

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No. CV 09-4957 CAS (RCx) Date January 4, 2012

Title LONNIE R. SMITH, ETC. v. CEVA LOGISTICS U.S., INC.; ET AL.

Present: The Honorable CHRISTINA A. SNYDER

CATHERINE JEANG

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers:) **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ORDER ADOPTING PLAINTIFF'S PROPOSED CLASS NOTICE** (filed 12/02/11)

I. INTRODUCTION & BACKGROUND

The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of January 9, 2012, is hereby vacated and the matter is taken under submission.

On June 3, 2009, plaintiff Lonnie R. Smith, on behalf of a class of "freight forwarders," filed the instant class-action suit in Los Angeles County Superior Court. The case was timely removed to this Court on July 10, 2009. The gravamen of plaintiff's complaint is that defendants improperly denied him, and a class of "freight forwarders," pay for all of the hours they worked for defendants, including overtime compensation and wages for missed meal periods. On July 25, 2011, the Court granted in part and denied in part plaintiff's motion for class certification. *See* Dkt. No. 58 at 14. Specifically, the Court granted the motion with respect to plaintiff's meal break claim but denied the motion with respect to plaintiff's off-the-clock claim. *Id.*

On December 2, 2011, plaintiff filed a motion for an order adopting his proposed class notice. Dkt. No. 79. Defendants filed an opposition on December 19, 2011, and plaintiff filed a reply on December 27, 2011. Dkt. Nos. 83, 84. After carefully considering the arguments set forth by both parties, the Court finds and concludes as follows.

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II. DISCUSSION

Defendants assert two objections to plaintiff's proposed class notice. First, defendants argue that the notice should include a prepaid opt-out form. Opp'n at 3–4 (relying on Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811 (1985) (holding that including a preprinted opt-out form satisfies due process requirements); In re Wal-Mart, Inc., 2008 Dist. LEXIS 109446 (N.D. Cal. May 5, 2008) (granting Wal-Mart's request to include a prepaid opt-out card with the notice); Morales v. Stevco, Inc., 2011 U.S. Dist. LEXIS 130604, *40–41 (E.D. Cal. Nov. 10, 2011) (granting request to include opt-out card); Andrews Farms v. Calcot, Ltd., 2011 U.S. Dist. LEXIS 82409, *36–37 (E.D. Cal. July 18, 2011) (same); Cruz v. Dollar Tree Stores, Inc., 2009 U.S. Dist. LEXIS 62817, *5 (N.D. Cal. July 2, 2009) (same); Tierno v. Rite Aid Corp., 2007 U.S. Dist. LEXIS 89582 (N.D. Cal. Nov. 19, 2007) (same)). Second, defendants contend that the notice should apprise potential class members that if they remain in the class they may be called to testify at a deposition and/or trial. Id. at 5–6 (relying on Otto v. Variable Annuity Life Ins. Co., 730 F. Supp. 145, 150 (N.D. Ill. 1990) (“[L]anguage informing the class of the possibility of individual discovery requests must be inserted.”); Baden-Winterwood v. Life Time Fitness, 2006 U.S. Dist. LEXIS 53556, *5–6 (S.D. Ohio Aug. 2, 2006) (approving language that informed class members about potential discovery and testimonial obligations); Heaps v. Safelite Solutions, LLC, 2011 U.S. Dist. LEXIS 40089, *20–21 (S.D. Ohio April 5, 2011) (approving language apprising potential class members that they may be required to appear for deposition and/or trial)). Plaintiff opposes these objections, stating that their proposed form of notice is in a form approved by the Federal Judicial Center. Reply 4. Plaintiff further contends that the inclusion of a preprinted opt-out form will engender unnecessary confusion and CEVA's proposal to apprise the class members that they may be called to testify is a “misleading threat.” Id. at 2–3.

Upon careful consideration of defendants' objections, the Court finds them to be unavailing. First, while class notices that included postage-prepaid opt-out forms have been approved by some courts, no case cited by defendants supports the proposition that the class notice must contain a postage prepaid opt-out form. Moreover, the weight of authority recognizes that plaintiff's proposed form of notice, directing class members to write letters setting forth their decision to opt-out of the class, is appropriate. See Roberts v. Heim, 130 F.R.D. 416, 423 (N.D. Cal. 1988) (“[I]t is not necessary to provide a separate exclusion form. The Court finds that on balance, such a separate form will engender confusion and encourage [class members] to unwittingly opt out of the class.”);

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In re Prudential Ins. Co. of Am. Sales Practices Litig., 962 F. Supp. 450, 530 (D. N.J. 1997) (“Courts have often refused to allow an opt-out form to be included with a class notice, however, because the approach creates more confusion than it remedies.”); In re Domestic Air Transp. Antitrust Litig., 141 F.R.D. 534, 554 (N.D. Ga. 1992) (“This Court agrees with plaintiffs that the inclusion of a preprinted opt-out form will confuse class members and result in unnecessary costs.”). Further, insofar as defendants seek to insert language apprising class members that they may be called to testify, such language is surplusage and appears to be intended to chill class members from remaining in the class. See In re Wal-Mart Stores, Inc., 2008 U.S. Dist. LEXIS 109446, *18 (N.D. Cal. 2008) (finding that “inclusion of language warning” class members that they may be required to answer questions under oath “is unnecessary . . . inappropriate . . . and likely to discourage them from remaining a part of the class”); Roberts, 130 F.R.D. at 423 (same). See also Federal Judicial Center form notice, available at www.fjc.gov (reflecting nearly identical language adopted by plaintiff’s proposed notice).

III. CONCLUSION

In light of the foregoing, the Court overrules defendants’ objections. Accordingly, the Court GRANTS plaintiffs motion and hereby approves its proposed form of class notice.

IT IS SO ORDERED.

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 Initials of Preparer CMJ
