

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

STATE EMPLOYEES BARGAINING AGENT	:	
COALITION, et al,	:	
	:	
PLAINTIFFS,	:	
	:	
V.	:	NO. 3:03 CV 221 (AVC)
	:	
JOHN G. ROWLAND, et al	:	
	:	
DEFENDANTS.	:	SEPTEMBER 28, 2015

**SUPPLEMENTAL DECLARATION OF JONATHAN M. LEVINE**

Jonathan M. Levine does declare, under penalty of perjury, as follows:

1. I am a member of the law firm of Silver Golub & Teitell LLP, Class Counsel in this action. I submit this Supplemental Declaration to set forth additional information obtained by Class Counsel today concerning the mail notice provided to Class Members in accordance with the notice program previously approved by the Court.

2. Pursuant to the Court’s notice program, the parties provided direct mail notice to Settlement Class Members who have sustained economic damages who could be identified with reasonable efforts. In my previous Declaration dated September 21, 2015, I advised the Court that notice was mailed to approximately 3,700 Settlement Class Members. The notices were mailed by a vendor hired by the State of Connecticut, and bore Class Counsel’s return address. I further advised the Court that, after further address research as to some Settlement Class Members and re-mailings to those members, a total of 20 notices were determined to be undeliverable and an additional 19 were returned because the recipient was identified as deceased. Declaration of Jonathan M. Levine, dated September 21, 2015 (“Levine Dec.”), ¶ 5.

3. This morning, Class Counsel was advised by counsel from the Office of the Attorney General that the vendor employed by the State of Connecticut to mail the direct mail notices retained an additional list of undeliverable addresses which it did not provide to the State until sometime this week. I have now been provided with the list maintained by the vendor and have determined that list includes 40 (non-duplicate) undeliverable addressees.

4. As a result of the new disclosure of the undeliverables list maintained by the vendor, the total number of direct mail notices known to Class Counsel not to have been successfully delivered to Settlement Class Members is now 79 (20 initial undeliverables + 19 notices mailed to deceased recipients + 40 undeliverables on the new list just disclosed by the vendor).

5. Even with the new discovery of this previously undisclosed list of undeliverable notices, the notice program in this case – and the rate of actual delivery of direct mail notice to class members – far exceed the requirements of Rule 23 and applicable due process standards. The adequacy of a class action settlement notice is “measured by reasonableness.” *Wal-Mart Stores, Inc. v. VISA U.S.A. Inc.*, 396 F.3d 96, 113 (2d Cir. 2005), *cert. Den. Sub. Nom.*, *Leaonardo’s Pizza by the Slice, Inc. V. Wal-Mart Stores, Inc.*, 544 U.S. 1044 (2005). Notice need not be perfect or received by every Settlement Class Member, but instead must be the best practicable notice in the circumstances. *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 133 (S.D.N.Y. 2008). “[N]otice by mail sent to the last known address ... meets the due process requirement of notice through reasonable effort even where numerous class members have since changed addresses and do not receive notice.” *In re Prudential Secs. Ltd. Pshps. Litig.*, 164 F.R.D. 362, 369 (S.D.N.Y. 1996); *Weinberger v.*

*Kendrick*, 698 F.2d 61, 71 (2d Cir. 1982) (approving of mailing of individual notices to the last known address of all class members).

6. Even with the addition of the previously undisclosed list of 40 undeliverable notices, the rate of undeliverable notices in this case (approximately 2.15%) is well within the acceptable range of non-delivery to accord with due process requirements for notice, and well within the range of non-delivery in recent settlements approved by other courts in the Second Circuit. *Cf. Weiberger*, 698 F.2d at 71, *citing Grunin v. International House of Pancakes*, 513 F.2d 114, 121–22 (8<sup>th</sup> Cir. 1975) (individual mailing to last known address, without supplemental newspaper publication, approved, despite evidence that one third of prospective class did not receive notices); *see also Garland v. Cohen & Krassner*, No. 08-CV-4626 (KAM)(RLM), 2011 WL 6010211 \*3 (S.D.N.Y. Nov. 29, 2011) (settlement approved where 241 of 3,201 notices – 7.5% – returned as undeliverable); *Romero v. LaRevise Associates*, 58 F. Supp.3d 411, 419 (S.D.N.Y. 2014) (settlement approved where 69 of 486 notices – 14% – returned as undeliverable); *Sanchez v. JMP Ventures, L.L.C.*, No. 13 Civ. 7264 (GWG), 2015 WL 539506 \*2 (Feb. 10, 2015) (settlement approved where 24 of 359 notices – 6.7% – returned as undeliverable); *In re Sony SXRDRear Projection Television Class Action Litigation*, No. 06 Civ. 5173 (RPP), 2008 WL 1956267 \*4 (May 1, 2008) (settlement approved where 2,500 of 175,000 notices – 1.4% – returned as undeliverable).

I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct.

Executed on September 25, 2015.

*/s/ Jonathan M. Levine* \_\_\_\_\_  
JONATHAN M. LEVINE

**CERTIFICATION**

I hereby certify that on September 28, 2015, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ David S. Golub

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