
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CHARLES ROBERTS, an individual, and
KENNETH MCKAY, an individual, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

C.R. ENGLAND, INC., a Utah corporation;
OPPORTUNITY LEASING, INC., a Utah
corporation; and HORIZON TRUCK
SALES AND LEASING, LLC, a Utah
Limited Liability Corporation,

Defendants.

**ORDER APPROVING CLASS
NOTICE PROGRAM**

Case No. 2:12-cv-00302-RJS-BCW

Judge Robert J. Shelby
Magistrate Judge Brooke C. Wells

Plaintiffs move for approval of a class notice program, including proposed Mail and Long-Form Notices.¹ Defendants object to Plaintiffs' proposal² on the basis that the notice fails to (1) delineate a specific class period for each of Plaintiffs' claims and (2) notify class members of alleged restrictions on statutory remedies.³ The court finds Plaintiffs' proposed notice program sufficient under Federal Rule of Civil Procedure 23 and approves the proposal, with modifications as noted in this Order.

¹ Dkt. 307.

² Dkt. 312.

³ Defendants also object on the basis that the notice fails to notify class members that they must opt in to claims under the Utah Consumer Sales Practices Act (UCPSA). In a separate Memorandum Decision and Order, the court considered and ultimately rejected Defendants' assertion that an opt-in requirement applied to Plaintiffs' UCSPA claim. Dkt. 452 at 11.

Under Rule 23(c)(2)(B), “the court must direct to class members the best notice that is practicable under the circumstances.” Notice must include, in clear and concise terms:

(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).⁴

In order to adequately define the class, notice must identify a relevant time frame; however, it need not delineate beginning and end dates for each separate claim asserted.⁵

Plaintiffs’ proposed notice defines the class period as beginning May 27, 2007 and extending “to the present.”⁶ May 27, 2007 is the earliest date on which a class member could have signed an agreement placing them within the statute of limitations period for at least one of Plaintiffs’ asserted claims. As for the class end date, Plaintiffs agree to adopt January 31, 2017 as the class period end date for all claims.⁷

In the same vein, Rule 23 does not require that notice identify the remedies available for each asserted claim.⁸ Thus, notice in this case need not inform potential class members of the specific remedies available in a class action under the UCSPA, UBODA, or UTIAA.

In addition, Defendants request minor modifications to the proposed notice language, and two changes to Plaintiffs’ proposed notice program.⁹ Plaintiffs agree to each of Defendants’ requests.¹⁰ These requests are reflected in the court’s Order below.

⁴ FED. R. CIV. P. 23(c)(2)(B).

⁵ See MANUAL FOR COMPLEX LITIGATION (4th) § 21.222 (“The [class] definition must be precise, objective, and presently ascertainable. For example, the class may consist of those persons and companies that purchased specified products or securities from the defendants during a specified period, or it may consist of all persons who sought employment or who were employed by the defendant during a fixed period.”).

⁶ Dkt. 307-1 at 2.

⁷ Dkt. 344 at 13. January 31, 2017 is date the class was certified. Dkt. 304.

⁸ The parties dispute whether statutory damages are available for Plaintiffs’ statutory claims. Defendants agree that this issue should be deferred until the summary judgment stage, or “another appropriate time.” Dkt. 373 at 19.

The court is satisfied that with the modifications noted in this Order, Plaintiffs' proposed notice program provides sufficient information about the case "to enable class members to make an informed decision about their participation,"¹¹ and otherwise satisfies the requirements of Rule 23.

For the foregoing reasons, the court GRANTS Plaintiffs' Motion for Approval of Class Notice Program¹² and hereby:

1. APPROVES the proposed class notices, attached as Exhibits 1 and 2 to Plaintiffs' Motion, as modified to reflect a class end date of January 31, 2017 and with the minor language changes proposed by Defendants in Part IV of their Opposition to Plaintiff's Motion;¹³

2. APPROVES A.B. Data, Ltd., as "Notice Administrator" to supervise and carry out the notice procedure;

3. DIRECTS Defendants, within twenty-eight (28) days of this Order, to compile and provide to the Class Counsel and the Notice Administrator a list of names, addresses, social security numbers, home, cell, and alternate/emergency contact telephone numbers, and email addresses of the potential Class Members as they appear in Defendants' records or other records in their custody or control (including those maintained by Eagle Atlantic Financial Services, Inc., an affiliated company that handles collections) and in an electronic format that is readily usable by the Notice Administrator, and further directs Defendants to otherwise cooperate in ensuring that the information regarding the potential Class Members is as complete and accurate as possible;

⁹ Dkt. 312 at 9-10.

¹⁰ Dkt. 319 at 3 n.2.

¹¹ MANUAL FOR COMPLEX LITIGATION (4th) § 21.311.

¹² Dkt. 307.

¹³ Dkt. 312 at 9.

4. DIRECTS the Notice Administrator to compile a list of names, addresses, email addresses, and telephone numbers of the potential Class Members as they appear in Defendants' records;

5. DIRECTS Plaintiffs to make available on www.CREnglandClassAction.com the Long-Form Notice, the operative Complaint and Answer, the Certification Order, an Exclusion Request form, an address for mailing requests for exclusion, and such other helpful information for potential Class Members;

6. DIRECTS the Notice Administrator to establish a toll-free telephone number where potential Class Members may call for additional information;

7. DIRECTS the Notice Administrator to send through U.S. first-class mail, as soon as practicable but no later than fourteen (14) days of receiving the Class Member information (the "Notice Date"), the Mailed Notice, substantially in the form attached as Exhibit 1, to each potential Class Member identified on the list, informing them of this class action. Among other things, the Mailed Notice shall provide a website address, phone number, information on how Class Members can obtain a Long-Form Notice (substantially in the form attached as Exhibit 2), which includes: (i) more detail about the litigation and answers to frequently asked questions; (ii) an address for sending requests for exclusion from the Class; and (iii) information as to how Class Members can update their information;

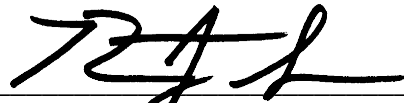
8. DIRECTS the Notice Administrator to send, via email, within ten (10) days of the Notice Date, the Mailed Notice (substantially in the form attached as Exhibit 1), with a link to the Long-Form Notice (substantially in the form attached as Exhibit 2), to each potential Class Member with an email address on the list referenced above;

9. DIRECTS that the deadline for exclusion from the Class shall be forty-five (45) days after the Notice Date (“Opt-Out Deadline”), and orders that any Class Member who does not send a completed, signed request for exclusion to the Notice Administrator post-marked on or before the Opt-Out Deadline will be deemed to be a member of the Class for all purposes and bound by all further orders and judgments of the Court, and orders that all opt-outs shall not be so bound, but also barred from sharing in any recovery;

10. DIRECTS the Notice Administrator to provide Class Counsel and counsel for Defendants with a list of individuals for whom notice could not be delivered and a list of all timely requests for exclusion within seven (7) business days after the Opt-Out Deadline, and directs Class Counsel to file such list with the Court within three (3) business days thereafter.

SO ORDERED this 26th day of March, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. J. Shelby', is written over a horizontal line.

ROBERT J. SHELBY
United States District Judge