

IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI
DIVISION 1

FILED

08/29/2025

Ashley Thrasher

CLERK, CIRCUIT COURT
BUCHANAN COUNTY

JANE DOE AND JANICE DOE,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CASE NO. 22BU-CC01774-01

MOSAIC HEALTH SYSTEM,

and

HEARTLAND REGIONAL
MEDICAL CENTER

d/b/a Mosaic Life Care,

Defendants.

ORDER GRANTING
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

On the 18th day of August, 2025, the Court took up for consideration Plaintiffs' Motion for Class Certification filed on May 30, 2025. Defendants filed their Suggestions in Opposition on July 11, 2025. Plaintiffs filed their Reply in Support on August 1, 2025. Defendants filed a Notice of Errata and Supplement on August 12, 2025. The Court has reviewed the parties' submissions, the evidence the parties provided, the pleadings, and relevant case law. After hearing argument from the parties on August 18, 2025, the Court now finds that Plaintiffs' Motion should be GRANTED.

Discussion

Plaintiffs seek certification to pursue two claims against Defendants through a class action:

(1) breach of the duty of confidentiality identified in *Brandt v. Med. Def. Assocs.*, 856 S.W.2d 667, 670 (Mo. 1993), and (2) violation of the Missouri Wiretapping Act, Mo. Rev. Stat. § 542.400.

Both claims are premised on alleged interceptions and disclosures of patients' protected medical information when those patients logged in to Defendants' patient portal. Plaintiffs request certification of two classes:

Google Analytics Class: All persons who are Missouri citizens and who, from January 1, 2016 to December 13, 2022, were patients of Mosaic Health System, who logged into the MyMLC Patient Portal, and who had their medical record number, full or partial email address, and/or full or partial patient portal username disclosed to Google.

Meta Pixel Class: All persons who are Missouri citizens and who, from May 21, 2020 to December 13, 2022, were patients of Mosaic Health System, who logged into the MyMLC Patient Portal, and who had their Facebook ID connected to their activity on the Mosaic web properties by the 601079540756042 Meta Pixel.

To obtain certification, Plaintiffs must satisfy the requirements of Rule 52.08(a):

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

Mo. Sup. Ct. R. 52.08(a). They must also meet the implied requirement of "ascertainability." *Elsea v. U.S. Eng'g Co.*, 463 S.W.3d 409, 425 (Mo. App. W.D. 2015). Because Plaintiffs move for certification under Rule 52.08(b)(3), they are further required to demonstrate that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Mo. Sup. Ct. R. 52.08(b)(3).

Plaintiffs meet their burden "if there is evidence in the record, which if taken as true, would satisfy" the requirements for certification. *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 164–65 (Mo. App. W.D. 2006) (citation omitted). In analyzing the record, "the named plaintiffs'

allegations are accepted as true.” *Elesa*, 463 S.W.3d at 425. And, “because Rule 52.08 is a procedural and not a substantive rule, the courts do not conduct an inquiry into the merits of the lawsuit when class certification is at issue.” *Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 222 (Mo. App. W.D. 2007).

Applying this standard, and based on a review of the record, the Court concludes that Plaintiffs have met their burden under Rules 52.08(a) and 52.08(b)(3).

Rule 52.08(a)

Numerosity: Plaintiffs have provided evidence that each of the classes is comprised of several thousand members, including:

- During the class periods, the total number of patients with credentials to the applicable Mosaic patient portal totaled over 90,000.
- In 2022, 56,000 patients scheduled appointments while logged into the Mosaic patient portal.
- Plaintiffs have identified several thousand patients whose medical record numbers were identified in URLs that they allege were disclosed to Google.

Through this evidence and a corresponding “reasonable, good faith estimate of the number of purported class members” made through “common sense assumptions,” the numerosity requirement is met. *Dale*, 204 S.W.3d at 167–68.

Commonality: “Rule 52.08(a)(2) does not require that all issues in the litigation be common, only that common questions exist.” *Elesa*, 463 S.W.3d at 419. Even “a single” common question will do. *Id.* “If the same evidence will suffice for each member to make a prima facie showing as to a given question, then it is a common question.” *Id.*

Plaintiffs identified several common questions of law and fact, including whether Mosaic acted knowingly when allegedly intercepting and disclosing patients’ communications to Google and Facebook. Defendants do not contest that their knowledge would be a common issue. This is

sufficient. Moreover, as discussed below, there are multiple common questions that predominate—any of which would satisfy this requirement. Commonality is met.

Typicality: Typicality is “fairly easily met so long as other class members have claims similar to the named plaintiff. Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory.” *Dale*, 204 S.W.3d at 169. Here, the claims of Jane and Janice Doe align with those of the other Class members.

Named Plaintiffs both alleged and provided evidence that they were patients who used Defendants’ patient portal during the Meta Pixel and Google Analytics class periods. With respect to the Google Analytics class, Jane Doe provided evidence that her medical record number and partial patient portal username were among the URLs that Plaintiff alleges Defendants disclosed to Google through Google Analytics. For the Meta Pixel Class, both Jane and Janice Doe provided evidence that they were Facebook account holders when they logged into Defendants’ patient portal during the Meta Pixel class period.

Defendants’ assertion that Janice Doe is not a member of the Meta Pixel Class is unavailing. Janice Doe both pled and provided testimony that she was a patient of Mosaic who logged in to Defendants’ patient portal during the Meta Pixel class period. The Court will not adopt Defendants’ arguments in place of Plaintiffs’ allegations and evidence regarding Janice Doe’s experiences as a patient of Defendants. *See Hale*, 231 S.W.3d at 224 (“ignor[ing]” arguments against certification that were “negation[s] to the allegation[s]” in complaint).

Named Plaintiffs’ claims turn on the same central challenge as those of the members of the Google Analytics and Meta Pixel classes: that Mosaic knowingly embedded tracking technologies

on its websites in a manner which disclosed the patients' use of the Mosaic patient portal to Google and Meta. Therefore, typicality is established.

Adequacy: The adequacy requirement looks to “whether class counsel or the named representatives have conflicts of interest that will adversely affect the interests of the class.” *Craft v. Philip Morris Companies, Inc.*, 190 S.W.3d 368, 379 (Mo. App. E.D. 2005). Neither Plaintiffs nor their counsel have any interest aligned with Defendants in this litigation. Class counsel have significant class action and commercial litigation experience and have represented Plaintiffs throughout this litigation. This requirement is met.

Ascertainability: “While Rule 52.08 does not explicitly demand a proper class definition, such a requirement clearly underlies each of the mandatory elements for certification.” *Elsa*, 463 S.W.3d at 425 (citation omitted). “A sufficiently definite class exists to justify class certification, if its members can be ascertained by reference to objective criteria.” *Dale*, 204 S.W.3d at 179. *See also Elsa*, 463 S.W.3d at 425 (same).

Both Classes are ascertainable by objective criteria. The Google Analytics Class is defined to include solely (1) individuals who are Missouri citizens; who (2) logged into Defendants' patient portal between January 1, 2016 and December 13, 2022; and (3) had their medical record number, full/partial email address, and/or full or partial username shared with Google via Google Analytics. Likewise, the Meta Pixel Class is also based on objective criteria—(1) individuals who are Missouri citizens; who (2) logged into Defendants' patient portal between May 21, 2020 and December 13, 2022; and (3) had Facebook accounts at the time they logged in to the patient portal which – Plaintiffs allege – would have caused their Facebook IDs to be connected to their activity on Defendants' web properties by the 601079540756042 Meta Pixel.

Defendants' contention that identifying class members will require administratively unfeasible individualized inquiries is not well taken. It is not the case that "any and all individualized fact-finding necessary in determining class membership universally renders a class definition infirm." *Dale*, 204 S.W.3d at 181. And, although not necessary to meet the ascertainability requirement, Plaintiffs have put forward evidence that records exist which would make it possible to verify class membership. Because any individualized assessment of class membership will turn on "objective criteria that do not depend on the consumer's subjective state of mind or the merits of the case," that assessment is consistent with the implied ascertainability requirement under Missouri law. *Craft*, 190 S.W.3d at 388.

Therefore, the Court concludes that the implied requirement of ascertainability – like the express requirements of Rule 52.08(a) – is established.

Rule 52.08(b)(3)

Predominance: The heart of the parties' arguments is appropriately focused on the predominance requirement of Rule 52.08(b)(3). To meet the predominance requirement, Plaintiffs are required to show that common issues substantially predominate over individual ones. *Hale*, 231 S.W.3d at 224–25. Predominance does not require that all issues be common to all class members. *Plubell v. Merck & Co.*, 289 S.W.3d 707, 712 (Mo. App. W.D. 2009). Nor does predominance require that no individualized issues exist. *Hale*, 231 S.W.3d at 224–25. Indeed, "a single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions." *Id.* The core inquiry is whether the class is "seeking to remedy a common legal grievance." *Plubell*, 289 S.W.3d at 712.

Plaintiffs have identified numerous issues of law and fact that are common to the proposed classes. Of these, there are four in particular that will drive the resolution of this action:

1. Whether Defendants made misrepresentations regarding the use of tracking technologies in their privacy policy and terms of use.
2. Whether Defendants knowingly tracked and disclosed patient portal logins.
3. Whether Defendants could lawfully disclose the combination of (1) a patient's login to their password protected patient portal and (2) cookies or data identifying that patient, without the patient's authorization.
4. Whether Defendants had authorization to disclose the combination of (1) patients' logins to their password protected patient portal and (2) cookies identifying those patients.

The Court concludes that these common issues predominate over any individualized issues.

Defendants raise several contrary arguments, but none are persuasive. First, Defendants contend that there is variability in the contents of URLs that Plaintiffs allege are disclosed with Google and Meta from inside of Defendants' patient portal. However, under Plaintiffs' theory of liability – which turns on patients' log ins to the patient portal rather than subsequent actions taken within it – any such variability is irrelevant. *See Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 719 (Mo. 2007). Defendants' reliance on out-of-state cases involving different theories of liability and underlying facts is misplaced. *Contra Griffith v. TikTok, Inc.*, No. 5:23-CV-00964-SB-E, 2024 WL 4308813 (C.D. Cal. Sept. 9, 2024).

Second, Defendants claim that class members may have used different browsers, privacy tools, and other technologies to access their website and patient portal, which would result in differing disclosures of information. However, Defendants have not put forth evidence that class members in fact did use such technologies or that they did impact the resulting disclosures. Mere “speculation as to potential variations on some individual facts and party defenses” does not suffice to rebut Plaintiffs' allegations and evidence that common issues predominate. *Plubell*, 289 S.W.3d at 715.

Plaintiffs have also put forward admissible evidence, including the testimony of their expert witness Dr. Zubair Shafiq, to show that the same baseline of information was sent to Google and Meta as part of each of the alleged disclosures. Though not necessary to the Court's conclusions, this evidence further undermines Defendants' individualized inquiry arguments.

Third, Defendants assert that there are individualized issues regarding whether the alleged disclosures to Meta and Google include the "contents" of "wire communications" as defined under the Missouri Wiretap Act. Mo. Rev. Stat. § 542.400, *et seq.* But the Court will not take up Defendants' merits arguments regarding the construction of the Missouri Wiretap Act at this stage. See *Hale*, 231 S.W.3d at 222. To the extent that these statutory interpretation arguments are relevant to the Court's analysis, they are merely additional common issues that support Plaintiffs' showing.

Fourth, Defendants contend that there are individualized damages issues that defeat predominance. However, "predominance is not precluded when there needs to be an inquiry as to individual damages." *Elsea*, 463 S.W.3d at 422. Moreover, Plaintiffs have provided evidence that they can show that each class member suffered damages through common proof. In addition to nominal damages and statutory damages under the Missouri Wiretap Act, Plaintiffs have put forward the admissible testimony of their expert, Eric Krause, to show that, assuming the alleged disclosures occurred, each class member would have suffered economic damages as a result.

In short, none of Defendants' proffered issues withstand scrutiny. And, even if the Court assumed that the individualized issues that Defendants identified do exist, the Court remains convinced that Plaintiffs' common issues predominate. Plaintiffs have thus met their burden on the core issue of predominance.

Superiority: Finally, under Rule 52.08(b)(3), Plaintiffs must show that a class action is “superior to other available methods for the fair and efficient adjudication of the controversy.” Mo. Sup. Ct. R. 52.08(b)(3). In determining whether a class action is superior, the trial court is required to consider (a) the interest of 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 the 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. *Dale*, 204 S.W.3d at 181 (citing Rule 52.08(b)(3)).

Plaintiffs have met their burden on this requirement as well. Plaintiffs have put forward evidence that there are thousands of putative class members with relatively low-dollar claims against Defendants. It is improbable that “large numbers of [these] class members would possess the initiative to litigate individually.” *See Dale*, 204 S.W.3d at 181-82. That is especially true given the complex issues and dueling experts in this action. *Id.* Proposed class actions “which aggregate small claims that could not otherwise be brought are exactly the type of claims that satisfy the superiority requirement.” *Hale*, 231 S.W.3d at 229.

In addition, Plaintiffs have set out a trial plan that addresses how this case can be tried on a class basis. Although a trial plan is not required, their ability to present one at the certification stage is further evidence that class treatment is appropriate. *See Speer v. Cerner Corp.*, 14-0204-CV-W-FJG, 2016 WL 5444648, at *11 (W.D. Mo. Sept. 27, 2016).

The Court therefore concludes that trying this case on a class basis will maximize efficiency and promote finality by resolving the many related claims against Defendants through a single proceeding.

Conclusion

For these reasons, the Court hereby GRANTS Plaintiffs' Motion for Class Certification.

Therefore, it is ORDERED that the following classes are certified:

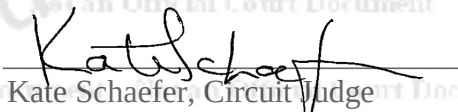
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It is further **ORDERED** that Foster C. Johnson of Ahamd, Zavitsanos, & Mensing, PLLC, Stephen M. Gorny of Gorny Dandurand, LC, Jay Barnes of Simmons Hanly Conroy, LLP, and Raina Borelli of Strauss Borelli, LLP are appointed as class counsel.

It is further **ORDERED** that Jane Doe is appointed as representative of the Google Analytics Class and Janice Doe is appointed as representatives for the Meta Pixel Class.

IT IS SO ORDERED.


Kate Schaefer, Circuit Judge

Dated: August 28, 2025

