

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JENNIFER MONDELLO, on behalf of
herself and all others similarly situated,

Plaintiffs,

v.

Case No. 8:24-cv-1037-SPF

ICF TECHNOLOGY, INC.,
ACCRETIVE TECHNOLOGY GROUP, INC.,

Defendants.

_____ /

ORDER

In this hybrid class and collective action, before the Court are Plaintiff's Motion for Class Certification and supporting documents (Doc. 54), Defendants' Opposition and supporting documents (Doc. 57, 59-67, 70), Plaintiff's Reply (Docs. 75), and Plaintiff's Notice of Supplemental Authority (Doc. 76). After a hearing (Docs. 77, 79), the Court grants the motion for the reasons stated here.

I. FACTUAL BACKGROUND

A. Plaintiff and the Proposed Class

Plaintiff and Class Representative Jennifer Mondello is a Tampa-based adult content creator who has livestreamed her performances through Streamate since October 2022 (Doc. 12 ("Amend. Cmplt.") at ¶ 1). Plaintiff alleges that Defendants violate the Fair Labor Standards Act, 29 U.S.C. § 216(b) ("FLSA"), the Florida Minimum Wage Act, Fla. Stat. § 448.110 ("FMWA"), and the Florida Constitution by misclassifying their Performers as independent contractors rather than employees, retaining most of the tips Performers earn,

and paying Plaintiff and other potential class members less than a minimum hourly wage under Florida law (*Id.* at ¶¶ 75-105).¹

Related to Count II (the state law claim), Plaintiff proposes to represent a class defined as:

All persons who, at any time from April 30, 2019 continuing through entry of judgment in this case, worked as Performers for ICF Technology, Inc. and/or Accretive Technology Group, Inc. in Florida.

(Doc. 54 at 1).

B. Defendants and Streamate

Defendant ICF Technology, Inc. (“ICF”) is a Washington state corporation that operates social media platforms for adult content and owns the domain streamate.com (Amend. Cmplt. at ¶ 2; Doc. 21 (“Answer”) at ¶ 2). Defendant Accretive Technology Group, Inc. (“ATG”), also a Washington-based corporation, describes itself as a market leader in web-based live video streaming (Amend. Cmplt. at ¶ 3; Answer at ¶ 3). It shares a principal place of business with ICF and owns more than 10% of ICF’s stock (*Id.*). The IP address associated with www.streamate.com is registered to Accretive Networks, a d/b/a of ATG (*Id.*). Plaintiff alleges ICF and ATG are joint employers (Amend. Cmplt. at ¶ 4).

Streamate is a host platform on which Performers livestream and upload adult content (Answer at ¶ 9). Before doing so, Performers must register with the website, certify their eligibility, and execute a Performer Agreement (*Id.* at ¶ 19). There is no Streamate-specific training that Performers must complete. Before approving a Performer, Defendants confirm that they meet the minimum age requirement and that it is legal in the Performer’s home state

¹ In Defendants’ standard Performer Agreement, webcam performers who work for Defendants to provide online adult content, like Plaintiff, are “Performers” (*see* Doc. 59-1).

to livestream and upload adult content (Doc. 60 (“Rekevics Decl.”) at ¶ 3). Once approved, a Performer is free to start using the Streamate platform (Doc. 54-2 (“Rekevics Depo.”) at 36:10-13). Performers can set their own hours, negotiate pricing with customers (although Streamate sets a minimum price), create and design their performances, and stream from any location (Answer at ¶¶ 7-8).

C. “Free Chat” Versus “Paid Chat”

Streamate’s homepage displays thumbnail photographs of Performers who are online at the time (Amend. Cmplt. at ¶ 14; Answer at ¶ 14). Potential customers browse the thumbnails or search for Performers by keyword or category. From there, a customer can click on a Performer’s thumbnail to view some content for free (a “free chat”), but they must pay to view more explicit and exclusive performances (a “paid chat”) (Amend. Cmplt. at ¶¶ 12-16; Answer at ¶¶ 12-16). In the free chat area, a customer can watch a Performer’s livestream and interact with the Performer in a chatroom (Amend. Cmplt. at ¶ 15; Answer at ¶ 15).

A Performer only receives compensation in free chat through a “Gold” transaction. Gold is Streamate’s virtual currency. Customers exchange U.S. dollars for Gold at a 1:1 exchange rate (*see* Rekevics Depo. at 71:4-7; Rekevics Decl. at ¶ 5, n. 1). Streamate retains an agreed-upon percentage of all Gold a Performer earns in U.S. dollars. Although Performers have the right under the Performer Agreement to negotiate this percentage (Doc. 59-1 at 4), there is no record evidence that Performers ever receive more than 35% of a Gold transaction (Rekevics Depo. at 66:10-15).

To Plaintiff and the putative class members, receiving Gold from a customer is like getting a tip (Amend. Cmplt. at ¶ 37). Defendants disagree with this characterization but

concede that, in some circumstances, a customer may give Gold as a form of a tip (*see* Doc. 79 at 11). At their discretion, a customer can click either a “Give Gold” or a “Quick Gold” button during a performance (*Id.*). According to Elizabete Rekevics, Defendant ICF’s Director of Marketing, “[p]eople can give gold if they want” through these features (Rekevics Depo. at 70:3-4).

