

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**LESLIE J. MURPHY and VINCENT
J. MARTIN, III, Individually and
On Behalf of all Others Similarly Situated,**

Plaintiffs,

Case No. 17-159571-CB

Hon. Victoria A. Valentine

v

**SAMUEL M. INMAN, III, JOHN F. SMITH,
BERNARD M. GOLDSMITH, WILLIAM O.
GRABE, LAWRENCE DAVID HANSEN,
ANDREAS MAI, JONATHAN YARON, and
ENRICO DIGIROLAMO,**

Defendants.

**OPINION AND ORDER REGARDING PLAINTIFFS' COMBINED MOTION FOR
CLASS CERTIFICATION PURSUANT TO MCR 3.501(B)**

At a session of said Court held on the
9th day of October, 2023 in the
County of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

OPINION

The instant action is before the Court on Plaintiffs' Combined Motion for Class Certification Pursuant to MCR 3.501(B). The Court has reviewed the pleadings as well as the

Motion, Response, and Reply filed by the parties and has heard oral argument on the above-entitled motion.

I.

OVERVIEW

This matter arises from a cash-out merger agreement executed between Covisint Corporation (“Covisint”) and OpenText Corporation (“OpenText”).¹ Leslie J. Murphy (“Murphy”), a former shareholder of Covisint, brought this action against former Covisint directors alleging that they breached their statutory and common law fiduciary duties owed to Murphy as a shareholder.

The basic facts and the procedural history of the case through the Michigan Court of Appeals’ April 20, 2020 decision has been described by the Michigan Supreme Court as follows:

¹ As was explained by the Michigan Supreme Court:

In a simple two-party corporate merger, one corporate entity (the “acquiring” corporation) succeeds to all rights, privileges, and liabilities of the other corporate entity (the “target” corporation), whose existence terminates upon completion of the merger; the corporation resulting from the merger is the “surviving corporation.” See MCL 450.1724; Schulman, Moscow, and Lesser, *Michigan Corporation Law & Practice* (rev ed, 2022 supp), §§ 7.01 to 7.04, 7.06. Shareholders of the extinct target corporation are offered consideration for their shares, including shares, bonds, or other securities in the surviving corporation, or cash. See MCL 450.1701(2)(c). Unlike a merger involving an exchange of shares or other securities, this case involves a “cash-out” merger transaction, in which shareholders of the target corporation must accept cash payment for their shares, thereby eliminating their interest in the target corporation. See *Black’s Law Dictionary* (11th ed.), p. 1184 (defining “cash merger”). . . . [*Murphy v Inman*, 509 Mich 132, 138 n 1; 983 NW2d 354 (2022).]

In this case, Covisint was the “target” corporation and OpenText was the “acquiring” corporation. The Michigan Supreme Court further explained:

To initiate a merger under the [Michigan Business Corporations Act] the board of directors for each constituent corporation must adopt a merger plan. The plan must include, among other things, “the manner and basis of converting the shares of each constituent corporation into shares, bonds, or other securities of the surviving corporations, or into cash or other consideration” This conversion constitutes the consideration used to facilitate the merger, i.e., the “merger consideration.” The amount and form of the merger consideration is a matter of negotiation between the directors of the corporations being merged. After the plan’s adoption by each corporation’s board of directors, the plan is generally submitted to the shareholders of each corporation for approval. Once the plan is approved and the merger takes effect, the target corporation ceases to exist, and the outstanding shares of the target corporation are converted into the merger consideration provided for in the merger plan [*Murphy*, 509 Mich at 144-145.]

On June 5, 2017, Covisint, a corporation headquartered in Southfield, Michigan, publicly announced that it had entered into a merger agreement with OpenText. Under this agreement, OpenText acquired all outstanding shares of Covisint stock for \$2.45 per share and a wholly owned subsidiary of OpenText merged with and into Covisint. Covisint issued a preliminary proxy statement on June 15, 2017, and a definitive proxy statement on June 26, 2017, both of which detailed the transaction and the negotiation process leading up to the merger agreement.

On June 30, 2017, before the merger was consummated, plaintiff filed this action in the business court of the Oakland Circuit Court. Plaintiff alleged that defendants breached their fiduciary duties of care, loyalty, good faith, independence, and candor owed to all Covisint shareholders. Plaintiff sought damages and rescission of the merger agreement.

