

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CHARLES ROBERTS, an individual, and
KENNETH MCKAY, an individual, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

C.R. ENGLAND, INC., a Utah corporation; and
OPPORTUNITY LEASING, INC., a Utah
corporation,

Defendants.

Civil No. 2:12-CV-00302

Chief Judge Robert J. Shelby
Magistrate Judge Brooke C. Wells

If you entered a vehicle lease agreement (“VLA”) with Opportunity Leasing, Inc. d/b/a Horizon Truck Sales and Leasing and entered an Independent Contractor Operating Agreement (“ICOA”) with C.R. England, Inc. between May 27, 2007 and January 31, 2017, you may be entitled to a class action settlement payment.

A federal court authorized this notice. This is not a solicitation from a lawyer.

**QUESTIONS? CALL 1-877-242-2522 TOLL-FREE OR VISIT
WWW.CRELANDCLASSACTION.COM**

TO: ALL PERSONS IN THE UNITED STATES WHO, DURING THE PERIOD FROM MAY 27, 2007 THROUGH JANUARY 31, 2017, ENTERED INTO A VEHICLE LEASE AGREEMENT WITH OPPORTUNITY LEASING INC. d/b/a HORIZON TRUCK SALES AND LEASING AND AN INDEPENDENT CONTRACTOR OPERATING AGREEMENT WITH C.R. ENGLAND, INC., AND DROVE FOR AT LEAST ONE DAY UNDER THESE AGREEMENTS.

PLEASE READ THIS NOTICE CAREFULLY.

THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.

THIS NOTICE DESCRIBES THE PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT AGAINST C.R. ENGLAND, INC. AND OPPORTUNITY LEASING, INC. d/b/a HORIZON TRUCK SALES AND LEASING.

AS A MEMBER OF THE CLASS, IMPORTANT BENEFITS MAY BE AVAILABLE TO YOU UNDER THE SETTLEMENT AGREEMENT.

PLEASE READ THE PART BELOW REGARDING YOUR ADDRESS CAREFULLY.

Basic Information:

A. Introduction	p. 2
B. History of the Action	p. 3

Settlement Information:

C. Settlement Benefits	p. 3
D. Background to the Settlement	p. 4
E. Settlement Distribution Plan	p. 5

Next Steps of Settlement:

F. What are your options?	p. 5
G. The Settlement Final Approval Hearing and the rights of Class Members to object and to appear	p. 6
H. Attorneys' Fees, Incentive Awards, and Administrative Costs and Expenses	p. 6
I. Effect of a Final Judgment	p. 7
J. Any further questions?	p. 7

Basic Information

A. Introduction

Why should I read this Notice?

1. This Notice concerns the proposed settlement of a class action lawsuit ("Class Action") filed against C.R. England, Inc. and Opportunity Leasing, Inc. d/b/a Horizon Truck Sales and Leasing (together, "England" or "Defendants"). This Notice is being provided to drivers ("Class Members" or "Class") who entered into a Vehicle Lease Agreement with Opportunity Leasing, Inc. and an Independent Contractor Operating Agreement with C.R. England, Inc. between May 27, 2007 and January 31, 2017, drove for at least one day under those agreements, and did not previously opt-out of the Class Action.

2. As a Class Member, you may be eligible to receive a cash payment as part of the proposed Settlement. For further details regarding your ability to participate in the Settlement, you should read this Notice in full. Only by reading the entire Notice will you learn about your rights arising from the Settlement.

How do I know if I am a member of the Class?

The Class consists of all drivers who entered into a Vehicle Lease Agreement with Opportunity Leasing, Inc. and an Independent Contractor Operating Agreement with C.R. England, Inc. between May 27, 2007 and January 31, 2017, drove for at least one day under those agreements, and did not previously opt-out of the Class.

B. History of the Action

1. This Class Action was filed by plaintiffs Kenneth McKay and Charles Roberts against the Defendants on May 27, 2011 alleging, among other things, that England was violating the Utah Truth in Advertising Act, the Utah Business Opportunity Disclosure Act, and the Utah Consumer Sales Practices Act, and that England was committing fraud, negligent misrepresentation, unjust enrichment, and breach of fiduciary duty.

