UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARGARET L. DIBB, SHAUNA OVIST, and WENDY GONDOS, individually and on behalf of others similarly situated, Plaintiffs, v. ALLIANCEONE RECEIVABLES MANAGEMENT, INC., Defendant.	CASE NO. 14-5835 RJB ORDER ON PLAINTIFFS' MOTION TO AMEND CASE SCHEDULE

This matter comes before the Court on the Plaintiffs' Motion to Amend Case Schedule Deadlines for Mailing Class Notice and For Class Members to Opt-Out. Dkt. 159. The Court has considered the pleadings filed regarding the motion and the remaining file.

The schedule for this class action case was amended at the parties' request on April 11, 2016. Dkt. 156. The amended deadline for Plaintiffs to send notice of this case to class members was April 15, 2016. *Id*. The amended deadline set for expiration of the opt-out period was May 30, 2016. *Id.*

Plaintiffs mailed Fed. R. Civ. P. 23 (c)(2) notices to class members on April 15, 2016. Dkt. 160-1. These notices inadvertently stated the opt-out date was April 15, 2016 (the date set prior to the case amendment) rather than using the amended date of May 30, 2016. Plaintiffs discovered their error on April 20, 2016, and now move the Court for an amended case schedule to ensure that class members have at least forty-five days in which to exercise their right to opt-out of this lawsuit. Dkt. 159. Plaintiffs move for an extension of seven days after the date of the order to send a corrected notice and for an extension of 45 days after the date the notice is sent for expiration of the opt-out period. *Id.* Plaintiffs filed a proposed corrected notice. Dkt. 160-1, at 2-3.

Defendant responds and argues that the Plaintiffs' proposed revision should not be utilized "because it fails to alert class members to the magnitude of Plaintiffs' counsel's errors." Dkt. 161. Further, Defendant argues that the class website contained an incorrect opt-out date of January 22, 2016 in the introduction (at least until April 20, 2016 when it was corrected, but five days after the notices were sent) and the introduction included a reference to a non-party: "Lawyers must prove the claims against Appstack at a trial set to December 12, 2016. If money is obtained from AllianceOne, you will be notified about how to ask for a share." Dkt. 162-1, at 2. Defendant contends that these errors are "highly prejudicial" because even if an amended notice is sent and the website corrected these "least sophisticated debtors" are "highly unlikely" to read a second notice or visit a website again. Dkt. 161, at 3. Defendant also complains that Plaintiffs are not communicating information like class administration budget and website traffic monitoring with it. *Id.* Defendant argues that either a new class administrator should be appointed (it suggests an entity called Class Action Administration LLC) or that different

corrective language should be used in the revised notice which Defendant suggests should provide:

> PRIOR NOTICES THAT YOU RECEIVED REGARDING THE ALLIANCEONE CLASS ACTION CONTAINED INCORRECT INFORMAITON ABOUT YOUR OPT-OUT RIGHTS. ALSO, IF YOU VISITED THE WEBSITE, WWW.ALLIANCEONECLASSACTION.COM PRIOR TO APRIL 20, 2016, IT CONTAINED INCORRECT INFORMATION ABOUT YOUR OPT-OUT RIGHTS. THE ERRORS ON THE WEBSITE WERE CORRECTED ON APRIL 20, 2016. THIS INCORRECT INFORMATION MAY HAVE BEEN MISLEADING, DESCEPTIVE, AND CONFUSING. THE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF THESE ERRORS, TO LET YOU KNOW THAT YOU HAVE UNTIL ___ TO OPT-OUT OF THIS CLASS ACTION, AND TO PROVIDE YOU CORRECT INFORMATION REGARDING CLASS ADMINISTRATION.

Dkt. 161, at 2.

In their Reply, Plaintiffs note that Defendant does not oppose the extension of time. Dkt. 163. Plaintiffs' offer a modification of Defendant's proposed language for the revised notice which provides:

> PRIOR NOTICE THAT YOU RECEIVED CONTAINED AN INCORRECT DATE FOR OPTING OUT. THIS NOTICE IS TO INFORM YOU THAT YOU HAVE UNTIL JUNE 6, 2016 TO OPT-OUT OF THIS CLASS ACTION.

