IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PAUL F. WORSHAM, Plaintiff, v. AMERICOR LENDING GROUP, INC., et al. Defendants.	: : : : : : : : :	Case No. 259191-V

MEMORANDUM AND ORDER

On July 7, 2008, the court held a hearing on the plaintiff's Second Motion for Class Certification. (DE # 217). The court's independent review of the five file jackets reveals that this case has endured what can charitably be described as a tortured procedural history. Time does not permit the court to recount every twist and turn. The pertinent milestones, however, will be discussed below.

I.

This putative class action was filed on February 22, 2005. (DE # 1). An amended complaint was filed on April 18, 2006. (DE # 63). According to the amended complaint, the plaintiff, Paul F. Worsham, lives in Potomac, Maryland. Worsham alleges that he received three (3) unsolicited, pre-recorded telemarketing calls. The calls were received on November 28, 2004, December 15, 2004 and January 4, 2005. According to the plaintiff, his receipt of these three telephone calls violated the Telephone Consumer

Protection Act of 1991, 47 U.S.C. § 227(b)(3)[1] and the Maryland Telephone Consumer Protection Act, §§14-3201 & 14-3202 of the Commercial Law Article.[2]

In the amended complaint, Worsham named the following defendants: (1) Americor Lending Group, Inc. ("Americor"); (2) Direct Link, Inc. ("Direct Link"); (3) David Botton, alleged to be the sole principal of Direct Link; and (4) Jeremy Foti, the president of Americor. Counts 1 through 4 of the amended complaint allege that the three telephone calls violated the federal statute. Counts 5-9 allege that these same three calls violated the Maryland act.

On May 30, 2006, Worsham moved for partial summary judgment against Americor and Direct Link. (DE # 70). By order dated September 18, 2006, the court (Thompson J.) denied the motion. (DE # 146).

On October 16, 2006, the case was called for trial. The plaintiff and counsel for the plaintiff failed to appear. Judge Thompson granted Americor's oral motion to dismiss and the case, as to defendant Americor, was dismissed with prejudice. (DE # 154, # 155). Judge Thompson also observed, having reviewed the file, that none of the other defendants appeared to have been served with process. (DE # 156).

After Judge Thompson's ruling of October 16, 2006, the plaintiff filed an affidavit of service as to defendant Foti. (DE # 157).

By order dated May 18, 2007, the court (Rowan J.) granted defendant Foti's motion for summary judgment. (DE # 205). By order dated July 7, 2007, the court

[1] The Court of Appeals has concluded that Maryland trial courts have jurisdiction to entertain private causes of action created by this federal statute. *Felland Limited Partnership v. Digi-Tel Communications, LLC*, 384 Md. 520 (2004); *Levitt v. Fax.com, Inc.*, 383 Md. 141 (2004); *R.A. Ponte Architects, Ltd. v. Investors' Alert, Inc.*, 382 Md. 689 (2004).

[2] *See Worsham v. Nationwide Ins. Co.*, 138 Md. App. 487 (2001), in which the plaintiff's counsel was the plaintiff in a case under the live call provision of 47 U.S.C. § 227(c)(5).

denied the plaintiff's motion to alter or amend judgment as to defendant Foti. (DE # 211).

Thus, as of July 7, 2007, nearly 2 ½ years after the case had been filed, the only two defendants who had been served had been dismissed from the action.

On December 17, 2007, the plaintiff filed an affidavit of service as to defendant Botton. (DE # 215). Curiously, the affidavit of the process server does not state that Botton was served with a copy of the amended complaint, although it does recite a list of other papers that were delivered to this defendant. *See* Maryland Rule 2-126.[3] The Clerk sent the plaintiff a notice on March 6, 2008, that Botton had not filed an answer, but the plaintiff has not sought the entry of an order of default. *See* Maryland Rule 2-613(b). It does not appear that defendant Direct Link has ever been served.

On April 1, 2008, the plaintiff filed its second motion for class certification. (DE # 217). On May 21, 2008, the Clerk scheduled a hearing on this motion for July 7, 2008. (DE # 218).

II.

Modern class actions can be traced to the English "bill of peace" in the Seventeenth Century. Although provisions for class actions modeled after the English procedure existed in various state codes and the Federal Equity Rules, Federal Rule 23, as originally adopted in 1938, was the first effort to provide for class actions in their modern form. But in all events, class actions must be carefully monitored by the court because they permit a person who is neither a party to a suit nor served with process to be bound by the result. *Hansberry v. Lee*, 311 U.S. 32 (1940).

[3] Defective service of process is jurisdictional, and a defendant's actual notice of the proceeding does not cure the jurisdictional defect. *Guen v. Guen*, 38 Md. App. 578, 585 (1978).

Both the federal and Maryland Constitutions permit class actions, but neither require them. As Judge Meredith cogently observed: "At the outset, we note that there is no statutory or constitutional right to pursue by way of a class action the claims that were the subject of appellants' complaint. Rather, a class action is a procedural device, created by the judiciary's adoption of a court rule to facilitate management of multiple similar claims." *Cutler v. Wal-Mart Stores, Inc.*, 175 Md. App. 177, 188 (2007).

With this backdrop in mind, the court turns to Worsham's motion for class certification.

III.

Worsham asks this court to certify nine sub-classes, variously structured, but all based on the three recorded telephone calls he received. According to Worsham, the approximate size of each sub-class "is estimated to be at least several thousand Maryland residents." Apart from this bare allegation, there is no evidence of record regarding the size of any class or sub-class, the identities of any putative class members or the amounts of any damages claimed.

The merits of the controversy are, of course, separate from whether the requirements of Maryland Rule 2-231 have been met. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974); *Sandlin v. Shapiro & Fishman*, 168 F.R.D. 662, 665 (M.D. Fla. 1996). In deciding class certification, the court should accept as true the well pleaded allegations in the plaintiff's complaint, but the court may look beyond the pleadings to determine whether class certification is or is not appropriate. *Creveling v. GEICO*, 376 Md. 72, 88-89 (2003). What this means is that the court can and should examine the nature of the claims, defenses, relevant facts and the substantive law. *Philip Morris v.*

Angeletti, 358 Md. 689, 727 (2000); *Castano v. American Tobacco Co*., 84 F.3d 734, 744 (5th Cir. 1996). To do otherwise would result in the automatic certification of every case in which the complaint recited the literal requirements of Maryland Rule 2-231. *See Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 365-66 (4th Cir. 2004); *Szabo v. Bridgeport Machs., Inc*., 249 F.3d 672, 675-76 (7th Cir. 2001). As Judge Niemeyer noted for the Fourth Circuit:

> We must not lose sight of the fact that when a district court considers whether to certify a class action, it performs the public function of determining whether the representative parties should be allowed to prosecute the claims of the absent class members. Were the court to defer to representative parties on this responsibility by merely accepting their assertions, the court would be defaulting on the important responsibility conferred on the courts by Rule 23 of carefully determining the class action issues and supervising the conduct of any class action certified.

Gariety, 368 F.3d at 366-70.[4]

The correct standard of proof of the requisites for a class action is the preponderance of the evidence. *In re Initial Public Offering Sec. Litig*., 471 F.3d 24, 40-42 (2d Cir. 2006); *Gariety v. Grant Thornton, LLP*, 368 F.3d at 366; *Szabo v. Bridgeport Machines, Inc*., 249 F.3d 672, 767 (7th Cir. 2001). Although the Court of Appeals has not specifically ruled on this question in the context of class certification, s*ee Creveling v. GEICO*, 376 Md. at 88-89 (2003); *Philip Morris v. Angeletti*, 358 Md. 689, 726-27 (2000), when squarely presented with the question, the Court of Appeals likely will follow the majority of the federal courts of appeal that have recently examined the question and hold that proof of the requisites for class certification must be by a

[4] In class action litigation, the role of the court necessarily is more pro-active than in the usual civil case. This is because the court serves as a fiduciary who guards the rights of the absent class members. *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 279 (7th Cir. 2002); *Grunin v. International House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975).

preponderance of the evidence. *See Volodarsky v. Tarachanskaya*, 397 Md. 291, 304-06 (2007)(rejecting a lesser standard of proof under § 9-101 of the Family Law Article).

IV.