2. After nearly six years of vigorous litigation by the parties, the Court certified this case as a nationwide class action by order dated January 31, 2017.

3. The Court approved the Class Notice Program on March 27, 2018. Notice was sent out by direct mail beginning on May 2, 2018, and by e-mail on May 10, 2018, to 17,522 unique potential Class Members. Three timely exclusion requests were received from drivers on or before the June 18, 2018, deadline.

4. The parties to the litigation have exchanged more than 680,000 pages of relevant documents, conducted a total of 22 depositions, and responded to hundreds of written discovery requests.

5. In an effort to resolve the litigation, Class Counsel and counsel for England attended two separate mediation sessions in Los Angeles, with Robert Fairbank and Kimberly West of Fairbank ADR serving as mediators.

6. On September 21, 2018, the parties agreed in principle to resolve this litigation. This resolution was subsequently reduced to writing in a Settlement Agreement, which is available at www.CREnglandClassAction.com.

Settlement Information

C. Settlement Benefits

What will Class Members receive under the Settlement?

1. England has agreed to pay the sum of \$37.8 million in a full and final settlement of this action, including all claims for all attorneys' fees and costs, including without limitation settlement administration costs. A separate Form 1099 will be issued to each Class Member for the cash component of the Settlement Amount payable to that individual Class Member, which does not include the portion of the cash component consisting of attorneys' fees, costs of administration, litigation expenses, incentive awards, and disbursements.

2. In addition to the cash benefit, England has agreed to treat the disputed, unpaid debts owed to Defendants (including, without limitation, for permits, licenses, and truck lease payments) (the "Advanced Funds Debts") that were active in England's database as cancelled. The value of the Advanced Funds Debts equates to approximately \$48 million. England further agrees not to issue a Form 1099 to Class Members in conjunction with this Advanced Funds Debts treatment unless ordered to do so by the Internal Revenue Service.

3. England also will take affirmative steps to inform credit reporting agencies that the Advanced Funds Debts are no longer collectible and/or are cancelled.

4. England has also agreed to continue to refrain from actively collecting student tuition debt of Class Members, which will remain in Defendants' database as an outstanding receivable and which may be netted with any allowance for collectability. This unpaid tuition debt equates to approximately \$13 million.

5. England will provide and staff a telephone hotline/number for Class Members to contact Defendants about concerns regarding the information on their drive-a-check a/k/a DAC reports directly related to their time working for C.R. England as an independent contractor driver. This hotline, (844) 212-0584, will not be activated until five (5) days after final settlement approval by the Court and the exhaustion of any objector objections and all appeals, and will remain active for one year. Defendants will act in good faith in attempting to assist in the resolution of any complaints or inquiries made by Class Members through the hotline, though England is not obligated to take any particular action in response to inquiries or complaints. Defendants also agree to field any questions or concerns from Plaintiffs about tuition debt through the same process and for the same time period (one year from final settlement approval by the Court and the exhaustion of any objector objections and all appeals).

What are the additional considerations under the Settlement?

1. With respect to individuals who Defendants engage for the first time as independent contractor drivers during the two-year period following final Court approval of the Settlement and exhaustion of all appeals, Defendants agree to provide a written disclosure addressing motor carrier industry and company: (1) annual turnover (based on the company's then-current independent contractor drivers over the prior calendar year); (2) average time in job (based on the company's then-current independent contractor drivers over the prior calendar year); and (3) average income for independent contractor drivers (based on the company's then-current independent contractor drivers over the prior calendar year). The disclosure would apply only to new independent contractor drivers who sign VLAs or any equivalent agreement through which they lease vehicles from or through Defendants; it would not apply to any existing independent contractor drivers, returning drivers, or new owner-operators.

2. A total of \$68,500 will be requested to pay for incentive awards for Kenneth McKay and the Estate of Charles Roberts for their role as plaintiffs who brought the class action case initially and the work done by them for the benefit of the Class. This is subject to approval of the Court.

