UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:21-cv-23472-RNS

Ryan Birmingham, Roman Leonov, Steven Hansen, Mitchell Parent, and Jonathan Zarley, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Alex Doe, *et al.*,

Defendants.
_____ /

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND INCORPORATED MEMORANDUM OF LAW

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Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Ryan Birmingham, Roman Leonov, Steven Hansen, Mitchell Parent, and Jonathan Zarley (collectively "Plaintiffs"), through their undersigned counsel, respectfully move for class certification on the facts and authorities set forth in the following Memorandum of Law ("Motion") and attached Exhibits.

RELEVANT FACTUAL BACKGROUND

Between 2018 and 2021, an informal association of persons based in Ukraine (the "RoFx Operators") operated a phony foreign exchange trading service via RoFx.net—a website hosted in Jacksonville, Florida. Am. Compl. [ECF No. 64] ¶¶ 1, 3–4, 17–18, 121. The RoFx Operators claimed to have artificially intelligent software that could conduct foreign exchange trading on behalf of customers; the customers needed only to send funds to the RoFx Operators and, in return, the customers were promised passive income. *Id.* ¶ 2. The RoFx Operators perpetrated this years-long fraud (the "RoFx Scheme") using a sophisticated website, active customer service team, invoices, account statements, foreign exchange activity reported on third-party websites, and promotions via advertisements and sponsored articles.[1] *Id.* ¶¶ 2, 61–125. As explained in the Amended Complaint, all of this was elaborate stage dressing: the RoFx Operators never conducted foreign exchange trading and, instead, pocketed the customers' funds. *Id.* ¶¶ 102–27. By the time the RoFx.net website went dark in September 2021—and the RoFx Operators stopped responding to customers—the RoFx Operators had stolen at least $75 million from customers. *Id.* ¶¶ 126–27.

Plaintiffs' counsel created an internal database for receiving and reviewing documents from claimants who purport to have made contributions to the RoFx Scheme. *See* Declaration of Dennis A. González ¶¶ 10–11 (hereinafter "González Decl."). As of February 7, 2023, this database has received 629 claimant submissions, totaling approximately $43 million in contributions to RoFx.net. *Id.* ¶ 12(a)–(b). The median claimant's contribution was approximately

[1] Each of the Plaintiffs list the express representations that they relied on before making their contributions to RoFx.net. *See generally* Ex. A, Declaration of Roman Leonov (hereinafter "Leonov Decl."); Ex. B, Declaration of Mitchell Parent (hereinafter "Parent Decl."); Ex. C, Declaration of Jonathan Zarley (hereinafter "Zarley Decl."); Ex. D, Declaration of Ryan Birmingham (hereinafter "Birmingham Decl."); Ex. E, Declaration of Steven Hansen (hereinafter "Hansen Decl." and collectively with the other Declarations, "Plaintiffs' Decls."). The common theme running throughout the misrepresentations relied upon by Plaintiffs was that the RoFx Scheme was a foreign exchange trading platform that would generate passive returns on their contributions. *See generally* Plaintiffs' Decls.

$30,000.00. *See id.* ¶ 12(c)–(d). Furthermore, the smallest contribution was approximately $3; the largest was $2,042,000. *See id.* ¶ 12(e)–(f).

RELEVANT PROCEDURAL HISTORY

Plaintiffs filed the instant class action on September 29, 2021, and, with the Court's leave, amended their complaint on February 14, 2022. The Amended Complaint brings nine counts against numerous Defendants—including, *inter alia*, common-law fraud (Count III) and unjust enrichment (Count IX). After being served with process, 27 Defendants failed to appear, answer, or otherwise plead to the Amended Complaint. The Clerk entered defaults against them; subsequently, on June 27, 2022 and July 15, 2022, Plaintiffs moved for default judgment [ECF Nos. 180 and 189] (collectively, the "Default Judgment Motions") as to liability. On December 6, 2022, Magistrate Judge Goodman issued a Report and Recommendation [ECF No. 233] regarding the Default Judgment Motions, recommending that they be granted with respect to the following 15 Defendants (hereinafter "Defaulted Defendants") on the issue of *liability only*:

- Count III for fraud against Defendants Mohylny and The Investing Online;
- Count III for fraud against Ester Holdings, but only with respect to Plaintiffs Leonov, Parent, and Zarley;
- Count IX for unjust enrichment against Wealthy Developments, Notus, Global E-Advantages, Easy Com, ShopoStar, Grovee, Trans-Konsalt, Art Sea Group, VDD, Brass Marker, Profit Media Group, and Auro Advantages.

On January 5, 2023, the Court adopted Judge Goodman's Report and Recommendation in full [ECF No. 236]. Plaintiffs now seek certification of the class of victims of the RoFx Scheme—limited to the claims on which the Court granted default judgment for liability—prior to moving for default judgment as to damages on Plaintiffs' claims.

PROPOSED CLASS

Plaintiffs propose to certify the following Class:

> All persons who contributed funds to the RoFx foreign exchange trading scheme. Excluded from the Class are 1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, agents, assigns, and successors; 2) anyone employed by counsel for Plaintiffs in this action; and 3) the judge to whom this case is assigned and the judge's staff.

