

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDGAR W. TUTTLE, ERIC BRAUN, and THE
BRAUN FAMILY TRUST by its co-trustee ERIC
BRAUN, on behalf of themselves and all others
similarly situated,

No. C 10-03588 WHA

Plaintiffs,

**ORDER REGARDING
CLASS NOTICE**

v.

SKY BELL ASSET MANAGEMENT, LLC, *et al.*,

Defendants.

The parties have filed a joint plan for dissemination of class notice, a proposed form of class notice, and a proposed time table (Dkt. No. 322). These proposals are approved, subject to the modifications set forth below.

1. CLASS LIST.

The order dated February 10, 2012, included a list of all known class members for each certified class, which was based on plaintiffs' previous submission of a class list. The parties were ordered to vet the class lists and inform the Court of any errors. The parties responded and stated the following individuals should not be named as class members, given that they are defendants in this action:

- Agile Sky Alliance Fund, LP Class: Gary Marks d/o/t/ 10/7/96, Geoff M. Gotsch Management Trust, Night Watch Partners, LP, and PipeLine Investors, LP.
- Night Watch Partners, LP Class: NTC & Co. FBO Norm Gotsch, and Sky Bell Asset Management, LLC.

- PipeLine Investors, LP Class: Gary Marks, Geoffrey M. Gotsch Management Trust dtd 4/3/2006, Night Watch Partners, LP, and Sky Bell Asset Management, LLC.

The individuals listed above, shall be removed from the respective class lists. No other corrections to the class list were made.

After the opt-out period has closed, class counsel shall file an updated report on class size with the finalized class rosters appended.

2. ADMINISTRATOR.

The parties' joint proposal to designate Gilardi & Co., LLC, as the administrator for printing, dissemination of class notice, and receipt of requests for exclusion is **APPROVED**. Class counsel shall bear the full cost of the administrator, subject to possible reimbursement if the class prevails.

3. FORM OF CLASS NOTICE.

The parties' proposed class notice will be used subject to the following amendments.

First, on the first page of the class notice, the following language, indicated herein in italics, shall be added (the added language need not be italicized in the class notice): "If you do nothing, you will be bound by the result of the class action litigation which is described in Section 2 below.

Please read Section 1 below to inform yourself of what this means for you in terms of giving up control of any and all claim(s) you may have against defendant."

Second, class members shall be made aware that they will be bound by any settlement approved by the Court, without necessarily further opportunity to opt-out. As such, the following language shall be included in the class notice under Section 6: "*Counsel and lead plaintiffs will be authorized to settle this case without necessarily further opportunity for class members to opt out. In that event, if the settlement is approved by the Court, class members would be bound by the settlement.*"

Third, the italicized language shall be added to the following sentence on the first page of the notice: "This is the first, *and possibly only*, notice issued to members of the Class in this case."

A revised version of the class notice is filed concurrently herewith.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. MEANS OF DISSEMINATION.

All class notices shall be sent as independent mailings via first class United States mail. Class notices shall be sent in distinctive envelopes that do not resemble junk mailings. The outside of each envelope shall state that it contains an important notice from the United States District Court. The return address on the envelopes shall be the address of the administrator but it shall indicate that the class notice was sent on behalf of the District Court. For example, the return address may read as follows:

Important Class Action Notice from the Court
United States District Court for the Northern District of California
Class Action 10-3588 WHA
[ADMINISTRATOR NAME]
[ADMINISTRATOR ADDRESS]

The parties propose to mail the class noticed to the addresses reflected on the records used to generate the class list. Previously, plaintiffs indicated that the class list was “derived from records produced in discovery in this litigation” (Dkt. No. 288 at 2). Class counsel must use the most up-to-date information available to it, in its reasonable exercise of due diligence, to ensure, prior to dissemination of the class notices, that the addresses listed are correct. The parties also propose that the class notice include a section that brokers and nominees are requested to forward the class notice to class members directly or to provide addresses to the administrator for mailing. This is acceptable.

The parties do not state one way or another whether each class member will receive only one class notice, regardless of whether the class member is a member of multiple classes. Unless otherwise requested by the parties, each class member shall be mailed one class notice, regardless of whether the class member is a member of multiple classes.

5. COST OF DISSEMINATION.

Class counsel shall pay all costs associated with disseminating class notice, subject to possible reimbursement if the class prevails.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. SCHEDULE.

The parties may file objections to the tentative class notice by **NOON ON MARCH 12, 2012**. After that time, the class notice and the schedule for dissemination of notice will be finalized. It is anticipated that the administrator will mail the class notices on or by **MARCH 16, 2012**. The class members would then have until **May 7, 2012**, to opt out of the class action. Plaintiffs propose that class members be permitted to opt out by sending a letter *via* mail or an email to the administrator. This will be allowed.

If either party anticipates problems with this schedule, their concerns should be explained along with any objections to the tentative class notice and filed by the **MARCH 12**, deadline for objection.

IT IS SO ORDERED.

Dated: March 6, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE