

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

www.laborlawyers.com

Chicago

1000 Marquette Building
140 South Dearborn Street
Chicago, IL 60603-5202

(312) 346-8061 Tel
(312) 346-3179 Fax

Writer's Direct Dial:
(312) 580-7810

Writer's E-mail:
jrice@laborlawyers.com

May 27, 2011

VIA ELECTRONIC MAIL

Honorable J. Phil Gilbert
U.S. District Court
Southern District of Illinois
Kenneth Gray Federal Building and U.S. Courthouse
301 West Main Street
Courtroom 1
Benton, IL 62812

Re: *Edward Earl Nicholson, et. al., v. UTI Integrated Logistics, Inc., et. al.*,
Case No. 3:09-cv-00722-JPG-DGW

Dear Judge Gilbert:

In accordance with the Court's Order of May 10, 2011, Defendants respectfully submit their proposed notice to the Illinois, Rule 23 class that was certified by the Court. Defendants provided their comments to Plaintiffs on May 19, 2011, after receiving a proposed notice from Plaintiffs on May 18, 2011. On May 24, 2011, Plaintiffs informed Defendants that they did not intend to discuss the revisions proposed by Defendants but, rather, intended to submit their proposal directly to the Court on May 27, 2011. Accordingly, Defendants submit a clean and redline copy of the proposed notice that Defendants previously provided to Plaintiffs on May 19, 2011.

Defendants have three general concerns about the class notice Defendants received from Plaintiffs: (a) the notice is factually inaccurate; (b) the notice provides a cumbersome means for putative class members to "opt-out" of the class and inadequate information about the opt-out process; and (c) the notice creates potential confusion among the class members about the previously certified FLSA class by providing instructions about how to "opt-in" to the FLSA class.

Defendants' concerns about the factual inaccuracy of Plaintiffs' proposed class notice include:

- Plaintiffs erroneously defined the Rule 23 class by instructing putative class members that they are a member of the class only if they "were not paid for all the time you spent performing activities such as locating your forklift and

performing maintenance and inspections before your shift started and/or during your unpaid lunch break.” The Court did not include this sentence in its class definition. Moreover, even Plaintiffs’ witnesses do not contend that they perform “maintenance and inspections” on forklift trucks during lunch breaks.

- In Section 3, Plaintiffs advise the class that both the Rule 23 class and the FLSA class “involve the same issue of whether UTi’s preparation, time rounding, and lunch policies are legal and whether it is obligated to pay forklift operators for the time they spend preparing for work before the beginning of the shift and time spent working during lunch.” This representation is inaccurate in that Plaintiffs have not, in fact, established that the referenced “policies” even exist. Further, UTi has not argued that it does not have an obligation to pay forklift operators for work that has been performed. Thus, it is unfair and misleading to suggest to putative class members that UTi contends that it has no obligation to pay employees for work performed pre-shift or during lunch breaks. UTi has similar concerns about Plaintiffs’ poorly defined reference to “UTi’s preparation, time rounding and lunch policies” in Section 5 of the Plaintiffs’ proposed class notice.
- In Sections 3 and 9, Plaintiffs propose to advise putative class members that they will “give up the possibility of getting money or benefits” or “won’t get any money or benefits” if they opt out of the case. Defendants object to this language as misleading. Defendants propose to remind the putative class on page 1 of the proposed notice that there is no current money available to anyone and no guarantee of payment to any class member.
- In Section 4, Plaintiffs erroneously advise putative class members that they “lose no rights” by failing to “opt-out” of this lawsuit. As indicated in page 2 and in Section 8 of the proposed notice, among other issues, putative class members who do not “opt-out” of this case lose the right not to be bound by any result in this case should they elect to remain in the case.
- In Section 12 (“Should I get my own lawyer?”), Plaintiffs represent to putative class members that they “will” be required to pay for a lawyer if they seek legal advice as to this case. Such a blanket representation is necessarily false, as putative class members may have access to free legal advice for any number of reasons. Moreover, Defendants are concerned about Plaintiffs’ apparent failure to agree to Defendants’ proposed insertion of text on page 2 and in Section 12 of the proposed notice that reminds putative class members that they are free to discuss this case with counsel of their own choosing. Providing such advice to putative class members is consistent with, if not required by, Rule 4.3 of Rules of Professional Conduct of both Illinois and Missouri, as prospective class members are not represented by Class Counsel, and may have a possible conflict of interest with Class Counsel, until they fail to opt out of this case.
- Similarly, in Section 9, Plaintiffs misleadingly suggest to putative class members that they should only ask to be excluded from this case if they have a separate claim pending against UTi for the same issues presented in this action.

