UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-09198-JVS (RNBx)	Date	October 22, 2018
Title	Joyce Walker, et al. v. Life Insurance Co. Of the Southwest, et al.		

Present: The Honorable	James V. Selna

Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS)**
Order Denying Plaintiffs' Motion for Reconsideration

Plaintiffs Joyce Walker ("Walker"), Kim Bruce Howlett ("Howlett"), Muriel Spooner ("Spooner"), Taline Bedelian ("Bedelian"), and Oscar Guevara ("Guevara") (collectively, "Plaintiffs") filed a motion for reconsideration of the Court's order granting class certification. Docket No. 963. Defendant Life Insurance Company of the Southwest ("LSW") filed an opposition. Docket No. 966. Plaintiffs filed a reply. Docket No. 975. After the motion was denied without prejudice for failure to comply with Local Rule 7-3, LSW filed a superseding revised opposition and Plaintiffs filed a superseding revised reply. Docket Nos. 984, 987.[1]

For the following reasons, the Court **denies** the motion for reconsideration.

I. BACKGROUND

The background of this case is well known to the parties and the Court. For a more robust recitation of this case's procedural history, refer to the Court's order granting class certification. See Order, Docket No. 961.

Broadly, this motion concerns Plaintiffs' attempts to certify a class of purchasers of

[1] Plaintiffs argue that the Court should decline to consider the revised opposition because it was an impermissible surreply. Revised Reply, Docket No. 987 at 2. However, Plaintiffs also submitted their own revised reply. See generally, id. Thus, the Court considers the revised opposition and reply to supersede the papers filed in support of and opposition to the original motion.

indexed life insurance policies issued by LSW. Fourth Amended Complaint ("FAC"), Docket No. 947 ¶ 1. Plaintiffs allege that LSW's practices in connection with two of its life insurance policies, SecurePlus Provider ("Provider") and SecurePlus Paragon ("Paragon"), constitute unlawful and unfair business practices under California's Unfair Competition Law ("UCL") based on various violations of California's Illustration Statute, Cal. Ins. Code §§ 10509.950, et seq. FAC, Docket No. 947 ¶¶ 63–73. Relevant to the instant motion, the Court held on summary judgment that the Provider and Paragon illustrations violated § 10509.956(b)(4) of the Illustration Statute as to the terms "Guaranteed Values at 2.00%" and "Guaranteed Values at 2.50%." Order, Docket No. 874 at 20. The Court also held that the illustration of the elimination of the Monthly Percent of Account Value Enhancement Charge in the Paragon policies constituted a violation of § 10509.956(e)(3). Id. at 25.

On July 31, 2018, the Court granted Plaintiffs' motion for class certification. Order, Docket No. 961. Plaintiffs now seek reconsideration of that order. Mot., Docket No. 963. In the motion for class certification, Plaintiffs sought to certify a class defined as:

> All persons who purchased a Provider Policy or Paragon Policy from Life Insurance Company of the Southwest that was issued between September 24, 2006 and August 30, 2015, and who resided in California at the time the Policy was issued.

Docket No. 907 at 4. In the alternative, Plaintiffs sought certification of a class defined as:

> All persons who purchased a Provider Policy or Paragon Policy from Life Insurance Company of the Southwest that was issued between September 24, 2006 and August 30, 2015, who resided in California at the time the Policy was issued, and who received an illustration on or before the date of policy application.

Id. In certifying the class, the Court adopted the narrower, alternative definition, except the end of the class period was moved to April 27, 2014. Order, Docket No.

961 at 7.

Plaintiffs now argue that the Court should have adopted the broader class definition that was not limited to purchasers who received an illustration on or before the date of policy application. Mot., Docket No. 963 at 1. Therefore, Plaintiffs request that the Court delete the words "and who received an illustration on or before the date of policy application" from the class definition. Id.

II. LEGAL STANDARD

It is within the court's discretion to grant a motion for reconsideration. See Navajo Nation v. Confederated Tribes & Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). Reconsideration pursuant to Local Rule 7-18 is permissible in three situations:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision;
>
> (b) the emergence of new material facts or a change of law occurring after the time of such decision; or
>
> (c) a manifest showing of a failure to consider material facts presented to the Court before such decision.

