

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CRYSTAL BYRD and BRIAN BYRD,)	
Individually, and on Behalf of all)	
Similarly Situated Persons,)	
)	
Plaintiffs,)	Civil Action No. 11-101
)	
v.)	Judge Cathy Bissoon
)	
AARON’S, INC., <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case was referred to United States Magistrate Judge Susan Paradise Baxter for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.C, 72.D and 72.G of the Local Rules for Magistrates.

On August 4, 2017, the Magistrate Judge issued a Report and Recommendation (Doc. 507) recommending that Plaintiffs’ Renewed Motion to Certify Class (Doc. 439) be denied. Service of the Report and Recommendation was made on the parties, and Plaintiffs timely filed objections (Doc. 508) to which Defendants timely filed Responses (Docs. 511 and 512).

This Court conducted a *de novo* review of the issues raised by Plaintiffs’ objections, together with the Report and Recommendation.

Plaintiffs’ objections raise two primary issues: that their proposed revised class definition and methodology for determining alleged violations of the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*, satisfy the predominance requirement of class certification under Federal Rule of Civil Procedure 23(b)(3). The Court has considered, and now rejects, these arguments. First, assuming for argument’s sake that the Court were to entertain Plaintiffs’

revised class definition, the revised definition does not create predominance for the reasons adequately set forth in Defendants' responses to Plaintiffs' objections. Second, the second expert report by Dr. Micah Sherr (Doc. 463-5) has been stricken. However, even if the Court were to consider it, the methodology suggested therein does not eliminate many of the central predominance issues raised by both the Magistrate Judge and the Defendants in this case. For the reasons set forth in the Magistrate Judge's thorough Report and Recommendation, as augmented herein, Plaintiffs' renewed motion to certify the class is DENIED.

Accordingly, the following Order is entered:

The Renewed Motion to Certify Class (**Doc. 439**) is **DENIED**, and the Report and Recommendation of Magistrate Judge Baxter dated August 4, 2017, as augmented above, is hereby adopted as the opinion of the District Court.

IT IS SO ORDERED.

September 26, 2017

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record