate.

information in Soft-Pak. The executed contracts for each class member are also contained in Soft-Pak. Additionally, payments from customers' invoices are applied automatically.

Plaintiff's First Amended Complaint asserts the Fee is an illegitimate, sham fee because: (1) the purported 'environmental & regulatory charge' is not actually a legitimate Fee tied to Flood Brothers' environmental or regulatory costs as that term represents; (2) the Fee is not related to (proportionally or otherwise), based on, or calculated using Flood Brothers' actual or increased environmental or regulatory costs; (3) the Fee is excessive; and (4) Flood Brothers is 'double-dipping' by charging the Fee because it already recovers all of its environmental or regulatory costs in the base service rate it charges to customers. Plaintiff further asserts that Flood Brothers uniformly misrepresents and fails to disclose important information about the Fee that would make a reasonable customer aware of its illegitimate and deceptive nature.

Plaintiff seeks to certify two classes: one for a claim arising under the Illinois Consumer Fraud Act ("ICFA") and another for its breach of contract claim. According to Plaintiff, class certification is appropriate because resolving whether the Fee is in fact an illegitimate fee will determine Flood Brothers' liability for the claims of Plaintiff and each class member in a single stroke. With respect to Plaintiff's proposed ICFA Class, the Court agrees.

LEGAL STANDARD

Class certification is proper if Plaintiff meets the requirements of 735 ILCS 5/2-801. "Courts have broad discretion in determining motions for class certification." *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 125-26 (2005). "In exercising its discretion, the court should err in favor of granting class certification." *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶ 22 (citing *S37 Management, Inc. v. Advance Refrigeration Co.*, 2011 IL App (1st) 102496, ¶ 15); see *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673 (2d Dist.

2006) (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 545 (5th Dist. 2003)). When determining whether to certify a class, a trial court should focus on the prerequisites for class certification found in Section 5/2-801 while recognizing its lack of “authority to conduct a preliminary inquiry into the merits[.]” *Ziemack v. Centel Corp.*, 163 F.R.D. 530, 533 (N.D. Ill. 1995) (citations omitted). However, if necessary to its consideration of whether to certify a class, a trial court may “probe behind the pleadings before coming to rest on the certification issue.” *Id.* (citations omitted).³

THE CLASS DEFINITIONS

Plaintiff moves to certify an “**ICFA Class**”, which is narrowly defined as:

From February 15, 2014 through the date of class notice, all persons (including legal entities) who: (1) are resident citizens of Illinois; (2) are or were commercial customers of Flood Brothers Disposal Co.; (3) executed a written contract with Flood Brothers; and (4) paid Flood Brothers and/or its related entities an “environmental & regulatory charge”.⁴

Excluded from the Class are those members of the judiciary and their staffs assigned to preside over this matter, Defendant and its employees and related entities, persons or entities currently in bankruptcy, persons or entities whose obligations have been discharged in bankruptcy and governmental entities. Further excluded from the Class are those customers who executed a valid, binding arbitration agreement, but these customers are only excluded for the time period that the arbitration agreement was in effect as set out in this Court’s November 14, 2024 Order.

Plaintiff also moved to certify a “Breach of Contract Class.” However, summary judgment was previously granted for Flood Brothers on the individual breach of contract claim; thus, certification of Plaintiff’s proposed Breach of Contract Class is denied.

³ The Court previously made findings of fact on Flood Brothers’ Motion for Summary Judgment, denying Flood Brothers’ Motion as to Plaintiff’s ICFA claim but granting it as to Plaintiff’s breach of contract claim.

⁴ “Environmental & regulatory charge” shall also include “total/environmental recovery fee”, “environmental recovery” fee, or “regulatory environmental fee”.

The Court finds the ICFA Class definition is “precise, objective, and presently ascertainable.” *Boundas v. Abercrombie & Fitch Stores, Inc.*, 280 F.R.D. 408, 417 (N.D. Ill. 2012) (quoting Manual for Complex Litigation § 21.222, at 270 (4th ed. 2004)). The evidence shows that Flood Brothers can determine each customer who did or did not pay the Fee, the dates of such payments, and the amount paid from 2014 to the present. Any customer who did not pay the Fee is excluded by virtue of the proposed class definition.

DISCUSSION

I. THE REQUIREMENTS OF SECTION 2-801 ARE SATISFIED.

735 ILCS 5/2-801 specifies four elements that a party must satisfy to obtain class certification:

(1) The class is so numerous that joinder of all members is impracticable [numerosity]. (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members [commonality]. (3) The representative parties will fairly and adequately protect the interest of the class [adequacy]. (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy [appropriateness].

