

EXHIBIT D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

THIS DOCUMENT RELATES TO:

Waters, et al. v. U.S. Bank, N.A.
S.D. Fla. Case No. 1:09-cv-23034-JLK
N.D. Cal. Case No. 09-2071-JSW

Speers, et al., v. U.S. Bank, N.A.
S.D. Fla. Case No. 1:09-cv-23126-JLK
D. Or. Case No. 3:09-cv-00409-HU

Brown v. U.S. Bank, N.A.
S.D. Fla. Case No. 1:09-cv-24147-JLK
E.D. Cal. Case No. 2:10-00356-RMP

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

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

1. I am a Senior Vice President of Kinsella Media, LLC (“KM”), an advertising and notification firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs. My business address is 2120 L Street, NW, Suite

860, Washington, D.C. 20037. My telephone number is (202) 686-4111.

2. I have served as a qualified class action notice expert in many major class actions. State and federal courts have accepted my analyses and expert testimony on whether information is effectively communicated to people. My c.v. is attached as **Exhibit 1**.

3. I have testified in court as an expert in *Spillman v. Dominos Pizza, LLC*, No. 10-349 (M.D. La.); *PRC Holdings LLC v. East Resources, Inc.*, No. 06-C-81 (Cir. Ct. W. Va.); *Guidry v. American Public Life Ins. Co.*, No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish); *Webb v. Liberty Mutual Ins. Co.*, No. CV-2007-418-3 (Cir. Ct. Ark); and *Beasley v. The Reliable Life Insurance Co.*, No. CV-2005-58-1 (Cir. Ct. Ark). I have been deposed as an expert in *Thomas v. A. Wilbert Sons, LLC*, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

4. I have been involved in some of the largest and most complex national notification programs in the country, including: the Bank of America and JPMorgan Chase settlements in *In re: Checking Account Overdraft Litig.*, MDL No. 2036 (S.D. Fla.); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (involving millions of indirect purchasers); *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La.); *Kramer v. B2Mobile, LLC* (text messaging case involving tens of millions of consumers), No. 10-cv-02722 (N.D. Cal.); *In Re: Enfamil LIPIL Mkt'g & Sales Pract. Litig.* (consumer fraud settlement involving millions of infant formula purchasers), No. 11-MD-02222 (S.D. Fla.); *Fogel v. Farmers Group, Inc* (\$455 million settlement involving tens of millions of insureds), No. BC300142 (Cal. Super. Ct., LA County); *In re Katrina Canal Breaches Consolidated Litig.* (settlement obtained for Hurricane Katrina and Rita survivors), No. 05-4182 (E.D. La.); *Lockwood v. Certegy Check Services, Inc.* (data theft settlement involving over 37 million consumers), No. 8:07CV-1434 (M.D. Fla.); *Grays Harbor Adventist Christian School v. Carrier Corp.* (defective product settlement involving high efficiency furnaces), No. 05-05437 (W.D. Wash.); and many others.

5. Courts have admitted my expert testimony on quantitative and qualitative evaluations of the effectiveness of notice programs and several courts have commented favorably, on the record, regarding the effectiveness of notice plans I have done. Selected judicial comments are included in the attached c.v.

6. My qualifications include expertise in the form and content of notice. For example, while serving with the Federal Judicial Center (“FJC”), I played an integral part in the development of the illustrative, “model” forms of notice, designed to satisfy the plain language requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my doctoral dissertation, *The Effects of Plain Language Drafting on Layperson’s Comprehension of Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and attorneys, in state as well as federal courts, the FJC has posted the notices at www.fjc.gov.

7. I have authored and co-authored articles on notice and due process. I believe notice and due process depend upon clear communication with the people affected. *See, e.g.*, Shannon R. Wheatman & Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class Notice and Claims Administration*, in *The International Private Enforcement of Competition Law* 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*, GEO J. LEGAL ETHICS, 18 (4), 1359-1382 (2005); Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire-to-Inform” Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

8. I was asked by Settlement Class Counsel and counsel for U.S. Bank to design the

Notices and Notice Program to inform Settlement Class Members about their rights in the litigation. Plaintiffs and Class Counsel filed the Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of the Settlement Class (the "Motion") on July 24, 2013 and the Court approved the Motion and the Notices on July 29, 2013.

SUMMARY OF CONCLUSIONS

9. The Court-approved Notice Program we designed and implemented for this case achieved each of the planned objectives:

- a. Each element of the Notice Program approved by the Court has been implemented.
- b. As of October 19, 2013, the Notice Program, as implemented, reached approximately 85.8% of Settlement Class Members through Direct Notice and Publication Notice.
- c. Not reflected in the calculable reach figures is a Settlement website administered by Rust Consulting, Inc., which also provided information about the Settlement to Settlement Class Members and a copy of the Long Form Notice.
- d. The Court-approved Notices were noticeable, clear, simple, substantive, and informative. No significant or required information was missing.

10. In my view, the Notice Program, as approved by the Court and administered by the Notice Administrator, provided the best notice practicable under the circumstances of this case, and satisfied due process.

11. The details of the Notice Plan and the basis for my opinion on its adequacy, as well as on the adequacy of the Notice Plan as implemented, are outlined below.

NOTICE PLAN IMPLEMENTATION

Individual Notice

12. In developing the Notice Program, it was first determined that a comprehensive list of Settlement Class Members was available from data provided by U.S. Bank.

13. Starting on September 13, 2013, a total of 2,712,743 Postcard Notices were mailed to Settlement Class Members, using data provided by U.S. Bank.

14. Prior to mailing, all mail addresses were checked against the National Change of Address (“NCOA”)¹ database, which is maintained by the United States Postal Service (“USPS”). In order to ensure the most accurate mailings possible, the administrator also certified addresses via the Coding Accuracy Support System (“CASS”), and verified them through Delivery Point Validation (“DPV”).² Any mail that was returned with a forwarding address was re-mailed to the new address indicated by USPS. Any mail that was returned without a forwarding address was further checked through Lexis-Nexis and re-mailed if a new address was found.

15. As of October 7, 2013, only 384,402, or 14.17% of the Postcard Notices sent directly to Settlement Class Members, remain undelivered. Therefore, to date, the Postcard Notice has reached at least 85.8% of the Settlement Class.

Paid Media

16. To supplement direct notice to Settlement Class Members via mail, KM designed a notice program utilizing consumer magazines to provide Settlement Class Members with additional opportunities to receive notice.

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

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

17. Summary Notice (**Exhibit 2**) was published in two national consumer magazines, as follows:

- a. A half page ad (4.25" x 10.625") in *ESPN* on September 20, 2013.
- b. A half page ad (3.375" x 10") in *People* on September 20, 2013.

Online Media

18. On September 13, 2013 a Settlement website, www.USBankOversdraftSettlement.com, went live. By logging on to this website, potential Settlement Class Members could obtain additional information about the Settlement, including a copy of the Settlement Agreement, Long Form Notice, and Claim Form.

19. The website address was prominently displayed in all Notice materials.

20. As of October 19, 2013, there have been 39,027 unique visitors to the website.

Toll Free Number

21. On September 13, 2013, a toll-free phone number, set up and hosted by Rust Consulting, became operational. By calling this number, Settlement Class Members were able to hear answers to frequently asked questions or request that Notice be mailed to them.

22. As of October 19, 2013, the toll-free number has handled approximately 36,576 calls.

Objections

23. As of October 19, 2013, two Settlement Class Members have filed objections.

Exclusions

24. As of October 19, 2013, 68 Settlement Class Members have made timely requests to be excluded from the Class.

PERFORMANCE AND DESIGN OF NOTICE PROGRAM

25. ***Objectives were met.*** The primary objective of the Settlement Notice effort in this case was to effectively reach the greatest practicable number of Settlement Class Members with a “noticeable” Notice of the Settlement, and provide Settlement Class Members with every reasonable opportunity to understand that their legal rights are affected, and that they have a right to be heard and to object to and request exclusion from the Settlement. This objective was successful.

26. The Notice reached Settlement Class Members effectively. Our calculations indicate that direct notice reached an estimated 85.8% of Settlement Class Members as of October 19, 2013. In addition, although not included in the reach percentage above, publication of the notice in *ESPN* and *People* further enhanced coverage among the Settlement Class. In my experience, this reach percentage exceeds that achieved in many other court-approved notice programs. Based on our calculations, I can confidently state that the Settlement Class was adequately reached with notice of the Settlement.

27. ***Plenty of time and opportunity to react to the Notice.*** The Notices were initially sent on September 13, 2013, which allowed plenty of time for Settlement Class Members to see the Notice and respond accordingly before the November 13, 2012 exclusion and objection deadlines. With 61 days from the initial Notice until the exclusion and objection deadlines, and 97 days until the final approval hearing, Settlement Class Members were allotted more than adequate time to act on their rights.

28. ***Notices were designed to increase noticeability and comprehension.*** The Court-approved Notices were designed to bring the Notices to the attention of Settlement Class Members. Because recipients of email and mail are accustomed to receiving junk mail that they may be inclined to discard unopened, the notices were designed to bring the Notices to the attention of Settlement Class Members by, for example, including bold and informative

headlines. Once people “noticed” the Notices, it was critical that they could understand the contents of the notice. To this end, the Court-approved Summary Notices (Postcard and Publication Notices) were clearly worded with simple, plain language text to encourage readership and comprehension. They also directed readers to the settlement website and the toll-free number for more information.

29. In fact, the design of the Court-approved Long Form Notice embodied the illustrative “model” notices done by the Federal Judicial Center.

- a. The Long Form Notice that was available to Settlement Class Members through the settlement website and by request through the toll-free number included a large, bold headline that captured attention and immediately alerted even casual readers that they should read the Notice and explained why it is important.
- b. The Long Form Notice contained a prominent focus on the options that Settlement Class Members have, using a straightforward table design, and included details about the Settlement, such as who is affected, and Settlement Class Members’ rights. A table of contents, categorized into logical sections, organized the information for Settlement Class Members, while a question and answer format made it easy to find answers to common questions by breaking the information into simple headings and brief paragraphs.