Defendants have gamified the free chat area to encourage Gold transactions. For example, Performers can incorporate the “Gold Menu,” the “Spin-the-Wheel” program, and/or an interactive vibrator option into performances at their discretion (Rekevics Decl. at ¶ 5). Under the Gold Menu, a Performer agrees to perform a specific Menu item once they receive a set amount of Gold (*Id.*). Although each Performer determines their Menu prices, Defendants recommend a pricing structure. Under the Spin-the-Wheel program, a customer pays an amount set by the Performer to spin a digital wheel (*Id.*). The Performer then performs whatever act the wheel lands on.

Performers also earn Gold by selling content that Streamate permits them to upload, like videos or photos. And a Performer can design a Gold deal with a customer outside of these Streamate-suggested features (if the deal does not violate Streamate’s rules) (Doc. 79 at 16). Rekevics testified that in free chat, Performers can do “[p]retty much whatever they would like to do. This is where their creative side comes out. . . . We’ve had people change spark plugs in their car. We’ve had people cook. We’ve had people dance.” (Rekevics Depo. at 64:13, 17-19). Performers can perform topless in free chat; Rekevics testified that “the only thing I can think is that we do not allow below-the-waist nudity in logged-out free chat areas.” (*Id.* at 64:7-9).

For a paid chat, customers pay per minute for private (small group), exclusive (one-on-one), or Gold shows (where the Performer begins the show once a group of customers collectively pays a flat fee, Doc. 84-2 (“Mondello Depo.”) at 218:16-22). These generally are more explicit performances compared to a free chat (Rekevics Decl. at ¶ 6). Once a Performer accepts a paid chat, their thumbnail is no longer viewable in the free chat area (*Id.*). Performers set their own rates for paid chats, although Streamate mandates a minimum rate (*Id.* at ¶ 7).

Streamate distinguishes between a Performer’s “total minutes online” (free chats plus paid chats) and “total paid minutes online” (paid chats only) and compensates them only for the latter (Amend. Cmplt. at ¶¶ 17-18; Answer at ¶¶ 17-18). Plaintiff contends that most of her performance time is spent in free chats (Amend. Cmplt. at ¶¶ 41-43; Doc. 33-5 (“Mondello Decl. I”) at ¶ 10). It is not clear from the record how or how much Streamate compensates Performers for time spent in paid chat, only that Performers and Streamate share all revenue derived from Gold transactions in both free and paid chats, with Streamate typically receiving 65% of the Gold a Performer earns and the Performer receiving 35% (*see* Rekevics Depo. at 66:12-15). The formula for a Performer’s compensation “is calculated across the board the same.” (*Id.* at 69:13-14).

D. Performer Agreements

Between this case and a companion case pending in the District of New Jersey, Defendants have produced nine versions of their Performer Agreement, all substantially the same (*see* Doc. 44-2).² Two versions have a mandatory arbitration clause that provides: “Any

² The New Jersey litigation is *Tomasello v. ICF Tech., Inc., et al.*, Civ. Action No. 23-3759-MCA-JRA (D. N.J.). Counsel is the same in both cases. The parties have agreed that deposition testimony and exhibits from *Tomasello* can be used here (Doc. 45-1). While not

controversy or claim arising out of [the Performer Agreement], Performer/Studio's performance of this [Performer Agreement], or the parties' other actions in any way relating to any subject matter of [the Performer Agreement] shall be filed with and settled by final and binding arbitration in accordance with then-current arbitration procedures of the American Arbitration Association." (*Id.* at 33, 39). The mandatory arbitration provision contains a waiver of class and collective actions: "Performer/Studio and Streamate intend and agree that class, collective, and representative action procedures are hereby waived and shall not be asserted, nor will they apply, in any arbitration pursuant to this agreement." (*Id.*; *see also* Rekevics Decl. at ¶ 10).

Every Performer must execute and is bound by a Performer Agreement that Defendants can terminate for any reason (Doc. 59-1 at 7).³ The Performer Agreements state that a Performer "shall not be deemed or treated as an employee of Streamate for any purpose." (*Id.*). Defendants can suspend or terminate a Performer's livestream or Streamate account for violating their Standards, or code of conduct, incorporated into every Agreement (*Id.* at 3). For example, Performers are prohibited from displaying below-the-waist nudity in free chat areas (*Id.* at 5). Performers may not promote "non-Streamate related website[s]." (*Id.*). Individuals who are not Streamate-approved Performers may not appear in any

controlling on this Court, the district judge in *Tomasello* conditionally certified a collective of New Jersey Performers under the FLSA and a class of New Jersey Performers under Rule 23 (*see* Doc. 76). Tomasello performed in Florida during the class period and is a putative class member in this case (Doc. 54-15 ("Kocher Decl.") at ¶ 4).