L.R. 7-18; see also School Dist. No. 1J, Multnomah Cnty. v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) (providing that reconsideration is appropriate if the movant demonstrates clear error, manifest injustice, newly discovered evidence, or an intervening change in controlling law). "No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." L.R. 7-18. Furthermore, "a motion for reconsideration may not be made on the grounds that a party disagrees with the Court's application of legal precedent." Pegasus Satellite Television, Inc. v. DirecTV, Inc., 318 F. Supp. 2d 968, 981 (C.D. Cal. 2004).

III. DISCUSSION

The Court's order granting class certification adopted the narrower of Plaintiffs' two alternative proposed class definitions. Docket No. 961 at 5–6. The Court stated in relevant part:

> No potential class member could claim to have purchased and overpaid for an LSW policy based on statements and omissions in the illustrations if he or she had not seen an illustration before the sale. However, there is no evidence that the named Plaintiffs reviewed the final "batch" illustrations that they received with their policies. (See [Order, Docket No. 874] at 11.) Instead, the only evidence that the named Plaintiffs were exposed to the misrepresentations prior to purchasing their policies is that they received and reviewed illustrations prior to applying. (See Docket No. 859-1 ¶¶ 62, 74.) Therefore, pursuant to Plaintiffs' theories of liability and the evidence submitted, all potential class members must have been actually exposed to an illustration prior to applying for Provider or Paragon policy.

Id. The Court further stated in a footnote:

> At the hearing on the motion, Plaintiffs argued that the date of sale, not the date of application, is the relevant date to determine class membership. As discussed, there is no evidence that Plaintiffs reviewed the illustrations they received upon delivery of their policies. Instead the only evidence of actual exposure is evidence that Plaintiffs reviewed illustrations prior to applying. Moreover, the Court has adopted Plaintiffs' own proposed alternative class definition.

Id. at 6 n.2.

Broadly, Plaintiffs argue that reconsideration is merited because the Court failed to consider that (1) evidence indicates that Bedelian reviewed the batch illustration provided to her at policy delivery; (2) Plaintiffs did not request certification of a class defined as policyholders who received illustrations only after submitting applications; and (3) arguing for an alternative class definition should not prejudice against Plaintiffs' primary proposed class definition. Mot., Docket No. 963; Revised Reply, Docket No. 987.

LSW responds that (1) standing and exposure requirements preclude a class of "all purchasers"; (2) Plaintiffs' motion fails to meet the reconsideration standard even considering the evidence the Court failed to previously consider; and further, that (3) Plaintiffs' position that "purchase" occurs at a time later than application highlights the existence of an individualized issue that should preclude class certification entirely. Revised Opp'n, Docket No. 984.

Plaintiffs' motion does not concern the emergence of new material facts or controlling law. Thus, reconsideration must be based on "a manifest showing of a failure to consider material facts presented to the Court" prior to its decision. L.R. 7-18.[2] Accordingly, Plaintiffs point to evidence that Bedelian reviewed the batch illustration upon delivery of the policy to show that the Court erred in stating that "there is no evidence that the named Plaintiffs reviewed the final 'batch' illustrations that they received with their policies." Mot., Docket No. 963 at 7–10; see also Order, Docket No. 961 at 5–6 n.2. The Court agrees that the statement was in error because Bedelian declared that she reviewed the final batch illustration received with her policy, evidence which was submitted to the Court by Plaintiffs in connection with the class certification motion. See Bedelian Decl., Docket No. 909 ¶ 3 ("I reviewed [the batch] illustration and signed it on February 25, 2008."). However, that error is not material to the class definition in this case. Even with evidence that named Plaintiffs reviewed batch illustrations, it is impossible for that review to have occurred prior to purchase, and thus impossible for misrepresentations contained therein to have been relied upon in purchasing the policy.

[2] Reconsideration for manifest failure is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003).