3. A total of up to \$16,250,000 shall be used to pay for Class Counsel's attorneys' fees and litigation expenses. This is subject to approval of the Court.

D. Background to the Settlement

Why did the parties decide to settle the case?

1. The parties entered into the Settlement because it provides substantial and meaningful benefits to the Class Members and to avoid the uncertainties and substantial expense, business disruption, further passage of time, and burden inherent in continued litigation.

2. Both England and Plaintiffs have expended substantial amounts of time and money litigating this case for more than seven years to this point. Both sides faced substantial risk, and settlement allowed each party to mitigate their downside risk.

3. For Plaintiffs, there was the possibility that the Tenth Circuit Court of Appeals would reverse the trial court's determination that the Federal Rules Enabling Act required that Federal Rule of Civil Procedure Rule 23's requirement of an opt-out class applied to the seven certified nationwide claims and not the opt-in procedure set forth in the Utah Consumer Sales Practices Act. At the time of settlement, there was an appeal filed and pending before the Tenth Circuit Court of Appeals on this issue. At the same time, there was the uncertainty of a potential adverse ruling on England's already -filed motion for partial summary judgment that would exclude certain Class Members from the Class Action and result in the dismissal of certain claims.

4. England faced the risk of being found liable on some or all of the seven certified nationwide class claims and having to pay drivers an amount in excess of the \$37.8 million settlement payment.

E. Settlement Distribution Plan

When will Settlement benefits be distributed to Class Members?

1. The Settlement will become effective at such time as Orders entered by the Court approving the Settlement become final (“Final Approval”) and no longer subject to appeal (the “Effective Date”).
2. After the Effective Date, the settlement funds will be distributed to Class Members after payment of Class Counsel’s fees and costs, incentive awards to Kenneth McKay and to the Estate of Charles Roberts for their role as named plaintiffs and Class representatives, as well as administrative costs, including without limitation, settlement administration, and debt cancellation and other settlement benefits will take effect.

How will each Class Member’s share of the Settlement benefits be calculated?

1. For purposes of the Settlement, all Class Members shall receive their net share of the \$37.8 million settlement, based on the following:
 - a. All Class Members who do not opt-out of the Class will be issued a check of at least one-thousand dollars (\$1,000) (as explained below, certain Class Members will be issued a check of approximately \$1,500). These checks should be cashed promptly on receipt and **must be cashed within 120 days of mailing or else the amount will be forfeited as will the right to participate in any second distribution per section c. below.**
 - b. Any remaining net distributable settlement amount funds will be distributed in equal amounts to all Class Members who signed the VLA and ICOA between May 27, 2008 and October 31, 2010. By way of example, if the net distributable settlement amount has \$3,713,500 remaining after all Class Members would receive their \$1,000 minimum payment, then the 7,427 Class Members who signed the VLA and ICOA between May 27, 2008 and October 31, 2010, would receive an additional \$500 ($\$3,713,500/7,427 = \500).
 - c. If, after the first round of timely check cashing and payment of any unpaid costs or fees incurred in administering and redistributing funds, the net distributable settlement amount has at least \$25,000 of funds left over, a second round of checks will be issued in equal amounts to all Class Members who timely cashed their first check in an amount sufficient to exhaust the net distributable settlement amount. These second checks **must be cashed within 90 days of mailing or else the amount will be forfeited to the Utah State Treasurer.**

Next Steps of Settlement

F. What are your options?

1. **Remain in the Class and Receive a Monetary Award and Non-Monetary Benefits.** You may do nothing, and you will remain a Class Member and be both entitled to and bound by the terms of the Settlement. If the proposed Settlement is approved by the Court and the judgment becomes final, you will be entitled to the Settlement benefits described above. Important: to ensure that you will receive your check you should go to www.CREnglandClassAction.com and update your contact information and the address that you want the check mailed to. By staying in the Class, you give up any rights to sue Defendants separately.
2. **Opt-Out of the Class and the Settlement.** You have the right to opt out of the Class and the Settlement. If you opt out of the Class, you will not be bound by, or subject to, any judgment or Settlement of the case. If you opt out, however, you will also not be entitled to receive any monetary award under the Settlement. If you wish to opt out, you must submit a written, signed request to opt out, by postage-paid, first-class mail, stating (1) your name, address, and telephone number, (2) a reference to this case (i.e., *Roberts, et al. v. C.R. England, Inc., et al.*, Case No.

