

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
 LORINDA ROBINSON, ELAINE NIX,)
 ARCHIE PATTERSON AND TAMI)
 BOLLERMAN,)
)
 PLAINTIFFS,)
)
 v.)
)
 SOUTH CAROLINA DEPARTMENT)
 OF EMPLOYMENT & WORKFORCE,)
)
 DEFENDANT.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2013-CP-06-059

ORDER CERTIFYING

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 NOV 02 2017
 SC Court of Appeals

FILED FOR RECORD
 2016 MAY -5 AM 9:33
 PHOENIX A. D. HCELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Named Plaintiffs seek certification of a class of individuals who were wrongfully denied unemployment insurance benefits by the South Carolina Department of Employment and Workforce (hereinafter referred to as "SCDEW"). SCDEW is a State Agency charged by the South Carolina Legislature with the duty of processing unemployment claims in accordance with the Laws of this State. A hearing was held in this matter on January 11, 2016. After arguments and review of briefs, affidavits, and other evidence presented, this Motion is granted.

Plaintiffs assert as of August 6, 2012, SCDEW, without first promulgating regulations, began to require claimants to file at least one online application seeking employment. The named Plaintiffs were denied benefits because of their inability or failure to properly apply online for employment. Plaintiffs assert that SCDEW is required by Statute to implement regulations to establish policies to pay claims for unemployment benefits in particular S.C. Code Ann. §41-27-510, §41-35-610, and §1-23-10 et. seq. Alternatively, plaintiffs assert the new policy constitutes a binding norm which must be implemented by regulation.

Named Plaintiffs define the class as all persons who are citizens and residents of South

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Carolina who are eligible for unemployment insurance (UI) benefits but have not received payment because of procedures and policies required of class members by Defendant to make an online application for work as a prerequisite to his/her claim for benefits, this policy having not been promulgated as a regulation as mandated by statute. After applying a vigorous analysis of all five prerequisites for class certification as required by *Gardner v. South Carolina Department of Revenue*, 577 S.E.2d 190 (S.C. 2003), I find that the five (5) prerequisites for class certification have been met.

PREREQUISITES FOR CLASS CERTIFICATION

This action has been brought and may be maintained as a class action pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure. Under South Carolina Rules of Civil Procedure 23(a), the proponent of the Class must show:

- (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, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23(a) SCRPC.

Class actions are favored in South Carolina. *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 577, 703 S.E.2d 197, 204 (2010). The South Carolina Supreme Court has recognized and endorsed an expansive view and treatment of class actions. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 523 S.E.2d 781 (2000) ("By omitting the additional requirements [of 23(b) from the Federal Rules of Civil Procedure], Rule 23, SCRPC, endorses a more expansive view of class action availability than its federal counterpart."); *see also Grazia*,

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id. Suits commonly involving large numbers of plaintiffs, each with a small individual claim, who, without the class action device, might have no practical recourse due to the high costs obligation, are appropriate for class prosecution. *See S.C. Nat'l Bank v. Stone*, 139 F.R.D. 325, 328 (D.S.C. 1991). In addition, “[t]he class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23.” *Grazia*, 390 S.C. at 576, 703 S.E.2d at 204 (quoting *Califano*, 442 U.S. at 701).

The court has wide discretion in certifying a class action. *Waller v. Seabrook Island Prop. Owners Ass'n*, 388 S.E.2d 799, 801 (S.C. 1990). The focus for class certification is simply whether the prerequisites of Rule 23 have been met. *Tilley v. Pacesetter Corp.*, 508 S.E.2d 16, 21 (1998) (a court may not look to the merits when determining class certification).

1. The Proposed Class is so Numerous that Joinder of All Members is Impracticable.

“There is no requirement . . . that at the pleading stage of the case either the exact number of persons comprising the class be specified or the class members be identified.” *McGann v. Mungo*, 287 S.C. 561, 570, 340 S.E.2d 154, 159 (Ct. App. 1986) (citation omitted). A “fluid, changing membership . . . does not render the class action device unsuitable.” *Id.* There is no “magic number” necessary to establish numerosity. *See Green v. Cauthen*, 379 F.Supp. 361, 371-72 (D.S.C. 1974).

In *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011), the South Carolina Court of Appeals upheld certification of a class of 228 persons. Based upon the Affidavit of John Matthews, this class may very well consist of over 60,000 people whose unemployment benefits were denied. SCDEW employee, Kevin Cummings, in his October 27, 2014 deposition, indicates approximately 50,000 persons were denied benefits

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because of a failure to comply with the on-line work search requirement and these persons have not exhausted their benefits. Defendant, in its Memorandum against class certification, notes “that there is a large number of persons who have had claims stopped for a week or more because of failure to comply with the online work search requirement.” Using Mr. Cummings estimations, the numerosity prerequisite is clearly satisfied.

2. There are Questions of Law or Fact Common to the Class.

The Class has common questions of law or fact as a result of the Defendant’s policy; that is, the members of the class all have had their statutory benefits reduced or suspended because of the policy. Rule 23(a)(2) requires a showing of the existence of “questions of law or fact common to the class.” The South Carolina Supreme Court has provided guidance in this analysis. In *Gardner v. South Carolina Department of Revenue*, 577 S.E.2d 190 (S.C. 2003), the Court stated that:

To establish commonality, a party must show that “there are questions of law or fact common to the class.” Rule 23, SCRCP. In practical terms this means the party must articulate the existence of “significant common, legal, or factual issues” which bind the proposed class together. *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 64 (S.D. Ohio 1991).