On July 25, 2017, a majority of Covisint shareholders voted to approve the merger, which was consummated the next day. Plaintiff then filed an amended complaint, raising the same claim for breach of fiduciary duty. More specifically, plaintiff alleged, in relevant part, that defendants failed to maximize shareholder value when they sold Covisint at an inadequate and unfair price; engaged in a flawed sales process by favoring OpenText, neglecting other bidders, and failing to adequately pursue higher offers; acted in their self-interest and received personal financial benefits as a result of the merger; and breached their duty of candor when they issued a materially incomplete and misleading proxy statement that omitted information necessary to enable the shareholders to cast an informed vote.

Defendants moved for summary disposition, arguing that plaintiff lacked standing because his claim was derivative in nature and he did not satisfy the requirements for bringing a derivative shareholder action under MCL 450.1493a. Plaintiff responded that he was permitted to bring a direct shareholder action under MCL 450.1541a and, additionally, that defendants owed common-law fiduciary duties to plaintiff as a shareholder such that he could bring a direct shareholder action. Defendants replied that plaintiff's action is derivative regardless of how he characterized his claim.

The trial court granted defendants' motion for summary disposition, holding that plaintiff lacked standing to bring a direct shareholder action. The trial court determined that plaintiff's allegations—that defendants' breach of their fiduciary duties in handling the merger resulted in plaintiff receiving an inadequate and unfair price for his shares—affected both plaintiff and Covisint in the same manner. The trial court held that because plaintiff could not demonstrate an injury to himself without showing injury to the corporation, nor could he show harm separate and distinct from that of other Covisint shareholders, plaintiff's action was derivative. The court also rejected plaintiff's common-law theory because it arose out of the same alleged injury as his statutory claim. Because plaintiff failed to comply with the requirements for bringing a derivative action, the trial court dismissed his claim.

In an unpublished per curiam opinion, the Court of Appeals affirmed, agreeing with the trial court that plaintiff's action was derivative under both MCL 450.1541a and the common law. [*Murphy*, 509 Mich at 139-142 (footnotes omitted).]

Murphy sought leave to appeal to the Michigan Supreme Court and the court ordered oral argument on the application be scheduled and supplemental briefing filed to address:

- (1) Whether, with respect to Covisint Corporation's cash-out merger with OpenText Corporation, corporate officers and directors owed cognizable common law fiduciary duties to the corporation's shareholders independent of any statutory duty; and (2) whether the appellant has standing to bring a direct cause of action under either the common law or MCL 450.1541a. [*Murphy v Inman*, 507 Mich 906, 906; 956 NW2d 233 (2021).]

In a subsequent opinion the Michigan Supreme Court answered the first question in the affirmative and held that:

[U]nder Michigan common law, corporate directors owe fiduciary duties directly to their shareholders. In the context of a cash-out merger transaction in which the decision to sell the target corporation has been made, directors of the target corporation must disclose all material facts to shareholders regarding the merger and must exercise their fiduciary duties with one goal in mind: maximizing shareholder value by securing the highest value share price reasonably available. [*Murphy*, 509 Mich at 152 (footnote omitted).]

The court also concluded that "the plaintiff has standing to bring a direct shareholder action against defendants for an alleged breach of their common-law fiduciary duties in handling the Covisint-OpenText merger." *Id.* at 166. The court therefore reversed the decision of the Court of Appeals and remanded the case to this Court for proceedings consistent with its opinion. *Id.* at 169.

On remand, Defendants moved for summary disposition under MCR 2.116(C)(8) on issues not previously addressed by the Court.² This Court denied Defendants' motion in an order dated

² The original motion for summary disposition was before Judge Potts. Because Judge Potts agreed with Defendants that Plaintiff did not have standing to bring a derivative claim, it was not necessary to address the remaining summary disposition arguments.

September 20, 2022. On February 17, 2023, a Second Amended Complaint was filed adding Martin as a named plaintiff.³

Pursuant to MCR 3.501(B), Plaintiffs Murphy and Martin now move to certify a class of former shareholders of Covisint. Plaintiffs request that the class be defined as:

All record holders and beneficial owners of share(s) of Covisint Corporation (“Covisint”) common stock who held such share(s) at any time between June 5, 2017 (the date of the merger agreement between Covisint and Open Text Corporation) and July 26, 2017 (the date Open Text Corporation completed its acquisition of Covisint), excluding the defendants in this action and any person or entity related to or affiliated with any defendant (the “Class”).⁴

Plaintiffs also request that this Court appoint them as Class Representatives, appoint Monteverde & Associates, PC as Class Counsel, and appoint Doerr, MacWilliams, Howard, PLLC as Liaison Counsel for the Class.

II.