Defendants object to this representation being made to putative class members, as the provision of such advice may violate Rule 4.3 as well.

With respect to the opt-out process, Defendants note that Plaintiffs prepared a form for putative FLSA class members to use for the purpose of opt-in to the FLSA class. By contrast, in the Rule 23 notice, Plaintiffs directed putative class members that they would need to write their own letter in order to opt-out of the Rule 23 class. Plaintiffs offered no justification for treating the Rule 23 class differently. Obviously, asking a putative class member to write a letter for the purpose of opting out of the Rule 23 class is an unnecessary hurdle that Plaintiffs should not create, especially given that Plaintiffs were willing to provide a prepared form for use by those who wished to opt-in to this lawsuit. By providing an "opt-in" form, but not an "opt-out" form, Plaintiffs only increase the chance that individuals will be confused about what steps they need to take to preserve their rights in this case.

In addition, this Court directed in its May 10, 2011 Order that the parties attempt to address potential confusion that may occur when putative class members receive more than one notice about this lawsuit. By the time that UTi's full-time and temporary employees in Illinois receive notice of the Rule 23 class, each should have already been sent a court-approved notice regarding the FLSA class. Plaintiffs participated in the drafting of this notice. Nevertheless, Plaintiffs propose to include additional information about the FLSA class in the Rule 23 notice in Sections 3 and 4 of their proposed Rule 23 class notice. Indeed, in these Sections, Plaintiffs propose to remind Illinois-based employees that they may still join the FLSA class and may obtain additional copies of the FLSA class notice by contacting Class Counsel. Thus, Plaintiffs appear to be willing to provide multiple copies of the FLSA "opt-in" form to putative class members, but seek to require that putative class members draft their own letters if they wish to opt-out of the Rule 23 class.

Plaintiffs' proposed notice will contribute to possible confusion within the Rule 23 class because the notice prepared by Plaintiffs was not tailored for the more limited purpose of informing putative class members about the state-law claims that have been asserted and the Rule 23 class that has been certified. Rather, Plaintiffs' proposed notice includes instructions on how to join the FLSA class and where to obtain a opt-in form if the first one had been lost. There should be no need for Plaintiffs to provide such a reminder notice to Illinois-based employees that they may join the FLSA class in the manner that Plaintiffs propose to do in Sections 3 and 4 of their notice. If Plaintiffs had concerns about the content of the FLSA notice that was previously approved by the Court, such concerns should have been raised in a timely manner. Further, the proposed notice prepared by Defendants provides more than ample information on how to reach Class Counsel in the event that individuals in Illinois may have lost the FLSA class notice that was previously sent.

For the purpose of reducing potential confusion about the status of this case and why individuals are receiving a second notice about this case, Defendants propose to advise employees on the first page of the notice: (a) there has been no merits-related decision in this case, and (b) this second notice is not being issued because there are currently funds available for distribution. Defendants patterned their proposed statement based on text previously approved by the district court in *Spoerle v. Kraft Foods Global, Inc.*, No. 07-C-300 (W.D. Wis. May 23, 2008) (attached as Ex. A), which was also a case in which more than one notice was

Honorable J. Phil Gilbert
May 27, 2011
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sent to putative class members relating to Rule 23 and FLSA claims.

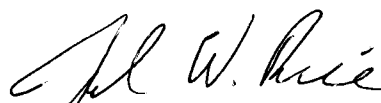
In addition, as noted previously, Defendants object to Plaintiffs' position that individuals who desire to be excluded from the case need to prepare their own letter. Accordingly, Defendants have prepared a "Request To Be Excluded" form and request that a form of this type be provided to putative Rule 23 class members. Defendants have modified the form that they provided to Plaintiffs on May 19, 2011 to include additional language that has been approved for use by the district court in *Romero v. Producers Dairy Foods, Inc.*, No. 05-CV-484 (E.D. Cal. Apr. 26, 2006) (attached as Ex. B), which also involved both state-law and FLSA claims.

Moreover, the notice prepared by Plaintiffs repeatedly suggests that individuals who opt out of the Rule 23 class action will receive "no money or benefits" that may be awarded, and advise these individuals that they "do not need to do anything" in order to participate. See, page 2, and Sections 3, 8, 9 of Plaintiffs' proposed class notice. By comparison, the FLSA class notice that Plaintiffs proposed and submitted to the Court last February did not include an express suggestion that anyone could receive "money or benefits" by joining the case. Because Plaintiffs' proposed notice places such heavy emphasis on the purported "possibility of getting money or benefits" from this case, Defendants urge the Court to require that the notice include express reminders to the putative class that: (a) each has the right to obtain independent legal advice about whether to remain in the case; (b) each is free to opt out of the case if they so elect; and (c) each should not assume that UTi has failed to pay anyone for fewer than all hours worked. Defendants have provided requested language for these purposes in their competing proposed notice to the Rule 23 class, which is attached.