Critically, “not every issue in the case must be common to all class members.” *O’Connor v. Boeing North Amer., Inc.*, 184 F.R.D. 311, 329 (C.D. Cal. 1998). Commonality is met only where the class shares a determinative issue. *See Stott v. Haworth*, 916 F.2d 134, 145 (4th Cir. 1990) (“certification is proper only when a determinative critical issue overshadows all other issues....”).

Id. at 200-01.

In the present case, the Class Members share a common determinative issue. Each member of the Class would be eligible for unemployment benefits under the regulations and statute, but were denied benefits because they failed to meet the requirements of the new policy.

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The determinative issue for all members of the Class is whether SCDEW was required to enact the new policy as a regulation.

Defendants argue that Plaintiffs have the burden of proving they have met other requirements of receiving unemployment benefits, such as satisfying the four (4) job search requirement, being available for work, and actively seeking work. Therefore, commonality cannot be met. This argument is without merit. Plaintiffs specifically have limited the definition of the class to all persons who were denied benefits because of the failure to comply with the online work search requirement. They have not sought to certify a class to recover benefits for persons who were denied benefits for any other reason. Therefore, the prerequisite of commonality has been met.

3. The Claims of the Representative Party are Typical of the Claims of the Class Members.

SCRCR Rule 23(a)(3) requires that the claims of the Class Representative be "typical of the claims of the class." The typicality requirement compares the similarity of the named Plaintiff's claim to the claims of the class as a whole.

The proposed class action presents similar claims for each member. The named Representatives, i.e. each member of the class has suffered the same type of harm from the new Policy. Specifically, each member has had his/her unemployment benefits denied for at least one week because of SCDEW's implementation of the online work search requirement policy. Further, each Plaintiff is capable of becoming employed in the future and suffering harm from this policy. Moreover, each named plaintiffs and each class member are seeking the same remedial measures. Each member is seeking damages for the lost benefits and an injunction until the SCDEW enacts the policy as a regulation. Therefore, the typicality requirement is satisfied.

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4. The Representative Party will Fairly and Adequately Protect the Interests of the Class.

SCRCRCP Rule 23(a)(4) requires that the representative party will fairly and adequately protect the interests of the Class. There are two criteria which the Court should examine in determining whether the Class Representative adequately protects the interests of the class. These two criteria are: “(1) the representative must have common interests with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel.” *Runion v. U.S. Shelter*, 98 F.R.D. 313, 317 (D.S.C. 1983); see *Waller v. Seabrook Island Prop. Owners Ass’n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (*Runion* “sets forth all criteria to be considered in determining whether a particular named plaintiff will adequately represent a proposed class.”).

The first element requires the class representative to “not have any significant antagonistic or conflicting interests to the unnamed members of the class.” *Runion*, 98 F.R.D. at 317. “The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class.” *Waller*, 300 S.C. at 468, 388 S.E.2d at 801 (citation omitted). Since the plaintiffs all have the same economic interests, namely acquiring unemployment compensation, there is no antagonism within this class. The second element should be satisfied because the representative parties have counsel and there is no evidence of close relationships between the representative members and the SCDEW. *Runion*, 98 F.R.D. at 317-18 (denying Mr. Runion as representative because of his close relationship with the defendant). Further, Plaintiffs have supplied the Affidavit of John Freeman indicating Plaintiffs’ counsel experiences with class action litigation, as well as their own affidavits outlining their experience. I find that the prerequisite of adequacy has been met.

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5. The Amount in Controversy Exceeds One Hundred Dollars for Each Class Member.

The final prerequisite is that the amount in controversy must exceed one hundred dollars for each member of the class. SCRCP 23(a)(5). This amount is based on the amount claimed by the Plaintiffs if it is apparent that the claim is made in good faith. *See Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200, 201 (S.C. 1991). Here, the amount in controversy is the amount of unemployment compensation denied for each member. The average weekly benefit, according to SCDEW's website, is \$236.00. Each of the members of the class has missed at least one week's worth of benefits as a result of SCDEW's arbitrary policy. Further, Plaintiffs have defined the class as those who have more than \$100.00 in damages. Therefore, any claim of less than \$100.00 is excluded. I find that the prerequisite \$100.00 threshold for damages has been met.

CONCLUSION AND CLASS DEFINITION

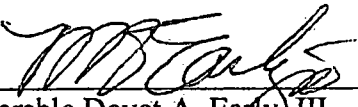
I find that all five (5) prerequisites of class certification have been met, including the damages threshold, and hereby certify a class consisting of all persons who are: (1) citizens and residents of South Carolina; (2) who were eligible to receive unemployment benefits, through SCDEW; (3) who made application through SCDEW to receive benefits; and (4) who did not receive benefits for one or more weeks as a result of their failure to conduct an online job search on or after August 5, 2012.

No part of this Order shall be construed as a decision on the merits of this case.

AND IT IS SO ORDERED.

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Bamberg, South Carolina
April 29, 2016



Honorable Doyet A. Early III
Judge of the Second Circuit