

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LINDA ROUNDTREE,

Plaintiff,

v.

Case No: 8:14-cv-357-T-27AEP

BUSH ROSS, P.A.,

Defendant.

ORDER

BEFORE THE COURT is Defendant's Motion for Reconsideration (Dkt. 69) and Plaintiff's response (Dkt. 72). Upon consideration, the motion is DENIED.

The motion seeks reconsideration of the Order (Dkt. 66) adopting in part the Magistrate's Report and Recommendation (Dkt. 58) and certifying a class subject to Rule 23.

Reconsideration is justified only by (1) an intervening change in controlling law, (2) new evidence, and/or (3) clear error or manifest injustice. *Del. Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1383 (11th Cir. 2010) (quoting *Degirmenci v. Sapphire-Ft. Lauderdale, LLLP*, 642 F. Supp. 2d 1344, 1353 (S.D. Fla. 2009)). "A motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made." *Id.* at 1384 (quoting *Z.K. Marine, Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)). "Rather, it is appropriate where the 'Court has patently misunderstood a party, or has made a decision outside of the adversarial issues presented to the Court by the parties, or has made an error not of reasoning, but of apprehension. . . . Such problems rarely arise and the motion to reconsider should be equally rare.'" *Id.* (quoting *Ass'n for Disabled Ams., Inc. v. Amoco*

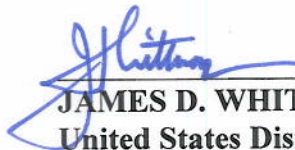
Oil Co., 211 F.R.D. 457, 477 (S.D. Fla. 2002)).

Defendant largely rehashes its arguments in opposition to class certification, which do not present any grounds justifying reconsideration. Most of these arguments have already been considered and rejected in the Report and Recommendation and the Order adopting the Report and Recommendation in part.

One of Defendant's arguments warrants further discussion. Defendant contends the class definition, which includes only persons whose debt "was incurred for personal, family, or household purposes," creates an impermissible fail-safe class. This misapprehends the nature of fail-safe classes. A fail-safe class "includes *only* those who are *entitled* to relief." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 538 (6th Cir. 2012) (emphasis original). Here, as Defendant argues elsewhere in the same motion, the determination of whether potential members' debt was incurred for personal, family, or household purposes does not automatically entitle class members to relief. (Dkt. 69 pp.7-10). This "proves the point" that the class is "not a proscribed fail-safe class." *Young*, 693 F.3d at 538.

Accordingly, Defendant's Motion for Reconsideration (Dkt. 69) is **DENIED**.

DONE AND ORDERED this 27th day of April, 2015.



JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record