UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AUTUMN CHAMBERLAIN, *on behalf of herself and all others similarly situated*,

Plaintiff,

v.

NRA GROUP, LLC,

Defendant.

CIVIL ACTION NO. 1:21-CV-00281

(MEHALCHICK, J.)

MEMORANDUM

Before the Court is a motion for class certification filed by Plaintiff Autumn Chamberlain ("Chamberlain") on behalf of herself and all others similarly situated. (Doc. 57). Chamberlain commenced this action by filing a complaint against Defendant NRA Group, LLC d/b/a National Recovery Agency ("the NRA"). (Doc. 1). On April 22, 2021, she filed the operative amended complaint alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(c). Based on the foregoing, Chamberlain's motion is **GRANTED**. (Doc. 57).

I. BACKGROUND AND PROCEDURAL HISTORY

The following relevant factual summary is taken from Chamberlain's amended complaint. (Doc. 8). The NRA is a nationwide debt collector. (Doc. 8, ¶ 2). One of the ways the NRA communicates with customers is via text message. (Doc. 8, ¶ 2). The NRA advises customers "To stop receiving text messages reply STOP." (Doc. 8, ¶ 3). Chamberlain messaged the NRA to "STOP" sending her messages and received a reply that she had "successfully been unsubscribed" and "will not receive any more messages from this

number." (Doc. 8, ¶ 4). However, the NRA continued sending Chamberlain debt collection messages. (Doc. 8, ¶ 6). Chamberlain now seeks relief for herself and those similarly situated. (Doc. 8, ¶ 7).

On June 28, 2023, Chamberlain filed the instant motion for class certification. (Doc. 57). On June 29, 2023, she filed her brief in support. (Doc. 58). On July 19, 2023, the NRA filed their brief in opposition. (Doc. 63). On August 23, 2023, Chamberlain filed a reply brief. (Doc. 67). Accordingly, the motion is now ripe for discussion.

II. STANDARD FOR CLASS CERTIFICATION

Federal Rule of Civil Procedure 23(a) details the four prerequisites that must be met for a court to certify a proposed class action. To obtain class certification, a party must show that:

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

See Fed. R. Civ. P. 23(a).

A court can only certify a class if all four requirements of Rule 23(a) are met. *See In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 309 n.6 (3d Cir. 2008); *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d 283, 308-09 (3d Cir. 1998). Thus, failure to satisfy any single element is fatal to a litigant's motion for class certification.

Whereas Rule 23 does not explicitly state that a class must be ascertainable, the Third Circuit has stated that demonstration of an "ascertainable class" is an "essential prerequisite" or "implied requirement" to proceed under Rule 23. *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 592-93 (3d Cir. 2012); *Byrd v. Aaron's Inc.*, 784 F.3d 154, 177 n.5 (3d Cir. 2015), *as*

amended (Apr. 28, 2015). [T]he [proposed] class must be currently and readily ascertainable based on objective criteria. *Marcus*, 687 F.3d at 593. "If class members are impossible to identify without extensive and individualized fact-finding or 'mini-trials,' then a class action is inappropriate. Some courts have held that where nothing in company databases shows or could show whether individuals should be included in the proposed class, the class definition fails." *Marcus*, 687 F.3d at 593.

Finally, Rule 23(b) dictates that to maintain a class action, Chamberlain must show either, (1) that prosecuting separate actions would create risk of developing incompatible standards or "adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;" (2) "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole" or (3) "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(1-3); *see In re Modafinil Antitrust Litig.*, 837 F.3d 238, 248 (3d Cir. 2016).

III. Discussion

A. Article III

As a preliminary matter, the Court first addresses the issue of Article III standing. (Doc. 63, at 11; Doc. 67, at 16). The NRA argues that Chamberlain has failed to allege "a concrete harm sufficient to confer Article III standing" by pleading only that she was "annoyed, frustrated, and angered," by the NRA's post-STOP messages and that the

messages "drained [her] phone battery and caused [her] additional electricity expenses and wear and tear on her phone battery." (Doc. 8, ¶¶ 25-26; Doc. 63, at 12). Chamberlain replies she has standing "by virtue of their receipt of Defendant's debt collection text messages after asking Defendant in writing to 'Stop' messaging them" and that a single text message is enough to establish injury-in-fact under the Federal Debt Collection Practices Act" ("FDCPA"). (Doc. 67, at 16). The Court agrees with Chamberlain.