The party seeking class certification bears the burden of demonstrating all preliminary factors of Maryland Rule 2-231(a). *Creveling v. GEICO*, 376 Md. at 89. *See also General Telephone Co. v. Falcon*, 457 U.S. 147, 155 (1982); *McLaughlin v. American Tobacco Co.*, 522 F.3d 215, 222 (2d Cir. 2008). The four threshold requirements of Maryland Rule 2-231(a) are mandatory. But they are not alone sufficient. The proponent also must show that a putative class meets the requirements of one of the sub-categories of Maryland Rule 2-231(b). *Creveling v. GEICO*, 376 Md. at 88; *Cutler v. Wal-Mart Stores, Inc.*, 175 Md. App. at 190.

Numerosity – Is Joinder Impractical?

Under Maryland Rule 2-231(a)(1) the question is whether joinder is impractible under the circumstances of the case. *General Telephone Co. v. Falcon*, 457 U.S. at 157-58 n. 13. But the test is not impossibility of joinder. *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993); *Philip Morris, Inc. v. Angeletti*, 358 Md. at 732-33.

There is no magic number. *Bender v. Sec. Maryland Dep't of Personnel*, 290 Md. 345, 356 (1981)(suggesting 350 is sufficient); *Kirkpatrick v. Gilchrist*, 56 Md. App. 242, 248-50 (1983)(suggesting 500 is sufficient); *Christiana Mortg. Corp. v. Delaware Mortg. Bankers Ass'n*, 136 F.R.D. 372, 377 (D. Del. 1991); 7A C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE & PROCEDURE § 1762 (2d ed. 1986).

However, the decision on numerosity must be based on evidence, not assumptions. *Robidoux v. Celani*, 987 F.2d at 935. The plaintiff must make some

threshold showing regarding the size of the putative class, the location of the class members, and the amount of each member's potential claim. *Pederson v. Louisiana State University*, 213 F.3d 858 (5th Cir. 2000); *Sandlin v. Shapiro & Fishman*, 168 F.R.D. 662, 666 (M.D. Fla. 1996); *Alvarado Partners, L.P. v. Metha*, 130 F.R.D. 673 (D. Colo. 1990); *Stoudt v. E.F. Hutton & Co., Inc*., 121 F.R.D. 36 (S.D.N.Y. 1988).

In this case, the plaintiff has adduced no evidence whatsoever as to the potential size of the class or any of the sub-classes, the locations in Maryland of class members, or the size of any claims of the putative class members. The amended complaint states: "On information and belief, Plaintiff alleges that such persons number in the thousands and constitute a class so numerous that joinder of all class members is impracticable."[5] Although the plaintiff's second motion for class certification intones, unremarkably, that the goal of pre-recorded messages "is to send as many targeted calls as possible within budget,"[6] no information of any evidentiary value is provided.[7] Speculation is not a sufficient substitute for evidence. Numerosity usually is not difficult to establish. But in this case, due to the lack of diligence by plaintiff's counsel in producing any useful information, it has not been established. Hence, the court finds that the plaintiff has failed to establish numerosity under Maryland Rule 2-231(a)(1).

Are there really common questions of fact or law?

Under Maryland Rule 2-231(a)(2), common questions of law or fact must exist but common questions need not predominate over individual issues. *Bergmann v. Board*

[5] Amended Complaint at ¶ 10.

[6] Second Motion for Class Certification at p. 24.

[7] The Federal Communications Commission citation referenced by the plaintiff, issued to defendant Botton on March 31, 2006, simply refers to "one or more pre-recorded messages to a residential telephone line.

of Regents, 167 Md. App. 237, 287-88 (2006), *quoting Philip Morris, Inc. v. Angeletti*, 358 Md. 689 at 734. The basic question is whether class action treatment will promote judicial economy by permitting an issue potentially affecting every class member to be litigated in an economical fashion. *General Telephone Co. v. Falcon*, 457 U.S. at 155. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 609 (1997); *Washington v. Brown & Williamson Tobacco Corp*., 959 F.2d 1566, 1569 (11th Cir. 1992); 7A C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE & PROCEDURE, § 1763 (2d ed. 1986).