CLASS CERTIFICATION REQUIREMENTS

In Michigan the certification of a class is controlled by court rule. “Pursuant to MCR 3.501(A)(1), members of a class may only sue or be sued as a representative party of all class members if the prerequisites dictated by the court rule are met.” *Henry v Dow Chemical Co*, 484 Mich 483, 496; 772 NW2d 301 (2009). MCR 3.501(A)(1) provides:

- (1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:

³ Plaintiffs represent that “[t]his Second Amended Complaint is substantively identical to the Amended Complaint file-stamped September 5, 2017. It has been changed solely to add Mr. Martin as a plaintiff and to conform Count I in a manner consistent with the Michigan Supreme Court’s opinion in this action. . . .” (Second Amended Complaint, p 2 n 1.)

⁴ Pls’ Motion, p 1.

- (a) the class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
- (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

“These prerequisites are often referred to as numerosity, commonality, typicality, adequacy, and superiority.” *Henry*, at 488. “The burden of establishing that the requirements for a certifiable class are satisfied is on the party seeking to maintain the certification.” *Michigan Ass’n of Chiropractors v Blue Cross Blue Shield of Mich*, 300 Mich App 577, 586; 834 NW2d 138 (2013). “A party seeking class certification is required to provide the certifying court with information sufficient to establish that each prerequisite for class certification in MCR 3.501(A)(1) is in fact satisfied.” *Henry supra*, 484 Mich at 502.

The certifying court has “broad discretion to determine whether class certification is proper” but may not simply “rubber stamp” a party’s allegations that the class certification prerequisites are met. *Id.* at 502, 504. The court is to independently determine that the plaintiff has at least alleged a statement of basic facts and law which are adequate to support the prerequisites. *Id.* at 505. The court may make its determination on the pleadings alone, only if such pleadings set forth sufficient information that satisfies the court that each prerequisite is in fact met “such as in cases where the facts necessary to support this finding are uncontested or admitted by the opposing party.” *Id.* at 503. Where the pleadings are insufficient, the court is to

look to additional information beyond the pleadings to determine whether class certification is proper. *Id.* at 503. However, at the class certification stage of the proceedings, a court is to avoid making determinations on the merits of the underlying case. *Id.* at 488. “[W]hen it is necessary to look beyond a party’s assertions to determine whether class certification is proper, the courts shall analyze any asserted facts, claims, defenses, and relevant law without questioning the actual merits of the case.” *Id.* at 504.

III. ANALYSIS

Plaintiffs have alleged that the requirements of MCR 3.501(A)(1) are satisfied. Defendants do not dispute that the requirements of numerosity, commonality and superiority are satisfied.⁵ Rather, they argue that class certification should be denied because Plaintiffs have failed to meet the typicality and adequacy requirements under MCR 3.501(A)(1)(c) and (d).⁶

⁵ Plaintiffs allege that the numerosity requirement is met because there were 40,885,818 shares of Covisint outstanding as of June 5, 2017. Second Amended Complaint ¶ 9. Plaintiffs also allege that questions common to the class predominate. Second Amended Complaint ¶ 167. It is also alleged that the class action is the superior method of adjudication. Second Amended Complaint ¶ 169. These allegations are not contested by Defendants and this Court is satisfied that Plaintiffs have sufficiently supported their arguments that the numerosity, commonality, and superiority requirements are satisfied.

⁶ Both Murphy and Martin submitted “Declarations of Plaintiff” in support of the motion for certification. Murphy declared that he “continuously held shares of Covisint common stock from April 20, 2017, through the consummation of the merger between Covisint and Open Text Corporation in July 2017” and Martin declared that he “continuously held shares of Covisint common stock from January 10, 2017, through the consummation of the merger between Covisint and Open Text Corporation in July 2017. *See* Motion, Exhs 2 and 3. Both Murphy and Martin also declared under penalty of perjury that:

I am aware of the status of the litigation and have conferred with my attorneys at Monteverde regarding the litigation and case strategy. My attorneys at Monteverde have kept me abreast of all major developments in this matter, including about the appeal, motions for summary disposition, discovery, mediation, and settlement discussions. [Martin declared that “my attorneys at Monteverde informed me about the major developments in this case that occurred before I became a plaintiff, and have kept me informed of case developments since I became a plaintiff.”]

I remain in contact with my attorneys at Monteverde regarding this action and am committed to monitoring and participating in the prosecution of this class action. I understand what my role would be as a Class Representative, including seeking to obtain the best possible recovery for all Class members, and I am willing and able to represent the Class. I am prepared to provide input into any settlement and/or trial.