The turning point of the class definition is the point of "purchase." The Court agrees with Plaintiffs that sale does not occur unequivocally at the point of application. Mot., Docket No. 963 at 11. Rather, the Court finds that purchase (or equivalently, sale) occurs upon delivery of the policy, which triggers the free look period. However, the Court rejects Plaintiffs' argument that sale doesn't occur until a purchaser "accepts" the policy by deciding not to return it at some unspecified point after policy delivery, i.e., during the free look period; as the Court has previously noted, the free look period occurs after the sale is concluded. Hearing Tr., Docket No. 964-1 at 11:9–16, 24:17–19; see also Revised Reply, Docket No. 987 at 3 (Plaintiffs themselves arguing that LSW's S.A.L.E. Compliance Manual "shows that LSW is not bound until the policy is delivered"). Thus, the batch illustration is provided contemporaneously at the point of sale. Since Plaintiffs' claims depend on review of and reliance on deficient illustrations prior to sale, purchasers who reviewed only batch illustrations are not proper members of Plaintiffs' proposed class. See Order, Docket No. 961 at 5 ("No potential class member could claim to have purchased and overpaid for an LSW policy based on statements and omissions in the illustrations if he or she had not seen an illustration before the sale.") (emphasis added). The contract analysis which Plaintiffs offered at oral argument does not change the relevant point for determining reliance, namely, receipt of the sales illustration prior to executing an application. A class of "all purchasers" would therefore encompass uninjured purchasers who were not exposed to an illustration prior to sale, i.e., prior to policy delivery.[3] As a result, although Plaintiffs correctly point out that the Court did not consider evidence that Bedelian reviewed the batch illustration, that alone does not constitute "a manifest showing of a failure to consider material facts." L.R. 7-18.[4]

Based on the foregoing, the named Plaintiffs cannot represent a class of "all purchasers" because, as noted, there is a material difference between purchasers who received an illustration prior to application and purchasers who received only a batch illustration at delivery concurrent with the point of sale. Evidence that Bedelian also

[3] As Plaintiffs concede in their moving papers, "Plaintiffs' claims based on LSW's violations of the Illustration Statute do not depend on when the illustration was received so long as it was received before purchase of the policy." Mot., Docket No. 963 at 12 (emphasis added).

[4] The Court notes that policy purchasers who reviewed illustrations after application but prior to policy delivery could be permissible class members; however, Plaintiffs have put forth no evidence nor do they contend that purchasers reviewed illustrations during that period.

reviewed the batch illustration does not change the fact that she and the other named Plaintiffs viewed an illustration prior to application and thus prior to sale. See Docket No. 961 at 6; Docket No. 909 ¶ 3; Docket No. 859-1 ¶¶ 62, 74.

The Court's analysis is unchanged by Plaintiffs' argument that proposing an alternative class definition should not militate against its primary proposed class definition. Mot., Docket No. 963 at 13–14; Revised Reply, Docket No. 987 at 10–11. In the order certifying the class, the Court merely observed that, despite the Court's discretionary power to reshape the class definition, the Court's adoption of the point of application as a relevant touchstone was consistent with the language of a class definition that Plaintiffs themselves requested. See Armstrong v. Davis, 275 F.3d 849, 871 n.28 (9th Cir. 2001)[5] (citation omitted). The Court did not use Plaintiffs' alternative argument against it in the order granting class certification, and it does not do so here.

LSW contends that not only should Plaintiffs' motion for reconsideration be denied, but that the Court should consider decertifying the class because Plaintiffs' position demonstrates that the purchase decision is individualized. Revised Opp'n, Docket No. 984 at 14–16. To the extent that LSW argues that the point at which each individual purchaser made the subjective decision to purchase the policy is the relevant point for class membership, that argument was already presented to the Court at oral argument on the certification motion. Hearing Tr., Docket No. 964-1 at 7:14–9:22. The Court need not address that argument here because "no motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." L.R. 7-18. Furthermore, to the extent that LSW argues that the Court should reconsider its finding on any issue, it must file its own properly noticed motion conforming with Local Rule 7-18, as Plaintiffs have done in the instant motion.

Accordingly, the Court declines Plaintiffs' request to delete "and who received an illustration on or before the date of policy application" from the class definition. Plaintiff's motion to reconsider and thus modify the class definition to encompass "all purchasers" of the Paragon and Provider policies during the relevant time period is denied.

[5] Cert. denied, 537 U.S. 812 (2002), abrogated on other grounds by Johnson v. California, 543 U.S. 499 (2005).

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IV. CONCLUSION

For the foregoing reasons, the Court **denies** Plaintiffs' motion for reconsideration.

IT IS SO ORDERED.

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