The Plaintiffs also move to be appointed representatives of the Class, and for the appointment of Holland & Knight LLP to serve as counsel pursuant to Fed. R. Civ. P. 23(g).

MEMORANDUM OF LAW

I. Legal Standard for Class Certification

Class actions are an essential tool for adjudicating cases involving multiple claims that involve similar factual and/or legal inquiries and that are too modest to warrant prosecuting individually. "Federal Rule of Civil Procedure 23 'establishes the legal roadmap courts must follow when determining whether class certification is appropriate.'" *Kron v. Grand Bahama Cruise Line, Ltd. Liab. Co.*, 328 F.R.D. 694, 698–99 (S.D. Fla. 2018) (quoting *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1187 (11th Cir. 2003)). In crafting Rule 23, "the Advisory Committee had dominantly in mind vindication of 'the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.'" *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). Class actions thus give voice to plaintiffs who "would have no realistic day in court if a class action were not available." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985).

The party seeking certification has the burden of proving that the class certification prerequisites are met. *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 323 (S.D. Fla. 1996). The Court has broad discretion to determine whether the Rule 23 elements are satisfied, yet "Rule 23 is liberally construed in order to meet its objectives [and] the Court must not exercise its discretion in a manner that would undermine the policies underlying class actions." *Id*. While the Rule 23 inquiry may overlap with the merits of the underlying claim, *Comcast Corp. v. Behrend*, 569 U.S. 27, 33–34 (2013), courts are not to make merits determinations because "[t]he office of a Rule 23(b)(3) certification ruling is not to adjudicate the case; rather, it is to select the metho[d] best suited to adjudication of the controversy fairly and efficiently." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013).

Rule 23(a) states that a class may be certified "only if (1) the class is so numerous that joinder of all members is impracticable ["Numerosity"], (2) there are questions of law or fact common to the class ["Commonality"], (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ["Typicality"], and (4) the representative parties will fairly and adequately protect the interests of the class ["Adequacy"]." Fed. R. Civ. P. 23(a).

"In addition to Rule 23(a), the party seeking certification 'must also satisfy through evidentiary proof at least one of the provisions of Rule 23(b).'" *Keim v. ADF MidAtlantic, Ltd. Liab. Co.*, 328 F.R.D. 668, 675 (S.D. Fla. 2018) (quoting *Comcast Corp. v. Behrend*, 569 U.S. at

33). At the class certification stage, a plaintiff is only required to demonstrate that the requirements of Rule 23 are met, not that the plaintiff will ultimately prevail on the merits. *See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. at 466 (Rule 23 is not a "license to engage in free-ranging merits inquiries at the certification stage.").

As detailed herein, each of the foregoing Rule 23(a) requirements are plainly met in this action. Furthermore, the proposed Class satisfies the requirements of Rule 23(b)(3) because "questions of law or fact common to class members predominate over any questions affecting only individual members" and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Hence, for the reasons stated herein, the Motion should be granted.

II. The Proposed Class is Ascertainable

Before considering Rule 23 factors, the Court must determine whether the proposed Class is adequately defined and ascertainable; the Eleventh Circuit recently held that "a proposed class is ascertainable if it is adequately defined such that its **membership is capable of determination**." *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1304 (11th Cir. 2021) (emphasis added). While Rule 23 implicitly requires that class membership must be ascertainable since a court cannot determine issues such as commonality or typicality if class membership is defined in vague terms, "membership can be capable of determination without being capable of *convenient* determination." *Id.* at 1303 (emphasis in original). However, a class is inadequately defined when it is defined through vague or subjective criteria. *Id.* at 1301. Neither this analysis nor the remainder of the Rule 23 analysis requires "administrative feasibility"; if the action involves a proposed Rule 23(b)(3) class, the district court may consider administrative feasibility as part of the manageability criterion under Rule 23(b)(3)(D). *Id.* at 1301–04. However, "the court must weigh any manageability concerns against the advantages of proceeding as a class action." *Rensel v. Centra Tech, Inc.*, 2 F.4th 1359, 1369 (11th Cir. 2021) (quotation omitted).

Considering the fraudulent nature of the RoFX scheme, any and all payments by individuals to the RoFx foreign exchange trading scheme resulted in the *per se* unjust enrichment of Defendants. As such, to prove membership in the Class, Plaintiffs must merely establish that they contributed funds to the RoFx foreign exchange trading scheme.

This criteria is ascertainable as the Class is closed. No additional putative members can be added as the RoFx.net website has been inactive since September 2021. The criteria is both

objective and verifiable, making membership capable of determination; to prove class membership, the putative class member must merely produce a bank statement or record showing the class member sent funds to an identifiable Defendant's bank account, and if applicable, any email receipts from RoFx.net confirming their account creation and account deposits. Finally, Plaintiffs' counsel has already received 629 claimant submissions including such information (*see* González Decl. ¶ 12(a)), which confirms its availability and supports Plaintiffs' contention that their proposed class is capable of determination. *See, e.g.*, *Rensel v. Centra Tech, Inc*, 2 F.4th at 1370 (finding that the plaintiffs' proposed subclasses "easily meet the *Cherry* standard for ascertainability" because the plaintiffs possessed a spreadsheet from the defendant that identified token purchasers and "others could have been identified through additional Centra Tech ICO records or submissions of claims forms verified by transaction records") (emphasis added); *Haines v. Fid. Nat'l Title of Florida, Inc.*, 8:19-CV-2995-KKM-AEP, 2022 WL 1095961, at *8 (M.D. Fla. Feb. 17, 2022), *report and recommendation adopted*, 8:19-CV-2995-KKM-AEP, 2022 WL 612099 (M.D. Fla. Mar. 2, 2022) (explaining how the class was sufficiently ascertainable because "whether a potential class member meets such criteria can be determined from the face of documents contained in the transaction files as well as other evidence") (emphasis added).