Conclusion

30. Notice of the Settlement in this case reached over 85% of Settlement Class Members. Many courts have determined that a 75 or 80 percent “reach” is more than adequate in analogous cases. Here, we were able to exceed that. This “reach” indicates that the notice campaign was highly successful in providing notice to Settlement Class Members.

31. In addition, although not included in the reach percentage above, the website provided information about the Settlement to Settlement Class Members and made available to Settlement Class Members a copy of the Long Form Notice.

32. The Court-approved notice program meets the expressed requirements of Rule 23 of the Federal Rules of Civil Procedure and, as implemented by the Notice Administrator, has provided members of the Settlement Class the best notice practicable under the circumstances, including individual notice to all members who could be identified through reasonable effort.

33. The Court-approved notice program also comports with the guidance for effective notice articulated in the latest edition of the *Manual for Complex Litigation, Fourth*.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 22nd day of October 2013.

A handwritten signature in cursive script, appearing to read "Shannon R. Wheatman", followed by a long horizontal flourish line.

Shannon R. Wheatman

EXHIBIT 1



Shannon R. Wheatman, Ph.D.

Senior Vice President
Kinsella Media, LLC
2120 L Street NW, Suite 860
Washington, DC 20037
2010 – Present

Dr. Wheatman specializes in designing, developing, analyzing, and implementing large-scale legal notification plans. She is a court-recognized expert who provides testimony on the best notice practicable. Dr. Wheatman began her class action career in 2000 at the Federal Judicial Center where she was instrumental in the development of model notices to satisfy the plain language amendment to Rule 23. Her plain language expertise was advanced by her education, including her doctoral dissertation on plain language drafting of class action notice and her master's thesis on comprehension of jury instructions. Dr. Wheatman has been involved in over 200 class actions. Her selected case experience includes:

Antitrust

Blessing v. Sirius XM Radio Inc., No 09-CV-10035 HB (S.D.N.Y.).

Brookshire Bros. v. Chiquita, No. 05-CIV-21962 (S.D. Fla.).

In re: Dynamic Random Memory (DRAM) Antitrust Litig., MDL No. 1486 (N.D. Cal.).

In re Flonase Antitrust Litigation, No. 08-CV-3301 (E.D. Pa.).

In re: Metoprolol Succinate End-Payor Antitrust Litig., No. 06-cv-71 (D. De.).

In re: Online DVD Rental Antitrust Litig., MDL No. 2029 (N.D. Cal.).

In re TFT-LCD (Flat Panel) Antitrust Litig., MDL No. 1827 (N.D. Cal.).

Allen v. Dairy Farmers of America, Inc., No. 5:09-CV-00230-CR (D. Vt.).

Sweetwater Valley Farm, Inc. v. Dean Foods, No. 2:07-CV-208 (E.D. Tenn.).

Consumer and Product Liability

Beringer v. Certegy Check Servs., Inc., No. 8:07-cv-1434-T-23TGW (M.D. Fla.) (data breach).

CSS Inc. v. FiberNet, L.L.C., No. 07-C-401 (Cir. Ct. W. Va.) (telecommunications).

Donovan v. Philip Morris USA, Inc., No. 06-12234 NG (D. Mass.) (medical monitoring).

FIA Card Services, N.A. v. Camastro, No. 09-C-233 (Cir. Ct. W. Va.) (credit card arbitration).

Glazer v. Whirlpool Corp., No. 1:08-WP-65001 (N.D. Ohio)(defective product).

Grays Harbor v. Carrier Corp., No. 05-CIV-21962 (W.D. Wash.) (defective product).

In Re: Checking Account Overdraft Litig., MDL No. 2036 (S.D. Fla.) (JP Morgan, U.S. Bank, BOA settlements; overdraft fees).

In Re: Enfamil LIPIL Mktg. & Sales Practs. Litig., No. 11-MD-02222 (S.D. Fla.) (false advertising).

In re: M3Power Razor System Marketing & Sales Practs. Litig., MDL 1704 (D. Mass.) (false advertising).

In re Netflix Privacy Litig., No. 5:11-cv-00379 (N.D. Cal.) (privacy).

In re: Pharmaceutical Industry Average Wholesale Price Litig., MDL No. 1456 (D. Mass.) (pharmaceutical).

In re: SCBA Liquidation, Inc., f/k/a Second Chance Body Armor, Inc., No. 04-12515 (Bankr. W.D. Mich.) (defective product).

In re: Toyota Motor Corp. Unintended Acceleration Mktg, Sales Practs, & Prods Litig., No. 8:10ML2151 (C.D. Cal.) (unintended acceleration).

In Re: Wachovia Corp. "Pick-a-Payment" Mortgage Mktg & Sales Practs. Litig., No. M:09-CV-2015 (N.D. Cal.) (negative amortization).

Keilholtz v. Lennox Hearth Prods., No. 08-CV-00836 (N.D. Cal.) (defective product).

Kramer v. B2Mobile, LLC, No. 10-cv-02722 (N.D. Cal.) (text messaging).

Lee v. Carter Reed Co., L.L.C., No. UNN-L-39690-04 (N.J. Super. Ct.) (false advertising).

