

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**DONOVAN FORD, CARRIE GALAN, JAMES
GILMER, JUDY MILLS, and BILLIE J. NORRIS,
on behalf of themselves and others similarly situated**

PLAINTIFFS

V. CASE NO. 4:08cv00509 BSM

**TOWNSENDS OF ARKANSAS, INC., and
TOWNSENDS, INC.**

DEFENDANTS

ORDER

Plaintiffs submit proposed notices, as required by the April 9, 2010 order (Doc. No.129), for their prospective class actions pursuant to the Fair Labor Standards Act (“FLSA”) and Federal Rules of Civil Procedure 23 (Doc. No.131). Defendants object to the notices (Doc. No. 133), and the parties submitted stipulations (Doc. No. 139). After reviewing the briefs, affidavits, proposed notices, and the stipulations:

IT IS HEREBY ORDERED

1. **Methods of Notice.** Plaintiffs request to notify proposed FLSA and Rule 23 class members via United States Mail, plant posting, payroll insert, and radio notice is granted.

2. **Form of Mailed Notice.** Defendants will provide class counsel with contact information for all employees within the class period, including temporary and contract employees. Plaintiffs’ notices shall conform with parties’ stipulations. *See* Stipulation and agreement on notice to the FLSA and Rule 23 Classes (Doc. No. 133)(“Stipulations”).

Plaintiffs propose that putative class members wishing to opt-out of the Rule 23 state law class be required to write a letter to the clerk of the court requesting their removal. Defendants object, arguing that this approach stacks the deck against class members who desire to opt-out and imposes an undue burden on the clerk's office. In the alternative, defendants propose that an opt-out form, *see* Defendants' exhibit C attached to Objections as Doc. No. 133-3. ("Doc. No. 133-3"), and an addressed postage-paid envelop be included for proposed class members wishing to opt-out of the Rule 23 state law class.

Defendants' request is granted and plaintiffs are directed to include defendants' opt-out form, *see* Doc. No. 133-3, and an addressed postage-paid envelop in its mailed notice. The opt-out form attached as Doc. No. 133-3 shall, however, be amended by removing all references to social security numbers.

Plaintiffs are further directed to conform the language in its proposed mailed notice regarding opt-out procedures for the Rule 23 state law class as follows:

"If you worked at the Batesville, Arkansas plant at any time since October 1, 2006, you may have state wage claims. If you do **NOT** want to be part of the state wage claims, you **must** sign the enclosed "Opt-Out Form," which is included for your convenience, and send it by mail in the enclosed envelop (no postage necessary) addressed to: James W. McCormack; Clerk of the Court; United States District Court; Eastern District of Arkansas; 500 West Capitol Avenue; Little Rock, Ar; 72201."

The Opt-Out Form must be postmarked no later than: [120 days from Order, 2010]

Defendants' request that the opt-out form be printed on green paper is denied.

Plaintiffs' proposed notice is granted in all other respects.

3. Time Frame. Parties stipulate that the time period to opt-in to the FLSA collective action and to opt-out of the Rule 23 state law action shall be 120 days from the date notice is mailed to the putative class members.

4. Spanish Language Translation. Parties stipulate that all Spanish language translations will be done by an individual certified as a Spanish-English Federal Court Interpreter by the Administrative Office of the United States Courts. Defendants will have a seven (7) day period to review and object to any translations. In the event the parties cannot agree on a translation, they will submit the issue to the court for resolution before any notice is sent or posted.

5. Plant Notice. Parties stipulate to defendants' proposed plant notice. See Defendants' exhibit B attached to objections as Doc. No. 133-2. Defendants are directed to post English and Spanish FLSA and Rule 23 class notices in the Batesville, Arkansas plant for 120 days.

6. Content of Website. Parties stipulate that the website, www.townsendarkcase.com, shall contain information identical to that contained in the mailed notice.

7. Form of Radio Notice. Plaintiffs' request to issue radio notice is granted. Plaintiffs' notice shall read as follows:

“If you are a current or former hourly production or support employee at Townsends' Batesville, Arkansas plant, you may be eligible to join with other employees in a case seeking unpaid wages.”

“For further information about the lawsuit, call xxx-xxx-xxxx or go to www dot Townsends “a” “r” “k” Case dot com. That’s xxx-xxx-xxxx or www dot Townsends “a”“r” “k” Case dot com. Se habla espanol. All calls will be kept confidential.”

Plaintiffs shall be allowed to run periodic radio notices in both English and Spanish for 120 days beginning from the date the mailed notice is mailed to putative class members. Plaintiffs’ Spanish language radio notice shall be translated according to this order

8. Form of Payroll Insert. Plaintiffs’ request that defendants provide a copy of the mailed notice in its employees’ payroll checks is granted. During the payroll period following the date the mailed notice is mailed to putative class members, defendants shall include an English and Spanish version of the court approved mailed notice in the payroll checks of putative class members as defined by the court’s April 9, 2010, order.

9. Consent to Join Form. Plaintiffs are directed to conform their consent to join form to the parties’ stipulations. Plaintiffs’ proposed consent to join form, attached as exhibit C to Doc No. 132-1, is adopted in all other respects.

IT IS SO ORDERED this 24th day of May, 2010.


UNITED STATES DISTRICT JUDGE