

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 7 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JEFF POKORNY; et al.,

Plaintiffs-Appellees,

DENNIS OBADO,

Objector-Appellant,

v.

QUIXTAR, INC.; et al.,

Defendants-Appellees.

No. 13-17141

D.C. No. 3:07-cv-00201-SC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Samuel Conti, District Judge, Presiding

Submitted July 5, 2016**
San Francisco, California

Before: SILVERMAN and NGUYEN, Circuit Judges and GARBIS,*** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Marvin J. Garbis, District Judge for the United States
District Court for the District of Maryland, sitting by designation.

Dennis Obado appeals from a district court order denying his motion to be reinstated as a class member after he had previously opted out. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. While there may be circumstances where equity requires a district court to allow a person to rejoin a class after opting out, this is not such a case. Obado's motion to rejoin the class was filed more than nine months after the opt-out deadline and more than two months after the second claims deadline. His excuse for that late filing—that he never received the January 13 claims notice—was contradicted by the claims administrator's representations that the notice was mailed to Obado's address and not returned as undeliverable. Under these circumstances, the district court was well within its discretion in denying Obado's motion.

2. Obado's ineffective assistance of counsel claim is not cognizable. Such a claim does not exist in the civil context. Even if it did exist, it would lack merit here. Class counsel did not represent Obado during the relevant proceedings.

AFFIRMED.