"Article III of the Constitution limits federal-court jurisdiction to 'Cases' and 'Controversies.'" *Massachussetts v. EPA*, 549 U.S. 497, 515, (2007). Under Article III, "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *In re Google Inc. Cookie Placement Consumer Priv. Litig.*, 806 F.3d 125, 134 (3d Cir. 2015) (quoting *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 296 (3d Cir. 2003) (internal quotation marks omitted)). "If [the] plaintiffs do not possess Article III standing, [] the District Court lack[s] subject matter jurisdiction to address the merits of [the] plaintiffs' case." *Storino*, 322 F.3d at 296.

To satisfy the constitutional standing requirements, a plaintiff must show "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve." *TransUnion LLC v. Ramirez,* 594 U.S. 413, 423 (2021) (quoting *Casillas v. Madison Avenue*

Assocs., Inc., 926 F.3d 329, 333 (CA7 2019) (Barrett, J.)). According to the Third Circuit, "[i]n assessing injury in fact, we look for an 'invasion...which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical.'" *In re Google*, 806 F.3d at 134. A "concrete" injury is one that exists in fact—a "real" injury. *Spokeo, Inc. v. Robins,* 578 U.S. 330, 340 (2016). However, whereas "intangible injuries can nevertheless be concrete," the violation of a federal statute alone is not enough to establish the requisite concrete injury needed for standing. *Spokeo*, 578 U.S. at 340; *TransUnion, LLC*, 594 U.S. at 440-41; *see also Barclift v. Keystone Credit Servs., LLC,* No. 22-1925, 2024 WL 655479, at *2-3, *5 (3d Cir. Feb. 16, 2024). Where the Court has identified an intangible harm allegedly brought by a statutory violation, the court must determine "whether [the] plaintiff[] ha[s] [also] identified a close historical or common-law analogue for their asserted injury."[1] *TransUnion, LLC*, 594 U.S. at 424.

Consistent with this precedent, the Third Circuit recently addressed standing in the FDCPA context in *Huber v. Simon's Agency Inc.* and *Barclift v. Keystone Credit Services, LLC.* 84 F.4th 132 (3d Cir. 2023); 2024 WL 655479, at *2-5. In both cases, the Third Circuit reiterated that a violation of the FDCPA alone is insufficient to establish standing, the plaintiff must properly allege harm that bears a close relationship to a common-law analogue. 84 F.4th at 148; 2024 WL 655479, at *2-5. "Congress enacted the FDCPA in 1977 to 'eliminate abusive debt collection practices by debt collectors' that had contributed to 'personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.'" *Barclift*, 2024

[1] The Supreme Court also clarified in *TransUnion* that a congressionally defined injury lacking a common-law analogue is insufficient for Article III purposes. *TransUnion*, 594 U.S. at 425-26.

WL 655479, at *2 (quoting 15 U.S.C. §§ 1692(a),(e)). Ultimately, the FDCPA seeks to protect consumers' privacy. *St. Pierre v. Retrieval-Masters Creditors Bureau, Inc.*, 898 F.3d 351, 358 (3d Cir. 2018).