³ Plaintiff collected all nine versions of the Performer Agreement applicable during the class period and submitted them in support of her motion for conditional certification of the FLSA collective (*see* Doc. 44-2). References to specific provisions of the Performer Agreement in this Order will be to the March 1, 2024 version that Defendants submitted in connection with their opposition to Plaintiff's class certification motion (*see* Doc. 59-1).

performances, even if they meet the minimum age requirement (*Id.*). To remain in good standing, Performers are not permitted to use or be under the influence of illegal drugs or alcohol in any of their uploaded content or while livestreaming; they may not solicit prostitution; they may not display “any animal[s], firearm[s], or gun[s] of any type”; and they may not engage in fraudulent activity, defined as “any activity that violates any law, that results in complaints or chargebacks, or that is deemed inappropriate by us.” (*Id.*). What constitutes “inappropriate” content is a subjective standard up to Defendants to interpret (*see* Doc. 54-4 (“Glogowski Depo.”) at 66:22-24). Defendants employ over one hundred content moderators at their Romania and Spokane offices who view every stream to enforce these rules (Glogowski Depo. at 26:7-9, 29:19-21).

Performers submit images for their Streamate biographies to Defendants for approval (Amend. Cmpl. at ¶ 27). Streamate reviews all content that Performers submit for uploading before it is viewable to customers; Defendants block content deemed illegal or in violation of the Performer Agreements (Doc. 59-1 at 3). Under the Agreements, Streamate owns all content Performers upload to the platform (unless the Performer is a California resident) (*Id.* at 6). It has “the sole discretion to use any such [u]ploaded [c]ontent in any way it so chooses, including but not limited to in any medium and in any promotion, distribution, advertising, sales, or marketing efforts. . .” (*Id.*).

Streamate has posted a “Streaming Rules FAQ” to the Performer portal of its website to help clarify its “streaming rules and how they are enforced” and “what is and isn’t allowed on camera.” (Doc. 54-11 at 2; *see also* Glogowski Depo. at 62:8-9). According to this document, specific rules in the Performer Agreement and code of conduct are “no tolerance” rules (*Id.*). Streamate will remove a Performer from its platform for a single violation (*Id.*).

Streamate has “no tolerance” for depictions of underage or non-consensual roleplay, for example (*Id.* at 4). Other violations are subject to a “loose three-strike” policy, meaning they will result in a warning, temporary suspension, or a Performer “timeout” until a third violation, when Streamate may decide to remove the Performer permanently (*Id.* at 5). For example, although below-the-waist nudity in free chat is subject to the loose three-strikes policy, Defendant Accretive’s Director of Global Compliance, Katrine Glogowski, testified that “[a]s far as nudity below the waist [it] takes a lot more than three or five [strikes,]” for Streamate to remove a Performer from the platform; the policy is “subjective.” (Glogowski Depo. at 66:11-12, 22).

E. Plaintiff’s Experience

Plaintiff lives in Tampa and has worked as a Performer since October 2022 (Amend. Cmplt. at ¶ 10). After registering with Streamate and executing a Performer Agreement, Plaintiff started performing, utilizing her computer, webcam, and internet connection (*see id.*; Answer at ¶ 32; Rekevics Depo. at 32:13-14). Plaintiff has purchased other work-related equipment, such as costumes. The version of the Performer Agreement that Plaintiff executed does not include a mandatory arbitration provision.

Plaintiff provided an exemplar period to show the compensation she received from Streamate versus the hours she worked. During the week of September 10, 2023, for example, Plaintiff worked online for 700 minutes as a Performer but was paid for only 124 minutes, or 18% of her total online time working (Amend. Cmplt. at ¶ 43; Answer at ¶ 43). Plaintiff alleges that Defendants control the placement and, therefore, the visibility of her thumbnail on the site, which impacts her compensation (Amend. Cmplt. at ¶ 25).

According to Plaintiff, in August 2023, Defendants suspended Plaintiff's account because she wore dog ears during a livestream (*Id.* at ¶ 23). Defendants decided this violated the prohibition on certain types of animal roleplay and temporarily blocked her account (Answer at ¶ 23); Plaintiff alleges they suspended her for what they alleged was bestiality (Amend. Compl. at ¶ 23). In January 2024, Defendants again unilaterally prevented Plaintiff from streaming, this time because she attempted to change her mailing address (Amend. Compl. at ¶ 26; Answer at ¶ 26).

II. PROCEDURAL HISTORY

On April 30, 2024, Plaintiff filed her initial class and collective action Complaint against Defendants in this Court on behalf of herself and all others similarly situated (Doc. 1). On June 12, 2024, Plaintiff filed the operative Amended Complaint, alleging that Defendants have violated and continue to violate the FLSA and Florida wage laws (Amend. Compl.).

On October 11, 2024, Plaintiff moved to conditionally certify an FLSA collective under 29 U.S.C. § 217(b) of current and former Florida-based performers who worked for Defendants at any time over the past three years, were classified as independent contractors, and wish to opt into the class (Count I) (Doc. 33). On January 16, 2025, the Court granted the motion in part and conditionally certified the FLSA collective (Doc. 51). On February 6, 2025, the Court authorized the method, timing, and content of notices to putative members of the FLSA collective (Doc. 53). The opt-in period has closed; 81 Performers joined the Florida collective. Limited opt-in discovery closes on October 1, 2025 (Doc. 116).