III. The Proposed Class Satisfies the Requirements of Rule 23(A)

A. Numerosity

The numerosity requirement of Rule 23 requires a district court to determine "whether 'the class is so numerous that joinder of all members is impracticable.'" *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1266–67 (11th Cir. 2009) (quoting Fed. R. Civ. P. 23(a)(1)). Generally, "a group of more than 40 satisfies numerosity, a group of fewer than 21 does not, and the numbers in between are subject to judgment based on additional factors." *Kelecseny v. Chevron, U.S.A., Inc.*, 262 F.R.D. 660, 668 (S.D. Fla. 2009). The Eleventh Circuit has explained that "[a]lthough mere allegations of numerosity are insufficient to meet this prerequisite, a plaintiff need not show the precise number of members in a class." *Vega v. T-Mobile USA, Inc.*, 564 F.3d at 1266–67 (internal citations and quotations omitted). Nonetheless, a plaintiff seeking to certify a class must make a showing with factual support that the numerosity requirement will be satisfied. *See id.*

The proposed Class satisfies the numerosity requirements. To date, Plaintiffs have already received preliminary claim information from 629 putative Class members. *See* González Decl. ¶ 12(a). Each of these putative Class members have disclosed the amount of funds they contributed

to RoFx.net, and many have provided supporting documents. This number of putative class members is nearly 16 times the number that the Southern District of Florida courts have found viable for certification. *See, e.g., Kelecseny v. Chevron, U.S.A., Inc.*, 262 F.R.D. at 668 (stating, generally, a group of more than 40 satisfies numerosity.) Putative Class members are located across the United States. Requiring them to be individually joined would "be extremely inconvenien[t] and a waste of valuable judicial resources." *See Walco Invs., Inc. v. Thenen*, 168 F.R.D. at 324 (finding joinder to be impracticable where the alternative would be trying several hundred individually across the country).

B. Commonality

Rule 23(a)(2) requires there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). As with numerosity, the Eleventh Circuit has described the commonality requirement as a "low hurdle" or a "light burden," as commonality "does not require that all questions of law and fact raised be common." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009) (emphasis added); *Vega v. T-Mobile USA, Inc.*, 564 F.3d at 1268. The Supreme Court has found that the commonality inquiry merely requires the plaintiff to demonstrate that the class members "have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (internal citation omitted). Additionally, the court must take into account whether certification of the class will "generate common answers to drive the resolution of the litigation." *Id.* Even "a single common question" will suffice to satisfy the commonality requirement. *Id.* at 359. Commonality will be found where there is "an issue that by its nature "is capable of class-wide resolution–which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Herman v. Seaworld Parks & Entm't, Inc.*, 320 F.R.D. 271, 289 (M.D. Fla. 2017) (citing *Dukes*, 564 U.S. at 348).

The proposed Class satisfies the commonality requirement because there are both legal and factual questions common to all members of the proposed Class. Common questions include, generally:

- Whether Defendants made misrepresentations regarding the RoFx Scheme;
- Whether Defendants accepted funds from the proposed Class members;
- Whether Defendants returned any funds to the proposed Class members;
- Whether Defendants' acceptance of funds from proposed Class members was a benefit unjustly conferred; and

- Whether Defendants' retention of the proposed Class members' funds would be inequitable in the circumstances.

The resolution of the above questions is a necessary prerequisite before each Class members' claim can be adjudicated. Specifically, each putative class member contributed funds to RoFx.net, causing them to suffer financial losses via a common fraudulent scheme. To prevail on their claims, each and every class member must establish that Defendants' misrepresentations caused the class members' damages or that the Defendants' received class members' funds which were intended to be contributions for the RoFx Scheme. The determination of the truth or falsity of the above questions is central to each and every putative class member claims. The proposed Class thus satisfies the commonality requirement.

C. Typicality

Rule 23(a) requires 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). "[T]he typicality requirement is permissive: representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 674 (S.D. Fla. 2011) (citing *Brown v. SCI Funeral Servs. of Fla., Inc.*, 212 F.R.D. 602, 605 (S.D. Fla. 2003)). Accordingly, a plaintiff must generally establish that a "sufficient nexus exists between the legal claims of the named class representatives and those of individual class members to warrant class certification." *Piazza v. Ebsco Indus., Inc.*, 273 F.3d 1341, 1346 (11th Cir. 2001) (internal citations and quotations omitted). Said differently, a plaintiff must show that the claims of the named representatives share "the same essential characteristics as the claims of the class at large." *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279, n.14 (11th Cir. 2000) (internal citations and quotations omitted). As such, "a strong similarity of legal theories will satisfy the typical requirement despite substantial factual differences." *Id.*

Here, like all members of the proposed Class, Plaintiffs each submit Declarations swearing that: (1) they read online advertisements about a foreign exchange trading service named RoFx which utilized robotic trading technology that could guarantee passive returns for its customers; (2) relying on such representations they registered for accounts on RoFx.net and subsequently deposited funds to the various Defendants, as directed by the RoFx.net operators; and (3) on or about September of 2021, realized the website and the Plaintiffs' contributions were no longer accessible. *See generally* Plaintiffs' Decls. Because this platform turned out to be nothing more

than a sham and improperly retained the benefit of their contributions, Plaintiffs brought claims for fraud and unjust enrichment against the Defendants.