2:12-cv-00302), and (3) your desire to opt out of the Class. Requests to opt out must be sent to C.R. England Class Action Settlement, EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217, and postmarked no later than **June 4, 2019**. If you do not submit a timely opt-out request that complies with these requirements, your opt-out request will be deemed invalid and you will not be excluded from the Class.

3. **Right to object to the Settlement.** You may submit a written objection to any aspect of the Settlement pursuant to the procedure outlined in Section G below.

G. The Settlement Final Approval Hearing and the rights of Class Members to object and to appear

When will the Settlement Final Approval Hearing take place?

1. The Court has scheduled the Settlement Final Approval Hearing (the “Final Approval Hearing”) to occur on July 9, 2019, at 1:30 p.m. before the Honorable Robert J. Shelby in the United States District Court for the District of Utah, 351 S. West Temple, Salt Lake City, Utah 84101.

2. At the Final Approval Hearing, the Court will determine, among other things, (a) whether to finally approve this Settlement as fair, reasonable, and adequate; (b) whether the plan for allocating the Settlement benefits is fair and reasonable; (c) whether to approve the incentive awards requested for Kenneth McKay and the Estate of Charles Roberts; and (d) whether to approve the application of Class Counsel for attorneys’ fees and expenses.

Can I object to the proposed Settlement?

1. Any Class Member who wishes to object to the proposed Settlement or any of its terms, including the proposed plan for allocating the Settlement benefits, the requested incentive awards for Kenneth McKay and the Estate of Charles Roberts, or Class Counsel’s application for attorneys’ fees and expenses, may do so by filing such objection in writing with the Clerk of the Court, United States District Court for the District of Utah, 351 S. West Temple, Salt Lake City, Utah 84101. **For any such objection to be considered, it must be received by the Court on or before June 4, 2019 (the “Response Deadline”).** Each written objection must: (a) set forth the Class Member’s name, address, telephone number, and e-mail address; (b) be signed by the Class Member and reference the name of the Action, “*Roberts, et al. v. C.R. England, Inc., et al.*, Case No. 2:12-CV-00302-RJS-BCW (D. Utah)”; (c) state with specificity all grounds for the objection, including without limitation, demonstrating standing to object (*i.e.* membership in the Class), indicating whether the Class Member or their lawyer intends to appear at the Final Approval Hearing, and including any written material on which their objection is based or on which they intend to rely; (d) state whether it applies only to the objector, to a specific subset of the Class, or to the entire Class, and (e) be filed with the Court on or before the Response Deadline.

Can I appear at the Final Approval Hearing?

1. Any Class Member who files and timely serves a written objection as described above may also appear at the Final Approval Hearing, either in person or through counsel retained at the Class Member’s expense. **Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval of the proposed Settlement.**

2. Class Members who intend to object to the proposed Settlement or any of its terms, and who desire to present evidence at the Final Approval Hearing, must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing.

3. **Only Class Members may object to the proposed Settlement and/or appear at the Final Approval Hearing. Accordingly, those who request exclusion from the Class pursuant to Section F(2) of this Notice may not object or be heard at the Final Approval Hearing.**

H. Attorneys’ Fees, Incentive Awards, and Administrative Costs and Expenses

1. Under the terms of the Settlement Agreement, costs and expenses associated with the litigation, including but not limited to sending Class notice, paying the Plaintiffs’ share of mediation expenses, administration of

the Settlement, and costs incurred in providing notice of the Settlement to the Class, will be paid from Settlement funds.