For the reasons set out below, the Court finds Plaintiff has satisfied each element as to its ICFA Class.

A. Numerosity

The Court finds that Plaintiff has satisfied the numerosity requirement of Section 5/2-801(1), as the members of the class are sufficiently numerous to render joinder impractical. Illinois recognizes that no specific “magic number” is needed to sustain the numerosity requirement but has found 80 to 90 individuals sufficient. See *Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 766-69 (2d Dist. 2008). The record demonstrates that Flood Brothers can determine from its Soft-Pak customer database each customer who was charged the Fee, the dates of such charges, and the amount charged and paid from 2014 to the present. The database and evidence presented reveals

that roughly 11,000 customers were charged and paid the Fee. Flood Brothers has not seriously disputed this element. Thus, the numerosity requirement is met.

B. Commonality

Under Section 5/2-801(2), “[t]he commonality requirement requires a showing that: (1) there are questions of fact or law common to the class; and (2) the common questions predominate over any questions affecting only individual members.” *Walczak*, 365 Ill. App. 3d at 673. Therefore, “so long as questions of fact or law common to the class predominate over questions affecting only individual class members, the statutory requisite is met.” *Id.* at 674 (citation omitted). Furthermore, “[a] class action is not defeated solely because of some factual variations among class members’ grievances.” *Id.* at 677 (citations omitted). This Court must find “the existence of a community of interest in the subject matter and a community of interest in the remedy among all who make up the purported class.” *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 337 (1977) (citations omitted). The crux of the commonality requirement is therefore satisfied when the questions linking class members are substantially related to the resolution of the litigation, even if the individuals are not identically situated. See *Walczak*, 365 Ill. App. 3d at 369-70.

1. There are common questions of fact and law.

As for the first prong of the commonality requirement, the threshold to establish “commonality is not high” and “[a] common nucleus of operative fact is usually enough to satisfy the commonality requirement.” *Dhamer v. Bristol-Myers Squibb Co.*, 183 F.R.D. 520, 526 (N.D. Ill. 1998) (citations omitted). Here, the issue for trial is whether Flood Brothers’ common practice of charging and collecting the Fee is deceptive, and the common relief sought for class members is reimbursement of the amounts of the allegedly improper Fee paid to Flood Brothers. The record

here establishes that Flood Brothers created, implemented, represented, charged and collected the Fee in a uniform manner for Plaintiff and each member of the ICFA Class. Some of the common questions of law or fact common to all claims include: (1) whether Flood Brothers' use of the term "environmental & regulatory charge" is unfair and/or deceptive, (2) whether Flood Brothers uniformly misrepresents and/or fails to disclose material information about the Fee, (3) whether the amount of the Fee is unrelated to Flood Brothers' actual environmental or regulatory costs; (4) whether the amount charged for the Fee is excessive; and (5) whether charging class members a Fee for purported environmental and regulatory costs already recovered in Flood Brothers' base rate is deceptive (a practice called "double-dipping").

Any unique factual situations, such as the ultimate amount of each class member's Fee payments, are irrelevant in the face of these shared claims and injury. See 1 William B. Rubenstein, *Newberg on Class Actions* § 3:34 (6th ed.) ("[F]actual differences will not render a claim atypical if the claim both arises from the same event, practice, or course of conduct that gives rise to the claims of the class members and is based on the same legal theory."). Moreover, Illinois law is clear that the prospect of individual damage determinations does not destroy commonality and predominance. See, e.g., *Cruz*, 383 Ill. App. 3d at 777. Accordingly, because Plaintiff and class members assert the same legal theory and seek the same relief for the same injury, there are questions of fact and law common to the class.

2. Common questions of fact and law predominate.

Section 5/2-801(2) requires that "the common questions predominate over any questions affecting only individual members." "The test for predominance is not whether the common issues outnumber the individual ones, but whether common or individual issues will be the object of most of the efforts of the litigants and the court." *Bemis v. Safeco Insurance Co. of America*,

407 Ill. App. 3d 1164, 1168 (5th Dist. 2011) (citations omitted). Accordingly, “[a]n issue ‘central to the validity of each one of the claims’ in a class action, if it can be resolved ‘in one stroke,’ can justify class treatment.” *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (reinstating class certification)). Therefore, where predominance is satisfied, “a judgment in favor of the class members should decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim.” *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 55 (5th Dist. 2007) (citations and quotation marks omitted).

The record evidence presented demonstrates that Flood Brothers charged every class member the same Fee using the same misleading terminology and withheld the same material facts from each class member. Flood Brothers’ representatives testified that the Fee is not, and has never been calculated using any of Flood Brothers’ actual environmental or regulatory costs.⁵ Brian Flood, responsible for creating and implementing the Fee, testified that the Fee was not specifically used to offset any environmental or regulatory cost that Flood Brothers incurred.

Plaintiff’s motion presented testimony that, prior to implementing the Fee, Flood Brothers recovered its environmental and regulatory costs in its base rate along with its other costs and a small amount of profit. However, the methodology of capturing Flood Brothers’ environmental and regulatory costs in its base rates did not change after Flood Brothers began charging and collecting the Fee. Consequently, since implementing the Fee, Flood Brothers has recovered its

⁵ In charging the Fee to its customers, Flood Brothers relies solely on the uniform “PRICE AND PAYMENT” provision in the boilerplate Terms & Conditions section of its contract which requires that the Fee be “proportionally” charged to recover any increase in Flood Brothers’ environmental or regulatory costs. However, since the testimony reflects that Flood Brothers never tracked its environmental or regulatory costs, it could not have undertaken a proportionality calculation to determine whether the Fee was justified pursuant to its contract provision.

purported environmental and recovery costs twice from its customers: once in the base rate and again through the Fee (Plaintiff's "double-dipping" allegation).⁶

The evidence also supports Plaintiff's allegations that Flood Brothers uniformly failed to disclose any information to Plaintiff or class members about the true nature of the Fee. Flood Brothers' sales representatives and managers testified that they do not know how the Fee is calculated, whether the Fee is based on Flood Brothers' actual environmental or regulatory costs, or even what Flood Brothers' environmental and regulatory costs are. Therefore, Flood Brothers' employees could not have explained to its customers how the Fee was calculated. Flood Brothers' invoices and contracts do not explain or describe how the Fee is calculated. These omissions are standard among each ICFA class member.

Additionally, the evidence before the Court suggests that a reasonable consumer paying the Fee would believe it was reasonably related to or based upon Flood Brothers' actual environmental or regulatory costs. Flood Brothers uniformly used the term "environmental & regulatory charge" to charge the Fee to its customers by communicating this identical phrase to each class member through identical means using its monthly invoices. By using the term "environmental & regulatory charge," Flood Brothers represented and conveyed to its commercial customers that the Fee was based on, and charged to recover, Flood Brothers' actual environmental and regulatory costs.⁷ Flood Brothers' sales representatives, corporate representative, and sales

⁶ Resolution of the merits of Plaintiff's allegations is not necessary for purposes of class certification. Instead, the Court's focus is on whether the Plaintiff's claims are amenable to class certification. See *Cruz*, 383 Ill. App. 3d at 764. The Court has previously determined that the Fee bears no relation to the environmental cost. See (Sept. 28, 2020 Hearing Transcript at pp. 6-8, 11) ("The deposition testimony clearly indicates that the environmental and regulatory charges were unrelated to any such expenses or services, and instead were calculated as a percentage of the base rate.").

⁷ Or at the very least, the use of the name "environmental & regulatory charge" "creates a likelihood of confusion or misunderstanding[]" and is likely deceptive as defined by the ICFA. 815 ILCS 510/2(12).

managers also testified that they assumed (but did not know) that the Fee was charged to recover Flood Brothers' actual environmental and regulatory costs. Therefore, if a customer asked a sales representative about the Fee, the sales representative would have incorrectly told the customer that the Fee was based on Flood Brothers' actual environmental or regulatory costs.

The elements of Plaintiff's ICFA claim must also be analyzed to determine whether common factual and legal issues predominate. See *Eshaghi v. Hanley Dawson Cadillac Co., Inc.*, 214 Ill. App. 3d 995, 1001-02 (1st Dist. 1991). To establish an ICFA claim, Plaintiff must show: "(1) a deceptive act or practice by defendants, (2) defendants' intent that plaintiff rely on the deception, (3) the deception occurred in the course of conduct involving trade or commerce, and (4) actual damage to plaintiff (5) proximately caused by the deception." *Gredell v. Wyeth Laboratories, Inc.*, 367 Ill. App. 3d 287, 290 (1st Dist. 2006) (citing *Avery*, 116 Ill. 2d at 180. "[T]he standard of proof required is lenient and does not require that 'any person has, in fact, been misled, deceived or damaged thereby.'" *Eshaghi*, 214 Ill. App. 3d at 1002 (citation omitted).

Likewise, Plaintiff does not have to prove Flood Brothers actually intended to deceive each individual customer either. Under ICFA, a defendant's "state of mind is immaterial, and a defendant need not be motivated by an intent to deceive." *Warren v. LeMay*, 142 Ill. App. 3d 550, 566 (5th Dist. 1986) (finding lack of intent to deceive was not a defense to ICFA violation). Rather, "[t]he 'intent' required by the statute is only the intent that the plaintiff in the primary action rely on the information that that the defendant gave him, as opposed to any intent on the defendant's part to deceive." *Hoke v. Beck*, 224 Ill. App. 3d 674, 679 (3d Dist. 1992) (citing *Village of Carl Sandburg v. First Condo Developers*, 197 Ill. App. 3d 948, 953 (1st Dist. 1990)).

The record shows that Flood Brothers created and implemented the Fee by placing it on customer invoices beginning in 2007. Flood Brothers also specifically chose to name the Fee the

“environmental & regulatory charge”. Thus, common proof of intent can be established because customers’ payment of the Fee was a natural and predictable consequence of Flood Brothers asking its customers to do so. Moreover, Illinois law recognizes that “[c]ircumstantial evidence may be used to establish the seller’s intent.” *Hart v. Boehmer Chevrolet Sales, Inc.*, 337 Ill. App. 3d 742, 750 (2d Dist. 2003) (finding summary judgment inappropriate for an ICFA claim where there was sufficient circumstantial evidence to prove intent).

The fourth and fifth elements will be established by showing that Plaintiff and class members actually paid the Fee.⁸ Plaintiff and each class member suffered the exact same type of damages, the amount of which may be determined for each class member using the same methodology through formulaic means. It is well-established that individual damage determinations do not destroy predominance. See, e.g., *Cruz*, 383 Ill. App. 3d at 777. The actual amount of each class member’s damages does not defeat class action treatment. See *id.* Plaintiff alleges that each class member should be returned the entire amount of the Fee they paid to Flood Brothers. Should some lesser amount be awarded during the damages phase of trial, each class member can easily be returned a pro-rata share of that award through formulaic means. See *id.*

This case fits the pattern of cases routinely certified as class actions by Illinois courts based on the same or similar theory of deception under ICFA. See *S37 Management*, 2011 IL App (1st) 102496 (finding common questions predominated, which included whether a government processing charge was misleading as falsely representing that it was government mandated); *P.J.’s Concrete Pumping Service, Inc., v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1003 (2d Dist. 2004) (noting an identical entry that appeared on each class member’s bills, the court stated, “[t]he primary factual issue in this case is a uniform billing practice that allegedly violated the Consumer

⁸ As noted herein, Flood Brothers maintains this information.

Fraud Act in the same manner as to all class members”); see also *Mullins v. Direct Digital, LLC*, No. 13 CV 1829, 2014 WL 5461903, at *3 (N.D. Ill. Sept. 30, 2014) (certifying an ICFA class claim based on defendant’s deceptive act in falsely advertising its product had health benefits where evidence that the product was no more effective than a placebo was a question of fact common to every member of the proposed class and would produce a common answer to whether the advertisements on defendant’s label were false); *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33 (1994) (resolved as a class action, the court held the commodity option contracts’ broker’s disclosure statement was misleading, in violation of ICFA, because the “foreign service fee” to be charged to investors was a commission from which it would receive compensation); *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 812 (3d Dist. 2007) (reversing the trial court’s denial of a motion for class certification on an ICFA claim where the common question was whether defendant engaged in an unfair or deceptive scheme to charge hospital patients an excessive fee for copying their medical records based on defendant’s uniform billing procedure and the standard or basic fee listed on all of defendant’s invoices); *Clark*, 343 Ill. App. 3d at 549 (finding certification of an ICFA claim appropriate where plaintiffs alleged that defendants’ fraudulent sales and marketing scheme misled plaintiffs and class members to overpay for a prescription drug).

C. Adequacy

The third prong of Section 5/2-801 requires that representative parties must “fairly and adequately protect the interest of the class.” 735 ILL. COMP. STAT. 5/2-801(3). This requirement serves “to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim.” *P.J.’s Concrete*, 345 Ill. App. 3d at 1004 (citation omitted). The test of adequate representation is simply “whether the interests of those

who are parties are the same as those who are not joined and whether the litigating parties fairly represent those not joined.” *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981) (citation omitted).

