
Barry Sewall, Shamika Gregory, and Jerome
Gregory, each individually and on behalf of
all others similarly situated,

Court File No. 27-CV-22-10389

Plaintiffs,

vs.

Home Partners Holdings LLC, SFR
Acquisitions 1 LLC, and OPVHHJV LLC,
d/b/a Pathlight Property Management,

Defendants.

ORDER APPROVING FORM OF CLASS NOTICE AND PLAN OF NOTICE

The above-entitled matter came duly before the Honorable Christian Sande, Judge of the above-named court, on Wednesday, March 06, 2024 at the Hennepin County Government Center, Minneapolis, Minnesota.

Anne Regan and Joseph Bourne, Attorneys at Law, appeared on behalf of the plaintiffs.

Michael Cockson, Diego Garcia, and Andrew Bloomer, Attorneys at Law, appeared on behalf of the defendants.

Based upon all the files, records, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Plaintiffs' Motion for Approval of the Form of Class Notice and Plan of Notice is

GRANTED AS MODIFIED as follows:

- a. Plaintiffs' notice program shall consist of: (1) direct mail via the United States Postal Service of a Short Form Notice to all class members whose email address

cannot be reasonably identified; and (2) direct email of a Long Form Notice to all class members whose email address can be reasonably identified.

- b. The Court approves the Short Form Notice and Long Form Notice which are attached as Exhibit A (“Long Form Notice”) and Exhibit B (“Short Form Notice”), subject to the following modification:
 - i. Any references to injunctive relief claims in Plaintiffs’ Short Form Notice and Long Form Notice shall be removed and not included.
- c. Plaintiffs’ Notice Administrator is authorized to make minor typographical corrections and modifications necessary to ensure proper printing and delivery without requesting advanced permission of the Court. Plaintiffs must notify Defendants of any such modifications as soon as reasonably possible.
- d. The Court approves the creation of a case-specific litigation website, email address, and toll-free phone number using a script based on the approved Long Form Notice language.
- e. The Court appoints Atticus Administration LLC as the Notice Administrator (“Administrator”).
 - i. The Administrator shall cause the Short Form Notice to be mailed via the United States Postal Service on or before 45 days after this Order is issued to all Class Members at the address of each stated in the records of Defendants as updated via the Notice Plan that an email address has not been identified through reasonable efforts.
 - ii. The Administrator shall cause the Long Form Notice to be emailed on or before 45 days after this Order is issued to all Class Members at the email

address of each as stated in the records of Defendants or who otherwise can be identified through reasonable efforts of the Administrator.

- iii. The Administrator will file with the Court proof of email and mail distribution of the Class Notice.
- iv. The Administrator shall cause the Short Form Notice to be mailed a second time via the United States Postal Service to any Class Member for whom the Administrator receives notice that its first mailing address is returned as undeliverable if the Administrator is able to identify an updated mailing address after taking reasonable steps to identify such an updated address, or for those Class Members who are emailed the Long Form Notice that the Administrator receives notification that the emailed Long Form Notice was not properly delivered via email as soon as reasonably possible after such notification.
- v. The Administrator shall cause the creation of the case-specific litigation website, to be made publicly available and updated with relevant court information and documents.
- vi. The Administrator shall cause creation of the toll-free number, with a tollfree script in substantially the same form to the approved content contained in Exhibit A and Exhibit B (subject to the modifications to be made therein), to be available 24 hours a day, 7 days a week that Class Members may call for more information about the lawsuit.

- f. Each Class Member shall have the right to be excluded from the Class by submitting the required information in paper form postmarked within 45 days of the date Notice is sent.
 - g. No later than 30 days after the deadline for exclusion, Class Counsel shall file with the Court a list of all persons and entities who have timely requested exclusion from the Class.
 - h. Except for those potential Class Members who file a timely request for exclusion all others will be deemed members of the Class except for the Class definition exclusions.
- 2. The attached Memorandum is incorporated by reference in this Order.
 - 3. All prior and consistent orders shall remain in full force and effect.
 - 4. Service of a copy of this order shall be made upon self-represented parties by first class U.S. mail at their address(es) last known to the Court Administrator, or to attorneys by e-service, which shall be due and proper service for all purposes.