At issue here is whether the NRA's alleged violation of the FDCPA resulted in a concrete injury to Chamberlain. *See Barclift*, 2024 WL 655479, at *2. Receiving unwanted text messages after texting the NRA "STOP" to unsubscribe likely qualifies as an intrusion upon personal privacy and thus a procedural violation of the FDCPA. *See Ward v. NPAS, Inc.*, 63 F.4th 576, 581-82 (6th Cir. 2023) (discussing Congress's goal for implementing FDCPA as personal privacy protection). As a result of receiving the unwanted text messages, Chamberlain alleges she suffered frustration, annoyance, and anger, as well as drained battery and electrical expenses. (Doc. 8, ¶¶ 25-26). The Third Circuit, along with several other United States Courts of Appeal, has recognized the harm imposed by receiving unwanted text messages and phone calls to be akin to the common-law tort of intrusion upon seclusion and thus sufficient as a concrete harm to establish standing. *See Susinno v. Work Out World Inc.*, 862 F.3d 346, 351–52 (3d Cir. 2017) (a single unwanted telephone call was enough to establish concrete harm because of its close relationship with the tort of intrusion upon seclusion, even though more calls would be needed for tort to be actionable); *see also Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017) (finding two unwanted text messages constituted a concrete injury); *see also Drazen v. Pinto*, 74 F.4th 1336 (11th Cir. 2023) (holding "the harm associated with an unwanted text message shares a close relationship with the harm underlying the tort of intrusion upon seclusion. Both harms represent "an intrusion into peace and quiet in a realm that is private and personal." (quoting *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 n.1 (7th Cir. 2020))); *see also Lupia v. Medicredit, Inc.*, 8 F.4th 1184, 1191-92 (10th

Cir. 2021) (finding plaintiff "suffered an injury bearing a 'close relationship' to the tort of intrusion upon seclusion" by receiving one unwanted, unanswered phone call regarding her debt, "despite her having sent written notice disputing the debt and requesting that it cease telephone communications."); *see also Dickson v. Direct Energy, LP*, 69 F.4th 338 (6th Cir. 2023) (recognizing "the common law recognizes concrete harm where a defendant "intrude[s] into the private solitude of another" and finding one unsolicited call constituted an injury in fact for the purpose of an FDCPA action). Because Chamberlain has alleged she was injured by receiving unwanted text messages from the NRA, she has sufficiently established she suffered analogous harm to the tort of intrusion upon seclusion, and thus a concrete injury for the purposes of establishing Article III standing. *See Abramson v. Oasis Power LLC*, No. 2:18-CV-00479, 2018 WL 4101857, at *4 (W.D. Pa. July 31, 2018), *report and recommendation adopted*, No. CV 18-479, 2018 WL 4095538 (W.D. Pa. Aug. 28, 2018) (finding plaintiff established they suffered an "injury in fact" for the purpose of standing by alleging harm akin to "intrusion upon seclusion"). Accordingly, the Court concludes Chamberlain has standing to bring this action. *See Zelma v. Penn LLC*, No. 19-8725, 2020 WL 278763, at *6 (D.N.J. Jan. 17, 2020) (finding that a plaintiff who alleged receiving six unsolicited text messages had standing under Article III); *see also Camunas v. Nat'l Republican Senatorial Comm.*, 541 F. Supp. 3d 595, 601 (E.D. Pa. 2021) (finding standing where plaintiff alleged unsolicited text messages from defendant were "annoying, disruptive, frustrating and an invasion of his privacy.").

B. CLASS CERTIFICATION PURSUANT RULE 23

The Court next addresses whether Chamberlain has sufficiently met the requirements of Rule 23 for certification of her class action. The NRA requests this Court deny class certification, arguing that Chamberlain's proposed class definition is not ascertainable and

that Chamberlain has not satisfied "several of the express requirements of Rule 23, including numerosity, predominance, and typicality." (Doc. 63, at 16-23). Chamberlain asserts the prosed class is "[a]dequately and clearly ascertainable" and that she has met all the elements required for class certification. (Doc. 58, at 14-18). Additionally, Chamberlain argues she has satisfied Rule 23(b) by establishing common questions predominate her litigation. (Doc. 58, at 18). The Court will address these arguments in turn.

1. Ascertainability

The NRA argues that class certification should be denied in this case because "the class definition requires a merits determination unique to each potential member" and thus is fail-safe and not ascertainable. (Doc. 63, at 15). Chamberlain avers that this characterization "seeks to add additional requirements for class membership" and that the class is ascertainable because "members can be identified using the following objective criteria: persons who (a) sent 'stop' to NRA but (b) received a subsequent collection text message from NRA." (Doc. 67, at 7).