Finally, as Defendants have noted previously to the Court, all putative class members in this case were either full-time employees of UTi Integrated Logistics or temporary employees assigned to work for UTi Integrated Logistics; UTi Worldwide, Inc. has no employees. To reduce potential confusion over which entity is the actual employer in this action and the scope of the claims at issue, Defendants have proposed that the caption in the notice list UTi Integrated Logistics as the defendant and reference UTi Integrated Logistics first whenever both entities are mentioned. Defendants request that the notice issued follow this convention.

We appreciate the Court's consideration of these issues.

Respectfully submitted,



Joel W. Rice
For FISHER & PHILLIPS LLP

JWR:pg
Enclosure
cc: All counsel of record

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

EDWARD EARL NICHOLSON, individually)	
and on behalf of all others similarly situated,)	Case No. 3:09-cv-00722-JPG-DGW
)	
Plaintiff,)	
)	
v.)	
)	
UTI INTEGRATED LOGISTICS, INC. et al.,)	
)	
Defendants.)	

If you are or were a forklift operator employed by UTi Integrated Logistics or UTi Worldwide, Inc., either directly or through a temporary staffing agency in the State of Illinois, please read this notice. A class action lawsuit may affect your legal rights.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- Forklift operators have sued UTi Integrated Logistics and UTi Worldwide, Inc. (“UTi”) claiming that UTi failed to pay all wages owed for time spent performing activities such as locating forklifts and performing maintenance and inspections before the beginning of the shift and for working during unpaid lunch breaks. UTi denies these claims and believes that forklift operators in Illinois have been paid for all hours worked for UTi.
- The United States District Court for the Southern District of Illinois has certified this lawsuit to proceed as a class action. You are a member of the class if:
 1. You are currently employed, or were previously employed, by UTi in Illinois, either directly or through a temporary staffing agency, at any time from September 14, 2004 to the present; and
 2. Your primary duty was operating a forklift.

You have received this Notice because you are believed to be a member of the class of employees who could be affected by the claims that have been brought in this lawsuit. There is no money available to you now as a result of this lawsuit, and there are no guarantees that there will ever be any money available to you if you choose to remain in this lawsuit.

- By certifying a class and allowing you the option to participate in this lawsuit, the Court has not yet decided whether UTI did anything wrong. The Court may determine that UTi has done nothing wrong and has paid all of its forklift operators in Illinois all of the wages and compensation to which they are entitled. However, your legal rights may be affected unless you ask to be excluded, and, to do so, you must act before [INSERT DATE 60 days from mailing]. A copy of the form that you may use to request to be excluded from this lawsuit is attached to this notice, and additional instructions on how to request to be excluded from this case are provided in paragraph 10 of this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

DO NOTHING	<p style="text-align: center;">Stay in this lawsuit. Await the outcome. Give up certain rights.</p> <p>You have no obligation to participate in this lawsuit as a Class Member, and are free to seek independent legal advice from a lawyer of your own choosing as to whether you should remain a part of this lawsuit. If you <u>do nothing</u>, you will automatically be treated as part of the class that has been certified by the Court and your rights could be affected by this lawsuit. You would keep the possibility of getting money or benefits that may come from a trial or a settlement, if Plaintiffs are successful in proving their claims or in negotiating a settlement payment. But, you would also give up any rights to sue UTi separately about the same legal claims asserted in this lawsuit and would be bound by any decision that the Court reaches regarding the merits of Plaintiffs' claims, if any.</p>
ASK TO BE EXCLUDED	<p style="text-align: center;">Get out of this lawsuit. Get no benefits from it, if any. Keep rights.</p> <p>If you ask to be excluded and money or benefits are later awarded, you will not share in those, if any. But, you are not bound by any decision that the Court makes regarding the merits of Plaintiffs' claims in this lawsuit, whether favorable or unfavorable. If you believe that you have a claim for money owed to you by UTi that you want to pursue separately, you may do so only if you ask to be excluded from this Class Action. In order to be excluded from this lawsuit, you must follow the steps outlined in Section 10 below by [INSERT DATE 60 days from mailing].</p>

BASIC INFORMATION

1. Why did I get this notice?

UTi's records show that you currently work, or previously worked, for UTi, either directly or through a temporary staffing agency, operating a forklift in the State of Illinois. The Court has certified a class action lawsuit that may affect you, unless you elect to exclude yourself from this case. You have legal rights and options that you may exercise at this time, which are described in this notice. The lawsuit is styled *Nicholson v. UTi Integrated Logistics, Inc., et al*, Case No. 3:09-cv-722-JPG-DGW.

2. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" (in this case Edward Earl Nicholson) sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The Class Representatives who sue—and all the Class Members like them—are called the Plaintiffs. The company they sued (in this case UTi) is called the Defendant. One court resolves the issues for everyone in the Class. If the attorneys who are representing the Class are successful in recovering money on your behalf, these attorneys may be compensated from a portion of the money that is paid by UTi.

3. Am I part of another Class in this lawsuit?

The Court has certified two classes in this lawsuit. The first one is described in this notice and covers a class of UTi forklift operators employed in the State of Illinois—referred to as the "Illinois Class." The second one covers a class of UTi forklift operators employed anywhere in the United States—referred to as the "Nationwide Class." You either have or will receive information about the Nationwide Class separately through a notice that has been approved by the Court.

The Illinois Class seeks remedies available under Illinois law, covers a period of time going back to September 14, 2004, and provides for different damages than the Nationwide Class. The Illinois Class is an “opt-out” class action. **That means that in order to participate you do not need to do anything**, but if you don’t want to participate, you need to let Class Counsel know that you do not want to participate in this lawsuit by completing the attached Request To Be Excluded, which is described in paragraph 10, below.

You may be a member of both classes and may receive more than one notice explaining your legal rights and options. Please read each notice carefully to understand your legal rights and options with respect to each Class.

4. If I return the Consent to Join form to be a member of the Nationwide Class, can I still be a member of the Illinois Class?

Yes. You can be a part of both the federal and state classes. That means you can return the Consent to Join form to be in the Nationwide Class and also remain in the Illinois Class. If you did not return the Consent to Join the Nationwide Class, you would still be a member of the Illinois Class, unless you return the enclosed Request To Be Excluded form, which is attached.

THE CLAIMS IN THE LAWSUIT

5. What is this lawsuit about?

Plaintiffs say that UTi violated Illinois law by failing to pay its forklift operators for the time they claim to have spent locating their forklifts, changing batteries on these forklifts, and performing other maintenance and inspections of those forklifts before the start of their shift. Plaintiffs also say UTi rounds forklift operators’ time to the start of the shift even when they claim to have performed these activities before the shift starts. Also, Plaintiffs say UTi automatically deducts a lunch each day and that this occurs even if forklift operators claim to have worked through a part or all of their lunch. UTi disputes Plaintiffs’ claims and contends that UTi compensates all employees for all hours that they work. This lawsuit is about whether Plaintiffs’ claims are factually accurate, and, if so, whether UTi is obligated to pay forklift operators for the time they spend performing these activities.

6. What are the Plaintiffs asking for?

Plaintiffs seek to recover unpaid wages from UTi for the time they claim to have spent before their scheduled shift began locating their forklifts, changing batteries on the forklift, and performing maintenance and inspections. Plaintiffs also seek to recover for time they claim to have worked during their unpaid lunch breaks. Plaintiffs also seek other remedies that may be available under Illinois law based on their assertion that they perform work for UTi that has not been fully compensated, including, but not limited to, compensatory damages, reasonable attorneys’ fees and costs of the action, and interest. UTi contends that all employees have been paid for all hours that they have worked and are not entitled to receive any additional compensation or recover any money for themselves or Class Counsel based on this lawsuit.

7. Has the Court decided who is right?

The Court has not yet decided whether UTi or the Plaintiffs are correct, or whether UTi has any obligation to pay any employee more than what each has already been paid by the company. By certifying this lawsuit as a class action and issuing this notice, the Court is not suggesting that Plaintiffs will win or lose the case or recover any money at all.

YOUR RIGHTS AND OPTIONS

8. What happens if I do nothing at all?

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit if Plaintiffs are successful in establishing that they or you performed work for UTi that has not been compensated. By doing nothing you stay in the Illinois Class. If you stay in and the Plaintiffs obtain money or benefits, either as a result of the trial or a settlement, you will be notified about any potential recovery (or how to ask to be excluded from any settlement). If you do nothing now, regardless of whether Plaintiffs win or lose the trial, you will not be able to sue, or continue to sue, UTi—as part of any other lawsuit—about the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action. In short, if this lawsuit is not successful, you may be prevented in the future from bringing your own lawsuit against UTi based on the same claims that Plaintiffs have brought in this case, if you believe that UTi has not paid you for all of the hours that you have worked for the company.