Dated: April 10, 2024

BY THE COURT:



Christian Sande
Judge of District Court

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MEMORANDUM

I. Background

This case commenced on July 12, 2022. On July 20, 2022, Defendants Home Partners Holdings LLC, SFR Acquisitions I LLC, and OPVHHJV LLC, d/b/a Pathlight Property Management (Defendants) filed an Amended Notice of Motion and Motion in Support of Partial Motion to Dismiss and supporting papers. The Court held a hearing on the defendant's motion on October 25, 2022. On January 23, 2023, the Court issued an Order Denying Partial Motion to Dismiss. On February 23, 2023, Plaintiffs Barry Sewall, Shamika Gregory, and Jerome Gregory (Plaintiffs) filed a Second Amended Complaint.

On May 15, 2023, Plaintiffs filed a Notice of Motion and Motion for Class Certification and for Appointment of Class Representatives and Class Counsel and supporting papers. On June 6, 2023, Defendants filed a Notice of Motion and Motion for Partial Summary Judgment on Plaintiffs' claims. The Court heard oral argument on the parties' cross-motions on July 14, 2023. On October 3, 2023, the Court issued an Order Granting, in Part, and Denying, in Part, Motion for Class Certification.¹ The October 3, 2023 Order granted the following class definitions for the certified claims and certified the Damages Class and Injunctive Relief Class:

a. Damages Class:

All persons within the State of Minnesota who, since March 1, 2016, paid rent or other fees to Defendants pursuant to a lease.

b. Injunctive Class:

All persons within the State of Minnesota who, since March 1, 2016, have entered into a lease with Defendants.²

¹ That same day, the Court issued an Order Granting, in part, and Denying, in part, Motion for Summary Judgment.

² Order Granting, in part, and Denying, in part, Mot. for Class Cert. ¶ 6 (Oct. 3, 2023).

The Damages Class seeks exclusively money damages, and the Injunctive Class seeks exclusively injunctive and declaratory relief. On November 2, 2023, Defendants petitioned the Minnesota State Court of Appeals for permission to appeal the Court's class certification ruling pursuant to Minnesota Rule of Civil Procedure 23.06. On January 2, 2024, the Minnesota State Court of Appeals entered judgment denying Defendants' Minnesota Rule of Civil Procedure 23.06 petition for permission to appeal.

On February 14, 2024, Plaintiffs filed a Notice of Motion and Motion by Plaintiffs and the Damages Class for Approval of the Form of Class Notice and Plan of Notice and supporting papers. On February 21, 2024, Defendants filed a responsive memorandum. On February 28, 2024, Plaintiffs filed a reply memorandum. The Court heard oral argument on March 6, 2024, and took this matter under advisement.

On April 5, 2024, counsel for Plaintiffs informed the Court that the parties have resolved the remaining class notice issues, with the exception of the Rule 23.03(b)(1)/injunctive relief content issue pending before the Court, which were discussed during the March 6, 2024 hearing.

II. Legal Standard

Minn. R. Civ. P. 23.03(b) governs class notice:

Notice. (1) For any class certified under Rule 23.02(a) or (b), the court may direct appropriate notice to the class.

(2) For any class certified under Rule 23.02(c), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

- (A) the nature of the action,
- (B) the definition of the class certified,
- (C) the class claims, issues, or defenses,

(D) that a class member may enter an appearance through counsel if the member so desires,

(E) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and

(F) the binding effect of a class judgment on class members under Rule 23.03(c).

