United States District Court
for the
Southern District of Florida

Jacob Zowie Thomas Rensel and others, Plaintiffs,	)	
v.	)	Civil Action No. 17-24500-Civ-Scola
Centra Tech, Inc., Defendant.	)	

Order on Plaintiffs' Motion for Class Certification

This matter comes before the Court on Plaintiffs' motion for class certification, appointment of class representatives, and appointment of class counsel. (ECF No. 212). After reviewing the parties' written submissions, the record, and the applicable law, the Court **denies** the Plaintiffs' motion. (**ECF No. 212.**)

I. Background

In December of 2017, the Plaintiffs in this case filed a class action complaint against Defendant Centra Tech and a number of related individuals. Defendant Centra Tech, a company founded in May 2016, purported to sell cryptocurrency, "Centra Tech Tokens" or "CTR Tokens," in an initial coin offering ("ICO"). The ICO allegedly raised funds for, among other things, a debit card backed by Visa and Mastercard that would allow users to instantly use cryptocurrencies to make purchases. Between July 23, 2017 and April 20, 2018, Centra Tech's ICO raised more than $32 million from thousands of investors. The founders of Centra Tech, Defendants Sharma, Farkas, and Trapani are currently the subjects of an SEC enforcement action for securities fraud (*S.E.C. v. Sharma et al.,* No. 18-cv-2909-DLC (S.D.N.Y.)[1] and are being criminally prosecuted in the Southern District of New York for the fraudulent Centra Tech scheme (*United States v. Sharma et al.,* No. 18-cr-340-LGS (S.D.N.Y.)). (Compl. at ¶¶ 60-61, ECF No. 1.)

This case was originally filed against nine defendants; some are co-conspirators in the criminal case, while others were only peripherally involved with the alleged sale of false securities. The Court granted motions to dismiss as to a handful of Defendants and the Plaintiffs voluntarily dismissed the remaining individual Defendants. The only remaining Defendant is Centra Tech, which has

[1] The SEC action is currently stayed during the pendency of the criminal prosecution.

defaulted as of January 31, 2019. (ECF No. 172.) On June 13, 2019, a few days after dismissing the last individual defendant, the Plaintiffs filed a motion for default judgment against Centra Tech and a motion for class certification. (ECF Nos. 211, 212.)

The Plaintiffs propose the following three subclasses:

(1) All persons and entities who purchased CTR Tokens directly from Defendant Centra Tech during Centra Tech's official initial coin offering from approximately June 23, 2017 through October 5, 2017;

(2) All persons and entities who purchased CTR Tokens directly from Defendant Centra Tech during the remainder of Centra Tech's initial coin offering from approximately October 6, 2017 through April 20, 2018; and

(3) All persons and entities who purchased CTR Tokens on the open market as a result of Defendant Centra Tech successfully soliciting their purchases of CTR Tokens.

(ECF No. 212 at 2.)

II. Legal Standard

"Under Rule 23, certification is proper where the proposed classes satisfy an implicit ascertainability requirement, the four requirements listed in Rule 23(a), and the requirements listed in any of Rule 23(b)(1), (2), or (3)." *Karhu v. Vital Pharms., Inc.*, 621 F. App'x 945, 946 (11th Cir. 2015). Under Rule 23(a), the party seeking certification must demonstrate: "(1) that the class is so numerous that joinder of all members is impracticable; (2) that there are questions of law or fact common to the class; (3) that the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) that the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Satisfaction of the Rule 23(a) factors, however, does not end the inquiry, and a class still may not be certified unless one of the requirements of Rule 23(b) are satisfied. *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004).

Where certification is sought under Rule 23(b)(3), the plaintiff must show that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *See* Fed. R. Civ. P. 23(b)(3). In making such determinations, courts consider "the class members' interests in individually controlling the prosecution or defense of separate actions"; "the extent and nature of any litigation concerning the controversy already begun by or against class members"; "the

desirability of undesirability of concentrating the litigation of the claims in the particular forum"; and "the likely difficulties in managing a class action." *Id.*

In reviewing a motion for class certification, the Court must conduct a "rigorous analysis" of the facts and law to determine whether the plaintiff has met its burden of demonstrating compliance with Rule 23. *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 161 (1982); *see also Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1169 (11th Cir. 2010) (citation omitted); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009) (the "burden of proof to establish the propriety of class certification rests with the advocate of the class."). While the district court's class certification analysis "may 'entail some overlap with the merits of the plaintiff's underlying claim,' Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1195 (2013) (citations omitted). Rather, "[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.*

"[I]n cases where a defendant fail[s] to appear, an entry of default by the clerk of the court has not prevented district courts from considering whether to certify a class prior to entry of default judgment against the defendant." *Saade v. Insel Air,* No. 17-22003, 2019 WL 2255580, at *2 (S.D. Fla. April 4, 3019) (Torres, Mag. J.) (citations omitted). A clerk's entry of default "does not change the analysis that a district court must undertake in deciding whether to certify a class[.]" *Id.* "For this reason . . . the party seeking class certification still bears the burden of establishing that certification is proper under Rule 23(a)." *Lankford v. Carnival Corp., No.* 12-24408, 2014 WL 11878383, at *1 (S.D. Fla. Feb. 12, 2014) (Simonton, Mag. J.).

III. Analysis

Federal Rule of Civil Procedure 23(c)(1)(A) requires that a class be certified "[a]t an early practicable time after a person sues or is sued as a class representative." Although the Southern District does not have a corresponding local rule, the Middle and Northern Districts of Florida require that a motion for class certification be filed within 90 days of the filing of the complaint. M.D. Fla. R. 4.04(b); N.D. Fla. R. 23.1. Courts often include a class certification deadline in their scheduling orders to avoid an untimely or late-filed motion for class certification. *See, e.g., Bianchi v. Dynamic Recovery Solutions*, No. 13-61997, 2015 WL 12711584, at *1 (S.D. Fla. April 28, 2015) (Altonaga, J.). And "numerous other courts have held that when a plaintiff has failed to move for class certification in a timely manner . . . such a plaintiff has failed to satisfy the

mandate of Rule 23(a)(4) of fairly and adequately representing the interests of the putative class." *Williams v. Southern Bell T&T Co.*, No. 77-1895, 1978 WL 73, at *2 (S.D. Fla. April 4, 1978) (Hoeveler, J.).

Here, the Plaintiff's motion for class certification was filed 18 months after the filing of the initial complaint and six months after the filing of the First Amended Complaint. (ECF No. 212.) The Plaintiffs' motion offers no excuse or justification for this delay. *See Porter v. Collecto Inc.*, 14-21270, 2015 U.S. Dist. LEXIS 151379 (S.D. Fla. Nov. 2, 2015) (O'Sullivan, Mag. J.) (denying motion for class certification as untimely when filed 18 months after complaint and less than two months before trial). Moreover, the Plaintiffs' delay appears to be a deliberate decision to file the motion when it would be unopposed by a defaulting defendant. Based on the foregoing, the Court finds that the Plaintiffs' motion for class certification is untimely.

Even if the Plaintiffs had filed a timely motion for class certification, the Court finds that the Plaintiffs are unable to demonstrate that their proposed classes are ascertainable. The Plaintiffs argue that the class is ascertainable because "all members of the Class and the subclasses may be identified by records maintained by Defendants and/or virtual currency exchanges[.]" (ECF No. 212 at 14.) The Plaintiffs reference a "spreadsheet" that was provided to the government in the criminal case which provides information regarding over 3,500 purchasers of Centra Tech Tokens. (*Id.*) The Plaintiffs do not provide any additional information about this spreadsheet.

"Rule 23 implicitly requires that the 'proposed class is adequately defined and clearly ascertainable.'" *Karhu*, 621 F. App'x at 946 (quoting *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012)); *Bussey v. Macon Cty. Greyhound Park, Inc.*, 562 F. App'x 782, 787 (11th Cir. 2014) (noting that ascertainability is a "threshold issue"). "In order to establish ascertainability, the plaintiff must propose an administratively feasible method by which class members can be identified." *Karhu*, 621 F. App'x at 947. A class identification method is "administratively feasible" where it is "a 'manageable process that does not require much, if any, individual inquiry.'" *Id.* at 946 (quoting *Bussey*, 562 F. App'x at 787). Moreover, where a plaintiff proposes to identify class members through a defendant's records, he must "*establish* that the records are in fact useful for identification purposes, and that identification will be administratively feasible." *Wasser v. All Market, Inc.*, 329 F.R.D. 464, 472 (S.D. Fla. 2018) (Scola, J.) (quoting *Karhu*, 621 F. App'x at 948). "Thus, where a plaintiff provides no more than unsupported asserti[ons] that class members can be identified using the defendant's records, it does not satisfy the ascertainability requirement." *Id.* (citations and quotations omitted).

Here, the Plaintiffs have failed to proffer any evidence that Centra Tech's records would be useful to identify class members. The only evidence provided by the Plaintiffs is that the government has a spreadsheet that includes a list of individuals that purchased Centra Tech Tokens. (ECF No. 212 at 14.) The Plaintiffs do not assert that they have access to this spreadsheet or that the government would share this spreadsheet, especially during the pendency of a criminal case. The Court takes judicial notice of the criminal complaint filed in the Southern District of New York. *See McDowell Bey v. Vega*, 588 F. App'x 923, 926 (11th Cir. 2014) (noting a judge permissibly took judicial notice of the underlying criminal case's docket). The criminal complaint states that "based on the records provided by Centra Tech to the SEC" the government has a spreadsheet with information regarding Centra Tech Tokens purchased between July 30, 2017 and August 26, 2017 and September 19, 2017 and September 26, 2017. *See Sharma,* No. 18-cr-340-LGS, ECF No. 1 at ¶ 32, (S.D.N.Y. March 31, 2018) The Plaintiffs' proposed classes include "persons or entities" that (1) purchased Centra Tokens between July 23, 2017 and October 5, 2017; (2) October 6, 2017 and April 20, 2018; and (3) purchased Centra Tokens on the open market. (ECF No. 212 at 2.) Therefore, the government's spreadsheet, if provided to the Plaintiffs, would only partially cover one of the three subclasses proposed by the Plaintiffs. The spreadsheet is silent at to Centra Tech Tokens purchased "on the open market."

The Plaintiffs also include a passing reference to "currency exchanges" as a mechanism for identifying plaintiffs. (*See* ECF No. 212 at 14.) The Plaintiffs do not explain how currency exchanges would help identify potential class members. The world of cryptocurrency and currency exchanges is a highly technical area and the Plaintiffs would need to explain to the Court how currency exchanges work, what information is stored, and how the Plaintiffs would access this information to identify potential class members. *See Karhu*, 621 F. App'x at 949 (noting that plaintiff "did not explain to the court" the identification process). Accordingly, the Court finds that, in addition to filing an untimely motion, the Plaintiffs have failed to meet their burden of demonstrating that the proposed classes are ascertainable.

IV. Conclusion

Accordingly, the Court **denies** the Plaintiffs motion for class certification (**ECF No. 212**).

Done and ordered, at Miami, Florida, on September 16, 2019.

Robert N. Scola, Jr.
United States District Judge