

In the Circuit Court of Logan County, West Virginia

Kelsey Starr,  
Plaintiff,  
vs.)  
Health Care Alliance, Inc.,  
Alcoa Billing Center,  
HCFS Health Care Financial Services,  
LLC,  
Defendants )

Case No. CC-23-2020-C-53

Order Granting Plaintiff's Motion To Compel

ON November 18, 2020, came the Plaintiff, by and through counsel Steven S. Wolfe, Esq., and the Defendants, by counsel Caleb David, for a hearing upon Plaintiff's Motion To Compel, Defendant's Response, and Plaintiff's Reply. After considering the filings and hearing argument of counsel, the court hereby GRANTS the Plaintiff's Motion and finds and orders as follows:

1. The Amended Complaint alleges that Defendant HCFS Health Care Financial Services, LLC has violated various consumer states and purports to bring claims "on behalf of all West Virginia residents who (1) received written communications from defendants attempting to collect debt using the name Alcoa or Alcoa Billing Center while defendants were not licensed and bonded in West Virginia to do so."
2. "The question of the relevancy of the information sought through discovery essentially involves a determination of how substantively the information requested bears on the issues to be tried. However, Under Rule 26(b)(1) of the West Virginia Rules of Civil Procedure, discovery is not limited only to admissible evidence, but applies to information reasonably calculated to lead to the discovery of admissible evidence." Syl. Pt. 4, *State Farm Mutual Automobile Insurance Co. v. Stephens*, 188 W.Va. 622, 425 S.E.2d 577 (1992).
3. "Where a party seeks to proceed as a class representative under Rule 23 of the West Virginia

Rules of Civil Procedure [1998], and where issues related to class certification are present, reasonable discovery related to class certification issues is appropriate, particularly where the pleadings and record do not sufficiently indicate the presence or absence of the requisite facts to warrant an initial determination of class action status. "[A]n exploration beyond the pleadings is essential to make an informed judgment on the propriety of a proposed spurious class action." *Love v. Georgia Pacific Corp.*, 214 W.Va. 484, 590 S.E.2d 677 (W. Va. 2003) (quoting *Burks v. Wymer*, 172 W.Va. 478, 485, 307 S.E.2d 647, 654 (1983) (discussing a prior version of Rule 23).

4. The court finds that name of the original creditor, account number, amount allegedly owed, and current balance goes towards proving at the certification stage common questions of fact or law, typical claims or common defenses, i.e. 'commonality' and 'typicality.'
5. The Court agrees with Plaintiff that Request For Production No 11, and Interrogatory No. 3, seeks relevant and permissible discovery pursuant to Rule 26 at this pre-certification stage of discovery to afford Plaintiff the opportunity to meet their burden under Rule 23(a) numerosity, commonality, typicality, adequacy, and at least one Rule 23(b) ground.
6. The Defendant is ordered to supplement their response to Request For Production No. 11 and Interrogatory No. 3 within (60) sixty days of the entry of this order. The Court orders that responses should include, in searchable format, all individuals who received communications from Defendant HCFS between June 2016 and time of the filing of the Complaint sent to a West Virginia billing address not limited to only patients of Logan Regional Medical Center, as follows:
  - a. Name and address of the individual receiving the letter
  - b. Date of letter
  - c. Name of the original creditor
  - d. Account number
  - e. Amount allegedly owed, and

f. Current balance owed

7. The responses and answers are deemed protected and shall not be disclosed by Plaintiff, or Plaintiff's counsel, outside the scope of this litigation, and Plaintiff shall return or destroy the protected health information at the end of the litigation or proceeding.
8. This Order is made pursuant to 45 C.F.R. 164.512(e)(v) 'permissible disclosures' at the order of the court as a qualified protective order – A) prohibiting the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information is requested; B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.
9. The Court orders the Defendant HCFS to supplement their response to Interrogatory No. 13 within ten (10) days of this ruling.
10. The Court orders the Defendant HCFS to supplement their response to Interrogatory No 14 within ten (10) days of this ruling.
11. The Plaintiff does not request fees or costs in bringing this motion to compel.
12. The Defendants' objections and exceptions to this discovery ruling are hereby noted and preserved for the record.

Prepared By:  
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/s/ Eric O'Briant 20-C-53