If a lawsuit really does have a common nucleus of operative facts that has not already been resolved, commonality usually is established. *Philip Morris, Inc. v. Angeletti*, 358 Md. at 733-737; *Cf. ACandS, Inc. v. Goodwin*, 340 Md. 334, 395 (1995)(permitting a consolidated, mass trial of common issues in asbestos claims). In this case, from reading the amended complaint, the court concludes that the commonality requirement is satisfied.

Are the claims or defenses alleged in the complaint typical?

The basic typicality questions are: (i) whether similar legal theories underlie the claims of the representative parties and those of the putative class members; and (ii) whether the same course of conduct was directed at the class as a whole. *Philip Morris,* 358 Md. 689 at 737-40 (2000); *Bergmann v. Board of Regents*, 167 Md. App. at 288.

In some cases, individualized circumstances of the putative class members make claims not typical. *In re American Medical Systems, Inc*., 75 F.3d 1069, 1082 (6th Cir. 1996). As well, unique issues among class members may defeat typicality. *Philip Morris, Inc. v. Angeletti*, 358 Md. at 737-740. *See also Simer v. Rios*, 661 F.2d 655 (7th Cir. 1981); *Dunnigan v. Metropolitan Life Ins. Co*., 214 F.R.D. 125 (S.D.N.Y. 2003).

The claims of the class members, however, need not be identical, *Trief v. Dun & Bradstreet Corp*., 144 F.R.D. 193, 200 (S.D.N.Y. 1992), and the defendant's same course of conduct directed to all class members usually will suffice. *In re Prudential Securities Litig*., 163 F.R.D. 200, 208 (S.D.N.Y. 1995). The court must be mindful, however, of named plaintiffs against whom the defendants have unique defenses, such as knowledge or unclean hands. *Gary Plastic Packaging Corp. v. Merrill Lynch*, 903 F.2d 176, 180 (2d Cir. 1990), *cert. denied*, 498 U.S. 1025 (1991); *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Differences in damages among class members, alone, usually are insufficient to undermine typicality. *Walsh v. Northrop-Grumman Corp*., 162 F.R.D. 440, 445 (E.D.N.Y. 1995).

The court finds that the gravamen of the amended complaint does not depend upon the individual circumstances of the named plaintiff or the putative class members. The claims of the named plaintiff, and those of the putative class members, are typical because they are alleged to have arisen from the same practice or course of conduct, the receipt of an unsolicited, pre-recorded telephone call. *See Angeletti*, 358 Md. at 200.

Are the Named Class Representatives and their Counsel Adequate Stewards?

The requirement of adequacy of representation is a fundamental element of due process. Both the named plaintiffs and the class counsel must meet the tests of adequacy under Maryland Rule 2-231(a)(4). *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Philip Morris, Inc.*, 358 Md. at 740-743.

The burden to show both prongs of adequacy is on class counsel. *Berger v. Compaq Computer Corp*., 257 F.3d 475, 481-82 (5th Cir. 2001); *Maywalt v. Parker & Parsley Petroleum Co*., 155 F.R.D. 494 (S.D.N.Y. 1994), *aff'd*, 67 F.3d 1072 (2d Cir.

1995); *Johnpoll v. Thornburgh*, 898 F.2d 849 (2d Cir. 1990). Moreover, the court has an independent duty to assure the adequacy of the named class representatives, as well as counsel. *Philip Morris, Inc.*, 358 Md. at 742-43 & nn.23 & 24. *See also Talley v. ARINC, Inc*., 222 F.R.D. 260, 270-71 (D. Md. 2004). This determination requires careful fact-finding by the court that the class representatives and class counsel can fairly and adequately protect the interests of the absent class members. *Kirkpatrick v. J.C. Bradford & Co*., 827 F.2d 718, 728 (11th Cir. 1987).

This court's independent review of the record in this case compels the conclusion that class counsel is inadequate. The court is mindful that the plaintiff's counsel has litigated other similar cases. But the court cannot ignore the wholly inadequate manner in which this case has been handled since its inception.[8] This case is over three years old and the plaintiff has made precious little demonstrable progress. The two defendants on whom service was effected have been dismissed. The plaintiff's counsel failed to show up for trial in October 2006. It is not certain that service actually has been achieved over defendant Botton.[9] No affidavit of service has been filed as to defendant Direct Link. Thus, what we have is a three year old case with no viable defendants and no clear path

[8] The court is mindful that its comments in this regard may seem harsh. But the court speaks from experience. Before assuming judicial office in December 2005, this member of the bench was lead or co-lead counsel (both for plaintiffs and defendants) in class actions and derivative cases in the courts of Maryland, New York, Delaware and Florida, federal and state. As well, the court teaches this very subject matter at the Maryland Judicial Institute. In sum, the court speaks from actual experience, not simply from reading appellate cases.

[9] Improper service of process is legal basis to vacate an enrolled judgment because, if shown, the court would not have acquired personal jurisdiction over the defendant. *Miles v. Hamilton*, 269 Md. 708, 712-14 (1973); *Sheehy v. Sheehy*, 250 Md. 181, 184-85 (1968); *J. Whitson Rogers, Inc. v. Hanley*, 21 Md. App. 383, 392-94 (1974).

to any sort of trial.[10] Consequently, the court finds that the plaintiff has failed to establish adequacy under Maryland Rule 2-231(a)(4).

V.

The plaintiff makes the remarkable assertion that all nine proposed sub-classes, covering all Maryland telephone subscribers who received unsolicited, pre-recorded telephone calls from April 17, 2002 through the present, may be certified under every sub-section of Maryland Rule 2-231(b). This court has never seen a case that could properly be certified under every part of subsection (b). Thus, the plaintiff's contentions will be examined, in turn.

It is well settled that the burden is on the moving party to demonstrate the appropriateness of certification under one of the subsections of Maryland Rule 2-231(b). *Creveling v. GEICO*, 376 Md. at 88-89 (2003). *See also In re Drexel Burnham Lambert Group, Inc*., 960 F.2d 285, 290 (2d Cir. 1992); *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 647 (C.D. Cal. 1996).

A "no opt-out" class may be certified under Maryland Rule 2-231(b)(1)(A) or (b)(1)(B). These types of classes are relatively rare in state practice.

A subsection (b)(1)(A) class may be proper if there is a high likelihood of separate actions and the party opposing the class (*i.e*., the defendant) is subject to incompatible judgments. This type of class generally is not suitable if the party opposing the class objects to certification and thereby accepts the risks of multiple litigation. Also, if the plaintiff has unique issues or seeks primarily money damages, this type of class is not appropriate. *In re Dennis Greenman Sec. Litig.*, 829 F.2d 1539, 1535 (11th Cir.

[10] The plaintiff's class certification brief is largely boilerplate and preciously short on facts relevant to this case or the merits of class certification.

1987); *Zimmerman v. Bell*, 800 F.2d 386, 389 (4th Cir. 1986), *aff'g*, *Horowitz v. Pownall*, 105 F.R.D. 615, 618 (D.C. Md. 1985); *Doe v. Guardian Life Ins. Co.*, 145 F.R.D. 466, 477 (N.D. Ill. 1992). Here, we have "no" defendants, and the plaintiff seeks primarily money damages, so this type of class is not appropriate.

A subsection (b)(1)(B) class is allowable when a judgment likely would be dispositive of the interests of the class members, or substantially impede their ability to protect their interests. The typical case is where there is a limited fund, such as an insurance policy, or the defendant is or likely will become insolvent. *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992). This case is not suitable for certification under this subsection.

A class may be certified under Maryland Rule 2-231(b)(2) if the defendant's conduct toward each class member (i) is generally the same; and (ii) either injunctive or declaratory relief as to the class as a whole is appropriate. This type of class action is useful where predominately (but not solely) equitable relief is sought, such as in employment discrimination, environmental, and certain antitrust cases. *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239 (3d Cir. 1975), *cert. denied*, 421 U.S. 1011 (1976); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 516-17 (S.D.N.Y. 1996); *Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 322, 328 (N.D. Ill.1995).

It is plain that the plaintiff's primary objective in this case is the receipt of money damages of $500 per call, plus treble damages per call, thus making certification under Rule 2-231(b)(2) inappropriate. *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 329-30 (4th Cir. 2006); *Talley v. ARINC, Inc.*, 222 F.R.D. at 270.

The usual variety of class certified in cases of this type is an opt-out, damages class action under Maryland Rule 2-231(b)(3). Such a class may be certified if, first, questions of law or fact predominate over individual questions and, second, the maintenance of a class action is a superior form of litigation. P*hilip Morris, Inc. v. Angeletti*, 358 Md. at 743-69; *Cutler*, 175 Md. App. at 190-91. *See also Smith v. Shawnee Library Sys.*, 60 F.3d 317, 321 (7th Cir. 1995). The key questions here are whether common issues outweigh individual issues and whether class treatment really will result in more efficient, manageable litigation.

Preliminarily, the plaintiff makes much of the fact that other judges have certified class actions in similar TCPA cases.[11] That may be so, but it does not obviate this court's responsibility to examine the case before it and to carefully apply Maryland Rule 2-231(b)(3). As the Court of Special Appeals recently noted, Maryland "does not share the liberal construction of the class action rule espoused" by other tribunals. *Cutler*, 175 Md. App. at 200.

Having reviewed the amended complaint, the second motion for class certification, and, indeed, the entire case file, the court finds that this case is not suitable for certification under subsection (b)(3). A class action manifestly is not a superior form of action in this specific case. The case has languished for over three years. Two defendants have been dismissed. The plaintiff and the plaintiff's counsel did not appear on the original trial date. Consequently, the court finds that the interest of the named plaintiff in controlling the prosecution of this case is insubstantial. Maryland Rule 2-231(b)(3)(A).

[11] Plaintiff's Second Motion for Class Certification at p. 36. Apparently, filing TCPA cases is a "cottage industry." *See* www.tcpalaw.com.

The court also has grave concerns about the propriety of service of process on defendant Botton. The plaintiff has not even purported to serve Direct Link, and the court wonders whether this entity still exists, much less has resources from which to pay a judgment. Together, these factors militate against class certification in this forum. Maryland Rule 2-231(b)(3)(C).

The court has no confidence that the plaintiff or his counsel can manage, much less prosecute, a class action to a successful conclusion. The plaintiff has not presented the court with any workable plan to navigate his way to a trial on the merits, even though the case is over three years old. Consequently, the court finds that the difficulties in managing this case as a class action have shown themselves to be nearly insurmountable. Maryland Rule 2-231(b)(3)(D). *See generally Philip Morris v. Angeletti*, 358 Md. at 765.[12]

Contrary to the plaintiff's implicit contention, denial of class certification is hardly the "death-knell" for Maryland telephone subscribers aggrieved by pre-recorded messages that violate the TCPA. It would be a simple matter for any aggrieved person, even one acting *pro se*, to file a form complaint in the District Court of Maryland, invoking §§ 14-3201 and 14-3202 of the Commercial Law Article, seeking $500 in damages for each call, plus reasonable attorney's fees if the assistance of counsel is utilized. *See* §§ 4-401(1)(any civil action sounding in contract or tort up to $25,000) and 4-405 (any small claim action up to $5,000) of the Court's Article. The District Court

[12] Indeed, class treatment may be wholly unnecessary as the Federal Communications Commission already has ordered the remaining two defendants to cease violating the TCPA and the Commission's rules. See *Chin v. Chrysler Corp.*, 182 F.R.D. 448 (D.N.J. 1998).

can handle such matters with alacrity.[13] Hence, the court finds that it is neither desirable nor necessary to concentrate TCPA claims of all Maryland residents in a single action. Maryland Rule 2-231(b)(3)(C).

VI.

"Based on the facts of this case, class certification would not do justice to the interests of the named [plaintiff] or absent proposed class members." *Talley v. ARINC, Inc.*, 222 F.R.D. at 271 (Bennett, J.). Consequently, the plaintiff's second motion for class certification (DE # 217) is DENIED and the class allegations (¶¶ 7 through 15) are stricken from the amended complaint. SO ORDERED this 8th day of July, 2008.

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Ronald B. Rubin, Judge

[13] Any putative class members in this case likely will receive the benefit of the tolling rule discussed in *Philip Morris v. Christensen*, 394 Md. 227, 253-57 (2006). Hence, there is little likelihood that their claims will have been "lost" due to the pendency of this action.