The ascertainability requirement for class certification is "grounded in the nature of the class-action device itself." *Byrd v. Aaron's Inc.*, 784 F.3d 154, 162 (3d Cir. 2015), *as amended* (Apr. 28, 2015). "Ascertainability functions as a necessary prerequisite (or implicit requirement) because it allows a trial court effectively to evaluate the explicit requirements of Rule 23. In other words, the independent ascertainability inquiry ensures that a proposed class will actually function as a class." *Aaron's Inc.*, 784 F.3d at 163. To show a proposed class is ascertainable, the plaintiff to show that: (1) the class is "defined with reference to objective criteria"; and (2) there is "a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition." *See Carrera v. Bayer Corp.*, 727

F.3d 300, 306 (3d Cir. 2013). "The ascertainability requirement consists of nothing more than these two inquiries. And it does not mean that a plaintiff must be able to identify all class members at class certification—instead, a plaintiff need only show that 'class members can be identified.'" *Aaron's Inc.*, 784 F.3d at 163 (quoting *Carrera*, 727 F.3d at 308 n.2). Here, Chamberlain must demonstrate satisfaction of both elements by a preponderance of the evidence. *Van Buren v. Abraxas Youth & Fam. Servs.*, No. 2:22-CV-00499-CCW, 2024 WL 510084, at *3 (W.D. Pa. Feb. 9, 2024); *see Carrera*, 727 F.3d at 306.

Chamberlain's class is ascertainable because she has shown by a preponderance of the evidence that her class is definable by objective criteria; people "who (a) sent 'stop' to NRA but (b) received a subsequent text message from NRA," and has been identified using administratively feasible mechanism, the NRA's collected records and digital system, Twilio. (Doc. 58, at 15 Doc. 57-3, ¶ 10); *see Schultz v. Midland Credit Mgmt., Inc.*, No. CV 16-4415, 2020 WL 3026531, at *5 (D.N.J. June 5, 2020) (finding the ascertainability requirements met where class members were identified and could be contacted through collected records). Whereas the NRA contends that Chamberlain's proposed class is an impermissibly fail-safe class, this argument fails.

The NRA argues Chamberlain's proposed class definition is impermissibly fail-safe because it presupposes liability under Section 1692c(c).[2] (Doc. 63, at 21). Additionally, that the proposed class fails to consider potential waiver, consent, and express exemptions that the

[2] In their argument, the NRA concedes that the proposed class definition as it stands "Alone is not indicative of an FDCPA violation." (Doc. 63, at 23). Accordingly, the NRA concedes the proposed class is not a fail-safe class.

NRA may have been relying on when sending messages to users post-STOP text. (Doc. 63, at 21). Chamberlain responds:

> RA's Opposition makes clear that it misunderstands the concept of a fail-safe class. In arguing that the class is supposedly a fail-safe class, NRA criticizes the class definition for "encompass[ing] class members who continued to communicate with NRA following a post-STOP request" and "fails to consider express exemptions that NRA may have been relying on in sending subsequent text messages." Def. Opp. at p. 15. Elsewhere, it argues that "the class definition in this lawsuit does not identify a certain FDCPA violation,". . . and that Plaintiff's calculation of class members who "sent messages that began 'Stop', 'stop' or 'STOP' to NRA but subsequently received' an additional text message . . . alone is not indicative of an FDCPA violation." Accordingly, NRA repeatedly argues that some class members theoretically may not have valid claims and could be subject to an adverse judgment, thus identifying precisely why the class is not fail-safe.
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> (Doc. 67, at 13-14).