A. Typicality

MCR 3.501(A)(1)(c) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” The typicality requirement “is concerned with whether the claims of the named representatives have the same essential characteristics of the claims of the class at large.” *Duskin v Dept of Human Serv*, 304 Mich App 645, 656; 848 NW2d 455 (2014) (quotation marks and citation omitted). “[T]ypicality requires that the class representatives share a common core of allegations with the class as a whole.” *Id.* at 657. *See also Hill v City of Warren*, 276 Mich App 299, 313; 740 NW2d 706 (2007) (quotation marks and citation omitted) (“Factual differences between the class members’ claims are not inherently fatal to certification, but their claims must share a legal theory and core of allegation.”)

Defendants argue that the typicality requirement is not satisfied where Murphy and Martin “each are subject to unique personal defense that are likely to be a major force of the litigation.”⁷ According to Defendants, the fact that Murphy purchased more than half of his shares after the merger and \$2.45 share price were publicly announced undermines Murphy’s argument that the merger was unfair. Defendants also argue that Murphy suffered no damages because he received \$2.45/share, the amount he believed he would receive. Defendants also assert that Murphy’s actions in this regard “indicates a voluntary and knowing waiver of any claim and assumption of any ‘purported loss’ or at the least a failure to mitigate damages.”⁸ The Defendants argue that

I will continue to keep abreast of the litigation and pursue the best interests of the entire Class. Moreover, I will vigorously pursue the claims against Defendants to obtain the maximum possible recovery for the Class.

I will not accept any payment for serving as Class representative beyond my pro rata share of any recovery, except for any service award if approved by the Court. [Motion, Exhs 2 and 3 ¶¶ 5-8.]

⁷ Defs’ Response, p 12.

⁸ Defs Response, pp 12-13.

Martin is subject to a unique personal defense because of Martin's statements in published articles that he thought the purchase price was "ultimately reasonable."⁹ Additionally, Defendants argue that Martin declared publicly that he would vote for the Merger and appears to have done so.

Plaintiffs argue that the typicality requirement is satisfied. Plaintiffs argue that Murphy's post merger announcement purchase of Covisint stock is within the class period and does not render him "atypical." Plaintiffs cite several cases from other jurisdictions rejecting the argument that the post-announcement stock purchase is a unique defense that disqualifies Murphy from representing the class. With regard to Martin, Plaintiffs argue that Martin's articles and "possible vote for the merger" do not render him atypical.

The Court agrees with Plaintiffs that the typicality requirement has been established because the claims involve the same legal theories and a common "core of allegations." *See Duskin*, 304 Mich App at 656 and *Hill*, 276 Mich App at 313. In this case, the class members' legal theories are the same where it is alleged that Defendants violated their common law fiduciary duties owed to the former public shareholders of Covisint.¹⁰ The shareholders also share a common "core of allegations." It is alleged that:

[Defendants failed to maximize shareholder value, breached their duty of candor, and acted in bad faith and out of self-interest by: (i) pursuing and finalizing the Merger despite knowing it was not fair to the Company's shareholders and that the Company had better available paths to maximize shareholder value; (ii) favoring

⁹ In 2017 Martin wrote about stocks for a website called "Seeking Alpha." Defs' Response, Exh 5, Martin Deposition, pp 22-23, 27.

¹⁰ Second Amended Complaint, ¶ 171. As was explained previously, The Michigan Supreme Court held that:

Under Michigan common law corporate directors owe fiduciary duties directly to their shareholders. In the context of a cash-out merger transaction in which the decision to sell the target corporation has been made, directors of the target corporation must disclose all material facts to shareholders regarding the merger and must exercise their fiduciary duties with one goal in mind: maximizing shareholder value by securing the highest value share price reasonably available. [*Murphy*, 509 Mich at 153 (footnote omitted).]

OpenText over other bidders and giving OpenText preferential treatment during the sales process; and (iii) agreeing to the Merger to advance their own personal financial interests, and placing their own interests ahead of the Company's shareholders.¹¹

Additionally, it is alleged that Defendants "intentionally breached their duties of loyalty, good faith, care, candor, and to maximize shareholder value" by, among other things, "failing to disclose material information to the Company's shareholders in the incomplete and misleading Proxy Statement."¹²

Defendants argue that because Murphy and Martin are subject to "unique personal defenses that are likely to be a major force of the litigation, and so the typicality requirement is not met here."¹³ They argue that because Murphy purchased more than half of his shares after the Merger was announced and he knew that he would receive \$2.45 a share he suffered no damages (or failed to mitigate damages) and that his actions undermine the creditability of the assertion that the Merger was unfair. Defendants also argue that Murphy's actions "indicate[] a voluntary and

¹¹ Second Amended Complaint, ¶171.