Palace v. DaimlerChrysler, No. 01-CH-13168 (Cir. Ct. Ill.) (defective product).

Rowe v. UniCare Life & Health Ins. Co., No. 09-cv-02286 (N.D. Ill.) (data breach).

Spillman v. Domino's Pizza, No. 10-349 (M.D. La.) (robo-call).

Wolph v. Acer, No. 09-cv-01314 (N.D. Cal.) (false advertising).

Environmental/Property

Allen v. Monsanto Co., No. 041465 and *Carter v. Monsanto Co.*, No. 00-C-300 (Cir. Ct. W. Va.) (dioxin release).

Angel v. U.S. Tire Recovery, No. 06-C-855 (Cir. Ct. W.Va.) (tire fire).

Ed Broome Inc. v. XTO Energy, Inc., No. 1:09-CV-147 (N.D. W. Va.) (oil & gas rights).

Cather v. Seneca-Upshur Petroleum Inc., No. 1:09-cv-00139 (N.D. W. Va.) (oil & gas rights).



In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, MDL No. 2179 (E.D. La.) (BP oil spill).

In Re Katrina Canal Breaches Litig., No. 05-4182 (E.D. La.) (Hurricanes Katrina and Rita).

Jones v. Dominion Transmission Inc., No. 2.06-cv-00671 (S.D. W. Va.) (oil & gas rights).

Thomas v. A. Wilbert Sons, LLC, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish) (vinyl chloride water contamination).

Government

Countrywide Mortgage Settlement, Department of Justice.

Iovate Settlement, Federal Trade Commission.

Cobell v. Salazar, No. 1:96cv01285 (D. D.C.), Depts. of Interior and Treasury.

National Mortgage Settlement, Attorneys General.

Walgreens Settlement, Federal Trade Commission.

Insurance

Beasley v. Hartford Ins. Co. of the Midwest, No. CV-2005-58-1 (Cir. Ct. Ark.) (homeowners insurance).

Bond v. Am. Family Ins. Co., No. CV06-01249 (D. Ariz) (property insurance).

Burgess v. Farmers Ins. Co., No. 2001-292 (Dist. Ct. Okla.) (homeowners insurance).

Campbell v. First Am. Title Ins. Co., No. 2:08-cv-311-GZS (D. Me.) (title insurance).

DesPortes v. ERJ Ins. Co., No. SU2004CV-3564 (Ga. Super. Ct.) (credit premium insurance).

Fogel v. Farmers Group, Inc., No. BC300142 (Super. Ct. Cal.) (management exchange fees).

Guidry v. Am. Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct.) (cancer insurance).

Gunderson v. F.A. Richard & Associates, Inc., No. 2004-2417-D. (14th Jud. D. Ct. La.) (PPO).

Johnson v. Progressive Casualty Ins., Co., No. CV-2003-513 (Cir. Ct. Ark.) (automobile insurance).

McFadden v. Progressive Preferred, No. 09CV002886 (Ct. C.P. Ohio) (UM/UIM).

Orrill v. Louisiana Citizens Fair Plan, No. 05-11720 (Civ. Dist. Ct., Orleans Parish) (Hurricane Katrina property insurance).

Purdy v. MGA Ins. Co., No. D412-CV-2012-298 (4th Jud. Ct. N. Mex.) (UM/UIM).

Press v. Louisiana Citizens Fair Plan Prop. Ins. Co., No. 06-5530 (Civ. Dist. Ct., Orleans Parish) (Hurricane Katrina property insurance).

Shaffer v. Continental Casualty Co., No. 06-2235 (C.D. Cal.) (long term care insurance).

Sherrill v. Progressive Northwestern Ins. Co., No. DV-03-220 (18th D. Ct. Mont.) (automotive



premiums).

Soto v. Progressive Mountain Ins. Co., No. 2002CV47 (Dist. Ct. Mont.) (personal injury insurance).

Webb v. Liberty Mutual Ins. Co., No. CV-2007-418-3 (Cir. Ct. Ark) (bodily injury claims).

Securities

In re Municipal Derivatives Antitrust Litig., MDL No. 1950 (S.D.N.Y.).

In re Mutual Funds Investment Litig., MDL No. 1586 (Allianz Sub-Track, D. Md.).

Canada

Donnelly v. United Technologies Corp., No. 06-CV-320045 CP (Ont. S.C.J.) (defective product).

Wener v. United Technologies Corp., 2008 QCCS 6605 (Québec) (defective product).

Dolmage v. Ontario, No. CV-09-376927CP00 (Ont. S.C.J.) (personal injury).

Hall v. Gillette Canada Co., No. 47521CP (Ont. S.C.J.) (false advertising).

Articles and Presentations

Shannon R. Wheatman, Speaker, *Class Action Developments and Settlements*, 18th Annual Consumer Financial Services Institute, New York, New York (Apr. 2013).

Shannon R. Wheatman, *Ensuring Procedural Fairness Through Effective Notice*, in NATIONAL CONFERENCE ON CLASS ACTIONS: RECENT DEVELOPMENTS IN QUÉBEC, IN CANADA AND IN THE UNITED STATES 83-99 (Yvon Blais ed., 2013).

