

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

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IN RE:
WIRSBO NON-F1807 YBFs

Case No: 08-CR-1223-F

**DECLARATION OF SHANNON R. WHEATMAN, PH.D. ON
ADEQUACY OF NOTICES AND NOTICE PLAN**

1 I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

2
3 1. I am President of Kinsella Media, LLC (“KM”), an advertising and notification firm in
4 Washington, D.C. specializing in the design and implementation of class action and
5 bankruptcy notification programs. My business address is 2001 Pennsylvania Avenue NW,
6 Suite 300, Washington, D.C. 20006. My telephone number is (202) 686-4111.

7 2. In the “Declaration of Shannon R. Wheatman, Ph.D. on Adequacy of Certification
8 Notices and Notice Plan” dated February 13, 2014, and submitted along with my c.v., I
9 detailed my class action notice experience, expertise in the form and content of class action
10 notice, and publications on notice and due process. I also provided my educational and
11 professional experience relating to class action notice programs and ability to render opinions
12 on the overall adequacy of the notice program.

13 3. In the above referenced matter, *In re: Wirsbo Non-F1807 YBFs*, I was asked to design
14 Notices and a Notice Plan to inform class members about their rights in the litigation. This
15 report will describe the elements of the Notice Program and the notices (the “Notice” or
16 “Notices”) proposed, including how they were developed and why I believe they will be
17 effective.
18

19 **Overview**

20 4. In developing the Notice Program, it was first determined that a list of Class Members
21 could be created, and it would be reasonable to implement an individual notification effort to
22 reach them.
23

24 5. In order to further supplement the reach of the Notice Program, a Summary Notice will
25 also appear in one national edition of an investor newspaper and one local newspaper. Online
26 advertising will also appear on the Internet in Nevada.
27

1 6. Detailed information about the Settlement will be available to potential Class Members
2 on a website.

3 7. KM recommends an opt-out deadline of July 31, 2015, (thirty days after the last notice
4 is issued). This timeframe will allow Class Members sufficient time to be exposed to the
5 notice efforts and act accordingly.

6
7 8. I have been involved in drafting the various forms of Notice described below.

8
9 9. As detailed below, in my opinion, the Notice Program represents the best notice
10 practicable under the circumstances.

11 **NOTICE PLAN SUMMARY**

12 10. Although each case is unique, the methods and tools used in developing the Notice
13 Program for this litigation have been employed in many other court-approved notice plans.

14
15 11. In this case, the Notice Program was designed to reach the greatest practicable number
16 of Class Members, ensuring that they will be exposed to, see, review, and understand the
17 Notice. Based on information provided by the parties, KM estimates the proposed notice
18 program will reach over 75% of the Class.

19 **Individual Notice**

20 12. A mailing list was compiled for the Certification Notice Program. Class Counsel
21 previously provided Rust Consulting, Inc. ("Rust"), who has now been retained to serve as the
22 Claims Administrator in this case, with a list of known builders that used the Uponor/Wirsbo
23 products involved in this litigation. Rust worked with a vendor to search property tax assessor
24 records by builder and subdivision to identify affected properties in Clark County, NV. This
25 list will be used again for Individual Notice.
26

1 13. Also, a list of non-residential properties that may include potential Class Members was
2 also obtained. This list contains approximately 794 properties, including hotels, motels, inns,
3 resorts, accommodations, dormitories, hostels, corporate lodging, condominiums, apartment
4 buildings, and student housing.

5
6 14. Individual Notice consisting of a mailed Postcard Notice will be the principal method
7 of providing Class Members with opportunities to see, read, and understand their rights, and
8 act if they so choose.

9
10 15. Prior to mailing, all addresses will be checked against the National Change of Address
11 (“NCOA”)¹ database, which is maintained by the United States Postal Service (“USPS”). In
12 order to ensure the most accurate mailings possible, the administrator will also certify
13 addresses via the Coding Accuracy Support System (“CASS”), and verify them through
14 Delivery Point Validation (“DPV”).²

15
16 16. Postcard Notices that are returned as non-deliverable will be re-mailed to any address
17 indicated by the postal service in the case of an expired automatic forwarding order. Notices
18 returned as non-deliverable, but for which a new address is not indicated by the postal service,
19 will be further searched through another vendor to obtain a more current address. If any such
20 address is found, the Notice will be re-mailed.

21 17. Research has shown that a summary notice is more likely to be read by recipients than
22 a longer form notice.