Now, under Rule 23(b)(3), Plaintiff moves to certify a class to pursue her claim that Defendants violated the FMWA and the Florida Constitution by misclassifying their

Performers as independent contractors and failing to pay them a minimum wage (Count II) (Doc. 54). Plaintiff also contends that Defendants violate 29 U.S.C. § 203(m)(2)(B) of the FLSA and Section 24(b) of Article X of the Florida Constitution by retaining Performers' tips. Plaintiff proposes this class definition: "All persons who, at any time from April 30, 2019 continuing through entry of judgment in this case, worked as Performers for ICF Technology, Inc. and/or Accretive Technology Group, Inc. in Florida." (*Id.* at 8). Defendants oppose class certification under Rule 23, arguing Plaintiff's claims are not typical of the proposed class, Plaintiff is not an adequate class representative, individual questions predominate any alleged class questions, and a class action is not the superior means for resolving Plaintiff's claims (Doc. 57).⁴

III. LEGAL STANDARD

Class certification is proper when the proposed class meets all the requirements of Rule 23(a) and one or more subsections of Rule 23(b). *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019). Rule 23(a) requires: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a)(1)-(4). Plaintiff argues that the proposed class satisfies these prerequisites as well as Rule 23(b)(3), which requires the court

⁴ Besides Plaintiff's class certification motion, the parties' cross summary judgment motions are pending (Docs. 89, 91, 93). Consistent with Eleventh Circuit guidance, the Court exercises its discretion and considers the class certification issue first. *See Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333, 1343 (11th Cir. 2000) ("It [is] within the court's discretion to consider the merits of the claims before their amenability to class certification."); *Martinez-Mendoza v. Champion Int'l Corp.*, 340 F.3d 1200, 1215-16 (11th Cir. 2003) (reversing a district court that mistakenly "thought that its decision granting [a defendant] summary judgment automatically disposed of the class certification issue"); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1279 n.21 (11th Cir. 2009) ("The district court could have prevented, or at least reduced, this confusion by keeping the class certification determination both conceptually and temporally distinct from its merits ruling on summary judgment."). The parties' *Daubert* motions are also pending (Docs. 88, 92).

to consider if: (a) “the questions of law or fact common to class members predominate over any questions affecting only individual class members;” and (b) “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The Eleventh Circuit also requires that the class representative has standing to sue and that the proposed class is adequately defined and clearly ascertainable. *See Prado-Steiman ex rel Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000) (“[P]rior to the certification of a class ... the district court must determine that at least one named class representative has Article III standing to raise each class subclaim.”); *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012).

“Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011). Consistent with this standard, “certification is proper only if ‘the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied[.]’” *Id.* at 351 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982)). In deciding whether to certify a class, the Court’s analysis frequently overlaps with “the merits of the plaintiff’s underlying claim[s]. That cannot be helped.” *Dukes*, 564 U.S. at 351. But the Court may consider the merits “only to the extent . . . that they are relevant to determining” class certification. *Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013).

IV. DISCUSSION

A. Standing

The Court must determine that at least one named class representative has standing to raise each class claim. *Veal v. Crown Auto Dealerships, Inc.*, 236 F.R.D. 572, 577 (M.D. Fla. 2006). “Any analysis of class certification must begin with the issue of standing.” *Prado-Steiman ex rel. Prado*, 221 F.3d at 1279 (quoting *Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir. 1987)). “Only after the court determines the issues for which the named plaintiffs have standing should it address the question whether the named plaintiffs have representative capacity, as defined by Rule 23(a), to assert the rights of others.” *Griffin*, 823 F.2d at 1482. Courts in the Eleventh Circuit abide by the “basic principle that at the class certification stage only the named plaintiffs need have standing.” *Green-Cooper v. Brinker Int’l, Inc.*, 73 F.4th 883, 888 (11th Cir. 2023) (footnote omitted).

For Article III standing, an individual plaintiff must demonstrate: (1) she suffered an injury in fact that is actual or imminent and not conjectural or hypothetical; (2) a causal connection between the injury and the conduct complained of that is fairly traceable to the defendant; and (3) the injury must be likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). To have standing to represent a class, a named plaintiff must “be part of the class and possess the same interest and suffer the same injury as the class members.” *Prado-Steiman ex rel. Prado*, 221 F.3d at 1279 (citation omitted); *see also Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307 (11th Cir. 2008).

Although neither side addresses standing, the Court is satisfied that Plaintiff has standing to proceed with her motion for class certification and to assert her class claims. Plaintiff lives in Tampa and has worked for Defendants since October 2022, streaming most

performances from her house and all but one performance from Florida (Amend. Cmplt. at ¶¶ 1, 5; Mondello Depo. at 168:3-7). Plaintiff testified she does not use a VPN (Mondello Depo. at 168:14-16). Additionally, Plaintiff alleges Defendants are her joint employer, they do not pay her a minimum wage under Florida law for her free chat time, and they improperly retain 65% of the tips she earns (*see* Amend. Cmplt.). All putative class members suffer the same alleged injuries.

B. Ascertainability

Plaintiff's proposed class is ascertainable—a conclusion Defendants do not challenge. Membership in the class can be determined by reference to objective and precise criteria. *See Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021); *Palm Beach Golf Ctr. – Boca, Inc. v. Sarris*, 311 F.R.D. 688, 693 (S.D. Fla. 2015). A class member must have (1) worked for Defendants as a Performer (2) in Florida (3) at any time from April 30, 2019, through the entry of judgment. Plaintiff represents that Defendants have produced payroll and timekeeping records for potential class members (Doc. 54 at 21; Doc. 54-15 (“Kocher Decl.”) at ¶ 3), so there is a reliable and administratively feasible mechanism for determining class membership that does not require much, if any, individual inquiry. *See Griffith v. Landry's, Inc.*, No. 8:14-cv-3213-T-35JSS, 2017 WL 11002193, at *4 (M.D. Fla. Jan. 30, 2017) (employee class adequately defined and clearly ascertainable through defendant records).