"A fail-safe class is 'one that is defined so that whether a person qualifies as a member depends on whether the person has a valid claim.'" *Zarichny v. Complete Payment Recovery Servs.*, 80 F. Supp. 3d 610, 623 (E.D. Pa. 2015) (quoting *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012)). A fail-safe class "require[s] a court to decide the merits of prospective individual class members' claims to determine class membership." 1 Newberg on Class Actions § 3:6 (5th ed. Dec. 2021 update). Accordingly, the class "bases its membership upon the validity of putative members' legal claims, meaning that a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment.'" *Jackson v. Meadowbrook Fin. Mortg. Bankers Corp.*, No. 4:22-CV-01659, 2023 WL 2472606, at *3 (M.D. Pa. Mar. 10, 2023) (quoting *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012)). "Neither the Supreme Court nor the Third Circuit has yet addressed whether fail-safe classes are categorically precluded from certification." *Butela v. Midland Credit Mgmt. Inc.*, 341 F.R.D. 581, 603 (W.D. Pa. 2022).

However, this is not an issue here because the Court finds Chamberlain's proposed class is not a fail-safe class.

The Court disagrees with the NRA's argument that Chamberlain's proposed class definition presupposes liability under the FDCPA. As the NRA admits in their opposition brief, continuing to send messages after receiving a "STOP" text is not immediately indicative of a FDCPA violation. (Doc. 63, at 17; Doc. 67, at 14). Thus, Chamberlain's proposed class definition is not "framed as a legal conclusion." *Butela,* 341 F.R.D. at 603. "Nor does it preclude the possibility of an adverse judgment against class members." *Butela,* 341 F.R.D. at 603-04. (Doc. 63, at 22). The questions of whether the NRA's post-STOP text messaging constitutes a violation of the FDCPA and whether the NRA is entitled to a "bone fide error defense in light of its uniform texting practices and policies" remain questions of law and fact common to the proposed class members to be determined later in this litigation. (Doc. 67, at 11); *see Jackson*, No. 2023 WL 2472606, at *3. As such, members of the proposed class definition could be members of the class yet still not have valid claims. *Butela,* 341 F.R.D. at 604. The proposed class definition is therefore not that of a fail-safe class and as such the Court will not deny class certification on this basis.

2. Predominance

Chamberlain asserts that predominance under Rule 23(b)(3) is met because "the common questions identified above (whether defendant's uniform text messaging practices violate the FDCPA, whether NRA can take advantage of its bona fide error defense) will predominate and the answer to those questions could or would resolve each putative class member's claims at one stroke." (Doc. 58, at 18). The NRA argues that Chamberlain class definition is flawed because "simply sending a STOP request does not mean that NRA's

subsequent text messages were a violation of the FDCPA" because it does not account for individuals who may have re-consented to receiving messages or who received additional messages on different accounts. (Doc. 63, at 25-26). Accordingly, the NRA argues each member's claims will warrant independent review. (Doc. 63, at 26).

Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 594 (1997). "When 'one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.'" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016) (quoting 7AA C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1778, pp. 123–124 (3d ed. 2005) (footnotes omitted)). Predominance here turns on whether the NRA's conduct was common to all class members and whether that conduct harmed everyone in the class. *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 263 (E.D. Pa. 2012) (citing *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011). It "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. The potential existence of affirmative defenses does not immediately defeat the predominance requirement of a class action so long as a "sufficient constellation of common issues binds class members together." *In re Linerboard Antitrust Litig.*, 305 F.3d at 161–63.

In the predominance context, courts have found Rule 23 satisfied where a defendant fails to support alleged individualized defenses with evidence. *See Underwood v. Kohl's Dep't Stores, Inc.*, No. CV 15-730, 2017 WL 5261535, at *6 (E.D. Pa. Nov. 13, 2017) (finding Rule

23(b)(3) satisfied where "Plaintiff has shown that Defendants lack evidence" for their potential defense because common question of Defendants' liability still predominated the litigation); *see also Huffman v. Prudential Ins. Co. of Am.*, No. 2:10-CV-05135, 2018 WL 583046, at *5-6 (E.D. Pa. Jan. 29, 2018) (finding the Rule 23 predominance requirement satisfied where defendants failed to support their consent defense with evidence); *see also In re Linerboard Antitrust Litig.*, 305 F.3d 145, 161-163 (3d Cir. 2002) (rejecting a per se bar on Rule 23(b)(3) certification when affirmative defenses turn on facts specific to each class member's case); *see also* 2 NEWBERG ON CLASS ACTIONS § 4:55 (observing that "a class that otherwise satisfies predominance can be certified even if affirmative defenses raise individual questions of law or fact."). In this case, discovery has closed and the NRA has failed to point to any concrete evidence supporting the defenses they contemplate in their opposition brief, including potential re-consent and receiving additional messages on different accounts.[3] (Doc. 63). As the NRA "bears the ultimate burden on its defenses," they have failed to demonstrate that the individualized inquiries they allude to will predominate this litigation.[4] *see Huffman*, 2018 WL 583046, at *6.

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[3] The NRA argues their CEO, Steven C. Kusic, ("Kusic") testified to instances of re-consent at his deposition. (Doc. 63, at 26). However, when asked if individuals re-consented, Kusic responded simply "I believe so." (Doc. 63-2). He was unable to actually identify any instances of re-consent, but just stated his belief that instances of re-consent exist. (Doc. 67-1, at 8). This alone is insufficient to sustain the NRA's argument. Regarding individuals who received additional messages on different accounts, Chamberlain points to Twilio data that can be used to eliminate these individuals from the proposed class. (Doc. 67, at 12).

[4] In their brief in opposition, the NRA also suggests that proving individualized defenses such as consent will result in mini-trials, undercutting the proposed class's ascertainability. (Doc. 63, at 15-16). The Court is not convinced, especially given the lack of evidence to support any potential defense provided by the NRA. As stated by the Sixth Circuit, "speculation and surmise" should not "tip the decisional scales in a class certification

Instead, the Court finds that common questions of law and fact predominate in this case. Whether the NRA's text messaging practices violate the FDCPA and whether the NRA can take advantage of "its bona fide error defense," or any other defense, will be determinative in this litigation for all class members. (Doc. 58, at 18). Accordingly, the Court finds the Rule 23(b)(3) predominance requirement met in this case. (Doc. 63, at 26; Doc. 67, at 8); *see Huffman,* 2018 WL 583046, at *5-6 (finding the Rule 23 predominance requirement satisfied where defendants failed to support their consent defense with evidence).

3. Numerosity

The NRA argues that "[a]lthough [Chamberlain] has identified nearly 5,000 phone numbers that received post-STOP messages, these accounts do not necessarily represent violations of the FDCPA." (Doc. 63, at 24). Chamberlain asserts that this recycled ascertainability argument fails, as the pertinent question is not how many FDCPA violations there were, but how many individuals Chamberlain seeks to certify. (Doc. 67, at 14). The Court agrees.

The numerosity requirement of Rule 23(a)(1) requires proof that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "There is no minimum number of members needed for a suit to proceed as a class action." *Marcus*, 687 F.3d at 595. Nevertheless, "a plaintiff ... can generally satisfy [the] numerosity requirement by establishing 'that the potential number of plaintiffs exceeds 40.'" *Mielo*, 897 F.3d at 486 (quoting *Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001)). Here, evidence supports

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ruling." *See Bridging Communities Inc. v. Top Flite Fin. Inc.*, 843 F.3d 1119, 1125 (6th Cir. 2016) (citing *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 298 (1st Cir. 2000)).

the proposed class will contain over 4,000 individuals. (Doc. 57-3, ¶ 10; Doc. 57-8, at 6). Accordingly, numerosity is met in this case.

4. Typicality, Commonality, and Adequacy of Representation

Citing Third Circuit precedent, the NRA argues "concepts of typicality and commonality are closely related and often tend to merge." (Doc. 63, at 27); *see Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). Further, that because the class definition here is dependent on "mini trials," the burden of which is "incongruous with policy underlying Rule 23, specificality typicality," this factor is not met. (Doc. 63, at 27). Chamberlain responds,

> NRA's Opposition ignores that Plaintiff and the class each share the same legal theories, they each received the same type of debt collection text messages from NRA, they each messaged NRA 'stop,' they each received an addition text message from NRA after explicitly asking NRA to 'stop,' and they each received those post-Stop messages due to NRA's uniform failure to implement adequate practices and policies to honor 'stop' requests.

(Doc. 67, at 15).

Addressing commonality, Rule 23(a)(2) requires a plaintiff to demonstrate that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "What matters to class certification is not the raising of common questions—even in droves—but, rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 349. "For purposes of Rule 23(a)(2), even a single common question will do." *Wal-Mart*, 564 U.S. at 359. Chamberlain's proposed class involves "a common contention. . . capable of class wide resolution" because each class member shares the contention that they received an unsolicited "post-STOP" text message from the NRA in violation of the FDCPA. *Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 155 (3d Cir. 2023) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Accordingly, the

commonality requirement is met. *See McCall v. Drive Fin. Servs., L.P.*, 236 F.R.D. 246, 250 (E.D. Pa. 2006) ("common issues of both law and fact" existed where "[t]he putative class consists of Pennsylvania residents who received a substantially identical form letter that plaintiffs claim violates the FDCPA" under the same legal theory).

The typicality requirement of Rule 23(a)(3) requires proof that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This rule "ensur[es] that the class representatives are sufficiently similar to the rest of the class—in terms of their legal claims, factual circumstances, and stake in the litigation—so that certifying those individuals to represent the class will be fair to the rest of the proposed class." *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 597 (3d Cir. 2009). Here, because Chamberlain does not have any unique interests that may motivate her to act divergent from the interests of the class, her "interests are 'sufficiently aligned with those of the class' to satisfy typicality." *Huber*, 84 F.4th at 156 (quoting *Boley v. Universal Health Servs., Inc.*, 36 F.4th 124, 133, 134 (3d Cir. 2022)). Accordingly, typicality is satisfied in this case. *See Miller v. Trans Union, LLC*, No. 3:12-CV-1715, 2017 WL 412641, at *9 (M.D. Pa. Jan. 18, 2017) (finding commonality and typicality met where claims of class members arose from the same alleged course of action and proceed under the same theory of liability).

The parties do not dispute whether Chamberlain is an adequate representative for her class. The final Rule 23(a) prerequisite provides that "class representatives must 'fairly and adequately protect the interests of the class.'" *Johnston*, 265 F.3d at 185 (quoting Fed. R. Civ. P. 23(a)(4)). To demonstrate she is an adequate representative, Chamberlain must provide her interests do not "conflict with those of the class," and that "the class attorney is capable of representing the class." *Packer v. Glenn O. Hawbaker, Inc.*, No. 4:21-CV-01747, 2023 WL

3851993, at *5 (M.D. Pa. June 6, 2023), *opinion adhered to as modified on reconsideration*, No. 4:21-CV-01747, 2023 WL 7019187 (M.D. Pa. Oct. 25, 2023) (quoting *Johnston*, 265 F.3d at 185). Chamberlain has met this burden. First, because prong one "tends to merge with the commonality and typicality criteria of Rule 23(a)," and Chamberlain has sufficiently evidenced these requirements, as discussed *supra*, prong one is met. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (internal quotation marks, brackets, and ellipses omitted); *see also In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 602 (3d Cir. 2009) ("There are clear similarities between the components of the typicality inquiry relating to the absence of unique defenses and alignment of interests, and [this] part of the adequacy inquiry that focuses on possible conflicts of interest."). Second, a review of the Declarations of the attorneys in this case, Stephen Taylor and Joshua Markovits, reveals they are capable counsel with the necessary experience to represent this class. (Doc. 57-2; Doc. 57-3). This is not challenged by the NRA. Therefore, prong two is met. Accordingly, the final requirement for class certification in this case is satisified.

IV. CONCLUSION

Based on the foregoing, the Court finds Chamberlain has met the requirements for class certification under Rule 23. Her motion for class certification is **GRANTED**. (Doc. 57).

An appropriate Order follows.

Dated: August 30, 2024

s/ Karoline Mehalchick
KAROLINE MEHALCHICK
United States District Judge