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25 ¹ The NCOA database contains records of all permanent changes of address submissions received by the
USPS for the last four years.

26 ² CASS is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems. Records
27 that are properly coded are then sent through Delivery Point Validation to verify the address is correct. If they are
28 incorrect, DPV will report exactly what is wrong with the address.

1 a. The Federal Judicial Center (“FJC”) believes that summary notices should be
2 mailed in many class action cases.

3
4 i. The Class Action Subcommittee of the Civil Rules Advisory Committee
5 asked the FJC to draft model notices in plain language to support the then
6 pending changes to Rule 23(c), which now requires notices to “concisely and
7 clearly state in plain, easily understood language” the information a class
8 member needs to know. The FJC conducted research to determine the best way
9 to write class action notices to allow people to easily understand all of their
10 rights and options.³

11 ii. While I was employed with the FJC we conducted four focus groups to
12 gather feedback on our draft plain language notices. During the focus group
13 process, we explored recipients' willingness to open and read a class action
14 notice. Many focus group participants complained that it would take too much
15 time out of their busy schedules to read a detailed notice, which in turn would
16 cause them to skim the notice or throw it away.

17
18 iii. We went on to empirically test the overall effectiveness of the FJC’s
19 model securities notice. We collected responses from 229 volunteer
20 participants who were members of 27 investment clubs across the country.
21 Only 2% of participants reported that they would carefully read a long form
22 notice; 59% would glance at it; 12% would file it away; and 27% would throw
23 it away without reading it. However, 43% of participants reported they would
24 carefully read a summary notice; 36% would glance at it; 6% would file it

25
26 ³ The research conducted by the FJC is discussed in Shannon R. Wheatman, *The Effects of Plain Language*
27 *Drafting on Layperson’s Comprehension of Class Action Notices* (2001) (unpublished Ph.D. dissertation,
28 University of Georgia) (on file with the University of Georgia Library).

1 away; and 15% would throw it away.

2
3 iv. Given these findings the FJC believes that when the case does not
4 involve a serious health or emotional issue, mailing a summary notice will
5 most likely increase the chances it will be read.

6 b. USPS research shows that many people scan their mail.⁴

7
8 i. The USPS conducts and publishes the results of an annual study
9 (*Household Diary Study*) examining how mail recipients interact with different
10 types of mail. The survey has three main purposes: (a) to measure the mail sent
11 and received by U.S. households, (b) to provide a means to track household
12 mail trends over time, and (c) to make comparisons of mail use between
13 different types of households. The survey collects household information on
14 attitudes toward mail and advertising.

15 ii. The study examines mail by type, including: correspondence,
16 transactions, advertising, periodicals, packages, and unclassified mail.
17 Advertising mail, which can take many forms – “letters, postcards, catalogs, and
18 free samples” – is the category for promotional, advertising, or sales material.
19 There is no category for legal notices.

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21 iii. In 2012, 79% of recipients either “read” or “scanned” the
22 advertising mail sent to their households. In order to decide to read or throw
23 away advertising mail, the recipient must look at the envelope or mailer.

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26 ⁴ USPS, *Household Diary Study: Mail Use & Attitudes in FY2012*, available at
27 <http://about.usps.com/current-initiatives/studying-americans-mail-use.htm> (last visited March 9, 2015).

1 c. Based on the FJC and the USPS studies, Postcard Notice is the
2 recommended form for direct notice in this case.

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5 **Publication Notice**

6 18. To supplement the Individual Notice, KM designed a paid media program to reach
7 Class Members who do not receive a Postcard Notice via mail.

8
9 19. KM reviewed demographics that represent potential Class Members and recommends
10 reaching Las Vegas homeowners that live within the Las Vegas Designated Market Area
11 (“DMA”)⁵ and property investors who may reside elsewhere.

12 20. To effectively reach this Class, KM recommends a broad-based notice program that
13 utilizes a national investment newspaper, local newspaper, and Internet in order to meet due
14 process standards and provide the best notice practicable under the circumstances.

15
16 21. KM chose the specific newspapers listed below because they reach Las Vegas
17 homeowners that live within the Las Vegas DMA and property investors who may reside
18 elsewhere. The Summary Notice will appear in the following newspapers:

19
20 a. A one sixth-page ad (3.9” x 8.4”) in the National edition of *Investor’s Business*
21 *Daily* with an estimated circulation of 158,658.