Defendants counter that they do not keep geolocation data for Florida-based Performers in the ordinary course of business (Doc. 75-4 at 2). In a different context, Defendants explained that available geolocation data permits their expert to pinpoint a Performer's streaming location with only 60-80% accuracy: “[W]e're relying upon a third-party data [from a company called MaxMind], publicly available third-party data to

determine where the IP addresses are.” (Doc. 79 at 19). If a Performer uses a VPN, it further complicates matters.

The Court sets aside for now the fact that, in the New Jersey litigation, Defendants produced a spreadsheet of Performers’ IP addresses at every login (Doc. 75-6 (“Rowland Depo.”) at 14:22-24). Plaintiff proposes identifying class members as those Performers who registered for Streamate in Florida during the relevant time and who received a 1099 at their Florida address. Utilizing these criteria, Plaintiff has identified approximately 1,903 Performers as putative class members (Kocher Decl. at ¶ 3). The putative class is ascertainable.

C. Rule 23(a)

1. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Plaintiff bears the burden of making some showing, although it is a “generally low hurdle.” *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1267 (11th Cir. 2009). Although the mere allegation of numerosity is insufficient, the plaintiff need not show a precise number of members for the putative class. *Id.* In *dicta*, the Eleventh Circuit has held, “while there is no fixed numerosity rule, ‘generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors.’” *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (citation omitted).

According to timekeeping and payroll data Defendants have produced, the number of class members approximates 1,903 (Kocher Decl. at ¶ 3). Defendants do not challenge this but again emphasize that, because geolocation data is limited, they cannot pinpoint with

perfect accuracy a Performer's location during a livestream (*see* Doc. 79 at 19). Plaintiff has met Rule 23(a)(1)'s numerosity requirement.

2. Commonality

Next, Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality refers to the characteristics of the class, unlike typicality, which refers to the individual characteristics of the named plaintiff in relation to the class. *Piazza v. Ebsco Indus., Inc.*, 273 F.3d 1341, 1346 (11th Cir. 2001) (citation omitted). Commonality requires that there be some factual or legal theory that is susceptible to class-wide proof. *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009). "[T]here be at least one issue whose resolution will affect all or a significant number of the putative class members." *Id.* (citation and quotation omitted).

The commonality requirement is a "low hurdle." *Id.* at 1356. Commonality may be satisfied "even with some factual variations among class members." *Schojan v. Papa John's Int'l, Inc.*, 303 F.R.D. 659, 665 (M.D. Fla. 2014). Plaintiff must show that the class members "have suffered the same injury[.]" and that the common issue is "of such a nature that it is capable of classwide 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." *Dukes*, 564 U.S. at 349-50.

Here, Plaintiff meets Rule 23(a)(2)'s commonality requirement. Plaintiff presents three overarching questions that are common to all class members: (1) whether Defendants misclassified Performers as independent contractors under Florida law, (2) whether Performers received Gold as discretionary tips, as defined by federal law, and (3) whether Defendants violated the FMWA and Florida's Constitution by paying less than minimum

wage to Performers and withholding tips. Answering these questions does not depend on individualized timekeeping and payroll records.

3. *Typicality*

Typicality mandates that Plaintiff prove “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). In other words, “there must be a nexus between the class representative’s claims or defenses and the common questions of fact or law which united the class.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). Typicality does not require identical claims and defenses. *Id.* “A factual variation will not render a class representative’s claim atypical unless the factual position of the representative markedly differs from that of other members of the class.” *Id.* (citations omitted). Unlike commonality, which evaluates the sufficiency of the class itself, typicality evaluates the sufficiency of the named plaintiff: “[O]ne of the core purposes of conducting typicality review is to ensure that ‘the named plaintiffs have incentives that align with those of the absent class members so as to assure that the absentees’ interests will be fairly represented.’” *Prado-Steiman ex rel. Prado*, 221 F.3d at 1279 (quoting *Baby Neal v. Casey*, 43 F.3d 48, 57 (3rd Cir. 1994)).

Plaintiff claims that she meets Rule 23(a)(3)’s typicality requirement, because Defendants treat her and putative class members the same (Doc. 54 at 19). Defendants categorize all Performers as independent contractors under nearly identical Performer Agreements (*see* Docs. 59-1, 44-2). These Agreements and the incorporated code of conduct subject Plaintiff and the putative class members to the same rules, policies, and procedures (Glogowski Depo. at 62:19-22). Defendants rely on their standard Compliance Handbook to monitor and discipline Performers (*see id.* at 73:6-14), and they utilize uniform payment

practices—Defendants do not pay Performers for time spent in free chat, and Streamate takes a 65% share of all Gold transactions (*see* Rekevics Depo. at 66:12-15).⁵

Defendants side-step these points and focus on Plaintiff's characterization of Gold as discretionary tips (Doc. 57 at 15-16). Defendants argue that Performers can earn Gold in free chat for services like performing a Menu item. Defendants cite to Plaintiff's deposition testimony where she admits that Performers can earn income in free chat (Mondello Depo. at 264:22-265:02). Defendants also submit declarations from seven other Florida-based Performers who confirm that they earn a significant amount of Gold while working in free chat (Docs. 61-67). Defendants emphasize that Streamate's functionality does not permit them in all instances to distinguish between types of Gold transactions (*see* Doc. 79 at 24-25).

But Defendants overlook that Plaintiff's tip claim is distinct from her unpaid wages claim. Plaintiff alleges Defendants do not pay her for free chat time, causing her earnings to fall below the state minimum wage. This harm tracks the alleged injuries of the putative class, and its source is Defendants' classification of Performers as independent contractors rather than employees. Seven Performers—out of approximately 1,903 putative class members—declare they work for Defendants because they want the ability to set their own hours, choose their work location, and negotiate their prices. At root, however, members of the proposed class share the same legal argument: Defendants exert enough control over them to create an employer-employee relationship, and they seek the protection of Florida's minimum wage laws.

⁵ With the Court's permission, Plaintiff submitted ICF's Compliance Handbook under seal (Docs. 41-43).

Whether Gold is considered a tip is a separate issue. Defendants contend there is no common evidence to resolve it, because Plaintiff has not provided evidence of her method for soliciting tips or whether this method is typical of members of the putative class. However, the universe of Gold transactions and the categories these transactions fall into are known, and Defendants admit to tracking the amount of Gold each Performer receives. The amount of Gold in each category for each putative class member will require individualized analysis, but this factual variation does not undermine typicality.

Defendants shift their argument to allege that the class action waiver and arbitration clause in two versions of the Performer Agreement defeats typicality (Doc. 57 at 17-18). This also fails. First, Plaintiff's Performer Agreement does not include an arbitration clause (Doc. 51 at 11; Doc. 33-4). Second, the two versions of the Performer Agreement with arbitration provisions only apply to Performers who signed Agreements during a short period (April 1, 2020, to September 14, 2021), rather than the broader class period (April 30, 2019, to the entry of judgment) (*Id.*). Defendants have not matched any Performer Agreement with an arbitration provision to any potential class member, either by name or by an estimate of the number of Florida-based performers who signed Agreements during that date range (*see* Doc. 75 at 5-6). Defendants are essentially asking the Court to validate arbitration provisions but have not identified Performers who signed them or provided copies of the Performers' executed agreements.⁶

⁶ The Court incorporates its analysis of this issue included in its Order granting Plaintiff's motion for conditional certification of the FLSA collective (*see* Doc. 51 at 11-13).

Plaintiff's legal theories are typical of all class members; there is no indication that Plaintiff's claims conflict with those of other members of the putative class. Rule 23(a)(3) is met.

4. *Adequacy of Representation*

Next, Plaintiff must show that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).⁷ The “adequacy of representation” analysis under Rule 23(a)(4) “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.” *Busby*, 513 F.3d at 1323. Minor conflicts of interest will not defeat class certification. *Moore v. GNC, Hldgs, Inc.*, No. 12-61703, 2013 WL 12237784, at *5 (S.D. Fla. Oct. 17, 2013). Courts presume adequacy of representation unless there is evidence to the contrary. *Id.*

Defendants challenge Plaintiff's ability to adequately represent the class. Defendants argue that Plaintiff's independent contractor misclassification argument is at odds with Plaintiff's deposition testimony that she would not have started working at Streamate if Defendants had classified her as an employee (Mondello Depo. at 279:7-10). They again cite the seven Florida-based Performers' declarations, who state that the flexibility provided by their independent contractor status is a key factor in their decision to work for Streamate (Docs. 61-67).

The Court has reviewed the excerpts of Plaintiff's deposition that the parties have submitted piecemeal in the class certification record. Taken in context, Plaintiff testified that

⁷ Relatedly, Rule 23(g) requires that Plaintiff establish the adequacy of her counsel to represent the class. Defendants agree that Plaintiffs' attorneys are suitable class counsel, and the Court concurs.

she would not have taken the job with Streamate if Defendants had required her to be an employee under current conditions (*i.e.*, unpaid free chat time and tip sharing with Streamate). Plaintiff clarified this in a declaration submitted with her reply brief (Doc. 75-3 (“Mondello Decl. II”) at ¶ 4). There are no substantial conflicts of interest between Plaintiff and the putative class members, and Plaintiff will adequately prosecute the action. Plaintiff meets the adequacy requirement of Rule 24(a)(4).

D. Rule 23(b)(3)

Besides establishing standing and satisfying Rule 23(a)’s four prerequisites, Plaintiff must show that the class she asks the Court to certify fits into at least one of Rule 23(b)’s categories. *See* Fed. R. Civ. P. 23(b). Plaintiff aims to proceed as a Rule 23(b)(3) class. Under that rule, certification is appropriate if “the court finds that 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 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Courts refer to these two requirements as predominance and superiority. *De Ford v. Koutoulas*, 348 F.R.D. 724, 739 (M.D. Fla. 2025).

