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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JENNIFER WIESE and CANDY BRADISON,)
Individually and on behalf of all others similarly)
Situating,) No. 13-2-33354-6 SEA
)
Plaintiffs,) ORDER GRANTING PLAINTIFFS'
v.) MOTION FOR CLASS CERTIFICATION
)
CACH, LLC, a Colorado limited liability)
company SquareTwo Financial Corp., a)
Delaware corporation, and SUTTELL &)
HAMMER, P.S., a Washington corporation.)
)
Defendants.)
_____)

This case is before this Court on the Plaintiffs' motion for class certification under CR 23.¹ The proposed class consists of "individuals in Washington whom a Washington court entered a judgment on a claim to collect a debt in favor of CACH, LLC, when the complaint which initiated such claim was filed when CACH, LLC, was not licensed as a collection agency under the Washington Collection Agency Act." Defendant CACH, LLC admits that under RCW 19.16. 110 and Gray v. Suttell & Assoc., 181 Wn.2d 329, 334 P.3d 14 (2014), it did not have a debt collection agency license prior to filing

¹ This Court heard oral arguments on January 8, 2016. After the briefing on this motion was completed, this Court dismissed Defendant SquareTwo Financial Corp. But because the motion and opposition were directed to both Defendants CACH, LLC and SquareTwo, the Court will refer to "Defendants."

1 lawsuits to collect on credit card default debts. The complaint sought an award of compensatory and
2 exemplary damages, and declaratory and injunctive relief for equitable vacatur. In Wiese v. Cach, LLC,
3 189 Wn. App. 466, 358 P.3d 1213 (2015), Division I of the Court of Appeals ruled that except for the
4 injunctive claim, all other claims must be arbitrated. The remaining injunctive remedies sought includes
5 vacating the judgments obtained in the collection actions, notifying credit reporting bureaus of the
6 vacated judgment and requesting removal of adverse credit history, and returning to the plaintiffs the
7 amount collected plus interest.

8 I conclude that Plaintiffs' proposed class has satisfied the requirements for class certification
9 under Rule 23. Plaintiffs' motion for class certification is hereby granted.

10 ANALYSIS

11 Under CR 23, a plaintiff seeking class certification must satisfy the following requirements:
12 First, under CR 23(a), the plaintiff must establish (1) numerosity (i.e., that the class is so large that
13 joinder of all members is impracticable); (2) commonality (that questions of law or fact are common to
14 the class); (3) typicality (that claims or defense or named parties are typical of the class); and (4)
15 adequacy of representation (that representatives will fairly and adequately protect the interest of the
16 class). Amchem Products, Inc., v. Windsor, 521 U.S. 591, 138 L.Ed. 2d 689 (1997). Once the above
17 four elements are satisfied, the plaintiff must also establish that the class meets at least one of the three
18 categories listed under CR 23(b).

19 A. The CR 23(a) factors are all established.

20 Defendants do not challenge that Plaintiffs have established the requisite numerosity under CR
21 23(a)(1). According to Declaration of Robert Hedrick submitted in support of Plaintiffs' Motion, there
22 are over 10,000 collection matters in King County during 2008-2009.

1 “Commonality” under CR 23(a)(2) exists when the defendant has engaged in standardized
2 conduct towards members of the proposed class. Put differently, commonality is satisfied when the legal
3 question linking the class members is substantially related to the resolution of the litigation, even though
4 the individuals are not identically situated. Miller v. Farmer Bros. Co., 115 Wn. App. 815, 824, 64 P.3d
5 49 (2003) (internal quotation marks omitted) (quoting Yslava v. Hughes Aircraft Co., 845 F.Supp. 705,
6 712 (D.Ariz.1993)). Under this standard, certification is appropriate if the defendant’s course of conduct
7 that gives rise to the cause of action affects all class members. K. Tegland, 3A Wash. Prac. § CR 23
8 (5th ed. 2006).

9 Defendants attempts to defeat Plaintiffs’ claim of commonality by arguing that the claim for
10 equitable vacatur is an independent action in equity “reserved for only those cases to prevent grave
11 miscarriage of justice...” and that the facts underlying each plaintiff’s claim do not reflect such
12 exceptional circumstances -- and that commonality is therefore not established. However, at this stage
13 of the proceedings -- when deciding on a motion to certify a class – a court does not consider the merits
14 of the plaintiffs’ claims. Washington Educ. Ass'n v. Shelton School Dist. No. 309, 93 Wn.2d 783, 790,
15 613 P.2d 769 (1980) (citing Miller v. Mackey International, Inc., 452 F.2d 424, 429-30, (5th Cir. 1971)).
16 Furthermore, although this case has been ensuing for a number of years, the actual litigation is still in
17 early stages and this Court will generally assume that the allegation in the pleadings are true. Tegland,
18 3A Wash. Prac. § 23.17 (5th ed. 2006). As alleged by Plaintiffs, the common legal question is whether
19 the judgments Defendants obtained are to be voided based on failure to obtain a proper license. This
20 legal question is substantially related to the resolution of the litigation. The Court finds that the
21 Plaintiffs have established the “commonality” factors in this matter.