¹² *Id.* at ¶ 173.

¹³ Defs' Response, p 12. Defendants rely on *Ballan v Upjohn Co*, 159 FRD 473, 480-481 (WD Mich 1994) in support of their assertion that Murphy and Martin are subject to unique personal defenses which destroy their typicality. In that case the court found that a serious question existed as to whether the named plaintiff would be subject to the defense of reliance where he purchased the stock after curative disclosures had been made. *Id.* at 480. However, in this case there is no allegation regarding purchase after curative disclosure. Rather, the allegations in this case are based, in relevant part, on the failure to disclose through the issuance of misleading proxy statements. Additionally, the holding in *Ballan* has been criticized by other courts. *See Bovee v Coopers & Lybrand*, 216 FRD 596, 610 (SD Ohio, 2003) ("The holding in *Ballan* appears to be the exception and perhaps is best explained by the fact that the plaintiff purchased most of his shares after the proposed class period ended.") *See also Wilkof v Caraco Pharm Laboratories, Ltd.*, 280 FRD 332, 339-340 (ED Mich, 2012) where the court, noting that *Ballan* and *In re Seagate Tech II Sec Litigation*, 843 F Supp 1341 (ND Cal, 1994), a case relied on by the court in *Ballan*, "knowingly rejected the traditional rule that a plaintiff class should be certified despite conflicts over damages between early and late sellers of stock" rejected *Ballan* and *Seagate* stating that "plaintiffs in this case all must make the same central claim; it is only when determining damages at a later stage that plaintiffs will have to separately set out the particular injuries they suffered."

knowing waiver of any claim and assumption of any ‘purported loss’ The Court is not persuaded by Defendants’ argument.

This Court is not convinced by the argument that Murphy and Martin are atypical of the class representatives because Murphy purchased shares after the Merger was announced and Martin wrote articles which allegedly contradict allegations made in the Second Amended Complaint and apparently voted for the Merger. As was previously stated “typicality requires that the class representatives share a common core of allegations with the class as a whole.” *Duskin*, 304 Mich App at 656. *See also Hill*, 276 Mich App at 313. The focus of the typicality requirement is the defendants’ behavior and not that of the plaintiffs. *In re Sumitomo Copper Litigation*, 194 FRD 480, 482 (SD NY 2000); *Costelo v Chertoff*, 258 FRD 600, 608 (CD CA, 2009). The presence of a unique defense does not automatically destroy typicality. *In re Cardizem CD Antitrust Litigation*, 200 FRD 297, 304-305 (ED Mich 2001). “It is only when the defense will ‘skew the focus of the litigation’ and create ‘a danger that absent class members will suffer if their representative is preoccupied with defenses unique to [him]’” that typicality is destroyed. *Id*

First, as Plaintiffs indicate, the timing of Murphy’s purchases does not necessarily make him unique, it is possible that other class members purchased stock after the merger announcement. Additionally, it is possible that unnamed class members voted for the Merger as Martin apparently did. Moreover, to the extent that Murphy’s conduct implicates the damages available to him, this does not destroy the typicality of the legal theories and the common core allegations in this case. *See Hill*, 276 Mich App at 313 (typicality requirement satisfied where the class members’ legal theories and core of allegations were the same and “the significant differences pertain[ed] only to the amount of damages.”). *See also Erma Rogers Revocable Trust by Plumley v Erickson Retirement Communities*, unpublished per curiam opinion of the Michigan Court of Appeals,

issued December 12, 2017 (Docket No. 332495), p 9 (“[I]ndividualized calculations of damages do not preclude class certification. Plaintiff’s claims are typical of the class members because they are based on the same legal theories and arise from the same alleged conduct”); *Wilko v Caraco Pharm Laboratories, Ltd.*, 280 FRD 332, 339-340 (ED Mich, 2012) (following the “traditional rule” that class should be certified despite conflicts over damage issues); and *In re Sumitomo Copper Litigation*, 182 FRD 85, 95 (SD NY, 1998) (typicality not defeated where failure to mitigate defense “goes solely to the amount of damages, not the presence of the claim.”)¹⁴

