

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, on behalf of
themselves and all other similarly
situated individuals,)

8:08CV90

Plaintiffs,)

ORDER

v.)

NEBRASKA BEEF, INC., and
NEBRASKA BEEF, LTD.,)

Defendants.)

DAVID CHUOL, on behalf of himself
and all other similarly situated
individuals,)

8:08CV99

Plaintiffs,)

ORDER

v.)

NEBRASKA BEEF, INC., and
NEBRASKA BEEF, LTD.,)

Defendants.)

This matter is before the court on the defendants’ objections to (more properly, an appeal of) the magistrate judge’s order on class notice and continuance of trial, Filing No. 203 in 8:08CV90 and Filing No. 308 in 8:08CV99, and on the plaintiffs’ motions to strike the evidence submitted by the defendants in connection with the objection, Filing No. 207 in 8:08CV90 and Filing No. 312 in 8:08CV99 (contained within briefs). In support of their objections, defendants rely on the arguments set forth in their original briefs on the issue as well as additional briefs and evidence. See Filing Nos. 205 & 206 in 8:08CV90 and Filing Nos. 310 & 311 in 8:08CV99. The court has considered the respective filings and finds the defendants’ objections should be overruled.

The court agrees with plaintiffs that if defendants wish to raise issues involving new or additional discovery, they may do so in a motion to compel or seek other appropriate relief. Defendants are similarly free to seek leave of court with respect to communications with class members concerning the Notice of Pendency of Class Action during the notice period.

In conformity with the magistrate judge's order, the notice period will run until June 18, 2010. If the notice is sent immediately, class members will have slightly less than 60 days from the date of mailing to opt out, thereby satisfying due process and falling well within the 30 to 60 day range normally approved in these cases. Moreover, all individuals who opt out of the class will be known before trial begins on June 21, 2010. In light of this determination, the plaintiffs' motions to strike the defendants' evidence is moot. Accordingly,

IT IS ORDERED:

1. The defendants' appeals of the magistrate judge's order on class notice and continuance of trial (Filing No. 203 in 8:08CV90 and Filing No. 308 in 8:08CV99) are denied.
2. The magistrate judge's order on class notice and continuance of trial (Filing No. 202 in 8:08CV90 and Filing No. 307 in 8:08CV99) is affirmed in all respects.
3. The plaintiffs' motions to strike (Filing No. 207 in 8:08CV90 and Filing No. 312 in 8:08CV99 (contained within briefs)) are denied as moot.

DATED this 30th day of April, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge