

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT

FILED

JUL 02 2021

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

ROBERT MICHAEL CULLEN,)
on behalf of himself and all other)
similarly situated,)
)
Plaintiffs,)
vs.)
)
FIRST ALLIED SECURITIES, *et al.*,)
)
Defendants.)

Cause No. 20SL-CC02119

Division 1

July 2, 2021

ORDER

Presently before the Court is Plaintiff Robert Michael Cullen's Motion for Class Certification ("Motion").

The Motion was called, heard by video conference and submitted on June 7, 2021.

The Court, having read all of the pleadings of the parties, reviewed the applicable state statutes, the Rules of Civil Procedure and caselaw, heard the arguments of counsel by video conference and being now fully advised, hereby finds that the Motion is with merit.

Plaintiff Cullen alleges that he and the members of the proposed Class purchased variable annuities and/or direct participation program securities (including non-publicly traded real estate income trusts ["non-traded REITs"]) from Defendant Sean Brady ("Brady") while he was affiliated with Defendant First Allied Securities ("First Allied") as a financial adviser.

Defendant Brady allegedly engaged in a sales scheme which violated Missouri law regarding portfolio percentage allocation, suitability obligations and other regulatory requirements.

Plaintiff also alleges that Defendant First Allied failed to properly oversee and monitor the offering and sale of variable annuities and non-traded REITs (which are “inherently risky investments” according to Plaintiff) and create safeguards to protect the customers.

Plaintiff Cullen is seeking certification of “a class of First Allied customers who purchased variable annuities and/or direct participation program securities from [Defendant] Brady”.

Plaintiff Cullen’s counsel represents to the Court that the limited discovery conducted to date indicates that Defendant Brady sold variable annuities and non-traded REITs to at least twenty-eight (28) individuals during his tenure with Defendant First Allied.

The class action determination “. . . ultimately rests with the sound discretion of the trial court.” *State ex rel. Coca-Cola Co. v. Nixon*, 249 S.W.3d 855, 860 (Mo. banc 2008)(*citations omitted*). “In determining whether to certify a proposed class, ‘a court should err in favor of, and not against, allowing maintenance of the class action’ because ‘class certification is subject to later modification.’” *Frank v. Enviro-Tech Services*, 577 S.W.3d 163, 167 (Mo.App.E.D. 2019)(*citations omitted*).

Rule 52.08 governs class action certification. The Rule 52.08(a) requirements “. . . are commonly referred to as numerosity, commonality, typicality, and adequacy.” *Hope v. Nissan North America, Inc.*, 353 S.W.3d 68, 74 (Mo.App.W.D. 2011).

The Court finds that the four Rule 52.08(a) prerequisites are met in this matter.

“If the Rule 52.08(a) prerequisites are met, a class action may be maintained only if the plaintiff shows the class satisfies one of the three additional standards set forth in Rule 52.08(b).” *State ex rel. General Credit Acceptance Company, LLC v. Vincent*, 570 S.W.3d 42, 47 (Mo. banc 2019).

Rule 52.08(b)(3) provides that an action may be maintained as a class action if “the court finds that the questions of law or fact common to members of the class *predominate* over any questions affecting only individual members, and a that a class action is *superior* to other available methods for the fair and efficient adjudication of the controversy.” (*Emphasis added*).

The Court finds also that the predominance and superiority requirements of Rule 52.08(b)(3) have been met. *See Hootselle v. Missouri Department of Corrections*, No. SC98252 (June 1, 2021), pp. 11-13.

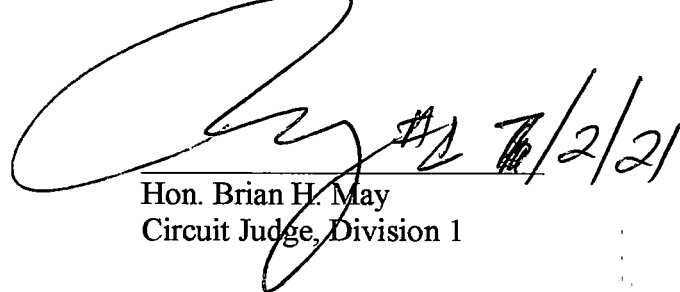
ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Plaintiff’s Motion for Class Certification is hereby **GRANTED**.
2. The following class is certified:

Those clients of Sean Brady and First Allied Securities who purchased variable annuities or direct participation program securities (including non-traded REITS) during the time period of January 1, 2010, until the date of the termination of Sean Brady’s affiliation with First Allied Securities.
2. Plaintiff’s counsel Matthew L. Dameron and Williams Dirks Dameron LLC and John R. Phillips and John R. Phillips Law, LLC, are hereby appointed to serve as class counsel.
3. Plaintiff Robert Michael Cullen is hereby appointed to serve as the class representative.

4. The parties shall send notice to all members who can be identified through reasonable effort:
- a) The parties must submit to the Court within twenty (20) days of the date of this Order a proposed notice complying with Rule 52.08(c)(3);
 - b) Each party shall submit to the Court a proposed notice within thirty (30) days of the date of this Order if the parties are unable to agree on the language of said notice; and
 - c) Defendant First Allied shall provide to Class Counsel the names, last known addresses and other contact information for Class members with twenty (20) days of the date of this Order.
5. Approval of a class action is an interlocutory order which the Court may change or modify in the future should circumstances dictate.

SO ORDERED:



Hon. Brian H. May
Circuit Judge, Division 1