Shannon R. Wheatman, Speaker, *Recent Trends in Class Actions in the United States*, National Conference on Class Actions: Recent Developments in Québec, in Canada and in the United States, Montreal, Canada (Mar. 2013).

Joshua P. Davis & Shannon R. Wheatman, Speaker, *Report on Model Jury Instructions in Civil Antitrust Cases, Presentation*, American Antitrust Institute's 6th Annual Private Antitrust Enforcement Conference, Washington, DC (Dec. 2012).

Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, in WORLD CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE ACTIONS AROUND THE GLOBE 673-686 (Paul Karlsgodt ed., 2012).



Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A HANDBOOK 338–348 (Albert A. Foer & Randy M. Stutz eds., 2012).

Shannon R. Wheatman, Webinar Speaker, *Class Action Notice Requirements: Challenges for Plaintiffs and Defendants*, Strafford Publications (July 2012).

Shannon R. Wheatman, Webinar Speaker, *How to Craft Plain Language Privacy Notices*, Int'l Assoc. of Privacy Professionals (Oct. 2011).

Shannon R. Wheatman, Speaker, *Improving Take-Up Rates in Class Actions*, The Canadian Institute's 12th Annual National Forum on Class Actions, Ontario, Canada (Sept. 2011).

Shannon R. Wheatman & Terri R. LeClercq, *Majority of Publication Class Action Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011).

Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF COMPETITION LAW 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010).

Shannon R. Wheatman, Speaker, *Majority of Publication Class Action Notices Fail to Satisfy Plain Language Requirements*, Clarity International Conference, Lisbon, Portugal (Oct. 2010).

Shannon R. Wheatman, Webinar Speaker, *Class Action Notification With Electronic Media: Emerging Legal Issues*, Stratford Publications (Sept. 2010).

Shannon R. Wheatman & Thomas E. Willging, *Does Attorney Choice of Forum in Class Action Litigation Really Make a Difference?* 17 CLASS ACTIONS & DERIVATIVES SUITS 1 (2007).

Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The "Desire-to-Inform" Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

Thomas E. Willging & Shannon R. Wheatman, *Attorney Choice of Forum in Class Action Litigation: What Difference Does it Make?* NOTRE DAME L. REV., 81 (2), 101, 161 (2006).

Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*. GEO. J. LEGAL ETHICS, 18 (4), 1359-1382 (2005).



Thomas E. Willging & Shannon R. Wheatman, *An Empirical Examination of Attorneys' Choice of Forum in Class Action Litigation*. FEDERAL JUDICIAL CENTER (2005).

Elizabeth C. Wiggins & Shannon R. Wheatman, *So what's a concerned psychologist to do? Translating the research on interrogations, confessions, and entrapment into policy*, in INTERROGATIONS, CONFESSIONS AND ENTRAPMENT 265–280 (G. Daniel Lassiter ed., 2004).

Thomas E. Willging & Shannon R. Wheatman, *Attorneys' Experiences and Perceptions of Class Action Litigation in Federal and State Courts. A Report to the Advisory Committee on Civil Rules Regarding a Case Based Survey*. FEDERAL JUDICIAL CENTER (2003).

Shannon R. Wheatman, *Survey of Bankruptcy Judges on Effectiveness of Case-Weights*. FEDERAL JUDICIAL CENTER (2003).

Elizabeth C. Wiggins & Shannon R. Wheatman, *Judicial Evaluation of Bankruptcy Judges*. FEDERAL JUDICIAL CENTER (2003).

Robert Niemic, Thomas Willging, & Shannon Wheatman, *Effects of Amchem/Ortiz on Filing of Federal Class Actions: Report to the Advisory Committee on Civil Rules*. FEDERAL JUDICIAL CENTER (2002).

Shannon Wheatman, Robert Niemic & Thomas Willging, *Report to the Advisory Committee on Civil Rules: Class Action Notices*. FEDERAL JUDICIAL CENTER (2002).

Elizabeth C. Wiggins & Shannon R. Wheatman, *Implementation of Selected Amendments to Federal Rule of Civil Procedure 26 by United States Bankruptcy Courts*. FEDERAL JUDICIAL CENTER (2001).

Shannon R. Wheatman & David R. Shaffer, *On finding for defendants who plead insanity: The crucial impact of dispositional instructions and opportunity to deliberate*. LAW & HUM. BEH., 25(2), 165, 181(2001).

Shannon R. Wheatman, *Distance Learning in the Courts*. FEDERAL JUDICIAL CENTER (2000).

David R. Shaffer & Shannon R. Wheatman, *Does personality influence the effectiveness of judicial instructions?* PSYCHOL. PUB. POL'Y & L., 6, 655, 676 (2000).

Court Testimony

Spillman v. Domino's Pizza, No. 10-349 (M.D. La.)



PRC Holdings LLC v. East Resources, Inc., No. 06-C-81 (Cir. Ct. W. Va.).

Guidry v. American Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish).

Webb v. Liberty Mutual Ins. Co., No. CV-2007-418-3 (Cir. Ct. Ark).

Beasley v. The Reliable Life Insurance Co., No. CV-2005-58-1 (Cir. Ct. Ark).

Depositions

Thomas v. A. Wilbert Sons, LLC, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

Judicial Comments

Spillman v. Dominos Pizza, LLC., No. 10-349 (D.La.)

“At the fairness hearing notice expert Wheatman gave extensive testimony about the design and drafting of the notice plan and its implementation, the primary goal of which was to satisfy due process under the applicable legal standards..Wheatman, who has extensive experience developing plain-language jury instructions, class action notices and rules of procedure, testified that the notice was composed at a ninth grade reading level because many adults read below a high school level.” – Hon. Stephen C. Riedlinger (2013).

In Re: Metoprolol Succinate End-Payor Antitrust Litig., No. 06-cv-71 (D. Del.)

“In accordance with the Preliminary Approval Order, notice of the proposed Settlement and Plan of Allocation has been provided to the Class in the manner directed by the Court. See Wheatman Dec. Such notice to members of the Class is hereby determined to be fully in compliance with requirements of Fed. R. Civ. P. 23(e) and due process of law and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all persons and entities entitled thereto.” – Hon. Mary Pat Thyng (2013).

PRC Holdings, LLC v. East Resources, Inc., No. 06-C-81(E) (W.Va. Cir. Ct., Roane County).

“Notice was uniquely effective in this action because East's records of their leases allowed the Claims Administrator to provide individual notice by mail to most Class Members.” - Hon. Thomas C. Evans, III (2012).

Kramer v. B2Mobile, LLC, No. 10-cv-02722 (N.D. Cal.).

“The Court approved Notice Plan to the Settlement Classes . . . was the best notice practicable under the circumstances, including comprehensive nationwide newspaper and magazine publication, website publication, and extensive online advertising. The Notice Plan has been successfully implemented and



satisfies the requirements of Federal Rule of Civil Procedure 23 and Due Process.” - Hon. Claudia A. Wilken (2012).

Cather v. Seneca-Upshur Petroleum, Inc., No. 1:09-CV-00139 (N.D. W. Va.).

“The Court finds that Class Members have been accorded the best notice as is practical under the circumstances, and have had the opportunity to receive and/or access information relating to this Settlement by reading the comprehensive written notice mailed to them . . . or by reading the published Notice in the local newspapers . . . The Court further finds that the Notice provided to the members of the Settlement Class had been effective and has afforded such class members a reasonable opportunity to be heard at the Final Fairness Hearing and to opt-out of the subject settlement should anyone so desire.” – Hon. Irene M. Keeley (2012).

In re: Checking Account Overdraft Fee Litig., No. 1:09-md-2036-JLK (S.D. Fla.) (JP Morgan Settlement)

“The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was “reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15). This Settlement with Chase was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so.” - Hon. James Lawrence King (2012).

In re Netflix Privacy Litig., No. 5:11-cv-00379 (N.D. Cal.)

"The Notice Plan and the intent of the forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B through E to the Wheatman Declaration are approved pursuant to subsections (c)(2)(B) and (ed) of Federal Rule of Civil Procedure 23. - Hon. Edward J. Davila (2012)

Purdy v. MGA Ins. Co., No. D412-CV-2012-298 (N.M. 4th Jud. Dist. Ct.)

“Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process . . . [T]he Notice also contained a clear and concise Claim Form, and a described a clear deadline and procedure for filing of Claims. Notice was directly mailed to all Class Members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class Members. The Court finds that such notice constitutes the best notice practicable.” – Hon. Eugenio Mathis (2012).

Blessing v. Sirius XM Radio Inc., No 09-CV-10035 HB (S.D.N.Y.).

“The Court finds that the distribution of the Notice and the publication of the Publication Notice . . . constituted the best notice reasonably practicable under the circumstances . . . was reasonably calculated . . . constituted due, adequate, and sufficient notice to all Class members who could be identified with



reasonable efforts; and . . . satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, R 23.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, and all other applicable law and rules.” - Honorable Harold Baer, Jr. (2011).

Fogel v. Farmers Group, Inc., No. BC300142 (Super. Ct. Cal.).

“The Court further finds and confirms that the Individual Notice (including the Proof of Claim), the Summary Notice, the reminder postcard, and the notice methodology: (a) constituted the best practicable notice . . . ; (b) constituted noticed that was reasonably calculated under the circumstances to apprise potential Class Members . . . ; (c) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice, and (d) met all applicable requirements of California law” - Hon. Laura Evans (2011).

In Re: Enfamil LIPIL Mktg. & Sales Practs. Litig., No. 11-MD-02222 (S.D. Fla.)

“The Court finds that the Class Notice provided to Class Members, in the form and manner of distribution described above, constitutes the best notice practicable under the circumstances, and fully satisfies the requirements of Federal Rules of Civil Procedure, Rule 23, the requirements of due process, and any other applicable law. The declarations filed with the Court demonstrate that the Parties have fully complied with the Court's Preliminary Approval Order (as amended by Order dated April 1, 2011) and that the best notice practicable under the circumstances was in fact given to Class Members.” - Hon. James I. Cohn (2011).

Keilholtz v. Lennox Hearth Prods., No. 08-CV-00836 (N.D. Cal.)

“Notice has been provided to the Settlement Class of the pendency of the Actions, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that said notice and the related Notice Plan provided for the best notice practicable under the circumstances to all Persons entitled to such notice and fully satisfied the requirements of Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure and the requirements of due process.” - Hon. Claudia Wilken (2011).

Rowe v. UniCare Life and Health Ins. Co., No. 09-CV-02286 (N.D.Ill.)

“The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.” – Hon. William J. Hibbler (2011).



Thomas v. A. Wilbert & Sons, LLC, 55,127 (La. 18th Jud. Dist. Ct., Iberville Parish).

“[N]otices complied with all requirements of the federal and state constitutions, including the due process clauses, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Thomas Subclass.” – Hon. Jerome M. Winsberg (2011).

In re: M3Power Razor System Mktg. & Sales Pract. Litig., MDL 1704 (D. Mass).

“The form, content, and method of dissemination of the notice given to the Settlement Class was adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Amended Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.” - Hon. Douglas P. Woodlock (2011).

Soto v. Progressive Mountain Ins. Co., No. 2002CV47 (Dist. Ct. Colo.).

“Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process . . . Finally, the Notice also contained a clear and concise Claim Form, and described a clear deadline and procedure for filing of claims. . . . Notice reached a large majority of the Class Members. The Court finds that such notice constitutes the best notice practicable.” - Hon. J. Steven Patrick (2010).

Press v. Louisiana Citizens Fair Plan Prop. Ins. Co., No. 06-5530 (Civ. Dist. Ct., Orleans Parish).

“This notice methodology . . . constitutes reasonable and best practicable notice . . . constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and . . . meets the requirements of the United States Constitution, Louisiana law, the Federal Rules of Civil Procedure and any other applicable rules of the Court . . .” - Hon. Sidney H. Cates, IV (2010).

In Re Katrina Canal Breaches, No. 05-4182 (E.D. La.).

“The notice here was crafted by Shannon Wheatman, Ph.D., whose affidavit was received as evidence . . . The entire notice was drafted in plain, comprehensible language . . . The Court finds this notice adequately reached the potential class.” - Hon. Stanwood R. DuVal, Jr. (2009).

Jones v. Dominion Transmission Inc., No. 2.06-cv-00671 (S.D. W. Va.)

“The Parties’ notice expert Shannon R. Wheatman, Ph.D. . . testified that in this case . . . that the mailed notices reached approximately 95.4 percent of the potential class . . . I HOLD that personal jurisdiction exists over the Class Members because notice was reasonable and afforded the Settlement Class an opportunity to be heard and to opt out.” - Hon. Joseph R. Goodwin (2009).



Guidry v. American Public Life Ins. Co., No. 2008-3465 (14th Jud. Dist. Ct.).

“The facts show that the notice plan . . . as adequate to design and implementation . . . Dr. Shannon R. Wheatman, a notice expert, also testified at the fairness hearing as to the sufficiency of the notice plan. Dr. Wheatman testified that the notice form, content, and dissemination was adequate and reasonable, and was the best notice practicable.” - Hon. G. Michael Canaday (2008).

Webb v. Liberty Mutual Ins. Co., (March 3, 2008) No. CV-2007-418-3 (Cir. Ct. Ark).

“Ms. Wheatman’s presentation today was very concise and straight to the point . . . that’s the way the notices were . . . So, I appreciate that . . . Having admitted and reviewed the Affidavit of Shannon Wheatman and her testimony concerning the success of the notice campaign, including the fact that written notice reached 92.5% of the potential Class members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class members who had an earlier opportunity to request exclusion but failed to do so . . . The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.” - Hon. Kirk D. Johnson (2008).

Sherrill v. Progressive Northwestern Ins. Co., No. DV-03-220 (18th D. Ct. Mont.).

“Dr. Wheatman’s affidavit was very informative, and very educational, and very complete and thorough about the process that was undertaken here. . . So I have reviewed all of these documents and the affidavit of Dr. Wheatman and based upon the information that is provided . . . and the significant number of persons who are contacted here, 90 percent, the Court will issue the order.” - Hon. Mike Salvagni (2008).

Shaffer v. Continental Casualty Co., No. 06-2235 (C.D. Cal.).

“The Class Notice and the notice methodology implemented pursuant to the Settlement Agreement, as described in part in the Declarations of . . . Shannon Wheatman . . . constituted the best practicable notice. . . was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.” - Hon. Philip S. Gutierrez (2008).

Gray’s Harbor v. Carrier Corp., No. 05-05437(W.D. Wash.).

“The Court finds that this notice was the best notice practicable under the circumstances, that it provided due and adequate notice of the proceedings and of the matters set forth therein, and that it fully satisfied all applicable requirements of law and due process.” - Hon. Ronald B. Leighton (2008).

Beringer v. Certegy Check Servs., Inc., No. 8.07-cv-1434-T-23TGW (M.D. Fla.).

“The proposed form of notice and plan for publishing are reasonable and designed to advise members of



the Settlement class of their rights . . . A nationally recognized notice specialist, Hilsoft Notifications, has developed the comprehensive Notice Plan. Here, Notice is reasonably calculated to reach the maximum number of potential Settlement Class Members and, thus, qualifies as the best notice practicable. The Notice Plan here is designed to reach the maximum number of Class Members, and it is Plaintiffs' goal to reach at least 80% of the Class—an extraordinary result in consumer class action litigation.” - Hon. Steven D. Merryday (2008).

Palace v. DaimlerChrysler Corp., No. 01-CH-13168 (Cir. Ct. Ill.).

“The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process . . .” – Hon. Mary Anne Mason (2008).

Johnson v. Progressive Casualty Ins., Co., No. CV-2003-513 (Cir. Ct. Ark.).

“Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated . . . Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable . . . The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.” - Hon. Carol Crafton Anthony (2007).

Beasley v. The Reliable Life Insurance Co., No. CV-2005-58-1 (Cir. Ct. Ark.).

“[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process . . . So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.” - Hon. Joe Griffin (2007).

Education and Experience

Education

Ph.D., Social Psychology, 2001; The University of Georgia, Athens, GA

Dissertation Title: *The effects of plain language drafting on layperson's comprehension of class action notices.*



M.S., Social Psychology, 1999; The University of Georgia, Athens, GA

Thesis Title: *Effects of verdict choice, dispositional instructions, opportunity to deliberate, and locus of control on juror decisions in an insanity case.*

M.L.S., Legal Studies, 1996; The University of Nebraska-Lincoln, Lincoln, NE

B.A., Psychology, 1993; Millersville University of Pennsylvania, Millersville, PA

Honor's Thesis Title: *The effects of inadmissible evidence and judicial admonishment in individual versus group decisions in a mock jury simulation.*

Related Experience

Hilsoft Notifications

Souderton, PA

2004-2009

Dr. Wheatman was the Vice President (2006-2009) and Notice Director (2004-2009) at Hilsoft Notifications, a legal notification firm.

Federal Judicial Center

Washington, DC

2000-2004

Dr. Wheatman was a Research Associate at the Federal Judicial Center. The Federal Judicial Center is the education and research agency for the Federal Courts. The Research Division performs empirical and explanatory research on federal judicial processes and court management. Dr. Wheatman worked with the Civil Rules Advisory Committee on a number of class action studies and with the Bankruptcy Administration Committee on judicial evaluations.

Supplementary Background

Dr. Wheatman has a strong statistical background, having completed nine graduate level courses as well as teaching undergraduate statistics at the University of Georgia. She is also a member of several plain language organizations, including the Center for Plain Language, Clarity, and Scribes.



EXHIBIT 2

If You Paid Overdraft Fees to U.S. Bank,

You May be Eligible for a Payment from a Class Action Settlement.

A \$55 million Settlement has been reached in class action lawsuits claiming that U.S. Bank National Association (“U.S. Bank”) improperly posted debit card transactions from highest to lowest dollar amount to increase the number of overdraft fees charged to account holders. U.S. Bank maintains that there was nothing wrong about the posting process used. The Court has not decided which side is right.

Who’s Included?

The Settlement includes anyone who:

- Had a U.S. Bank consumer deposit account that was accessible with a U.S. Bank debit card during the applicable Class Period, and
- Was charged one or more overdraft fees as a result of U.S. Bank’s practice of posting debit card transactions from highest to lowest dollar amount.

The applicable Class Period depends on the state where the U.S. Bank Account was opened:

- IA, IL, IN, KY, MT, OH, WY: April 1, 2003 to Aug. 15, 2010
- AR, ID, KS, MO, NE, WA: Oct. 19, 2004 to Aug. 15, 2010
- AZ, MN, ND, NV, OR, SD, TN, UT, WI: Oct. 19, 2003 to Aug. 15, 2010
- CA: May 12, 2005 to Aug. 15, 2010
- CO: Oct. 19, 2006 to Aug. 15, 2010

To be included in the Class, you must have had two or more overdraft fees caused by debits posted to your account on a single day during the applicable Class Period.

What are the Settlement Terms?

U.S. Bank has agreed to establish a Settlement Fund of \$55 million that will

provide payments to eligible Settlement Class Members. The amount any individual Settlement Class Member will receive cannot be determined at this time. Payments will be based on the number of people in the Settlement Class and the amount of additional overdraft fees each Settlement Class Member paid as a result of U.S. Bank’s posting order.

How to Get a Payment.

You will automatically receive a mailed check or electronic payment to your U.S. Bank account based on the number of eligible overdraft fees you paid during the applicable Class Period.

Your Rights May Be Affected.

If you do not want to be legally bound by the Settlement, you must ask (in writing) to be excluded from the Settlement Class by **November 13, 2013**. If you do not exclude yourself, you will release claims that were or could have been made against U.S. Bank. If you stay in the Settlement Class, you may object to the Settlement by **November 13, 2013**. The Court has scheduled a hearing on **December 18, 2013** to consider whether to approve the Settlement and a request for attorneys’ fees of up to 30 percent of the \$55 million Settlement Fund, plus reimbursement of costs and expenses, and service awards to the twelve Class Representatives. You can appear at the hearing, but you don’t have to. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing. You can call the toll-free number or visit the website to learn more about how to exclude yourself from or object to the Settlement.