

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**J. MICHAEL FOLEY, individually
and on behalf of all others similarly
situated,**)
)
)

Plaintiff,)

v.)

**Case No. 3:14-cv-877-GMB
[WO]**

GREENE COMMUNICATIONS, INC.;)
MAGNOLIA GREENE, INC.; and R.M.)
GREENE, INC. d/b/a CABLE TV OF EAST)
ALABAMA,)

Defendants.)

ORDER

On October 8, 2015, the parties to the above-captioned action (the “Action”), Plaintiff J. Michael Foley (“Plaintiff”) and Defendants Greene Communications, Inc.; Magnolia Greene, Inc.; and R.M. Greene, Inc. d/b/a Cable TV of East Alabama (“CTVEA”) (the “Defendants,” and collectively the “Parties”) entered into a Confidential Settlement Term Sheet (the “Settlement Agreement”) which is subject to review under Rule 23(e) of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of Plaintiff’s claims and those of the proposed Settlement Class on the merits and with prejudice and without costs.

The court having read and considered the Settlement Agreement and the accompanying documents, and the Parties to the Settlement Agreement having consented to the entry of this Order, and all capitalized terms used herein having the meanings defined herein or in the Settlement Agreement, it is ORDERED that the Parties’ Joint Motion for Preliminary Approval

of Settlement Agreement and Approval of Form and Content of Notice to Class Members (Doc. 33) is hereby GRANTED as follows:

1. The terms of the Settlement Agreement are preliminarily approved, subject to further consideration at the Final Fairness Hearing described below. The court preliminarily concludes that the Settlement Agreement, including the releases contained therein, is fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, was entered into at arm's length by highly experienced counsel, and is sufficiently within the range of reasonableness to warrant the scheduling of the Final Fairness Hearing and the distribution of the Notice of Class Settlement to members of the Settlement Class, each to occur as described in this Order.

2. The court preliminarily finds, for purposes of settlement only, that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class, in that:

- (a) The Settlement Class is ascertainable from records kept by CTVEA and the members of the Settlement Class are so numerous that their joinder before the court would be impracticable.
- (b) Based on the allegations of Plaintiff's complaint and an examination of the legal claims and the factual basis necessary to prove them, the court preliminarily finds that there are one or more questions of fact and/or law common to the settlement class.
- (c) Based on the allegations of Plaintiff's complaint and otherwise supported in the record, the court preliminarily finds that Defendants engaged in uniform conduct affecting members of the settlement class. The court further finds that Plaintiff's claims and alleged legal injuries are typical of the claims and injuries of the settlement class.
- (d) Plaintiff will fairly and adequately protect the interests of the settlement class in that: (i) Plaintiff's interests and the nature of his alleged claims are consistent with those of the members of the settlement class; (ii) there are no significant conflicts between or among Plaintiff and the settlement class; and (iii) Plaintiff is represented by qualified and reputable counsel who are experienced in preparing and prosecuting class actions of this nature.

- (e) Finally, the court preliminarily finds that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

3. Based on these findings, the court preliminarily certifies the following Settlement Class under Federal Rule of Civil Procedure 23(b)(3):

All persons in the United States who subscribed to CTVEA for digital cable and paid CTVEA a monthly rental fee for an accompanying set-top box, excluding a digital television adapter that converts analog to digital video, during the period August 10, 2010 through the effective date of the settlement (the “Class Members”).¹

4. The court finds that the Settlement Class is sufficiently well-defined and cohesive to warrant certification as a class under Rule 23(a) and 23(b)(3) for settlement purposes only. As required by Rule 23(g), the court has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in this action; (ii) Class Counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in this action; (iii) Class Counsel’s knowledge of the applicable law; and (iv) the time and resources Class Counsel have committed to representing the class. Based on these factors, the court finds that Class Counsel have and will continue to represent fairly and adequately the interests of the Settlement Class.