Additionally, Defendants cite no legal authority for the assertion that the purchase of shares by Murphy after the merger announcement “indicates a voluntary and knowing waiver of any claim and assumption of any purported loss” by Murphy. Accordingly, the argument will not be considered by this Court.¹⁵ “Trial courts are not the research assistants of the litigants” and “the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008). “A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for [its] claims, or give issues cursory treatment with little or no citation to supporting authority.” *Wolfe v Wayne-Westland Community Schs*, 267 Mich App 130, 139; 703 NW2d 480 (2005). See also *Moses, Inc*

¹⁴Unpublished decisions of the Michigan Court of Appeals and decisions of lower federal courts are not binding but may be considered as persuasive authority. See *Slater v Ann Arbor Public Schls Bd of Ed*, 250 Mich App 419, 432 (2002); *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004). See also *Brenner v Marathon Oil Co*, 222 Mich App 128, 133; 565 NW2d (1997) (In the absence of available Michigan precedents, a court may look to federal cases construing the similar federal rule governing class certification.)

¹⁵ Moreover, it is not clear at this time where a “knowing and voluntary waiver” defense (as to either named plaintiff) fits in this case where the core allegations include allegations that Defendant intentionally breached their duties of loyalty, good faith, care, candor, and to maximize shareholder value” by, among other things, “failing to disclose material information to the Company’s shareholders in the incomplete and misleading Proxy Statement.”

v Southeast Mich Council of Governments, 270 Mich App 401, 417; 716 NW2d 278 (2006) (“If a party fails to adequately brief a position, or support a claim with authority, it is abandoned”).

Lastly, to that extent that Defendants argue that Murphy and Martin are atypical because their actions undermine the credibility of the allegations made in the Second Amended Complaint that the Merger was unfair, the Court is not convinced. The actions of Murphy (purchase of shares after merger announced) and Martin (expressing opinions in article/apparently voting for merger) do not necessarily ‘skew the focus of the litigation’ and create a danger that Murphy and Martin will be preoccupied with defenses unique to them. *In re Cardizen*, 200 FRD at 304-305. As was discussed previously, the focus of the litigation includes allegations that Defendants failed to disclose material information to shareholders. There is no indication that any purported reliance on the alleged misrepresentations would be unique to Murphy and Martin.

Based upon the foregoing, the Court determines that the typicality requirement of MCR 3.501(A)(1)(c) is satisfied.

B.

C. Adequacy Requirement

Defendants argue that the adequacy requirement is not met because neither Murphy nor Martin are appropriately involved in the litigation and display a striking lack of knowledge of the litigation. Additionally, Defendants claim that Murphy and Martin are not supervising their attorney.

Plaintiffs argue that the adequacy requirement is satisfied because all that is required is that the class representative’s attorney be qualified, and that the plaintiffs not have a conflicting interest.

And, in any event, contrary to Defendants' assertion, Murphy and Martin have been sufficiently involved in the litigation.

MCR 3.501(A)(1)(d) requires that "the representative parties will fairly and adequately assert and protect the interests of the class." "To show adequacy, the proponents must show that (1) counsel is qualified to pursue the proposed class action, and (2) the members of the class do not have antagonistic or conflicting interests." *Duskin*, 304 Mich App at 657. Federal courts rely on the same criteria to establish the adequacy requirement. *See Senter v General Motors Corp*, 532 F2d 511, 525 (CA 6, 1976) ("1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel"). *See also Cardizem*, 200 FRD at 337; *Rankin v Rots*, 220 FRD 511, 520 (ED Mich 2004).

Plaintiffs assert that both proposed Class Counsel, Monteverde & Associates and local counsel, Doerr MacWilliams Howard are well-qualified to litigate this action on behalf of the proposed Class. Plaintiffs assert that Monteverde & Associates has extensive experience litigating merger related class actions, and that Doerr MacWilliams Howard has significant experience litigating complex business law cases and regularly appears before this Court and therefore, is qualified to act as liaison counsel.¹⁶

Defendants do not directly challenge the competence and/or experience of Proposed Class Counsel or Liaison Counsel. Rather, Defendants argue that the adequacy requirement is not satisfied because "Murphy and Martin display a striking lack of knowledge about this case and the claims being made in their names, including being unable to identify who they are suing or any

¹⁶ Attached to Pl's Motion as Exhibit 4 is the "Firm Resume" for Monteverde & Associates which includes a list of cases in which Monteverde represented shareholders or investors.

specific wrongful action that Defendants supposedly took” and because of Murphy and Martin’s complete failure to supervise counsel.¹⁷