Where class certification is sought in a “typical class action suit such as a taxpayers’ suit, a suit on behalf of the consuming public or a suit by the customers of a large retail store, bank or other establishment, [the] identity of interest may be readily assumed.” *Hamer v. Board of Education of Township. High School District No. 113*, 52 Ill. App. 3d 531, 536 (2d Dist. 1977); see *Hall v. Spring Spectrum L.P.*, 376 Ill. App. 3d 822, 832-33 (5th Dist. 2007). An adequate class representative must “(i) be a member of the class; (ii) not be seeking relief that is potentially antagonistic to nonrepresented members of the class; and (iii) have the desire and ability to prosecute the claim vigorously on behalf of itself and the other class members, which requires a sufficient level of knowledge and understanding of the litigation.” *Byer Clinic and Chiropractic, Ltd. v. Kapraun*, 2016 IL App (1st) 143733, ¶ 9 (internal citations omitted). In addition, the adequacy of class counsel must be met to best “represent the interests of absent class members.” See *In re Chicago Flood Litigation*, 289 Ill. App. 3d 937, 946 (1st Dist. 1997).

Here, Plaintiff’s claims are typical, if not identical, to those of the unnamed class members. Plaintiff is a commercial customer. Like the unnamed class members, Plaintiff has a written contract and also paid the Fee. Therefore, Plaintiff is not rendered “inadequate” by virtue of unique circumstances that could create a theoretical conflict with the claims of the class. See *Miner*, 87 Ill. 2d at 20 (“[T]he hypothetical existence of individual issues is not a sufficient reason to deny the right to bring a class action.”) (citations omitted); see also *Walczak*, 365 Ill. App. 3d at 679 (“[W]e note that, generally, individual counterclaims or defenses do not render a case unsuitable for class action.”). Moreover, Plaintiff has proven it is committed to protecting the interests of the class members and is unaware of any conflict between their interests and the interests of the class.

Finally, Plaintiff has already demonstrated a high degree of commitment to this litigation by its years of dedication to this action, including assisting counsel in discovery and giving deposition testimony.

Furthermore, the Court finds, Plaintiff's counsel have extensive experience prosecuting class actions and have vigorously promoted the interests of the class in this case. Robert Methvin, Jr. and James Terrell of Methvin, Terrell, Yancey, Stephens & Miller, P.C.; Patrick Marshall of Patrick Marshall Law, LLC; and Patrick Keating of Practus, LLP have participated as class counsel in numerous class actions over the last several years. Flood Brothers has not contested that these attorneys and firms are adequate class counsel. Based on the foregoing, the adequacy requirement of 735 ILCS 5/2-801(3) has been satisfied.

D. Appropriateness

Plaintiff also satisfied the final requirement of Section 5/2-801, known as "appropriateness," which requires that the class action is "an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). In *Walczak*, the Second District of the Appellate Court of Illinois set forth the standard for analyzing the appropriateness requirement:

In deciding whether the fourth requirement for class certification is met, a court considers whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain. Where the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well. Also, class actions are often the last barricade of consumer protection. Consumer class actions provide restitution to the injured and deterrence to the wrongdoer, thus attaining the ends of equity and justice.

365 Ill. App. 3d at 679 (internal citations omitted).

Here, the alternative to class adjudication is for individual class members to bring separate suits. This possibility would be incredibly inefficient and duplicative, particularly given the shared

legal and factual issues involved. This alternative could also deter some class members from seeking relief. Further, the interests of class members in prosecuting their own case are low given the relatively small damages amount individual class members may have in comparison to the costs of litigation. Indeed, the evidence of Flood Brothers' allegedly deceptive conduct by its very nature has only been uncovered through extensive discovery. Class certification is often appropriate in situations, such as here, where "individual litigation of the underlying dispute is not feasible, because the costs of litigation greatly exceed the value of the potential relief which could be awarded." See *Sebo v. Rubenstein*, 188 F.R.D. 310, 317 (N.D. Ill. 1999) (stating that "[c]lass actions are especially suited for cases where each class member may have suffered a small individual loss but where the collective loss is large") (citation omitted).