22 Similarly, the Court rejects Defendants’ challenges to the “typicality” and “adequate
23 representation” requirements based on the individualized circumstances.

1 B. 23(b)(2). Because the four elements of CR 23(a) are satisfied, the Court next considers
2 whether the class meets at least one of the three categories under CR 23(b)(1), (2), or (3). In this case,
3 Plaintiffs are moving to certify under subsection (b)(2), which states: “the party opposing the class has
4 acted or refused to act on grounds generally applicable to the class.”

5 Plaintiffs’ principal argument is that Defendant CACH is a collection agency under the
6 Washington Collection Agency Act, RCW 19.16, and was not licensed at the time CACH filed lawsuits
7 to collect on the debts. Plaintiffs assert that under RCW 19.16.260, CACH was prohibited from filing
8 lawsuits, and any judgments obtained are therefore void or voidable. Plaintiffs also assert that the
9 judgments were obtained by fraud.

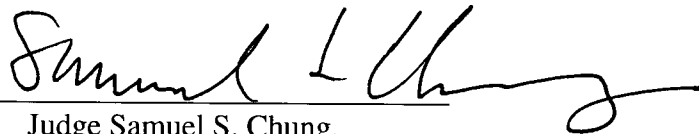
10 Defendants claim that Plaintiffs have not met the 23(b)(2) requirements because the only cause
11 of action remaining before this Court, equitable vacatur, is inapplicable to a class action. Furthermore,
12 Defendants argue that this action is primarily a damages case, not an equitable one, and characterizing
13 the relief sought as “disgorgement” of the monies collected by Defendants does not change the inherent
14 nature of the case.

15 Class actions under CR 23(b)(2) “are actions in which the defendant has acted in a consistent
16 manner towards all class members so that a pattern of activity is apparent, or when the defendant has
17 imposed a regulatory scheme that affects all class members. K. Tegland, 3A Wash. Prac. § CR 23.12
18 (5th ed. 2006). The key to the (b)(2) class is “the indivisible nature of the injunctive or declaratory
19 remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only
20 as to all of the class members or as to none of them.” R. Nagareda, “Class Certification In The Age of
21 Aggregate Proof,” 84 N.Y.U.L.Rev. 87, 132 (2009). In other words, Rule 23(b)(2) applies only when a
22 single injunction or declaratory judgment would provide relief to each member of the class. It does not
23 authorize class certification when each individual class member would be entitled to a *different*

1 injunction or declaratory judgment against the defendant. Similarly, it does not authorize class. Wal-
2 Mart Stores, Inc., v. Dukes, 564 U.S. 338, 131 S.Ct. 2541, 2557 (2011). Defendants admit that they did
3 not obtain a debt collector's license and also filed lawsuits in violation of RCW 19.16. These
4 acts/omissions are the pattern of activity that apply to all the class members. The proposed injunction
5 would apply equally to all the class members against whom Defendants obtained judgments.

6 Secondly, with respect to objections over damages veiled as disgorgement, at this procedural
7 posture, addressing the motion for class certification, this Court need not decide whether the remedies
8 sought by Plaintiffs are improper. The issues of whether individual class members owe the debt --
9 which is not in dispute -- or whether Defendants made bone fide efforts to determine its collection
10 agency status -- which is in dispute -- all go to the merits of the claim, and need not be resolved in ruling
11 on the pending motion. Finally, even where damages, however characterized, may eventually be
12 awarded, if injunctive relief is a significant aspect of the relief sought, Rule 23(b)(2) certification is
13 appropriate. Gelb v. American Tel. & Tel. Co., 150 F.R.D. 76, 78 (S.D.N.Y.1993). Whether money
14 damages/disgorgements will be available to the plaintiffs is not ripe for determination until the merits of
15 their injunctive relief claim are established.

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18 DATED this 3rd day of February, 2016.

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21 Judge Samuel S. Chung,
22 King County Superior Court
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