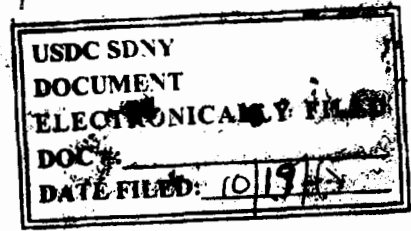


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X
MARK LEYSE, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

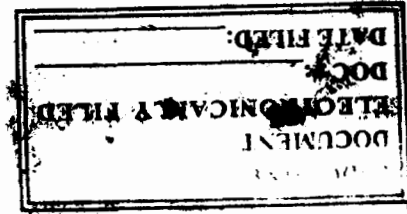
-against-

LIFETIME ENTERTAINMENT SERVICES, LLC,

Defendant.
----- X

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

13 Civ. 5794 (AKH)



ALVIN K. HELLERSTEIN, U.S.D.J.:

On September 22, 2015, the Court denied Plaintiff's motion for class certification.

On October 6, 2015, Plaintiff moved for reconsideration of that order. Plaintiff's motion for reconsideration is denied. The arguments all were made previously. Nothing more has been shown. See Shrader v. CSX Transp., 70 F.3d 255, 256-57 (2d Cir. 1995); Kunica v. St. Jean Fin., Inc., 63 F. Supp. 2d 342, 346 (S.D.N.Y. 1999).

Leyse's proposed class fails to meet the ascertainability requirement of Fed. R. Civ. P. 23(b). See Brecher v. Republic of Argentina, No. 14-4385, --- F.3d ---, 2015 WL 5438797, at *2 (2d Cir. Sept. 16, 2015). The "touchstone of ascertainability" is whether the class is "sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." Id. (internal quotations omitted). Documentary evidence has not established, nor does it seem likely that it will establish, the parameters of the class.

The parties, despite full opportunity of discovery, have not discovered any copy of a list said to have been used by a third party to call telephone numbers. Nor could class members realistically be expected to recall a brief phone call received six years ago or be expected to retain any concrete documentation of their receipt of such a phone call. Plaintiff's

request for still another opportunity to conduct discovery again is denied, as is its entire motion for reconsideration.

The Clerk shall mark the motion (Doc. No. 98) terminated.

The status conference, previously ordered by my order of September 30, 2015, will be held on the adjourned date of October 23, 2015, Courtroom 14D, 10:00 a.m.

SO ORDERED.

Dated: New York, New York
October 19, 2015



ALVIN K. HELLERSTEIN
United States District Judge