1. Predominance

Both sides devote most of their briefs to arguing over predominance. Under Rule 23(b)(3), issues that are subject to generalized proof and that apply to the class as a whole “must predominate over those issues that are subject only to individualized proof.” *Babineau v. Fed. Ex. Corp.*, 576 F.3d 1183, 1191 (11th Cir. 2009) (quotation omitted). Conversely, “[c]ommon issues will not predominate over individual questions if, as a practical matter, the resolution of [an] overarching common issue breaks down into an unmanageable variety of

individual legal and factual issues.” *Id.* (quotation omitted). Put differently, “any competently crafted class complaint literally raises common ‘questions.’ ... 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.” *Dukes*, 564 U.S. 350 (emphasis in original). The predominance requirement is “far more demanding” than the commonality requirement. *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1005 (11th Cir. 1997).

Individualized damages issues do not prevent a court from finding that common issues in the case predominate, however. *Klay v. Humana, Inc.*, 382 F.3d 1241, 1259-60 (11th Cir. 2004). The issue of individualized damages defeats predominance only when it is accompanied by “significant individualized questions going to liability.” *Id.* at 1260. Along these lines, a court should not certify a class if it appears that most of the putative class members’ claims turn on highly case-specific factual issues. *Babineau*, 576 F.3d at 1191.

While mindful not to decide cases on their merits at the class certification stage, the Eleventh Circuit has observed that analyzing predominance requires evaluating the parties’ claims and defenses:

Common questions “predominate” within the meaning of Rule 23(b)(3) when the substance and quantity of evidence necessary to prove the class claims won’t vary significantly from one plaintiff to another. *See Brown v. Electrolux Home Prods.*, 817 F.3d 1225, 1234 (11th Cir. 2016). The first step in assessing predominance is to “identify the parties’ claims and defenses and their elements” and to categorize “these issues as to common questions or individual questions by predicting how the parties will prove them at trial.” *Id.* A common issue is one that will likely be proved using the same evidence for all class members; and individualized issue, by contrast, is one that will likely be proved using evidence that “var[ies] from member to member.” *Id.* (citation and internal quotation marks omitted).

Tershakovec v. Ford Motor Co., Inc., 79 F.4th 1299, 1306 (11th Cir. 2023).

Here, Plaintiff claims in Count II that Defendants misclassified her and other class members as independent contractors under the Performer Agreements that all Performers must sign. Due to this alleged misclassification, Plaintiff claims, Defendants violated the FMWA by failing to pay Performers for all hours worked and unlawfully retaining tips. To prevail, Plaintiff and the putative class members must prove that they were employees entitled to a minimum wage for all hours worked and protected from tip deductions.

a. Economic Reality Test

Under Florida law, the terms “employee” and “employer” “have the meanings established under the [FLSA] and its implementing regulations.” Fla. Const. art. X, § 24. The FLSA defines “employee” broadly as “any individual employed by an employer.” 29 U.S.C. § 203(e)(1). To determine if an employer-employee relationship exists, courts applying Florida law examine the “economic reality” of the relationship and whether it shows dependence. *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1311 (11th Cir. 2013). “This inquiry is not governed by the ‘label’ put on the relationship by the parties or the contract controlling that relationship, but rather focuses on whether ‘the work done, in its essence, follows the usual path of an employee.’” *Id.* (quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947)). To assess the economic reality, courts consider: (1) the nature and degree of control over the alleged employee; (2) the alleged employee’s opportunity for profit or loss; (3) the alleged employee’s investment in equipment or materials; (4) whether the service rendered requires a special skill; (5) the degree of permanency and duration of the working relationship; and (6) the extent to which the service rendered is an integral part of the alleged employer’s business. *Id.*

Without deciding the merits, the Court finds that facts pertinent to whether an employer-employee relationship exists between Defendants and Performers are provable by common evidence. Regarding the first factor, Plaintiff plans to offer as common evidence that the rules and restrictions in Defendants' Performer Agreements go beyond merely tracking federal, state, and local laws that apply to online hosts of adult content. The Performer Agreements govern the parties' relationship and are largely uniform across nine versions. Under these Agreements, Streamate maintains the authority to block or remove a Performer's uploaded and/or livestreamed content if it determines the content is illegal or violates the Performer Agreement.

For example, a Performer may be deemed in violation of the Agreement if they engage in inappropriate activity, which is up to Defendants to define (Doc. 59-1 at 3). Defendants prohibit Performers from below-the-waist nudity in free chat areas; from showing animals; from depicting or using alcohol or drugs; and from promoting other non-Streamate websites (*Id.* at 5). And Defendants may terminate a Performer Agreement at their discretion for any reason and discipline Performers by issuing warnings or timeouts or by suspending or terminating an account. *See Maldonado v. Callahan's Express Delivery, Inc.*, No. 8:13-cv-292-T-33AEP, 2018 WL 398724, at *5 (M.D. Fla. Jan. 12, 2018) (noting that right to control is also part of the inquiry, not only the exercise of control). Both Plaintiff and Tomasello testified to their recollection of being suspended from Streamate.

Plaintiff also intends to satisfy the second, third, fourth, and sixth factors of the economic reality test with common evidence. The second factor examines a worker's opportunity to make a profit or loss. Although Performers can set their own prices, Defendants impose minimum rates. And all evidence is that Defendants retain up to 65% of

the Gold their Performers earn. The third factor considers a Performer's investment in equipment and work-related materials relative to Defendants' investment. Defendants' marketing materials claim that the only equipment a Performer needs to start streaming is a computer, a webcam, and access to the internet. There is no evidence that Defendants' investment varies by Performer: they provide and maintain the same hosting services to all Performers.