Plaintiffs' claims and the Class' claims arise from the same wrongful conduct and are premised on the same legal theories of fraud and unjust enrichment. Plaintiffs' claims are typical of those of the Class as they have the same interests in recovering their lost contributions and have suffered the same types of injuries as the other members of the Class. As such, the proposed Class meets the typicality requirements.

D. Adequacy of Representation

Rule 23(a)(4) requires a showing that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The analysis "encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d at 1189 (citation omitted). This prong also requires a determination that plaintiff's counsel is "qualified, experienced and generally able to conduct the proposed litigation." *Bowe v. Pub. Storage*, 318 F.R.D. 160, 172 (S.D. Fla. 2015) (quoting *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985)).

Plaintiffs are adequate representatives of the proposed Class; they are mutually interested in establishing the fraudulent and unjust nature of Defendants' conduct in connection with the RoFx Scheme. Plaintiffs and the proposed Class suffered injuries arising from the same scheme. Plaintiffs also provided Declarations swearing that they understand their responsibilities as class representatives, are willing to undertake such duties on behalf of the class, and do not have any conflict of interest with other members of the class that would prevent them from adequately representing the group's best interests. *See* Plaintiffs' Decls ¶¶ 5–8.

The named Plaintiffs are represented by counsel from Holland & Knight LLP, a national law firm with a strong class action practice. *See generally* Exhibit F, Holland & Knight LLP Resume. Counsel at the firm are "qualified, experienced . . . able to conduct the proposed litigation." *See Bowe v. Pub. Storage*, 318 F.R.D. at 172. Collectively, the undersigned attorneys have many years of experience in complex litigation, both in state and federal courts. *See generally* Ex. F. Holland & Knight's lead attorneys in this matter have been lead counsel of record in numerous class action matters involving cross-border disputes, consumer finance, and complex fraud. *Id.* As such, Counsel are well qualified to represent all Class Members in this case.

Additionally, Plaintiffs' undersigned counsel has already committed 3,267 hours of attorney time and incurred more than $1.7 million in costs investigating this complex scheme (*see* González Decl. ¶ 13)—the details of which are largely included in the Amended Complaint. *See Mohamed v. Am. Motor Co.*, 320 F.R.D. 301, 309 (S.D. Fla. 2017) ("Counsel has also demonstrated that they will capably advocate on Plaintiff's behalf, as reflected by the substantial motion practice in this action."). Here, the docket for the instant case is replete with a substantial volume of affirmative litigation and motion practice. Plaintiffs' counsel is aware of its fiduciary duties to the Class and will continue to discharge those duties by seeking the maximum possible recovery for the class members.

Accordingly, the proposed Class satisfies all Rule 23(a) requirements.

IV. The Proposed Class Also Satisfies the Requirements of Rule 23(b)

Having established the requirements under Rule 23(a), Plaintiffs assert that the putative class also meets the requirements under Rule 23(b)(3). Specifically, they contend that the putative class satisfies the requirements regarding predominance of common issues and superiority of the class action to other means of litigation. Fed. R. Civ. P. 23(b)(3).

A. Predominance

"[P]redominance . . . is perhaps the central and overriding prerequisite for a Rule 23(b)(3) class." *Vega v. T-Mobile USA, Inc.*, 564 F.3d at 1278 (citation omitted). To satisfy the predominance requirement, the moving party must demonstrate that the issues in the class action subject to generalized proof, and therefore applicable to the class, predominate over the issues subject only to individualized proof. *Babineau v. Fed. Exp. Corp.*, 576 F.3d 1183, 1191 (11th Cir. 2009); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1005 (11th Cir. 1997) (citations omitted). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. at 623. The predominance inquiry thus focuses upon the legal or factual questions that qualify each class member's case as a genuine controversy and, therefore, is a far more demanding requirement than the commonality requirement under Rule 23(a). *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d at 1005; *see Vega v. T-Mobile USA, Inc.*, 564 F.3d at 1270. Predominance requires more than just the presence of common issues. The common issues must outweigh and predominate over any individualized issues involved in the litigation. *Muzuco v. Re$ubmitIt, LLC*, 297 F.R.D. 504, 518

(S.D. Fla. 2013). Common issues of fact and law will predominate where they directly impact every class member's effort to establish liability and every class member's entitlement to monetary relief. *Babineau v. Fed. Exp. Corp.*, 576 F.3d at 1191.

The court's inquiry is typically focused on "whether there are common liability issues which may be resolved efficiently on a class-wide basis." *Brown v. SCI Funeral Servs. of Fla.*, 212 F.R.D. 602, 606 (S.D. Fla. 2003). To conduct this inquiry, the Court must consider the cause of action and "what value the resolution of the class-wide issue will have in each member's underlying cause of action." *Rutstein v. Avis Rent–A–Car Sys., Inc.*, 211 F.3d 1228, 1234 (11th Cir. 2000). The two relevant causes of action common to the proposed Class are fraud and unjust enrichment.

1. Fraud

The essential elements of common-law fraud are as follows: (1) a false statement of fact; (2) known by the Defendant to be false at the time it was made; (3) made for the purpose of inducing the Plaintiff to act in reliance; (4) on the correctness of the representation; and (5) resulting damage to the Plaintiff. *Perry v. Cosgrove*, 464 So. 2d 664, 666 (Fla. 2d DCA 1985).

The Eleventh Circuit and this Court have held that under a theory of a "common scheme," common issues of fact and law can predominate any individualized issues of reliance or loss causation. *See Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983) (holding that there was no need to prove individual reliance where the defendants "committed the same unlawful acts in the same method against the entire class," and as such, class certification under Rule 23(b)(3) was appropriate, notwithstanding the defendants contention that the court must consider the different circumstances of the individual stock purchases); *Kirkpatrick v. J.C. Bradford,* 827 F.2d 718, 721–22 (11th Cir. 1987) (finding that "the mere presence of the factual issue of individual reliance" was outweighed by "the overwhelming number of common factual and legal issues presented by plaintiffs' misrepresentation claims"); *Walco Invs., Inc. v. Thenen,* 168 F.R.D. at 335 (explaining how the "common scheme" or "common course of conduct" argument in favor of predominance is available for both securities fraud and common-law fraud claims). Moreover, predominance is "a test readily met in certain cases alleging consumer or securities fraud[.]" *See In re Checking Account Overdraft Litig.,* 286 F.R.D. 645, 657 (S.D. Fla. 2012) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997)).

Here, Plaintiffs allege that between 2018 and 2021, the Defendants operated a common scheme centered around a phony foreign exchange trading service named RoFx.net. The Defendants promised an artificially intelligent software that could conduct foreign exchange trading on behalf of customers; the customers needed only to send funds to the RoFx Operators and, in return, the customers were promised passive income. Such representations were reported on third-party websites and promoted via advertisements and sponsored articles—successfully soliciting contributions from customers across the globe. As explained in the Amended Complaint, all of this was elaborate stage dressing: the RoFx Operators never conducted foreign exchange trading and, instead, pocketed several million dollars of customers' funds.

Faced with similar allegations of a single, common fraudulent scheme, several courts (including this one) have certified such fraud-based claims. *See, e.g., Broin v. Philip Morris Cos.,* 641 So. 2d 888 (Fla. 3d DCA 1994); *Walco Invs., Inc. v. Thenen*, 168 F.R.D. at 335. Specifically, in *Walco Investments, Inc. v. Thenen*, investors alleged that defendants violated RICO and committed common-law fraud by operating a Ponzi scheme that involved transmitting false invoices and purchase orders to entities that would make false confirmations. 168 F.R.D. at 321–22, 335. The oral misrepresentations to the class members were not word-for-word, but they were "substantially identical"—meaning "that they *all* allegedly falsely confirmed that the fictitious invoices represented actual sales or purchases of products; they all misrepresented or omitted the same material information." *Id.* at 336 (emphasis in original). The Court further noted that "[m]inor differences in misrepresentations are to be expected in a fraudulent scheme that lasted several years and involved numerous transactions and several players." *Id.* Despite the fact that this fraudulent scheme was facilitated and promoted by various different players, Judge Moreno concluded that the plaintiffs' common allegations that defendants knowingly made false confirmations of nonexistent transactions predominated over individual questions about oral representations made to plaintiffs and that a "common scheme" or "common course of conduct" was available to support the motion for class certification. *Id.* at 336–37[2].

[2] *See also Kirkpatrick v. J.C. Bradford,* 827 F.2d at 724 (quoting *Kennedy v. Tallant*, 710 F.2d at 717) (The Eleventh Circuit explained how "the possibility that the named plaintiffs or other potential class members may have obtained the allegedly misleading information via their individual brokers rather than through widely distributed written information cannot transform the allegations of the complaints into claims concerning primarily questions of individual reliance.

Here, much like the Court's determination in *Walco,* the following issues are common to the class with respect to the common-law fraud claim:

- Whether the Defendants were all part of the fraudulent scheme;
- Whether the Defendants knowingly made material misrepresentations and omissions; and
- Whether Plaintiffs were damaged by the Defendants' fraudulent course on conduct.

Accordingly, there is a clear predominance of common questions over individual issues because *all* elements of Plaintiffs' fraud claim present questions that are susceptible to class-wide resolution. Moreover, the crux of the Amended Complaint's alleged misrepresentations is that the Defendants operated a robotic trading platform that purported to generate passive returns for its contributors. Plaintiffs are unaware of any material variation from this core promise, and any individualized questions with respect to specific statements are greatly outweighed by the common questions of fact and law that predominate the fraud-based claims.

2. Unjust Enrichment

"A claim for unjust enrichment is an equitable claim, based on a legal fiction created by courts to imply a 'contract' as a matter of law." *Tooltrend, Inc. v. CMT Utensili, SRL*, 198 F.3d 802, 805 (11th Cir. 1999). To state a claim for unjust enrichment in Florida, the plaintiff must show: "(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof." *Virgilio v. Ryland Grp., Inc.*, 680 F.3d 1329, 1337 (11th Cir. 2012) (citations omitted).

The Eleventh Circuit has cautioned that unjust enrichment claims are often-times not suitable for class-wide resolution. *See Vega v. T-Mobile USA, Inc.*, 564 F.3d at 1274. "While this is undoubtedly true in most cases, the Eleventh Circuit's underlying concern is that unjust enrichment claims typically require individualized inquiries into the equities of each class member's interaction with each defendant." *Cnty. of Monroe, Fla. v. Priceline.com, Inc.,* 265 F.R.D. 659, 671 (S.D. Fla. 2010). Therefore, unjust enrichment claims can be certified for class treatment if common circumstances bear on whether the defendant's retention of a benefit received

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The claims essentially involve allegations that the defendants 'committed the same unlawful acts in the same method against the entire class.'")

from class members was just or not. *See In re Checking Account Overdraft Litig.*, 286 F.R.D. at 657 (citation omitted). As such, nothing precludes a court from certifying an unjust enrichment claim for class-action treatment where the appropriate situation arises,[3] and "when the defendant's conduct is the same, 'it is difficult to conceive of any significant equitable differences between class members.'" *James D. Hinson Elec. Contracting*, 275 F.R.D. at 647 (quoting *Cnty. of Monroe, Fla. v. Priceline.com, Inc., Inc.*, 265 F.R.D. at 671).

Such individualized concerns are not present here because Defendants' inequitable conduct was the same with respect to all RoFx.net customers. Namely, Defendants promoted a robotic trading platform, which solicited contributions from Plaintiffs and class member alike. This platform turned out to be nothing more than a Ponzi scheme that never actually executed any trades, mislead its customers with illusory profits, and ran off with its customers' contributions. Therefore, the evidence necessary to establish Plaintiffs' unjust enrichment claim is common to both Plaintiffs and all members of the class alike; they all seek to prove that:

- They made contributions to fund their RoFx.net accounts;
- The Defendants accepted and retained this benefit; and
- The Defendants were unjustly enriched by *any and all* contributions because they misrepresented the true nature of their fraudulent scheme, which commonly, and adversely, affected the entire class.

In effect, the individualized equitable concerns that typically foreclose class certification in this context are not present here because all class members were similarly defrauded by the Defendants' misrepresentations—leaving no question as to the individualized equities of such conduct. Although the particular amount of contributions may vary between members of the class,

[3] *See, e.g., James D. Hinson Elec. Contracting Co., Inc. v. BellSouth Telecomms., Inc.*, 275 F.R.D. 638, 647 (M.D. Fla. 2011) ("Although unjust enrichment ordinarily requires individualized inquiries, this is not an ordinary case .... BellSouth's conduct was the same with regard to each class member in all relevant respects. The issue of whether it is equitable for BellSouth to retain the full amount of its bills when such amounts exceeded what BellSouth could recover in an action at law thus appears to be subject to common proof."); *Veal v. Crown Auto Dealerships, Inc.*, 236 F.R.D. 572, 581 (M.D. Fla. 2006) (finding that the issues relevant to the plaintiff's unjust enrichment claim were susceptible to proof using common generalized evidence, including as to the common issues of whether (1) the defendant's deceptive and unfair trade practices regarding the sale of a product resulted in it receiving income; (2) whether the income enriched the defendant at the expense of the class members; and (3) whether as a matter of equity, the defendant should be required to return the profits to the class members).

this Court has explained that such individualized concerns do not foreclose class certification and are properly addressed at the damages stage. *In re Checking Account Overdraft Litig.,* 286 F.R.D. at 656 (quoting Advisory Committee Notes to Rule 23(b)(3) (1966 Amendments)) (explaining how "[a] scheme 'perpetrated on numerous persons by the use of similar misrepresentations may be an appealing situation for a class action, and it may remain so despite the need, if liability is found, for separate determination of the damages suffered by individuals within the class.'" (emphasis added).

Where, as here, highly individualized issues are absent, class certification for an unjust enrichment claim is appropriate[4]. *Compare id.* at 658 (holding that certification of the unjust enrichment claims was proper because "class-wide proof is available to show that the defendant deliberately concealed from *all* customers important information about its overdraft policy . . . which bear on the justness of [the defendant's] retention of the excess overdraft fees it collected as a result") (emphasis added), *Williams v. Wells Fargo Bank*, N.A., 280 F.R.D. 665, 674 (S.D. Fla. 2012) (Scola, J.) (finding that the predominance element for class certification was satisfied because "the addition or subtraction of individual plaintiffs within a class will not affect the quantity or quality of the evidence available"); *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 697 & n. 40 (S.D. Fla. 2004) (Seitz, J.) (certifying a multi-state unjust enrichment class, finding that "[t]he standards for evaluating each of the various states classes' unjust