Finally, by concentrating all the class members' claims in this forum, the Court will "advance judicial economy" and efficiency, which cannot be obtained otherwise. *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 451 (2006) (citations omitted); see *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 9. A class action will "achieve the economies of time, effort, and expense" by avoiding the expense and inefficiency of repetitive, separate suits. *Sterling v. Velsicol Chemical Corp.* 855 F.2d 1188, 1196 (6th Cir. 1988). By concentrating these claims in this forum, the Court reduces the risk of inconsistent adjudications. See *Lewis v. National Football League*, 146 F.R.D. 5, 13 (D.D.C. 1992).

In sum, class treatment of the ICFA Class is far superior to any alternative method of adjudication. It is not only the best method to resolve the common issues that pervade this case, it is likely the only possible method.

II. Flood Brothers' Voluntary Payment Defense Does Not Preclude Certification.

Flood Brothers argues that the voluntary payment defense bars Plaintiff's claims because Plaintiff and class members knowingly paid the Fee. The Court disagrees. Under Illinois law, "in the absence of fraud, misrepresentation, or mistake of fact, money voluntarily paid under a claim of right to the payment, with full knowledge of the facts by the person making the payment, cannot be recovered unless the payment was made under circumstances amounting to compulsion." *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 30 (2005) (citations omitted). The Illinois Supreme Court has refused to bar actions under the voluntary payment doctrine when a plaintiff has "no way of ascertaining the method of calculating" a charge. See *Goldstein Oil Co. v. Cook County*, 156 Ill. App. 3d 180, 185 (1st Dist. 1987).

The evidence demonstrates that Plaintiff and ICFA Class members had no way of knowing the Fee was not what Flood Brothers purported it to be, and no way of ascertaining the method in which the Fee was calculated. Despite its burden of proof, Flood Brothers has presented no evidence that any ICFA Class member had any such knowledge. Indeed, even if Plaintiff or class members had inquired about the Fee, the Court finds it would be impossible for Flood Brothers to provide the requisite "full knowledge of facts" because no calculation or analysis justifying the Fee amounts was ever performed by Flood Brothers and its employees wrongfully believed the Fee was charged to recover Flood Brothers' actual environmental or regulatory costs. Moreover, because the contracts executed by Plaintiff and class members contain a provision that allows Flood Brothers to bring an action against customers and seek attorney fees for failure to pay an invoice (including the Fee), Plaintiff and class members would have been essentially forced to pay the Fee even if they did not want to. Therefore, the Court rejects Flood Brothers' voluntary payment defense in accordance with Illinois precedent. See, e.g., *Lee v. Allstate Insurance Co.*,

361 Ill. App. 3d 970, 972, 977 (2d Dist. 2005) (finding voluntary payment doctrine inapplicable and affirming class certification where plaintiffs did not have full knowledge of the facts). The Court further finds that Flood Brothers provided no evidence to support any of its other defenses asserted in opposition to Plaintiff's Motion for Class Certification.

Accordingly, it is **ORDERED** as follows:

1. Plaintiff's Motion to certify the ICFA Class is **GRANTED**.
2. Plaintiff's Motion to certify the Breach of Contract Class is **DENIED**.
3. The Court certifies the following class:

ICFA Class

From February 15, 2014 through the date of class notice, all persons (including legal entities) who: (1) are resident citizens of Illinois; (2) are or were commercial customers of Flood Brothers Disposal Co.; (3) executed a written contract with Flood Brothers and (4) paid Flood Brothers and/or its related entities an "environmental & regulatory charge".⁹

Excluded from the Class are those members of the judiciary and their staffs assigned to preside over this matter, Defendant and its employees and related entities, persons or entities currently in bankruptcy, persons or entities whose obligations have been discharged in bankruptcy and governmental entities. Further excluded from the Class are those customers who executed a valid, binding arbitration agreement, but these customers are only excluded for the time period that the arbitration agreement was in effect as set out in this Court's November 14, 2024 Order.

4. Robert Methvin, Jr. and James Terrell of Methvin, Terrell, Yancey, Stephens & Miller, P.C.; Patrick Marshall of Patrick Marshall Law, LLC; and Patrick Keating of Practus, LLP are appointed as counsel for the class.

⁹ "Environmental & regulatory charge" shall also include "total/environmental recovery fee", "environmental recovery" fee, or "regulatory environmental fee".

5. As soon as practicable, the parties will discuss issues concerning the notice that will be provided to all members of the class as provided for in Section 5/2-801.

6. This matter is set for further status on July 30, 2025 at 10:00 a.m.

DONE and ORDERED this 26th day of JUNE, 2025.



Court

Judge Michael T. Mullen
JUN 26 2025
Circuit Court-2084