Regarding the fourth factor, it is undisputed that Performers do not need formal training, industry-specific experience, or other credentials before streaming. The sixth factor is the extent to which the Performers' services are integral to Defendants' business. Whether Defendants rely on their Performers for their business model, and the extent of this reliance, is not an individualized inquiry.⁸

Defendants counter by returning to their argument that Performers are independent contractors who can choose their rates, when they work, the duration of their work, where they work, and the content of their performances (within limits) (*see* Doc. 57 at 19-22). Following Defendants down this road, however, leads to an analysis of the merits, which the Court will not engage in at the class certification stage.

Shifting gears, Defendants identify individualized questions that they claim prevent class certification. They argue the FMWA only applies to hours worked *in Florida*, and “[d]etermining which performer(s) ‘worked’ in Florida is not an insignificant task.” (Doc. 57 at 23). The analysis “will be unique and individualized based on the location of the performer

⁸ The fifth economic reality factor analyzes the worker's degree of permanency and the duration of the working relationship. Other than Plaintiff's observation that turnover is high industry-wide (Doc. 54 at 16), the Court has no evidence for or against this factor.

for each individual streaming instance because a performer can perform from virtually anywhere with internet access (including states other than Florida).” (*Id.*).

This does not defeat predominance. Putting aside questions about the extraterritorial application of the FMWA at this stage, Performers’ locations are known or knowable to Defendants. Although Defendants represent that they do not maintain this data in the ordinary course of their business (*see* Doc. 75-4), they produced similar information in the New Jersey litigation. Under the Performer Agreements, “[Streamate] reserve[s] the right to block Performer’s access to our website, including but not limited to from one or more specific internet addresses.” (Doc. 59-1 at 8). That Defendants can block specific IP addresses associated with specific Performer accounts means they have or can determine Performers’ IP addresses. Although Defendants contend their geolocation data is only 80% accurate at best, the parties can shore up this number by soliciting testimony from class members about where they streamed.

b. Unpaid Wages and Unlawfully Withheld “Tips”

Even if Plaintiff succeeds in proving an employer-employee relationship exists between Defendants and Performers, she must show that Defendants violated the FMWA. Defendants concede that they generally do not compensate Performers in free chat. Although this arrangement applies to all Performers, Defendants argue that individualized inquiries into each Performer’s compensation are required to calculate damages. This may be true, but it can be proven by common evidence.

To determine wage and hour violations, the amount each Performer is paid must be analyzed on a consistently timed basis and compared to the number of hours worked. Damages can be calculated by dividing a Performer’s total compensation by their total

streaming time and then determining if that amount is greater or less than minimum wage for the same number of hours. Defendants maintain payroll records of Gold received on a Performer-by-Performer basis and each Performer's total paid minutes online. Individual questions of liability and damages are therefore provable class-wide by common evidence. The precise apportionment of damages among class members is no barrier to class certification. *See Klay*, 382 F.3d at 1259-60.

As to Plaintiff's allegation that Defendants unlawfully withheld tips their customers paid to Performers via Gold, this is also provable by common evidence. Gold payments take several forms. Defendants admit that Streamate receives a percentage of all Gold that Performers earn. While that percentage appears negotiable, the evidence is that Streamate pays Performers 35% of Gold transactions. Defendants argue that "without looking at individual encounters between customers and performers," they cannot parse the data to determine whether a customer gave a Performer Gold as a tip or in return for a service (Doc. 79 at 11). "We don't have a mechanism for sussing that out." (*Id.*). So, it is not just a matter of individualized data determinations; it is a matter of whether a particular class member would be entitled to the recovery at all, Defendants contend (*Id.* at 11-12). But obstacles to calculating damages do not foreclose class certification if Plaintiff, on behalf of the putative class, can show damages on a common basis. *See Klay*, 382 F.3d at 1259-60. Here, she has made that showing.

2. *Superiority*

A party seeking class certification under Rule 34(b)(3) 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). In evaluating superiority, courts consider: "(A) the interest of the

members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; [and] (D) the difficulties likely to be encountered in the management of a class action.” *Klay*, 382 F.3d at 1269 (interpreting Fed. R. Civ. P. 23(b)(3)(A)-(D)).

These factors favor class treatment. Individual class members likely have little interest in controlling the prosecution of separate actions. Although total class damages may be substantial, the unpaid wages owed to each class member may be small. This makes individual litigation financially impractical because the costs would probably outweigh the potential recovery. Aside from the New Jersey litigation, the Court knows of no other class member who has commenced a separate lawsuit over this issue. Putative class members might still be earning money through uploading content or livestreaming on Streamate and may be reluctant to pursue individual claims against their income source. Additionally, although the parties do not discuss this, the sensitive nature of Performers’ work and identities likely also favors resolution through class action, since a class member can enjoy the cover of a larger group.

Next, litigating these claims in this Court will avoid the risk of inconsistent judgments and conserve judicial resources. Conducting the litigation in Florida is preferred, given that the class is defined as Performers who worked or currently work in Florida. Finally, the Court does not foresee any difficulties in managing the class.

V. CONCLUSION

For these reasons, the Court ORDERS:

(1) Plaintiff's Motion for Class Certification (Doc. 54) is **GRANTED**. An Order will follow.

ORDERED in Tampa, Florida, on September 24, 2025.



SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE