

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ARCHIE BEATON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SPEEDYPC SOFTWARE, a British Columbia
company.

Defendant.

Case No. 1:13-cv-08389

Honorable Andrea R. Wood

MOTION TO DECERTIFY CLASS

The named plaintiff in this matter is unable to continue as class representative due to recent developments with his health. Additionally, Defendant SpeedyPC Software (“SpeedyPC”) has repeatedly represented to the Court that it has dissolved its business, has no assets, and is no longer a viable defendant, which likely renders a search for a substitute class representative infeasible. Class Counsel files this Motion at the direction of the Court and to provide the class with notice of the expected decertification. Class Counsel will post the Motion on the Notice Website, where Class Counsel can be contacted, and—should any class members wish to step forward—Class Counsel stand ready to seek default of SpeedyPC and, if necessary, bring the matter to trial.

BACKGROUND

Almost exactly ten years ago, on November 20, 2013, Plaintiff Archie Beaton (“Plaintiff”) filed suit against Defendant SpeedyPC, a Canadian computer software company, alleging that SpeedyPC engaged in fraudulent and deceptive marketing. (Dkt. 1.) After defeating Defendant’s motion to dismiss and substantially completing discovery, Plaintiff filed his motion

to certify the class on January 27, 2017. (Dkt. 125.) On October 19, 2017, upon a substantial record and following extensive discovery and motion practice, the Court certified a nationwide class of purchasers of SpeedyPC's software and a subclass of Illinois residents asserting Illinois state law claims under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"). (Dkt. 201.) SpeedyPC then sought appeal of this Court's class certification decision, which the Seventh Circuit accepted on December 15, 2017. (Dkt. 208.) After briefing and oral argument, Plaintiff prevailed in the appellate court a year later in a decision issued on December 6, 2018. (Dkt. 239, *cert. denied*, 139 S. Ct. 1465 (2019).)

After returning to this Court and following the Court's approval of Class Notice (dkt. 309), Plaintiff's counsel together with the Notice Administrator worked diligently to effectuate notice to the class, including through website notice, which is explained in extensive detail in the record, (*see* dkt. 323.) The Notice Administrator maintains the website for class notice purposes and class members have been directed to access the website for case updates.¹

Thereafter, on May 11, 2021, SpeedyPC moved for summary judgment on all of Plaintiff's claims (dkt. 333), and briefing was completed on July 13, 2021. (Dkt. 345.) On March 30, 2023, the Court granted in part and denied in part SpeedyPC's motion for summary judgment—thereby dismissing the nationwide class's claims and preserving the claims asserted by Plaintiff and subclass members under the ICFA. (Dkt. 382.)

Over the past year, Defendant SpeedyPC has repeatedly represented it is no longer in business and has no assets. (*See, e.g.*, dkt. 366 (December 21, 2022 Status Report filed by SpeedyPC noting the company is no longer in business and is expected to be dissolved by the

¹ Class members may view case updates, including updates about this Motion and the Court's scheduled hearing on it, at the following publicly accessible website: <https://www.softwareclassaction.com/>.

British Columbia Registrar sometime in early 2023).) This has occurred in both discovery responses and in repeated representations (through counsel) to the Court that SpeedyPC has no assets and has wound down operations. (*Id.*; *see also, e.g.*, Dkts. 387, 387-1 (May 11, 2023 Status Report memorializing SpeedyPC’s representations that it has no assets).) When the Court ordered a representative of SpeedyPC to appear in court, no such representative appeared. (Dkt. 394.)

On October 10, 2023, counsel for Plaintiff informed the Court that the named Plaintiff was unable to continue to serve as Class Representative due to recent health developments and provided additional detail to the Court in an *in camera* proceeding. (Dkts. 396-97.) The Court directed Plaintiff’s counsel to file this Motion to Decertify.

ARGUMENT

A. Decertification is appropriate in light of Plaintiff’s inability to represent the class and Defendant’s business dissolution.

It is well-established under the federal rules that “[a]n order that grants or denies class certification may be altered or amended before final judgment.” Fed. R. Civ. P. 23(c)(1)(C). It is rare that decertification is appropriate, but where—as here—a named plaintiff is unable to continue due to health reasons and there is no adequate representative to step in, decertification is the only possible result.

Recent changes to Plaintiff’s health impair his ability to continue serving as class representative. In the normal course, the appropriate path would be to seek out a new representative rather than decertify. *See, e.g., CE Design Ltd. v. King Architectural Metals, Inc.*, 637 F.3d 721, 728 (7th Cir. 2011). But Defendant has provided sworn discovery responses and repeatedly represented to the Court that it has no assets. (*See* Dkts. 366, 387-1.) Given the substantial likelihood of non-recovery, despite the sound merits of the case, counsel is unable

recommend to a new potential named plaintiff that continuing to pursue SpeedyPC is a worthwhile endeavor, given the substantial likelihood that plaintiff will end up recovering nothing.

B. Since there is no prejudice to the class, notice of this Motion and the eventual decertification on the Notice Website is sufficient.

Class notice upon decertification is necessary and appropriate where there is prejudice to the class in the dismissal; that is, where there's some meaningful action for the class to take. *See Culver v. City of Milwaukee*, 277 F.3d 908, 914-15 (7th Cir. 2002) (notice required where there is some "prejudice" to the class). In light of the reality of non-recovery, there is no meaningful prejudice and notice is likely not required at all. However, Class Counsel previously provided notice that directed Class members to the Notice Website for case updates (dkt. 242; 242-1-3), which has been consistently maintained since notice was originally approved and issued. (Dkt. 309.) Class Counsel has posted this Motion to the Notice Website and will also post any order the Court enters disposing of the Motion.

CONCLUSION

Accordingly, the Court should grant Plaintiff counsel's Motion to Decertify the subclass and further grant Plaintiff counsel's proposal to provide website notice to class members of the decertification.

Dated: November 8, 2023

Respectfully submitted,

By: s/ J. Eli Wade-Scott
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