

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

CONSUMER RESEARCH AND
PROTECTION, INC., for itself,

and for others similarly situated,

Plaintiffs,

vs.

FRED MEYER STORES, INC.,

Defendant.

Case No. 3AN-16-10640 CI

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

DO NOT BE ALARMED. YOU ARE NOT BEING SUED. PLEASE READ THIS NOTICE
CAREFULLY, AS THE PROPOSED SETTLEMENT DESCRIBED BELOW MAY AFFECT
YOUR LEGAL RIGHTS AND PROVIDE YOU WITH POTENTIAL BENEFITS.

I. WHAT IS THE PURPOSE OF THIS NOTICE?

This is a Notice of a Proposed Class Action Settlement in a lawsuit brought by plaintiff Consumer Research and Protection, Inc. (“CRPI”), against Fred Meyer Stores, Inc., the defendant, in the Anchorage Superior Court. You have been identified as a potential class member because you may have purchased an automobile or other lead/acid battery from a Fred Meyer store located in Alaska during the period from December 13, 2014 to January 31, 2017.

The purpose of this Notice is to (1) advise you of a proposed settlement of this class action lawsuit; (2) summarize the benefits available to class members under the proposed settlement; (3) inform you of the rights and options of class members; (4) inform you of a court hearing to consider whether to finally approve the settlement, which will be held on May 20, 2019, at 3:30 p.m. before the Honorable Dani Crosby, Superior Court for the State of Alaska, in Courtroom 304 of the Nesbett Courthouse, 825 W. Fourth Avenue, Anchorage, AK 99501; (5) inform you of the right to opt out of the class.

II. WHAT IS THIS LAWSUIT ABOUT?

This lawsuit involves Fred Meyer’s alleged violation of the Alaska Unfair Trade Practices and Consumer Protection Act (UTPA) by posting signs in its stores stating that state law required Fred Meyer to collect a fee when it sold new lead/acid Automotive, Marine/RV, Garden/Lawn, or Motorcycle/ATV batteries, and the buyer did not turn in an old battery for recycling. This charge is commonly called a “core fee.” These signs were incorrect, because Alaska law does not require battery sellers to charge a core fee.

The period during which Fred Meyer had the incorrect signs posted was from December 13, 2014 to January 31, 2017. The core fees charged by Fred Meyer ranged from \$15 for Auto and Marine/RV batteries, to \$8 for Garden/Lawn batteries, to \$5 for ATV/Motorcycle batteries. In the lawsuit, CRPI requested statutory damages under the UTPA for itself and each class member, and a court order (i.e., an injunction) prohibiting Fred Meyer from engaging in this conduct.

The court found that Fred Meyer violated the UTPA by posting signs falsely claiming that state law required Fred Meyer to charge battery purchasers a core fee. The court rejected CRPI’s claim for an injunction because Fred Meyer voluntarily removed and replaced the signs that had the false information when it became aware that the signs were incorrect. In addition, Fred Meyer has asserted other defenses which may ultimately prevent it from being liable for its actions. Among the other defenses, Fred Meyer has argued that: (1) that the claims of the CRPI are not sufficiently typical of the class as a whole; (2) that CRPI is not an appropriate class representative; (3) that class members who obtained a core fee refund were not harmed; and (4) that each class member would be required to demonstrate reliance on the sign that contained the falsehood.

While CRPI does not believe that Fred Meyer’s defense assertions would prevail, it acknowledged that there is a possibility that the court might find in favor of Fred Meyer on one or more of these defenses. If that were to occur, then the class claims might be substantially limited and/or extinguished. This would result in limiting recovery or perhaps attaining no recovery for class members.

On September 21, 2018, the defendant made an offer to settle the matter on terms that the attorneys for CRPI felt were advantageous to the class, and recommended acceptance. On September 23, 2018, the Board of CRPI consider the proffered settlement and voted unanimously to accept the Settlement Offer.

III. WHAT ARE THE PRINCIPAL TERMS OF THE PROPOSED SETTLEMENT?

Defendant will make a global payment of \$162,500 to settle the matter. The settlement proceeds will be allocated as follows:

- A. A total of \$71,050 will be paid to class members who purchased a lead acid battery from a Fred Meyer store in Alaska during the period from December 13, 2014 to January 31, 2017. Purchasers of batteries during this period will receive two times the core charge for the type of battery they purchased, subject to the limit on total payments as described below.