Plaintiffs argue that the focus of the adequacy requirement is the qualifications of counsel and not the personal qualifications of the named plaintiff. There is support for such position. *See Rankin*, 220 FRD at 520 (“[T]he Sixth Circuit appears to focus on the adequacy of plaintiff’s counsel, and whether plaintiff has a conflicting interest, not the personal qualifications of the named plaintiff.”); *In re Cardizem*, 200 FRD at 338-339 (“Adequacy of representation merely requires that the class representative’s attorney be qualified, and that the class representatives not have conflicting interests with the class in the litigation at hand.”)¹⁸ In this case, there is no dispute that proposed class counsel and proposed liaison counsel are experienced and qualified. Moreover, as was previously discussed, there is nothing presented to demonstrate that the class representatives have conflicting interests with unnamed class members.

Further, even if the focus of the adequacy requirement falls on the personal qualifications of the named plaintiff, the Court is satisfied that the named plaintiffs in this case “will fairly and adequately assert and protect the interests of the class.”¹⁹

“[O]bjections to adequacy based upon a named representative’s alleged ignorance are

¹⁷ Defs’ Response, p 15. Defendants also argue that the named Plaintiffs cannot be adequate class representatives because their claims are not “typical.” However, as was discussed above, the Court has determined that the typicality requirement has been satisfied.

¹⁸ Plaintiffs also cite language from *Northview Const Co v City of St Clair Shores*, 395 Mich 497, 508-509; 236 NW2d 396 (1975) in support of the assertion that the focus of the adequacy inquiry is on the adequacy of counsel and not the personal qualifications of the named plaintiff. However, the precedential value of the *Northview* opinion is uncertain where rehearing resulted in an evenly divided court. *See Northview Const Co v St Clair Shores* (On Rehearing), 399 Mich 184; 249 NW2d 290 (1976).

¹⁹ Although a class has not yet been certified, certain legal issues in this case have already been vigorously prosecuted as demonstrated by Murphy’s appeal to the Michigan Supreme Court.

disfavored.” *In re Facebook Biometric Info Privacy Litigation*, 326 FRD 535, 543 (ND Cal, 2018) citing *Surowitz v Hilton Hotels Corp*, 383 US 363, 370-74 (1996).²⁰ In *Rankin*, the court rejected the defendants’ argument that the named plaintiff was not an adequate representative based on the assertion that “she admitted at deposition to essentially having no knowledge of ERISA, the role of the defendants, or the underlying facts of the case.” *Rankin*, 220 FRD at 520-521. The court stated:

However, it is inappropriate to attack the adequacy of a class representative simply based upon the representative’s ignorance of the underlying facts. Moreover, a careful review of Rankin’s excerpted deposition testimony shows that she understands that she had a retirement plan and believes that defendants failed to protect the money in the Plan. She also understands her obligation to assist her attorneys and testify. This is sufficient. [*Rankin*, 220 FRD 511, 520-521.]

Likewise, *Cardizem* the court stated:

Defendants argue that Plaintiffs cannot satisfy the adequacy requirement because [the named plaintiff] lacks sufficient knowledge or interest in the outcome of the case. The courts have routinely rejected similar arguments. Courts do not require the representative plaintiff to be the best of all possible plaintiffs or to be especially knowledgeable, intelligent or possessing a detailed understanding of the legal or factual basis on which a class action may be maintained. [*Cardizem*, 200 FRD at 338.]

In *Buus v WAMU Pension Plan*, 251 FRD 578, 587-588 (WD Wash 2008) the court found that the named plaintiff, although “unsophisticated and not fully aware of the facts of the case” was an adequate class representative. *See also In re Ins Management Solutions Group, Inc Securities*, 206 FRD 514, 517 (MD Fla, 2002) where the court rejected the defendant’s argument that the named plaintiff had abdicated the conduct of the case to his attorneys. The court, citing the opinion in

²⁰ In *Surowitz* the United States Supreme Court reversed the dismissal of a class action where the named plaintiff, because of her limited education and limited knowledge of the English language, did not understand the legal relationship or comprehend the business transactions described in the complaint but knew that she had invested her money in stocks and was not getting her dividends. *Surowitz*, 383 US at 370-371.

Surowitz, stated that the law does not require that the named plaintiff understand the details and means by which the Defendants perpetrated the alleged fraud.

