

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, Both Individually, and on
Behalf of a Class of Others Similarly Situated;
BARBARA DAVIS; and ANDY RIVERA;

Plaintiffs,

vs

5:03-CV-531

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

MAR 25 2005

AT _____ O'CLOCK _____ M
LAWRENCE K. BAERMAN, Clerk
UTICA

COUNTY OF MONTGOMERY; MONTGOMERY
COUNTY SHERIFF'S DEPARTMENT; MICHAEL
AMATO, Individually, and as Sheriff of the County
of Montgomery; JEFFREY SMITH, Individually, and
as Undersheriff of the County of Montgomery;
KEVIN SNELL, Individually, and as former Undersheriff
of the County of Montgomery; JOHN PECORA,
Individually, and as Jail Administrator in the Montgomery
County Sheriff's Department; and SUE BUDDLES,
Individually, and as Lieutenant in the Montgomery
County Sheriff's Department,

Defendants.

APPEARANCES:

OF COUNSEL:

BERANBAUM MENKEN BEN-ASHER
& BIERMAN LLP
Attorneys for Plaintiff
3 New York Plaza
New York, NY 10004

BRUCE E. MENKEN, ESQ.

ELMER R. KEACH, III, ESQ.
Attorney for Plaintiff
One Steuben Place
Albany, New York 12207

MASON LAW FIRM
Attorney for Plaintiff
Suite 500
1225 19th Street N.W.
Washington, DC 20036

GARY E. MASON, ESQ.

BERANBAUM MENKEN BEN-ASHER
& BIERMAN LLP
Attorneys for Plaintiff
32nd Floor
80 Pine Street
New York, New York 10005

JASON J. ROZGER, ESQ.

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP
Attorney for Defendants
One Steuben Place
Albany, New York 12207

THERESA B. MARANGAS, ESQ.

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Defendants
150 East 42nd Street
New York, New York 10017-5639

THOMAS W. HYLAND, ESQ.

DAVID N. HURD
United States District Judge

ORDER

By Memorandum-Decision and Order filed this date the plaintiff class was certified pursuant to Fed. R. Div. P. 23(b)(2) and 23(b)(3). It is appropriate in this matter to require that prospective class members be notified of the general legal issues involved and that their rights will be affected by resolution of this case. See LaFlamme v. Carpenters Local #370 Pension Plan, 212 F.R.D. 448, 459 (N.D.N.Y. 2003). While discretion may sometimes be exercised to permit opt-out rights to absent class members, this is not an appropriate case in which to do so. See id. Thus, notice to the prospective class members will not include an opt-out provision. Id. Where, as here, defendants are in sole possession of the information about prospective class members, it is appropriate that defendants either provide the notice or cooperate with the plaintiffs by providing the information necessary to provide the notice.

Id. at 460. The party providing the notice will determine whether the notice will be individual or general. See id. Costs of providing the notice will be borne by plaintiffs. See id.

Accordingly, it is

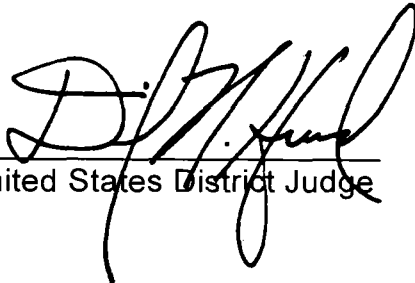
ORDERED that

1. Defendants elect, on or before April 8, 2005, whether to provide notice to the prospective class or provide the information necessary to plaintiffs so they can provide such notice;

2. The parties confer on or before April 18, 2005. At such conference, the party providing notice to the prospective class inform the other party of whether the notice to the prospective class will be individual or general. The parties attempt to agree upon the contents of a proposed notice; and

3. On or before April 28, 200⁵~~3~~, the parties submit for approval a proposed joint order setting forth the contents of the proposed notice, or, if an agreement as to content cannot be reached, the parties submit separate proposed notices.

IT IS SO ORDERED.


United States District Judge

Dated: March 25, 2005
Utica, New York.