

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 22, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JADE WILCOX on behalf of herself
and all others similarly situation,

Plaintiff,

v.

JAMES CRAIG SWAPP,
individually; and SWAPP LAW,
PLLC, doing business as Craig
Swapp and Associates,

Defendants.

NO: 2:17-CV-275-RMP

ORDER GRANTING JOINT
MOTION TO DELAY ENTRY OF
ANY ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

BEFORE THE COURT is the parties' Joint Motion Regarding the Class Action Fairness Act ("CAFA"), ECF No. 153. The parties jointly request that the Court hold the final fairness hearing on their proposed class action settlement on the scheduled hearing date of April 29, 2020, but that the Court delay entering any order granting final approval of the settlement until June 22, 2020. The parties also ask that the Court consider the revised proposed final approval order, which they

1 attached to the instant motion. *See* 153-1. The Court has considered the record, the
2 motion, and is fully informed.

3 The parties jointly request that any order granting final approval of their
4 settlement be held in abeyance to comply with statutory notice requirements under
5 CAFA. *See* 28 U.S.C. §§ 1715(b) and (d). CAFA requires that the defendants in
6 any class action settlement provide notice of the proposed settlement to the
7 appropriate state and federal officials “[n]ot later than 10 days after a proposed
8 settlement of a class action is filed in court” 28 U.S.C. § 1715(b). A district
9 court must wait ninety days after notice is provided to the appropriate state and
10 federal government officials before entering final approval of a class action
11 settlement. 28 U.S.C. § 1715(d).

12 Defendants admit that they did not provide the necessary documents to the
13 appropriate government officials within 10 days of filing the proposed settlement in
14 this Court. *See* ECF No. 151. The proposed settlement in this case was filed in
15 conjunction with the parties’ joint motion for preliminary approval of their class
16 action settlement on October 25, 2020. *See* ECF No. 139-1. Rather than providing
17 notice to the appropriate government officials within ten days, Defendants provided
18 them notice via U.S. Mail on March 24, 2020. ECF No. 151. Thus, the notice
19 requirement clearly was not met. *See* 28 U.S.C. § 1715(b). *See id.*; ECF No.151-1.
20 Due to Defendants’ delay in providing notice, the Court finds that, pursuant to
21 CAFA, 28 U.S.C. § 1715(d), it cannot issue an order granting final approval of the

1 class action settlement in this case until June 22, 2020, ninety days after Defendants
2 mailed notice of the proposed settlement and other required documents to the
3 appropriate state and federal officials.

4 The Court now must consider whether it may hold a final fairness hearing on
5 the scheduled date of April 29, 2020, despite the fact that notice to the relevant
6 government officials was delayed. CAFA is silent on this issue, and the Court has
7 found no precedent requiring a continuance of the final fairness hearing under these
8 circumstances. *See* 28 U.S.C. 1715. The statute only requires that the Court wait
9 ninety days before entering final approval; it imposes no time requirement related to
10 fairness hearings.

11 Additionally, the Court has found a persuasive case from the Central District
12 of California, *Gatdula v. CRST International, Inc.*, in which the district court faced
13 similar circumstances. Case No. CV 11-01285 VAP (OPx), 2015 WL 12697656, at
14 *12 (C.D. Cal. Aug. 26, 2015). There, the defendants in a class action settlement
15 provided notice to the relevant state and federal officials on August 12, 2015, and
16 the final fairness hearing was held later that same month. *See id.* To ensure that
17 government officials had the required amount of time to oppose the settlement, the
18 district court held its order granting final approval in abeyance. *Id.*

19 Moreover, numerous district courts have explained that, as long as state and
20 federal government officials are allowed ninety days to object to the settlement or
21 request to be heard, the notice requirement has effectively served its purpose. *See*

1 e.g., *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 973 (E.D. Cal. 2012)
2 (explaining that numerous courts have found that “late mailing of notices to state
3 and federal officials under CAFA is not fatal to approval of settlements”); *In re*
4 *Processed Egg Products Antitrust Litigation*, 284 F.R.D. 249, 258 n.12 (E.D. Pa.
5 2012) (“[A]lthough the notice requirements under CAFA have not been fully met on
6 a technical basis, the substance of the requirements have been satisfied insofar as
7 giving federal and state officials sufficient notice and opportunity to be heard
8 concerning the [s]ettlement.”); *Gatdula*, 2015 WL 12697656, at *12 (finding that
9 notice to government officials was not timely and holding entry of final order
10 approving settlement in abeyance to allow government officials ninety days to object
11 to the settlement).

12 The parties in the instant case ask this Court to take the same measures as the
13 *Gatdula* Court to remedy the same problem, a delay in notice to the appropriate
14 government officials. The Court finds that, as long as the relevant government
15 officials are allowed ninety days to object to the settlement, the notice requirement
16 has served its purpose. *See id.* In this case, holding final approval in abeyance until
17 June 22, 2020, allows the appropriate government officials the statutorily required
18 amount of time to object to the settlement and to request a hearing. Thus, the Court
19 will conduct the final fairness hearing on April 29, 2020, as scheduled, and hold any
20 decision approving the settlement in abeyance, as requested.