This Court is persuaded by the analysis of the above-cited federal cases. Moreover, contrary to Defendants' assertions, a review of the Declarations submitted by the named plaintiffs and the excerpts of the deposition testimony of Murphy and Martin cited by the parties, reveals that this is not a situation where the named plaintiffs are "startlingly unfamiliar" with the case.²¹ The deposition testimony demonstrates a perfectly adequate understanding of the case.²² Additionally, the Declarations and excerpted deposition testimony indicate that the name plaintiffs understood their roles as class representatives and intended to continue to keep abreast of the litigation and "vigorously" pursue the interests of the class.²³

Based upon the foregoing, the Court concludes that Plaintiffs have demonstrated that the

²¹ The Defendants cite to several federal cases to support the argument that the named defendants in this case are unfamiliar with the facts of the case and have essentially abdicated their responsibilities to class counsel. The Court finds that some of these cases present extreme situations and are factually distinguishable from the present case. For example, in *Efros v Nationwide Corp*, 98 FRD 703, 707 (SD Ohio 1983) the court was "greatly troubled" by the fact that the complaint and amended complaint were filed with the plaintiff's name before she had spoken to or retained counsel and that many of the claims that the attorney made in the case were claims that the plaintiff did not want to make. *Welling v Alexy*, 155 FRD 654 (ND Cal 1994) and *Kassover v Computer Depot, Inc*, 691 F Supp 1205 (D Minn 1987) involved a named representative who (at the time *Welling* was decided) had made fourteen appearances as a plaintiff in class action securities cases represented by the same attorney and demonstrated a lack of interest in the litigation made him an inadequate class representative. *Welling*, 155 FRD at 658. In *Koenig v Benson*, 117 FRD 330, 336-337 (ED NY, 1987) the named plaintiff did not read, write or speak English, relied on his son to explain the important parts of the complaint to him and had a weak understanding of the basic cause of action.

Moreover, as was stated, the Court is persuaded by the authority discussed above which does not require that a named plaintiff possess a detailed understanding of the legal or factual basis on which a class action may be maintained. See *Cardizem*, 200 FRD at 338. And which finds no "abdication" of responsibility by relying on experienced counsel particularly when pursuing a complex case. See *Facebook Biometric*, 326 FRD at 543.

²² See e.g., Murphy Dep, pp 58 (the proxy statement was misleading); 61-63 (merger was not fair), 97 (Murphy authorized the complaint being filed); Martin Dep, 163 (management put their interests ahead of shareholder); 164 (breach of fiduciary duty alleged and defendants are CEO, CFO, and Board of Directors.)

²³ See e.g., Motion, Exhs 2 and 3, Declarations. Murphy Dep, 143 (role is to represent shareholders to best of his ability and get everybody compensation for Defendants actions); Martin Dep, 156-158 (plans to keep informed about litigation through communication with counsel and acknowledges that his duties with regard to any settlement is to understand the terms and make a decision as to whether the settlement is in the best interest of the class.)

named plaintiffs have common interests with unnamed class members and will vigorously prosecute the interests of the class. Therefore, the adequacy requirement of MCR 3.501(A)(1)(d) has been established.

ORDER

Based upon the foregoing opinion, **IT IS HEREBY ORDERED** that the requirements of MCR 3.501 are satisfied and that Plaintiffs' Combined Motion for Class Certification Pursuant to MCR 3.501(B) is **GRANTED**.

IT IS FURTHER ORDERED that this action is certified as a class action on behalf of a class defined as:

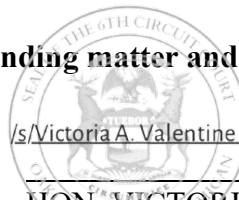
All record holders and beneficial owners of share(s) of Covisint Corporation ("Covisint") common stock who held such share(s) at any time between June 5, 2017 (the date of the merger agreement between Covisint and Open Text Corporation) and July 26, 2017 (the date Open Text Corporation completed its acquisition of Covisint), excluding the defendants in this action and any person or entity related to or affiliated with any defendant (the "Class").

IT IS FURTHER ORDERED that Plaintiffs Leslie J. Murphy and Vincent J. Martin, III are appointed as class representatives for the Class.

IT IS FURTHER ORDERED that Monteverde & Associates PC is appointed Class Counsel for the Class and Doerr MacWilliams Howard PLLC is appointed Liaison Counsel for the Class.

IT IS SO ORDERED.

This Order does NOT resolve the last pending matter and does NOT close the case.

The seal of the 6th Circuit Court of Michigan is circular. It features a central shield with a scale of justice and a book. The shield is flanked by two figures. The words "SEAL OF THE 6TH CIRCUIT COURT" are written around the top inner edge, and "MICHIGAN" is at the bottom.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
BUSINESS COURT JUDGE

Dated: 10/9/23