

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAN MACLEOD,	:	
	:	CIVIL ACTION
Plaintiff,	:	NO. 20-03485
	:	
v.	:	
	:	
JENNER'S POND, INC.	:	
	:	
Defendant.	:	

O R D E R

**AND NOW**, this **9th** day of **February, 2021**, after considering Plaintiff's Emergency Motion for Relief Pursuant to Rule 23(d), as well as the Response thereto, and holding a hearing on the record, it is hereby ordered that Plaintiff's Motion (ECF No. 43) is **GRANTED in part and DENIED in part**.<sup>1</sup> Accordingly, it is **FURTHER ORDERED** that:

1. By **February 16, 2021**, Defendant shall provide Plaintiff with the following information:

- i. The contact information and representative capacities of all putative class members who were contacted by Defendant about settling their claims in this action ("Members");
- ii. the date(s) on which the Members were contacted;

- iii. whether the Members signed a Confidential Settlement Agreement ("Agreement"); and
- iv. copies of all documents sent to Members.

2. Counsel for the parties shall proceed to draft a curative notice ("Notice"), which shall:

- i. Explain that paragraph 5 of the Agreement releases only those claims implicated in the instant action and does not release any other claims Members may have against Defendant;

- ii. clarify that putative class members have the right to consult with an attorney of their own choosing, at their own expense, before engaging in further negotiations or executing the Agreement;

- iii. explain that the Complaint sets forth Plaintiff's claims, and that Defendant denies liability; and

- iv. enclose a copy of the First Amended Complaint, redacted appropriately.

3. By **February 19, 2021**, the parties shall either: (i) transmit the agreed-upon Notice to all Members who previously received any written communication from Defendant or (ii) advise the Court of their inability to agree upon the contents of the Notice.

4. All other relief Plaintiff seeks in the instant

Motion is **DENIED**.

**AND IT IS SO ORDERED.**

/s/ Eduardo C. Robreno  
**EDUARDO C. ROBRENO, J.**

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<sup>1</sup> Federal Rule of Civil Procedure 23, which governs class actions, reflects a "dual policy of protecting the interests of absent class members while fostering the fair and efficient resolution of numerous claims involving common issues." In re Sch. Asbestos Litig., 842 F.2d 671, 680 (3d Cir. 1988). Under this Rule, "a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties." Gulf Oil Co. v. Bernard, 452 U.S. 89, 100 (1981).

Specifically, "district courts must closely monitor the notice process and take steps to safeguard class members from unauthorized and misleading communications from the parties or their counsel." In re Cmty. Bank of N. Va., 418 F.3d 277, 310 (3d Cir. 2005) (quotation omitted). To this end, Rule 23 permits courts to issue orders "impos[ing] conditions on the representative parties" and "deal[ing] with similar procedural matters," inter alia. Fed. R. Civ. P. 23(d).

However, a court's discretion to issue such orders "is not unlimited," Gulf Oil Co., 452 U.S. at 100, and "an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties," id. at 101; see also In re Sch. Asbestos Litig., 842 F.2d 671, 680 (3d Cir. 1988) ("Misleading communications to class members concerning the litigation pose a serious threat to the fairness of the litigation process, the adequacy of representation and the administration of justice generally. . . . Orders regulating communications between litigants . . . , however, also pose a grave threat to first amendment freedom of speech.").

For the reasons stated on the record, the Court concludes that aspects of Defendant's communications with putative class members were sufficiently incomplete as to warrant curative notice. The Court is satisfied that the Notice ordered herein will cure this issue.