[4] There is general agreement among courts that the "minor variations in the elements of unjust enrichment under the laws of the various states . . . are not material and do not create an actual conflict." *Pennsylvania Emp. Benefit Trust Fund v. Zeneca, Inc.*, 710 F.Supp. 2d 458, 477 (D.Del. 2010) (declining to undergo a choice of law analysis on the plaintiffs' unjust enrichment claims). Courts elsewhere are in accord. *See, e.g.*, *In re Abbott Laboratories Norvir Anti–Trust Litig.*, 2007 WL 1689899, at *9–10 (N.D. Cal. 2007) (certifying nationwide unjust enrichment class, finding that "the variations among some states' unjust enrichment laws do not significantly alter the central issue or the manner of proof"). This reasoning is persuasive, and courts in this District have reached similar results. *See Singer v. AT & T Corp.,* 185 F.R.D. 681, 692 (S.D. Fla. 1998) (concluding that the elements of unjust enrichment are "materially the same throughout the United States" and recommending that the class be certified). Additionally, the one potential element that might vary across states is the definition of what qualifies as an "unjustly retained benefit." This is likely unanimously satisfied here because the potential class members were defrauded into believing they were contributing to a foreign exchange trading platform, which turned out to be nothing more than a Ponzi scheme, and their contributions have been retained by the Defendants. These facts describe the epitome of an unjust enrichment claim irrespective of the state definition, and in any event, "[t]he focus of the inquiry is the same in each state." *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007), *rev'd on other grounds*, 328 Fed. Appx. 121 (3d Cir. 2009).

enrichment claims are virtually identical," and explaining that minor variation in states' laws "present[ed] no obstacle to class certification."), *with Haines v. Fid. Nat'l Title of Florida, Inc.*, at *19 (failing predominance inquiry because the claims did "not involve uniform charges equally applied to all putative class members as part of a policy or practice", and instead, the claims involved "individualized inquiries required to determine (1) whether Fidelity appreciated the benefit as anything other than proper payment for its services and (2) whether Fidelity's acceptance and retention of the CSF occurred under circumstances that made it inequitable for Fidelity to retain the CSF"), *and Vega v. T-Mobile USA, Inc.*, 564 F.3d at 1276–77 (finding that class certification was inappropriate because employees had differing levels of knowledge and participation in divergent compensation programs, raising individualized questions of equities unsuitable for class-wide determination).

Predominance of common questions is thus satisfied as to both the fraud and unjust enrichment claims.

B. Superiority

To satisfy the superiority requirement of Rule 23(b)(3), a movant must show that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The focus of this analysis is on the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs." *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.,* 601 F.3d 1159, 1183–84 (11th Cir. 2010). Rule 23(b)(3) lists matters pertinent to this finding: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action."

Class treatment is superior to other available methods for the fair and efficient adjudication of this controversy. *First*, nearly all of the class members in these actions have claims that are so small that it would cost them much more to litigate individually than they could ever hope to recover in damages, and thus there is no reason to believe that the putative class members have any particular interest in controlling their own litigation. *See* González Decl. ¶ 12. *Second*, the litigation concerning this controversy is already well-developed and reaching its final stages—including Plaintiffs' international service efforts, robust discovery requests and analysis,

settlements, and successful default judgments entered against 15 Defendants. Additionally, Plaintiffs are not aware of any other litigation proceeding elsewhere relating to their claims.

Third, concentrating the litigation in this forum is logical and desirable for a variety of reasons that also tilt the third superiority factor in favor of certification. Namely, holding separate trials for claims that can be tried together would "be repetitive, wasteful, and an extraordinary burden on the courts." *Kennedy v. Tallant*, 710 F.2d at 718. This duplication of actions is the very "evil that Rule 23 was designed to prevent." *Califano v. Yamasaki*, 442 U.S. 682, 690 (1979). Indeed, "[w]here predominance is established, this consideration will almost always mitigate in favor of certifying a class." *Klay v. Humana, Inc.,* 382 F.3d 1241, 1270 (11th Cir. 2004); *see also Carriuolo v. Gen. Motors Co.,* 823 F.3d 977, 989 (11th Cir. 2016) ("class-wide adjudication appropriately conserves judicial resources and advances society's interests in judicial efficiency" where common questions predominate). Additionally, the Supreme Court has long recognized that where, as here, "it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device." *Deposit Guar. Nat'l Bank of Jackson, Miss. v. Roper*, 445 U.S. 326, 339 (1980); *see also, e.g., Phillips Petro. Co. v. Shutts*, 472 U.S. 797, 809 (1985) (noting that the class action mechanism may empower "plaintiffs to pool claims which would be uneconomical to litigate individually," such as when most of them "would have no realistic day in court if a class action were not available.").

The final superiority factor—manageability—focuses on the "practical problems that may render the class action format inappropriate for a particular suit." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 164 (1974). The question is whether multiple individual lawsuits would be more manageable than a class action, and not whether a class here will create significant management problems. *Klay v. Humana, Inc.*, 382 F.3d at 1273. Indeed, this fourth factor "will rarely, if ever, be in itself sufficient to prevent certification." *Id*. at 1272; *see also In re Visa Check/MasterMoney Antitrust Litig.,* 280 F.3d 124, 140 (2d Cir. 2001) (refusal to certify a class solely on grounds of manageability is disfavored and "should be the exception rather than the rule"); *Cherry v. Dometic Corp.*, 986 F.3d at 1304–05 (noting that "[a]dministrative feasibility alone will rarely, if ever, be dispositive" and the Court retains the "discretion to decertify a certified class that turns out to be unmanageable").