“Because of the substantial similarity between Minnesota’s rule 23 and Fed. R. Civ. P. 23, federal precedent is instructive in interpreting our rule.”³ *Whitaker v. 3M Co.*, 764 N.W.2d 631, 635 (Minn. Ct. App. 2009) (citing *Lewy 1990 Trust ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 451 (Minn.App.2002), *review denied* (Minn. Nov. 19, 2002); *see also* Minn. R. Civ. P. 23 2006 & 1968 advisory comm. cmt. (noting that Minn. R. Civ. P. 23 closely tracks Fed. R. Civ. P. 23 and is intended to produce consistent results)) (internal quotations omitted). “Class certification under rule 23.02(a) does not require notice to individual class members.” *Bacon v. Bd. of Pensions of the Evangelical Lutheran Church in Am.*, 930 N.W.2d 437, 441 (Minn. Ct. App. 2019) (citing *Forcier v. State Farm Mut. Auto. Ins. Co.*, 310 N.W.2d 124, 129 (Minn. 1981)). “[C]ertification under rule 23.02(c) requires class members to receive notice and an opportunity to opt out of the class.” *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361, 131 S. Ct. 2541, 12558 (2011) (discussing federal equivalent, Fed. R. Civ. P. 23(b)(3))).

III. Analysis

The Class’s proposed notice program is as follows:

[T]he Class’s proposed notice program includes direct notice via post card of the Short Form Notice delivered by U.S. Mail to all Class Members who can be identified through reasonable effort, direct notice via email of the Long Form Notice to all Class Members who can be identified through reasonable effort, creation of a case-specific litigation website, and a tollfree line where Class Members can obtain additional information.⁴

³ The parties concede that federal precedent is instructive pursuant to Minnesota caselaw.

⁴ Mem. of Law in Supp. of Mot. by Pls.’ and the Damages Class for Approval of the Form of Class Notice and Plan of Notice at 1-2 (Feb. 14, 2024).

The parties have resolved the remaining class notice issues, with the exception of the Rule 23.03(b)(1)/injunctive relief content issue pending before the Court.

Defendants assert that all references in Plaintiffs' proposed class notices to injunctive relief claims and a class member's right to opt out of such claims and litigate them separately should be stricken. Defendants argue that this information is inaccurate, misleading, and confusing because under the law, class members with injunctive and declaratory relief claims have no right to class notice, no right to opt out, and are bound by any orders and judgment entered by the Court on those claims. Plaintiffs assert that the Court has discretion pursuant to Rule 23 to send notice to Injunctive Relief Class members and provide them the opportunity to opt out.

"Under a Rule 23(b)(2) certification the class members are not entitled to notice of the action and are not entitled to opt out of the action if they so choose, as they would be under a Rule 23(b)(3) certification." *Sperry Rand Corp. v. Larson*, 554 F.2d 868, 875 (8th Cir. 1977) (citing Fed. R. Civ. P. 23(c)(2) (internal quotations omitted). "The discretionary power to require notice in a Rule 23(b)(2) action thus serves as a 'safety valve' which should be utilized 'freely to protect the rights of the absentee members' to assure that a judgment in a Rule 23(b) (2) action will be 'binding on all the class members.'" *Id.* at 876 (citing 7A C. Wright and A. Miller, Federal Practice and Procedure s 1786, at 144 (1972); see *Sanders v. John Nuveen & Co.*, 463 F.2d 1075, 1082 (7th Cir. 1972)) (finding that district court's purpose in directing notice be given was prudent safeguard against future antagonism which might affect binding nature of a Rule 23(b)(2) judgment).

Plaintiffs' revised proposed Long Form Notice states, *inter alia*:

• **WHAT THE CLASS ACTION LAWSUIT SEEKS.** This class action lawsuit seeks money damages for Class Members The lawsuit also seeks injunctive relief to prohibit Defendants from creating and enforcing certain alleged misleading provisions in the leases and from Defendants charging the fees described identified above.