Dkt. 163, at 2. Plaintiffs also suggest language to be added to the website, which provides:

> PRIOR NOTICE THAT YOU RECEIVED CONTAINED AN INCORRECT DATE FOR OPTING OUT. IF YOU VISITED THIS WEBSITE PRIOR TO APRIL 20, 2016, IT CONTAINED AN INCORRECT DATE FOR OPTING OUT. AS A RESULT OF THESE ERRORS, THE DEADLINE FOR OPTING OUT HAS BEEN EXTENDED. YOU HAVE UNTIL JUNE 6, 2016 TO OPT-OUT OF THIS CLASS ACTION**.**

Id. They note that the June 6, 2016 date may change based on the date the revised notices actually get mailed. Dkt. 163. Plaintiffs argue that a claims administrator is unnecessary to complete the notice process or monitor the website. *Id.*

DISCUSSION

For classes certified pursuant to Fed. R. Civ. P. 23 (b)(3), as this one was, Rule 23 (c)(2)(b) provides that "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." In part, the notice must include "the time and manner for requesting exclusion." Rule 23 (c)(2)(b)(vi).

Plaintiffs' motion for an extension of time to send the class notices and to reset the expiration of the opt-out period (Dkt. 159) should be granted. Rule 23 (c)(2)(b) requires the class members get notice of this case and be informed of the proper opt-out deadlines. Defendant does not meaningfully object to the extension of time. Plaintiffs should send the revised notices within seven days of the date of this order with an opt-out deadline set no less than forty-five days from the date of mailing. The revised notices should include the following language:

> **PRIOR NOTICE THAT YOU RECEIVED CONTAINED AN INCORRECT DATE FOR OPTING OUT. THIS NOTICE IS TO INFORM YOU THAT YOU HAVE UNTIL [Fill in date no less than forty-five days from the date the notices are mailed] TO OPT-OUT OF THIS CLASS ACTION**.

The website should also include the following:

> **PRIOR NOTICE THAT YOU RECEIVED CONTAINED AN INCORRECT DATE FOR OPTING OUT. IF YOU VISITED THIS WEBSITE PRIOR TO APRIL 20, 2016, IT CONTAINED AN INCORRECT DATE FOR OPTING OUT. AS A RESULT OF THESE ERRORS, THE DEADLINE FOR OPTING OUT HAS BEEN EXTENDED. YOU HAVE UNTIL [Fill in date no less than forty-five days from the date the notices are mailed] TO OPT-OUT OF THIS CLASS ACTION.**

Plaintiffs should make the website changes as soon as possible.

Defendant's motion for appointment of a claims administrator should be denied without prejudice. The current procedural posture of the case does not yet warrant it. Defendant makes

no showing that Plaintiffs must communicating information like class administration budget and website traffic monitoring with it. Plaintiffs have agreed to provide information regarding notices that are not deliverable and opt-outs at the end of the period. Dkt. 163, at 4. At this stage, appointment of a claims administrator is not warranted.

ORDER

Therefore, it is hereby **ORDERED** that:

- Plaintiffs' Motion to Amend Case Schedule Deadlines for Mailing Class Notice and For Class Members to Opt-Out (Dkt. 159) **IS GRANTED**:
  - The case schedule is **AMENDED** as follows:
    - Deadline for mailing of class notice **IS RESET** to within seven days of the date of this order; and
    - Expiration of class opt-out period **IS RESET** to no less than forty-five days from the date the notices are mailed;
  - Plaintiffs' revised notice shall contain the following information:

    PRIOR NOTICE THAT YOU RECEIVED CONTAINED AN INCORRECT DATE FOR OPTING OUT. THIS NOTICE IS TO INFORM YOU THAT YOU HAVE UNTIL [Fill in date no less than forty-five days from the date the notices are mailed] TO OPT-OUT OF THIS CLASS ACTION.
  - Plaintiffs shall add the following information to the website:

    PRIOR NOTICE THAT YOU RECEIVED CONTAINED AN INCORRECT DATE FOR OPTING OUT. IF YOU VISITED THIS WEBSITE PRIOR TO APRIL 20, 2016, IT CONTAINED AN INCORRECT DATE FOR OPTING OUT. AS A RESULT OF THESE ERRORS, THE DEADLINE FOR OPTING OUT HAS BEEN EXTENDED. YOU HAVE UNTIL [Fill in date no less than forty-five days from the date the notices are mailed] TO OPT-OUT OF THIS CLASS ACTION.

- Defendant's motion for appointment of a third party administrator (Dkt. 161) **IS DENIED WITHOUT PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 2nd day of May, 2016.

ROBERT J. BRYAN
United States District Judge