

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

3
4 CONSUMER RESEARCH AND
5 PROTECTION, INC., for itself,
6 and for others similarly situated,

7 Plaintiffs,

8 vs.

9 FRED MEYER STORES, INC.,

10 Defendant.

11 Case No. 3AN-16-10640 CI

12 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

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

16 **I. WHAT IS THE PURPOSE OF THIS NOTICE?**

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

22 The purpose of this Notice is to (1) advise you of a proposed settlement of this class action
23 lawsuit; (2) summarize the benefits available to class members under the proposed settlement; (3)
24 inform you of the rights and options of class members; (4) inform you of a court hearing to consider
25 whether to finally approve the settlement, which will be held on [insert date], at [insert time] before

1 the Honorable Dani Crosby, Superior Court for the State of Alaska, in Courtroom 304 of the
2 Nesbett Courthouse, 825 W. Fourth Avenue, Anchorage, AK 99501; (5) inform you of the right to
3 opt out of the class.

4 **II. WHAT IS THIS LAWSUIT ABOUT?**

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

11 The period during which Fred Meyer had the incorrect signs posted was between December
12 13, 2014 and January 31, 2017. The core fees charged by Fred Meyer ranged from \$15 for Auto
13 and Marine/RV batteries, to \$8 for Garden/Lawn batteries, to \$5 for ATV/Motorcycle batteries.
14 In the lawsuit, CRPI requested statutory damages under the UTPA for itself and each class
15 member, and a court order (i.e., an injunction) prohibiting Fred Meyer from engaging in this
16 conduct.

17 The court found that Fred Meyer violated the UTPA by posting signs falsely claiming that
18 state law required Fred Meyer to charge battery purchasers a core fee. The court rejected CRPI's
19 claim for an injunction because Fred Meyer voluntarily removed and replaced the signs that had
20 the false information when it became aware that the signs were incorrect. In addition, Fred Meyer
21 has asserted other defenses which may ultimately prevent it from being liable for its actions.
22 Among the other defenses, Fred Meyer has argued that (1) the claims of the CRPI are not
23 sufficiently typical of the class as a whole; (2) that CRPI is not an appropriate class representative;
24 (3) that class members who obtained a core fee refund were not harmed; and (4) that each class
25 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

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1 acknowledged that there is a possibility that the court might find in favor of Fred Meyer on one or
2 more of these defenses. If that were to occur, then the class claims might be substantially limited
3 and/or extinguished. This would result in limiting recovery or perhaps attaining no recovery for
4 class members.

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

9 **III. WHAT ARE THE PRINCIPAL TERMS OF THE PROPOSED
10 SETTLEMENT?**

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

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

18 The total payment amount was calculated as follows:

- 19 a. Approximately 2178 Auto and Marine Battery purchasers will be paid \$30 each
20 (i.e., two times the \$15 core fee) for a total of approx. \$65,610;
21 b. Approximately 344 ATV/Motorcycle Battery purchasers will be paid \$10 each
22 (two times the \$5 core fee) for a total of approx. \$3,440;
23 c. Approximately 125 Garden Battery purchasers will be paid \$16 (two times the
24 \$8 core fee for a total of approx. \$2,000.

25 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

1 funds in excess of \$71,050, the payments to each class members will be reduced
2 pro rata so that the total paid out to class members equals \$71,050.

3 B. Within 30 days of the Court's final approval of Class Settlement, the Fund
4 Administrator will mail checks to all class members who can be identified through the
5 Fred Meyer Rewards Card program. In order to reach those class members who are not
6 enrolled in the Fred Meyer Rewards Card program, or who have incorrect addresses in
7 the Fred Meyer Rewards Card program, the Administrator will use best efforts to notify
8 class members, including posting notices in prominent locations in Alaska Fred Meyer
9 stores. Class members who are not located through the Fred Meyer Rewards Card
10 program must present some type of proof of purchase within 180 days of the Court's
11 approval of Class Settlement, to be eligible for payment.

12 C. Any unclaimed funds, including checks that are not cashed with 180 days of mailing,
13 will be donated to a mutually acceptable charitable organization.

14 D. Attorneys for the plaintiffs will receive \$91,450 (i.e., \$162,500-\$71,050) as
15 reimbursement for their attorney's fees and litigation expenses in this case. This amount
16 to be paid within 60 days of the courts' approval of the settlement.

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

20 **IV. WHO REPRESENTS THE CLASS?**

21 Consumer Research and Protection Inc., has been approved by the Court to serve as the
22 class representative. Tim Cook, of Cook and Associates Attorneys at Law, and the Northern Justice
23 Project, LLC, have been approved by the Court to serve as attorneys for the class ("Class
24 Counsel"). Contact information for Class Counsel is:
25

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

1 battery you purchased. If you have a Fred Meyer Rewards Card that shows the purchase of a
2 subject battery during the relevant period, and your address is correct, then payment will be mailed
3 directly to you. If you have a Fred Meyer Rewards Card, but your address is not correct, you can
4 update your address by contacting the Class Administrator at: KCC Class Action Services, PO
5 Box 404000, Louisville, KY 40233-4000, or by calling them at 866-298-4190, and advise them of
6 your correct address. You will then receive a benefit if the Rewards Card records show that you
7 purchased a battery at a Fred Meyer store in Alaska during the relevant period (December 13, 2014
8 to January 31, 2017).

9 If a battery purchase is not listed on your Fred Meyer Rewards Card, or you do not
10 have a Fred Meyers Rewards Card, but you purchased a subject battery at a Fred Meyer store in
11 Alaska during the period from December 13, 2014 to January 31, 2017, then you are still eligible
12 for payment. If you have a receipt, or canceled check, or credit card statement, or some other proof
13 that you purchased a subject battery at a Fred Meyer store in Alaska during the period from
14 December 13, 2014 to January 31, 2017, you can present that proof to the Class Administrator at:
15 KCC Class Action Services, PO Box 404000, Louisville, KY 40233-4000, or by calling them at
16 866-298-4190.

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

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

- 25 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

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1 3. why you believe your claim should have been accepted, and any documents
2 supporting your claim.

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

4 James J. Davis, Jr.	Marc Wilhelm
Northern Justice Project, LLC	Richmond and Quinn
310 K Street, Suite 200	360 K St. # 200
5 Anchorage, Alaska 99501	Anchorage, AK 99501

6 The court will address your appeal at the final hearing.

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

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

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

22 James J. Davis, Jr.	Marc Wilhelm
Northern Justice Project, LLC	Richmond and Quinn
310 K Street, Suite 200	360 K St. # 200
23 Anchorage, Alaska 99501	Anchorage, AK 99501

24 Please be advised that if you wish to appear (either personally or through an attorney) at the Final
25 Approval Hearing, you will not be permitted to raise matters that you could have, but did not, raise

1 in a properly filed objection.

2
3 3. **Opt Out of the Settlement.** Settlement Class members may opt out of the
4 Settlement by sending a written request to the Claims Administrator at the address stated in this
5 Class Notice by the Objection Deadline. If you opt out of the class, you will not be able to
6 participate in the settlement, and your claims in this lawsuit will be dismissed. You may pursue
7 your claims in a separate lawsuit.

8 **VIII. WHERE CAN I GET MORE INFORMATION?**

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

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

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

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

Dated this 28th day of December, 2018.

/s/ DANI CROSBY
Superior Court Judge

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