22 b. A one sixth-page ad (4.9” x 7.75”) in the *Las Vegas Review Journal/Las Vegas*
23 *Sun* with an estimated circulation of 115,272.

24
25 _____
26 ⁵ Designated Market Area (“DMA”) is a group of counties that form an exclusive geographic area in which the
27 home market television stations hold a dominant share of total hours viewed. DMA is a trademark of The Nielsen
28 Company and is used for planning, buying, and evaluating media audiences across various markets.

1 22. Additionally, a sentence about the Las Vegas Settlement will be included in the “Who
2 is Included” section of the nationwide publication notice that will be implemented in the
3 *George v. Uponor* settlement in the United States District Court for the District of Minnesota.
4 This Notice will further extend the reach to non-resident investors as well as any former
5 property owners who are affected by the Settlement. That Summary Notice will be published
6 as follows:

7 a. Two half-page ads (3.375” x 10”) in *People* with an estimated
8 circulation of 3,425,000.

9
10 b. A 2/5-page ad (5.25” x 6.375”) in *Parade* with an estimated circulation
11 of 22,000,000.

12
13 23. All print advertising will carry a toll-free number and website address for potential
14 Class Members to request or access the Long Form Notice or a Claim Form.

15 **Online Media**

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17 24. KM recommends incorporating Internet advertising into the Notice Program to provide
18 potential Class Members with additional notice opportunities beyond the print program.
19 Internet advertising delivers an immediate message and allows the viewer of an advertisement
20 to instantly click through to a website for further information.

21 25. Internet advertising will include the following network:

22 a. Banner advertisements measuring 160 x 600 pixels, 728 x 90 pixels, and 300 x
23 250 pixels will appear, on a rotating basis, on the Nevada Xaxis Network
24 (formerly known as 24/7 Media Network).⁶ The banner advertisements are
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27 ⁶ Xaxis is a network that represents over 5,000 websites.

1 expected to deliver over six million impressions.

2 26. An informational, interactive website is a critical component of the Notice Program. A
3 website is a constant information source instantly accessible to millions. The site will utilize
4 the Internet's ability to serve as a key distribution channel and customer service bureau.
5

6 27. A website will be maintained at www.BrassFittingsClass.com to enable potential Class
7 Members to get information about the Settlement and obtain a Claim Form.

8 ***Other***

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10 28. The Settlement Administrator will establish a toll-free phone number with live operator
11 support to allow Class Members to call and request that a Notice or Claim Form be mailed to
12 them, listen to answers to frequently asked questions, or get more information on the
13 Settlement.

14 29. A post office box will be established allowing Class Members to contact Class Counsel
15 by mail with any specific requests or questions.
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17 **NOTICE FORM AND CONTENT**

18 30. Copies of the Postcard Notice, Summary Notice for Publication, and the Long Form
19 Notice are being filed separately by the parties.
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21 31. The Notices communicate information about the litigation.

22 32. The notices also include all content required by Rule 23 of the Federal Rules of Civil
23 Procedure including: the nature of the action; the definition of the class certified; the class
24 claims, issues, or defenses; that a class member may enter an appearance through an attorney if
25 the member so desires; that the court will exclude from the class any member who requests
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1 exclusion; the time and manner for requesting exclusion; and the binding effect of a class
2 judgment on the members under Rule 23(c)(3).

3
4 33. The Summary Notices (Postcard and Publication Notices) are designed to capture Class
5 Members' attention. They direct readers to the case website for more information. The text
6 provides important information regarding the subject of the litigation, Class definition, and
7 legal rights available to Class Members. No important or required information is missing or
8 omitted. In fact, these Notices state all the required information, without omitting significant
9 facts that Class Members need to understand their rights.

10 34. The Long Form Notice will be available at the website or by calling the toll-free
11 number. The Long Form Notice provides substantial information, including all specific
12 instructions Class Members need to follow to properly exercise their rights, and background on
13 the issues in the case. It is designed to encourage readership and understanding, in a well-
14 organized and reader-friendly format.

15
16 **Conclusion**

17 35. It is my opinion that this Notice Program is adequate, reasonable, and consistent with
18 the standards employed by KM in notification programs designed to reach class members. The
19 Notice Program as designed is fully compliant with Rule 23 of the Federal Rules of Civil
20 Procedure.

21 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
22 true and correct. Executed in Washington, D.C. this 26th day of May 2015.

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26 Shannon R. Wheatman