As discussed above, class members are ascertainable through objective criteria: their RoFx.net accounts and wire transfers sent to the Defendant entities in the hopes of funding the same. Plaintiffs' counsel has dedicated substantial time and resources towards developing an internal database for accepting and managing individual class members' documents. *See* González Decl. ¶¶ 10–11. To date, this database has received several hundred submissions; Plaintiffs' expect this trend to continue and certainly cannot foresee any serious manageability problems that would make nearly one thousand individual actions a better alternative to the class format proposed herein.

Accordingly, class treatment is superior to other available methods for the fair and efficient adjudication of this controversy.

V. The Court Should Appoint the Undersigned as Class Counsel.

Rule 23(g)(1) provides that "unless a statute provides otherwise, a court that certifies a class must appoint class counsel." Rule 23(g)(1)(A) outline the factors relevant to the appointment of class counsel:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class[.]

All of these factors weigh in favor of appointing the undersigned as class counsel. Counsel from Holland & Knight LLP have already completed substantial work investigating the facts and identifying the claims for the Class members. Holland & Knight attorneys have collected and reviewed numerous documents and records solicited from potential class members. Counsel has also conducted interviews with a variety of parties involved in the RoFx Scheme. Holland & Knight LLP has extensive experience handling complex class actions. The firm is committed and able to represent the class.

Accordingly, Plaintiffs request the Court appoint as class counsel the undersigned attorneys from Holland & Knight LLP.

CONCLUSION

Defendants through fraudulent conduct operated a phony foreign exchange trading service via RoFx.net. As result of their actions, they were unjustly enriched by over $75 million of ill-gotten gains at the expense of the Plaintiffs and many others in the proposed Class. The Class

members deserve a meaningful opportunity to recover these unconscionable losses. Certifying the proposed Class will be the most efficient route to redress this wrong.

Plaintiffs request the Court:

1. Certify this case as a class action with the following class definition: All persons who contributed funds to the RoFx foreign exchange trading scheme.
2. Appoint Plaintiffs Ryan Birmingham, Roman Leonov, Steven Hansen, Mitchell Parent, and Jonathan Zarley as Class Representatives;
3. Appoint as Class Counsel Holland & Knight and its attorneys Jose Casal, Warren Gluck, Matthew DiBlasi, Dennis González, and Andrew Balthazor; and
4. Grant further relief that may be just and proper.

Dated: February 10, 2023.

Respectfully submitted,

/s/ *Dennis A. González*

Dennis A. González (Fla. Bar No. 1032050)
Dennis.Gonzalez@hklaw.com
Jose A. Casal (Fla. Bar No. 767522)
Jose.Casal@hklaw.com
Andrew W. Balthazor (Fla. Bar No. 1019544)
Andrew.Balthazor@hklaw.com
Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Telephone: 305-374-8500

Warren E. Gluck (N.Y. Bar No. 4701421)
Pro hac vice
Warren.Gluck@hklaw.com
Matthew R. DiBlasi (N.Y. Bar No. 4237475)
Pro hac vice
Matthew.DiBlasi@hklaw.com
Holland & Knight LLP
31 West 52nd Street
New York, New York 10019

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about February 10, 2023, a true and accurate copy of Plaintiffs' Motion for Class Certification was served on counsel of record via the CM/ECF system. The undersigned further certifies that a copy of the foregoing document was served upon Defendants at the addresses listed below via mail or as otherwise indicated:

Art Sea Group Ltd. Via publication on Plaintiffs' website	**Auro Advantages, LLC** Via publication on Plaintiffs' website
Easy Com, LLC c/o Registered Agent 159 Main Street, Unit 100, Nashua, NH 03060	**Marina Garda** Via publication on Plaintiffs' website
Global E-Advantages LLC c/o Registered Agent North West Registered Agent LLC 8 The Green, Suite B, Dover, DE 19901	**Grovee, LLC** c/o Registered Agent Delaware Business Incorporators 3422 Old Capitol Trail, Suite 700 Wilmington, DE 19808
Ivan Hrechaniuk Via direct message to his LinkedIn profile	**Borys Konovalenko** Via email to borys.konovalenko@gmail.com
Mayon Solutions Ltd Via email to info@mayon.solutions and sales@mayon.solutions	**Mayon Solutions, LLC** (1) c/o Registered Agents, Inc. 159 Main Street, Unit 100, Nashua, NH 03060; and (2) Via courtesy email to Mayon.llc@gmail.com
Notus, LLC c/o Registered Agent Colorado Registered Agent LLC 1942 Broadway Street, Suite 314C, Boulder, CO 80302	**Profit Media Group LP** 4 Queen Street, Suite 1, Edinburgh, GB, EH21JE
Shopostar, LLC c/o Registered Agent Colorado Registered Agent LLC 1942 Broadway Street, Suite 314C, Boulder, CO 80302	**Olga Tielly** 3rd Floor 207 Regent Street, London, United Kingdom W1B3HH
Trans-Konsalt MR Ltd. Via publication on Plaintiffs' website.	

Respectfully submitted,

/s/ *Dennis A. González*

Dennis A. González
Florida Bar No. 1032050
Dennis.gonzalez@hklaw.com
Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Telephone: 305-374-8500
Attorney for Plaintiffs