2. Class Counsel is seeking up to \$16,250,000 in attorneys' fees and litigation costs, subject to approval by the Court, to be paid out of the Settlement funds.

3. If a portion of the Class Settlement remains unclaimed by reason of uncashed checks, returned undeliverable checks, or otherwise, and after reasonable and diligent efforts by the Settlement Administrator to have Class Members cash their distribution checks, any balance remaining in the Settlement Fund after no more than two rounds of distribution checks, shall escheat (revert or be turned over) to the Utah State Treasurer.

4. Class Counsel will also request an award of \$43,500 for Class representative Kenneth McKay and \$25,000 for the Estate of Charles Roberts on behalf of former Class representative Charles Roberts, as incentive awards. The total amount sought in incentive awards is \$68,500. Class Counsel believes the awards are reasonable given the time commitment and resources that the individual Class representatives expended in initiating and prosecuting this case.

5. At the Final Approval Hearing or at such other times as the Court may direct, Class Counsel will request that the Court approve these payments.

I. Effect of a Final Judgment

If the proposed Settlement is approved by the Court at the Final Approval Hearing, the Court will enter a final judgment in this case ordering that the Settlement be completed and the Action be dismissed with prejudice, which will then release all claims arising out of or relating to the allegations made by Plaintiffs in this lawsuit. The claims that will be released include, but are not limited to, any and all claims, rights, demands, obligations, damages, actions or causes of action, or liabilities whatsoever, of every nature and description, whether known or unknown, whether arising under federal, state, common, or foreign law or regulation, that Class Members asserted or could have asserted in the Action, or that otherwise arise from or relate to the acts, facts, statements, or omissions that were or could have been alleged or asserted by Plaintiffs in the Action, including, without limitation, claims that arise out of or relate in any way to Defendants' alleged misrepresentations or omissions, the Class Members' independent contractor relationships with Defendants, C.R. England's buyout agreements and distributions to or involving any of the Released Parties¹, and any claims for damages, restitution, penalties, interest, costs, attorneys' fees, expenses, equitable relief, injunctive relief, and any other relief. Class Members who do not request exclusion from the Class will be bound by the final judgment and order entered by the Court.

J. Any further questions?

1. Any questions you have concerning matters contained in this Notice should **not** be made to the Court or to England. You may find more information about the Settlement at www.CREnglandClassAction.com.

2. You may also call with questions to the Settlement Administrator at the toll-free number 1-877-242-2522.

3. You may, of course, seek the advice and guidance of your own attorney, at your own expense, if you desire. The pleadings and other records of this litigation may be examined and copied at any time during regular office hours at the Office of the Clerk, United States District Court for the District of Utah, 351 S. West Temple, Salt Lake City, Utah 84101.

¹ Paragraph 1.39 of the Settlement Agreement provides that "Released Parties" shall mean each of defendants C.R. England, Inc. and Opportunity Leasing, Inc., and their present and former parents, subsidiaries, divisions, departments, affiliates, founders, owners, shareholders, officers, directors, employees, and agents (including, without limitation, Dan England, Janet England, Dean England, Todd England, and Corey England, and any trust of which any of them is a trustee or beneficiary), any of their advisors, counsel, and representatives (and the predecessors, successors, insurers, administrators, and assigns of each of the foregoing), and any other persons acting by, through, under, or in concert with any of them.

PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT WITH QUESTIONS CONCERNING THE PROPOSED SETTLEMENT.

Dated: Salt Lake City, Utah
February 21, 2019

By Order of the Court
Clerk of the Court

CR England Class Action Settlement
Settlement Administrator
c/o A.B. Data, Ltd.
P.O. Box 170500
Milwaukee, WI 53217

PRESORTED FIRST-CLASS MAIL U.S. POSTAGE PAID MILWAUKEE WI PERMIT NO. #####

COURT-APPROVED NOTICE REGARDING
Roberts, et al. v. C.R. England, Inc., et al., Case No. 2:12-CV-00302-RJS-BCW

DATED MATERIAL – OPEN IMMEDIATELY
CREGLAND_BR_51122_SET-NOT