IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Action No. 15-cv-02049-REB-STV

AISLAND RHODES, on behalf of herself and others similarly situated,

Plaintiff,

v.

NATIONAL COLLECTION SYSTEMS, INC.,

Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION

Blackburn, J.

The matter before me is defendant's **Motion for Reconsideration of This Court's Order Granting Class Certification** [#56],[1] filed November 17, 2016. I deny the motion.

The bases for granting reconsideration are extremely limited:

> Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law.

Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (citations omitted).[2] Defendant's motion satisfies none of these criteria. Instead, it merely

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[1] "[#56]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

[2] In intimating that this standard is more relaxed in the context of an interlocutory order, defendant fails to cite the entirety of the case on which it relies, with misleading effect. ***See Robinson v. City and County of Denver, Colorado***, 2014 WL 1395758 at *2 (D. Colo. April 10, 2014). Noting the court's

reiterates arguments the court previously considered and rejected in ruling on the motion for class certification. ***See id.*** (a motion for reconsideration is not intended to allow party "to revisit issues already addressed or advance arguments that could have been raised in prior briefing"). It therefore is denied.

Seizing on the court's observation that "defendant has made no real effort to *ascertain* whether it in fact can identify any potential class members" (**Order Granting Motion for Class Certification** at 5 [#55], filed November 3, 2016 (emphasis added)), defendant concludes the court impermissibly shifted the burden of proof on the issue of ascertainability.[3] No such thing happened here. Despite the court's choice of words, it clearly was referring to defendant's obligation, once an ascertainable class was described, to determine whether putative class members fell within its parameters. (***See id.*** ("That Defendant may need to search its existing records does not mean, however, that this class is 'unascertainable.'") (quoting ***Rhodes v. Olson Associates, P.C.***, 83 F.Supp.3d 1096, 1112 (D. Colo. 2015) (internal quotation marks omitted)).

Indeed, to accept defendant's argument actually would increase plaintiff's burden of proof with respect to ascertainability. Plaintiff is required only to propose an ascertainable class definition based on objective criteria. This she did. Defendant

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discretion to "alter its interlocutory order even where the more stringent requirements" of Rules 59(e) or 60(b) are not satisfied, Judge Daniel went on to recognize, nevertheless, that "as a practical matter, to succeed in a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." ***Id.*** (citation and internal quotation marks omitted).

[3] Defendant's further argument suggesting individual issues will predominate over common ones, while couched in terms of Rule 23(b), is actually just a reiteration of this same argument. As the court noted previously, under Rule 23(b), common issues are considered to predominate over individual ones "if the liability issue is common to the class." (**Order Granting Motion for Class Certification** at 11 [#55], filed November 3, 2016) (quoting ***Genden v. Merrill Lynch, Pierce, Fenner & Smith, Inc***., 114 F.R.D. 48, 52 (S.D.N.Y.1987) (citation and internal quotation marks omitted)). This case satisfies that standard amply.

would require plaintiff to prove further that every potential member of the class be identified at the outset. Such granular detail is not necessary, however. "If the general outlines of the membership of the class are determinable at the outset of the litigation, a class will be deemed to exist." ***Cook v. Rockwell International Corp***., 151 F.R.D. 378, 382 (D Colo. 1993) (quoting 7A Charles A. Wright et al., **Federal Practice & Procedure** § 1760 at 117-18 (3rd ed.)) (footnotes omitted).

Nor is the class overbroad, as defendant suggests explicitly, nor under-broad, as it implies tacitly. This argument conflates the issue of who is entitled to notice with that of who ultimately will be deemed a member of the class. Relying on potential members' last known Colorado addresses as a proxy for membership in the class may be an imperfect gauge, but neither Rule 23 nor due process require perfection in this regard. ***See In re Integra Realty Resources, Inc***., 262 F.3d 1089, 1110 (10th Cir. 2001) ("[T]he standard governing this due process right is not actual notice to each party intended to be bound by the adjudication of a representative action," but only "the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort") (citation and internal quotation marks omitted).

Providing notice to the approximately 3,854 people with a Colorado address from whom defendant attempted to collect a debt during the class period, requiring any putative class member to submit a verified claim averring to his or her membership in the class, and cross-referencing those claims to defendant's records appears to this court to be an eminently reasonable and workable process. Defendant certainly will be afforded an opportunity to challenge any claims it deems suspect. ***See Mullins v. Direct Digital, LLC***, 795 F.3d 654, 671 (7th Cir.), ***cert. denied***, 136 S.Ct. 1161 (2015);

Lilly v. Jamba Juice Co., 2014 WL 4652283 at *6 (N.D. Cal. Sept. 18, 2014). Its effort to circumvent that process prematurely, however, must fail.

THEREFORE, IT IS ORDERED that defendant's **Motion for Reconsideration of This Court's Order Granting Class Certification** [#56], filed November 17, 2016, is denied.

Dated December 16, 2016, at Denver, Colorado.

BY THE COURT:

Robert E. Blackburn
United States District Judge