The total payment amount was calculated as follows:

- a. Approximately 2178 Auto and Marine Battery purchasers will be paid \$30 each (i.e., two times the \$15 core fee) for a total of approx. \$65,610;
- b. Approximately 344 ATV/Motorcycle Battery purchasers will be paid \$10 each (two times the \$5 core fee) for a total of approx. \$3,440;
- c. Approximately 125 Garden Battery purchasers will be paid \$16 (two times the \$8 core fee) for a total of approx. \$2,000.

At this time, the exact number of class members eligible for payment is unknown. If claims are submitted and allowed that would require the payout of settlement funds in excess of \$71,050, the payments to each class member will be reduced pro rata so that the total paid out to class members equals \$71,050.

- B. Within 30 days of the Court's final approval of Class Settlement, the Class Administrator will mail checks to all class members who can be identified through the Fred Meyer Rewards Card program. In order to reach those class members who are not enrolled in the Fred Meyer Rewards Card program, or who have incorrect addresses in the Fred Meyer Rewards Card program, the Administrator will use best efforts to notify class members, including posting notices in prominent locations in Alaska Fred Meyer stores. Class members who are not located through the Fred Meyer Rewards Card program must present some type of proof of purchase within 180 days of the Court's approval of Class Settlement to be eligible for payment.
- C. Any unclaimed funds, including checks that are not cashed with 180 days of mailing, will be donated to a mutually acceptable charitable organization.
- D. Attorneys for the plaintiffs will receive \$91,450 (i.e., \$162,500-\$71,050) as reimbursement for their attorneys fees and litigation expenses in this case. This amount is to be paid within 60 days of the courts' approval of the settlement.

Class members who do not opt out will release from all liability Fred Meyer Stores Inc., Kroger, Inc., Interstate Batteries Inc., and Interstate Battery distributors, their employees, and related entities, for acts alleged in this suit.

IV. WHO REPRESENTS THE CLASS?

Consumer Research and Protection Inc., has been approved by the Court to serve as the class representative. Tim Cook, of Cook and Associates Attorneys at Law, and the Northern Justice Project, LLC, have been approved by the Court to serve as attorneys for the class ("Class Counsel"). Contact information for Class Counsel is:

Northern Justice Project, LLC
310 K Street, Suite 200
Anchorage, AK 99501
(907) 264-6634
Email: jdavis@njp-law.com

V. WHAT ARE THE REASONS FOR THE PROPOSED SETTLEMENT?

CRPI and Fred Meyer have agreed on all of the terms of the proposed settlement through extensive arms' length negotiations. CRPI entered into the proposed settlement after weighing the benefits of the settlement against the probabilities of success or failure in this action.

CRPI and Class Counsel have concluded that the proposed settlement provides substantial benefits to the class members; resolves substantial issues without further prolonging this litigation; provides the class members with significant individual benefits, as well as in the aggregate; and is in the best interests of the class. CRPI and Class Counsel have concluded that the proposed settlement is fair, reasonable, and adequate.

VI. WHEN IS THE FINAL APPROVAL HEARING?

A Final Approval Hearing will be held before the Honorable Dani Crosby on May 20, 2019, at 3:30 pm. The hearing will take place in Courtroom 304 of the Nesbett Courthouse, 825 W. 4th Avenue, Anchorage, AK 99501. At the Final Approval Hearing, any class members who have filed an objection to the terms and conditions of the settlement will have an opportunity to address the Court as to whether the settlement is fair, reasonable, and adequate. **You are not required to attend the hearing to participate in the settlement.**

VII. WHAT ARE MY RIGHTS AS A CLASS MEMBER?

1. Participate in the Settlement. If you wish to receive the benefits of the proposed settlement, and you received this Notice in the mail because you are a Fred Meyer Rewards Card member, you do not have to do anything. If the settlement is approved by the Court at the Final Approval Hearing, you will automatically receive a payment based on the type of battery you purchased. If you have a Fred Meyer Rewards Card that shows the purchase of a subject battery during the relevant period, and your address is correct, then payment will be mailed directly to you. If you have a Fred Meyer Rewards Card, but your address is not correct, you can update your address by contacting the Class Administrator at: CRPI v. Fred Meyer Stores Class Administrator, 866-298-4190, P.O. Box 404000, Louisville, KY 40233-4000 and advise them of your correct address. You will then receive a benefit if the Rewards Card records show that you purchased a battery at a Fred Meyer store in Alaska during the relevant period (December 13, 2014 to January 31, 2017).

If a battery purchase is not listed on your Fred Meyer Rewards Card, or you do not have a Fred Meyer Rewards Card, but you purchased a subject battery at a Fred Meyer store in Alaska during the period from December 13, 2014 to January 31, 2017, then you are still eligible for payment. If you have a receipt, or canceled check, or credit card statement, or some other proof that you purchased a subject battery at a Fred Meyer store in Alaska during the period from December 13, 2014 to January 31, 2017, you can present that proof to the Class Administrator at:

CRPI v. Fred Meyer Stores
Class Administrator
866-298-4190
P.O. Box 404000
Louisville, KY 40233-4000

If a Fred Meyer Rewards Card was used to purchase a battery, but the purchaser was someone other than the listed card holder, you may inform the Class Administrator of the name of the purchaser of the battery who should receive the settlement check. Please let the Class Administrator know the name on the Fred Meyer Rewards Card, your address, and the name and address of the person who in fact purchased the battery.

If you believe that the Class Administrator has wrongfully rejected your claim, you may appeal the rejection. All appeals must be received by the Court no later than ten (10) days before the Final Approval Hearing, i.e., by May 10, 2019, and must include:

1. the case name and number (*Consumer Research and Protection Inc., v. Fred Meyer Stores, Inc.*, Case No. 3AN-16-10640 CI) at the top of the filing;
2. your name, address and telephone number; and
3. why you believe your claim should have been accepted, and any documents supporting your claim.

Copies of your appeal must also be sent to each of the following:

James J. Davis, Jr. Northern Justice Project, LLC 310 K Street, Suite 200 Anchorage, Alaska 99501	Marc Wilhelm Richmond and Quinn 360 K St. Suite 200 Anchorage, AK 99501
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The court will address your appeal at the final hearing.

2. Object to the Settlement. You have the right to object to the any of the terms of the settlement and still remain a class member. You have the right to retain an attorney to file your objections, or you may personally file any objections to the terms of the settlement. Through these objections, you can state the legal and factual reasons why the proposed settlement should not be approved by the Court as fair, reasonable, and adequate. If your objection is rejected by the Court, you will still be bound by the settlement. All objections must be in writing and either filed with or mailed to the Clerk of Court, 825 W. 4th Avenue, Anchorage, Alaska 99501. All objections must be received by the Court no later than ten (10) days before the Final Approval Hearing, i.e., by May 10, 2019, and must include:

1. the case name and number (*Consumer Research and Protection Inc., v. Fred Meyer Stores, Inc.*, Case No. 3AN-16-10640 CI) at the top of the filing;
2. your name, address and telephone number; and
3. the specific terms of the settlement to which you object, the reasons for the objection, and any documents you wish the Court to consider.

Copies of your objections must also be sent to each of the following:

James J. Davis, Jr. Northern Justice Project, LLC 310 K Street, Suite 200 Anchorage, Alaska 99501	Marc Wilhelm Richmond and Quinn 360 K St. Suite 200 Anchorage, AK 99501
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Please be advised that if you wish to appear (either personally or through an attorney) at the Final Approval Hearing, you will not be permitted to raise matters that you could have, but did not, raise in a properly filed objection.

3. Opt Out of the Settlement. Settlement Class members may opt out of the settlement by sending a written request to the Class Administrator at the address stated in this Class Notice by May 10, 2019. If you opt out of the class, you will not be able to participate in the settlement, and your claims in this lawsuit will be dismissed. You may pursue your claims in a separate lawsuit.

VIII. WHERE CAN I GET MORE INFORMATION?

The descriptions of this action and the proposed settlement that are contained in this Notice are only a general summary. In the event of a conflict between this Notice and the parties' Stipulation, the terms of the Stipulation shall control. All papers filed in this case, including the parties' Stipulation, are available for you to inspect and copy (at your cost) at the office of the Clerk of Court, Superior Court for the State of Alaska, Third Judicial District at Anchorage, 825 West 4th Avenue, Anchorage, Alaska, 99501 during regular business hours. A copy of the Stipulation may also be obtained from Class Counsel by contacting them at the address or telephone number set forth in Section IV of this Notice.

Any questions concerning this Notice, the proposed settlement, or this action may be directed to Class Counsel by contacting them at the address or telephone number set forth in Section IV of this Notice.

You may also seek the advice and counsel of your own attorney, at your own expense, if you so desire.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE CLERK'S OFFICE IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, THE ACTION, OR THE SETTLEMENT AGREEMENT.

Dated this 1st day of April, 2019.