5. Accordingly, the Court hereby appoints Whatley Kallas, LLP as Class Counsel, having determined that they are experienced and skilled attorneys capable of fairly and adequately representing the interests of the Class and that the requirements of Fed. R. Civ. P. 23 are fully satisfied by this appointment. As mentioned, the court finds that Plaintiff is an adequate

¹ Excluded from the Settlement Class are the following: CTVEA subscribers with courtesy accounts who receive basic cable video services for free on a monthly basis; counsel for Plaintiff; CTVEA officers, directors and/or employees, any entity in which CTVEA has a controlling interest, and the affiliates, legal representatives, attorneys, heirs or assigns of CTVEA; any federal, state or local governmental agency; and the court and the court’s immediate family members and staff.

and typical representative for the Settlement Class and, therefore, appoints Plaintiff as the representative of the Settlement Class.

6. A Final Fairness Hearing shall be held before the court on **August 30, 2016**, at 10:00 A.M. in Courtroom 2D, Frank M. Johnson, Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama, for the purposes of:

- (a) Determining whether the proposed settlement of the Action on the terms and conditions provided by the Settlement Agreement is fair, reasonable, and adequate and should be approved by the court, and whether the Order and Final Judgment provided by the Settlement Agreement should be entered thereon;
- (b) Determining whether the proposed allocation of the proceeds of the settlement is fair and reasonable, and should be approved by the court;
- (c) Determining whether Class Counsel's application for an award of attorneys' fees and reasonable expenses should be granted; and
- (d) Ruling on such other matters as the court may deem appropriate.

The Court may adjourn the Final Fairness Hearing or any adjournment thereof without further notice to the Class other than by announcement at the Final Fairness Hearing or any adjournment thereof.

7. The Court approves the form, substance and requirements of the notices attached as Exhibits 2 through 5 (the "Notice") to the Declaration of W. Tucker Brown (Doc. 33-2, the "Brown Declaration"), and the Claim Form attached as Exhibit 6 to the Brown Declaration.

8. The Court approves the proposed notice program and orders that it be implemented as follows:

- Within thirty (30) days of this Order, CTVEA shall generate from its reasonably accessible customer records a list of customers who fall within the Settlement Class. Class notice in the form of Exhibit 2 to the Brown Declaration (the "Mailed Notice") will be sent to each Class Member who is a current customer of CTVEA in a monthly billing statement within sixty (60) days after the entry of this Order. The Mailed Notice shall be sent to the last known address reflected in CTVEA's records.

- In addition, notice in the form attached as Exhibit 3 to the Brown Declaration (the “Publication Notice”) will be published in *The Ledger-Enquirer* one time within sixty (60) days of the entry of this Order.
- A retained class settlement administrator will establish an internet website containing information about the settlement (the “Settlement Website”). The Settlement Website will be accessible no later than thirty (30) days from the entry of this Order. The Settlement Website will provide access to the following information: (i) the full text of the Settlement Agreement; (ii) the notice in the form attached as Exhibit 4 to the Brown Declaration (the “Long-Form Notice”); (iii) this Order and other relevant orders of the Court; (iv) Class Counsel’s fee application (when it is filed) and (v) contact information for Class Counsel and the Settlement Administrator. All forms of the Notice will set forth the objection and opt-out deadlines, will contain the HTML or web address for the Settlement Website where pertinent information concerning the settlement will be available, and will include a toll-free telephone number at which assistance will be available. All forms of the Notice will also be posted on the firm website of Class Counsel.

9. The Court finds that the distribution of the Notice, substantially in the manner and form set forth in this Order, meets the requirements of Fed. R. Civ. P. 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

10. Class Members shall be given the opportunity to request exclusion from the Class. Class Members who do not want to participate in the proposed settlement must send a written request to opt out of the settlement to the Settlement Administrator, RG/2 Claims Administration LLC, postmarked no later than **July 29, 2016**, which opt-out request must include the Class Member’s name, address, telephone number, federal Social Security Number or Tax Identification Number, and original signature. Opt-out requests must be submitted to:

RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

11. Class Members who opt out of the settlement will not be entitled to receive any payment or account credit, and their claims against CTVEA will not be released. Class Members who opt out will be free to pursue any claims they believe they have (consistent with applicable law and rules of procedure) by filing a separate action against CTVEA on their own.

12. Class Members will be given the opportunity to file a statement with the Court setting forth any objections they may have to the settlement.

13. The Court will consider Class Members' objections to the settlement only if:

- (1) such objections and any supporting papers are filed in writing with the Clerk of the Court no later than **July 29, 2016** at the following address: Ms. Debra P. Hackett, Clerk of Court, U.S. District Court, P.O. Box 711, Montgomery, AL 36101-0711; and
- (2) copies of all such papers are served by mail or private delivery service, postmarked or received for delivery (as applicable) no later than **July 29, 2016**, upon each of the following:

W. Tucker Brown
WHATLEY KALLAS, LLP
2001 Park Place North
1000 Park Place Tower
Birmingham, AL 35203
Telephone: 205-488-1200
Fax: 800-922-4851

Attorneys for Plaintiff J. Michael Foley

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**RUSHTON, STAKELY JOHNSTON &
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1919 Pennsylvania Ave.
Suite 800
Washington, D.C. 20006-3401
Telephone: 202-973-4200
Fax: 202-973-4499

Attorneys for Defendants

14. Any Class Member who files and serves a timely written objection may also appear at the Final Fairness Hearing either in person or through counsel retained at the Class Member's expense. Attendance at the Final Fairness Hearing is not necessary. Any Class

Member who wishes to be heard orally in opposition to the approval of the settlement and the proposed allocation of the proceeds of the settlement must indicate in his or her written objection the intention to appear at the Final Fairness Hearing.

15. Class Members who intend to object to the proposed settlement and desire to present evidence at the Final Fairness 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 Fairness Hearing. Class Members do not need to appear at the Final Fairness Hearing or take any other action to indicate their approval.

16. Unless the court otherwise directs, no Class Member shall be entitled to object to the settlement or otherwise to be heard, except by serving and filing written objections as described above. Any Class Member who fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in this Action or in any other action or proceeding. The Court shall not consider comments and/or objections filed by individuals who excluded themselves from the class.

17. If any specified condition to the settlement set forth in the Settlement Agreement is not satisfied and Class Counsel or Counsel for Defendants elect to terminate the settlement as provided in the Settlement Agreement, then the Settlement Agreement, the settlement proposed in the Settlement Agreement (including any amendments thereof), and any actions taken or to be taken with respect to the settlement proposed in the Settlement Agreement shall be of no further force or effect and shall be null and void. The termination of the settlement shall be without prejudice to the Parties, who shall be restored in all respects to their respective positions existing prior to the execution of the Settlement Agreement, except that Defendants shall not be entitled

to reimbursement of sums expended for the mailing and distribution of the Notice as directed by this Order.

18. The Court reserves the right to approve the Settlement Agreement and the settlement with modifications and without further notice to Class Members, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed settlement.

19. Pending final determination of whether the settlement should be approved, Plaintiffs and all Class Members, and any of them, are hereby barred and enjoined from asserting, commencing, prosecuting, assisting, instigating or in any way participating in the commencement or prosecution of any action asserting any of the settled claims.

20. Plaintiff shall file with the court a motion for final approval of the settlement and the plan of allocation, and all papers in support thereof, no later than **August 9, 2016**. Any application by class counsel for attorneys' fees and reimbursement of expenses, or for an incentive award to the class representative, and all papers in support thereof, shall also be filed with the court on or before **August 9, 2016**.

DONE this the 30th day of March, 2016.

/s/ Gray M. Borden
UNITED STATES MAGISTRATE JUDGE