- **What is a class action and who is involved?** In a class action lawsuit, one or more people called ‘Class Representatives’ have sued on behalf of themselves and other people who have similar claims. Collectively, these people are called a ‘Class’ or ‘Class Members.’ ... In a class action, one court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class.
- **What are the Class Representatives asking for?** The Class Representatives are asking for a monetary recovery for the Damages Class, For the Injunctive Class, the Class Representatives are also asking for a court order preventing Defendants from enforcing the challenged lease agreement terms,
- If you are a Class Member, however, you have a choice to make now.
- **What are my options as a Class Member?** You can decide whether to stay in the Damages Class or opt out of, or exclude yourself from, it. Only those who opt out may litigate the same issues separately.
- **What happens if I opt out of the Class?** If you opt out of the Class ..., you will give up the right to participate in any monetary recovery that may occur. But you will keep any rights you may currently have to sue the Defendants separately regarding the legal claims at issue in this lawsuit.⁵

Plaintiffs’ revised proposed Short Form Notice states, *inter alia*:

- This Notice summarizes the Class allegations and your rights as a Class Member.
- In addition to money damages, the lawsuit also seeks injunctive relief so that Home Partners will be legally prohibited from creating or enforcing the alleged misleading and unenforceable lease provisions in Minnesota.
- You can decide whether to stay in the Class or opt out of it and litigate the same issues separately on your own. If you stay in the Class you will be bound by any Orders and Judgments the Court issues. If you opt out of the Class ..., you will give up the right to participate in any recovery that may occur. But you will keep any rights you may currently have to sue Home Partners regarding the legal claims at issue in this lawsuit. You also will not be bound by any Orders the Court issues and Judgments the Court makes in this class action.⁶

The parties concede that every member of the Rule 23.02(b) mandatory Injunctive Class is also a member of the Rule 23.02(c) Damages Class, but not every member of the Damages Class is a member of the Injunctive Class. Rule 23.03(b)(2) clearly states that Damages Class members must receive class notice, whereas Injunctive Class members *may* receive class notice as prescribed by the Court under Rule 23.03(b)(1). And unlike Injunctive Class members, Damages Class members are

⁵ Ex. A to Sec. Decl. of Anne T. Regan in Supp. of Mot. by Pls.’ and the Damages Class for Approval of the Form of Class Notice and Plan of Notice (“Regan Decl.”) (Feb. 28, 2024).

⁶ Ex. B to Regan Decl. (Feb. 28, 2024).

afforded the right to opt out of participation in the class. *See* Minn. R. Civ. P. 23.03(b)(2)(E); *Larson*, 554 F.2d at 875.

Plaintiffs concede as much, asserting that “as Defendants must concede, a Rule 23.02(b) class member does not have a due process right to opt out.”⁷ A review of the above-mentioned proposed notices show that the notice forms repeatedly inform the recipient that (a) Plaintiffs seek injunctive relief in this case, (b) the recipient may litigate the same issues separately if the recipient opts out, and (c) the recipient will not be bound by any Orders and Judgments that the Court makes if the recipient opts out. These representations are particularly problematic because, as Defendants point out, they are legally incorrect. *Larson*, 554 F.2d at 875-76 (citing Fed. R. Civ. P. 23(c)(2); *Sanders*, 463 F.2d at 1082).

Likewise, Defendants are correct in that Damages Class members who also have Injunctive Class claims cannot be notified that they have the right to opt out and separately litigate those claims when no such right exists under the law. Although Plaintiffs’ claim is correct that nothing in Rule 23 requires separate notices be sent to Injunctive Class members and Damages Class members, the fact remains that Plaintiffs’ proposed class notices each contain legally inaccurate information.

Minn. R. Civ. P. 23.03(b) grants the Court considerable discretion in directing notice to Rule 23.02(b) class members. The Court shall sustain Defendants’ objection and strike any references to injunctive relief claims in Plaintiffs’ notices.

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⁷ Reply Mem. in Supp. of Mot. for Pls.’ and the Damages Class for Approval of the Form of Class Notice and Plan of Notice at 2 (Feb. 28, 2024).