IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA M. BECK	:	CIVIL ACTION
	:	
v.	:	
	:	No. 04-2199
MAXIMUS, INC.	:	

ORDER-MEMORANDUM

AND NOW, this 11th day of March, 2005, "Plaintiff's Motion for Class Certification" is granted, Fed. R. Civ. P. 23(b),[1] as follows:

1. This action shall be maintained as a class action in accordance with Fed. R. Civ. P. 23(b)(1), (b)(2), and (b)(3);

2. Plaintiff Donna M. Beck is certified as class representative; and

3. The law firms of Francis & Mailman, P.C. and Donovan and Searles, LLC shall serve as class co-counsel.

The following are findings of fact:

1. The "Class" is defined as all persons in the Commonwealth of Pennsylvania to whose employer(s) defendant, on or after May 20, 2003, sent an "Employment Verification Request" ("EVR") or a substantially same form in an attempt to collect a non-business debt. This class is so numerous that joinder of all members is impracticable.[2] Excluded from the

---

[1] "To obtain class certification, plaintiff must establish that all four requisites of Rule 23(a) and at least one part of Rule 23(b) are met." Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 55 (3d Cir. 1994). The 23(a) requirements are numerosity, commonality, typicality, and adequacy of representation. See Fed. R. Civ. P. 23(a). Plaintiff satisfies these requirements, see infra. Defendant concedes that the action can be maintained as a class action under 23(b)(1). Infra, n.6.

[2] Fed. R. Civ. P. 23(a)(1): "the class is so numerous that joinder of all members is impracticable." Numerosity in this case is conceded - defendant admits that there are 776 members of the class. See also Henderson v. Eaton, 2002 WL 10464 (E.D. La., Jan. 2, 2002) (certifying FDCPA class of all persons who had collection letters sent to their

class is defendant, its parents, subsidiaries and affiliates, and all governmental agencies.

2.There are questions of law or fact common to the Class. The principal question is whether defendant violated the Fair Debt Collection Practices Act by sending an "Employment Verification Request" or a substantially same form to the person's employer(s) on or after the applicable date.[3] Infra, n.7.

3. The claims of plaintiff Donna M. Beck are typical of the claims of the Class.[4]

4. Plaintiff will fairly and adequately protect the interests of the Class.[5]

---

employers by defendant).

[3] Fed. R. Civ. P. 23(a)(2): "there are questions of law or fact common to the class." Commonality is not in dispute.

[4] Fed. R. Civ. P. 23(a)(3) requires the claims of the class representative to be "typical of the claims of the class." Defendant argues against class certification in that Ms. Beck's claims are subject to a unique defense, the FDCPA's bona fide error defense, 15 U.S.C. § 1692k(c). She was not the debtor referred to in the EVR form sent to her employer. See, e.g., King v. Arrow Financial Services, LLC, 2003 WL 21780973, at *4 (E.D. Pa., July 31, 2003) (class certification denied where collection letter sent after litigation had been commenced was sent in error, and defendant, therefore, had unique defense to claims). In short, defendant says that sending the EVR to plaintiff's employer was the result of a bona fide error and defensible. Defendant's memorandum at 6-8; defendant's sur-reply at 3-6 (citing deposition testimony on behalf of defendant describing FDCPA training and debtor identification procedures). Plaintiff counters that it is irrelevant whether the communication was in error, because the violation - the prohibited language included in all EVRs - was not an error. Plaintiff's reply at 10-13. Plaintiff cites deposition testimony of two representatives of defendant that (1) defendant drafted the language of the EVR, Deborah Wolff Dep. at 50; (2) there was no specific procedure for sending EVRs, Vincent LoBianco Dep. at 27; and (3) it was not uncommon for EVRs to be sent to employers for whom debtors did not work, Wolff Dep. at 60. Given this evidence, the EVR does not appear to have been sent to Ms. Beck's employer in error, and she will not be disqualified from representing the class on this basis.

[5] Under Fed. R. Civ. P. 23(a)(4), a named plaintiff must demonstrate the capability to "fairly and adequately protect the interests of the class." According to defendant, Ms. Beck cannot satisfy this requirement, having not seen the complaint until the day before her deposition - five months after the complaint was filed. "The adequacy inquiry under 23(a) has two components designed to ensure that absentees'

5. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications that could establish incompatible standards of conduct for the party opposing the Class. It could also, as a practical matter, conclude the interests of other members not parties to the adjudications - or materially impair or impede their ability to protect their interests.[6]

7. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members.[7]

---

interests are fully pursued. . . the 'adequacy' inquiry 'tests the qualifications of the counsel to represent the class' . . . [and] seeks 'to uncover conflicts of interest between named parties and the class they seek to represent.'" In re Warfarin Sodium Antitrust Litigation, 391 F.3d 516, 532 (3d Cir. 2004). Here, there is no contention that counsel is not qualified, and no assertion that a conflict exists. Furthermore, unsophisticated consumer plaintiffs "may rely on counsel to investigate and litigate the case and his reliance does not make him an inadequate representative." Morris v. Transouth Financial Corp., 175 F.R.D. 694, 698 (M.D. Ala. 1997) (plaintiffs who hired counsel, were deposed, and exhibited basic understanding of nature of lawsuit were adequate representatives). Plaintiff has retained qualified counsel, appeared for deposition, and verified answers to interrogatories. She is entitled to rely on counsel to litigate the case. Plaintiff is an adequate representative of the class.

[6] Fed. R. Civ. P. 23(b)(1). Defendant does not challenge certification under 23(b)(1). See defendant's memorandum at 12 ("the class should only be certified under Fed. R. Civ. P. 23(b)(1)."

[7] It is undisputed that the dispositive issue is whether the display of "MAXIMUS Collection Center" at the top and bottom of the EVRs violated the FDCPA.

8. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.[8]

Defendant also contends that certain notice problems render class certification improper. Defendant's sur-reply at 10. Plaintiff responds that, based on discovery disclosures, defendant maintains data showing where EVRs were sent and for whom. The asserted difficulties with notice are not sufficient to defeat class certification.

BY THE COURT:

_____

Edmund V. Ludwig, J.

[8] "Representative actions, therefore, appear to be fundamental to the statutory structure of the FDCPA. Lacking this procedural mechanism, meritorious FDCPA claims might go unredressed because the awards in an individual case may be too small to prosecute an individual action." Weiss v. Regal Collections, 385 F.3d 337, 345 (3d Cir. 2004). See also Orloff v. Syndicated Office Systems, Inc., 2004 WL 870691 (E.D. Pa. 2004) (certifying class in FDCPA case based on use of form letter); Bonett v. Education Debt Services, Inc., 2003 WL 21658267 (E.D. Pa. 2003) (same); Oslan v. Law Offices of Mitchell N. Kay, 232 F.Supp.2d 436 (E.D. Pa. 2002) (same).