9. Why would I ask to be excluded?

You are under no obligation to participate in the Class, and can elect to be excluded for any reason that you may have, including your own belief that this lawsuit has no merit. You have the right to ask a lawyer of your own choosing whether you should participate in this lawsuit. If you want to be excluded from the Illinois Class, you simply need to complete and sign the attached Request To Be Excluded, in the manner described in paragraph 10. If you exclude yourself from the Illinois Class—which also means to remove yourself from the Illinois Class, and is sometimes called “opting-out” of the Class—you will not receive any further information about this lawsuit from Class Counsel. If you exclude yourself, you also will not be legally bound by the Court's judgments in this class action, whether favorable or unfavorable.

10. How do I ask the Court to exclude me from the Class?

To ask to be excluded, you must send a completed “Request To Be Excluded” in the form of the attached response document. Be sure to include your name and address, and sign the attached Request form. You must mail your Request To Be Excluded Form postmarked on or before **INSERT DATE** 60 days from mailing], to: *Nicholson v. UTi Integrated Logistics, Inc.* Exclusions, PO Box 679560, Orlando, FL 32867.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court decided that Richard M. Paul III of the law firm of Stueve Siegel Hanson LLP and Mark Potashnick of Weinhaus Potashnick are qualified to represent you and all Class Members. Together they are called Class Counsel. These law firms are experienced in handling similar cases against other employers. More information about these law firms, their practices, and their lawyers' experience is available at www.stuevesiegel.com and www.fairwagelawyers.com.

12. Should I get my own lawyer?

You have the right to discuss this case with a lawyer of your own choosing and the right to decide whether you want to participate in this lawsuit as a Class Member. In order to stay in this lawsuit as a Class Member, you do not need to hire your own lawyer because Class Counsel would be working on your behalf. But, if you want your own lawyer, you may have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for

you. If Class Counsel is successful in recovering money in this lawsuit, Class Counsel may be paid a portion of the money that they recover on your behalf or may seek to have fees paid separately by UTi.

13. Will I have to pay the lawyers and how will the lawyers be paid?

Class Counsel are working on a contingency fee basis. You will not have to pay them anything. They will get paid only if they get money or benefits for the Illinois Class. If that occurs, they may ask the Court for their fees and expenses. If the Court grants Class Counsel's request, the fees and expenses either would be deducted from any money obtained for the Class or paid separately by UTi, or may be a combination of the two.

GETTING MORE INFORMATION

14. Are more details available?

Yes. If you have any questions or require additional information, please contact Plaintiffs' Counsel at:

Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112
(888) 756-6496
Allison Gilbert: stuevesiegel.com

Weinhaus & Potashnick
11500 Olive Boulevard, Suite 133
St. Louis, Missouri 63141
(314) 997-9150, ext. 2
Mark Potashnick: markp@wp-attorneys.com

**THE COURT HAS TAKEN NO POSITION IN THIS MATTER REGARDING THE MERITS
OF PLAINTIFFS' CLAIMS OR UTI'S DEFENSES**

PLEASE DO NOT CONTACT THE COURT CLERK REGARDING THIS MATTER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

EDWARD EARL NICHOLSON, individually)	
and on behalf of all others similarly situated,)	Case No. 3:09-cv-00722-JPG-DGW
)	
Plaintiff,)	
)	
v.)	
)	
UTI INTEGRATED LOGISTICS, INC. et al.,)	
)	
Defendants.)	

REQUEST TO BE EXCLUDED

I do not wish to be a part of the lawsuit referred to as *Nicholson v. UTi Integrated Logistics, Inc., et al*, Case No. 3:09-cv-722-JPG-DGW. By my signature below, I request to be excluded from these proceedings.

Dated: _____

Name: _____
(Signature)

Name: _____
(Printed)

Address: _____

Phone Number: _____

**FAILURE TO RETURN THIS REQUEST TO BE EXCLUDED FORM BY [INSERT DATE]
MAY RESULT IN A LOSS OF YOUR RIGHT TO BE EXCLUDED FROM THE ILLINOIS
CLASS IN THIS LAWSUIT AND BIND YOU TO ANY DECISION THE COURT REACHES IN
THIS ACTION. IF YOU WISH TO BE EXCLUDED FROM THIS CASE, RETURN THIS
FORM TO:**

Nicholson v. UTi Integrated Logistics, Inc. Exclusions, PO Box 679560, Orlando, FL 32867