

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jeffrey A. Geer <i>et al.</i> ,)	
Plaintiffs,)	
)	
v.)	Case No. 07-CV-1209
)	
Challenge Financial Investors, Corp.,)	
<i>et al.</i> ,)	
Defendants.)	

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND SETTLEMENT FAIRNESS HEARING

TO: ALL PERSONS WHO MAY HAVE BEEN EMPLOYED BY CHALLENGE FINANCIAL INVESTORS CORPORATION BETWEEN JANUARY 1, 2003 AND JUNE 30, 2006 WHO WERE ASKED TO DECLINE TO PARTICIPATE IN THE NATIONS HOLDING COMPANY 401(K) PLAN

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS COULD BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

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

YOU ARE HEREBY NOTIFIED, pursuant to Federal Rule of Civil Procedure 23(c) and (e) and an order of the United States District Court for the District of Kansas, of the following events: (1) this case has been conditionally certified as a class action and a proposed settlement on behalf of the class has been reached; (2) the attorneys appointed by the Court to represent the class (the "Class Counsel") have made a request for attorneys' fees and reimbursement of expenses; (3) the Class Counsel will seek an incentive award or other payment to the named plaintiffs for the dismissal of their individual claims; and (4) the Court will hold a Fairness Hearing on January 15, 2008 to determine whether the proposed settlement and the fee and expense request are fair, adequate, reasonable, and in the best interests of the class.

- 1. WHY SHOULD I READ THIS NOTICE?** Your rights may be affected by this class action lawsuit. The purpose of this Notice is to inform current and former employees of Challenge Financial Investors Corporation ("CFIC") that a settlement of the class action case titled *Jeffrey A. Geer, et al. v. Challenge Financial Investors, Corp. et al.*, Case No. 07-CV-1209 (the "Action"), has been preliminarily approved by the Court. Moreover, the Court has appointed Class Counsel, who will submit a request for fees and reimbursement of expenses to be paid out of the settlement proceeds.
- 2. WHY DID I RECEIVE THIS DOCUMENT?** You received this document because you are listed in corporate records as an employee at some point between January 1, 2003 and June 30, 2006, and the named plaintiffs bringing the Action allege that you may have been asked to decline to participate in the Nations Holding Company 401(k) Plan.

3. **WHAT IS THE LAWSUIT ABOUT?** Plaintiffs allege that CFIC violated the Employee Retirement Income Security Act of 1974 (“ERISA”) by requiring or encouraging that its employees exercise a “Decline Form” that stated the employee did not want to participate in the Nations Holding Company 401(k) Plan (the “Plan”) offered by CFIC to its employees. As a result, plaintiffs allege that CFIC’s employees had no real choice as to whether they participated in the Plan and, thus, fewer employees participated in the Plan than otherwise would have.

Specifically, plaintiffs allege, among other things, that CFIC (1) refused to allow certain employees to participate in the Plan, (2) required as a condition of employment that certain employees decline to participate in the Plan or threatened current employees with adverse employment actions if they refused to decline to participate in the Plan, and (3) misrepresented the availability of the Plan in order to induce employees to accept employment with or continue to be employed by CFIC. The lawsuit, on behalf of the Class, seeks damages, equitable relief, and attorneys’ fees to compensate former and current CFIC employees.

Defendants deny all of the plaintiffs’ allegations of wrongdoing and deny they have any liability whatsoever. Specifically, defendants assert that they fulfilled their fiduciary duties, that they did not require or encourage that employees or prospective employees decline participation in the Plan, and that they did not misrepresent any aspect of the availability of the Plan to any qualified employee who wished to enroll in it. Moreover, defendants allege that no monetary damages are available under ERISA for the claims.

The Court has not reached any conclusion and does not express any opinion as to whether plaintiffs or defendants are correct or which of them would ultimately prevail in this lawsuit.

4. **WHAT IS THE CLASS AND WHO ARE MEMBERS OF THE CLASS?** The “Class” consists of all current and former employees of CFIC who: (1) executed a Decline Form between the dates of January 1, 2003 and June 30, 2006; and, (2) actually earned income from CFIC reported on IRS Form W-2 during that same time period. You are a member of the Class if you meet these requirements.
5. **WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?** In exchange for the release of the ERISA claims of the Class, as more fully described in the Stipulation and Agreement of Settlement dated September 24, 2007 (the “Settlement Agreement”), and subject to the terms of the Settlement Agreement and final approval by the Court, CFIC and the other defendants agree to provide payment in the amounts described in this Notice for the following: payments to the Class Members, payment of certain incentive payments to the named plaintiffs, payment to two of the named plaintiffs in respect of their dismissal of individual claims asserted against the defendants, plaintiffs’ attorneys’ fees and costs associated with the prosecution and settlement of the claims of this Action, and payment of the fees and costs associated with administering the class action settlement of this Action. Depending on the number of individuals, if any, who elect to exclude themselves from the settlement, defendants have the right to terminate the Settlement Agreement.

6. **HOW WILL THE SETTLEMENT PROCEEDS BE DISTRIBUTED TO CLASS MEMBERS?** Under the settlement, the Class Members will be eligible to receive distributions from a "Class Allocation Fund" of \$42,000. Alleged damages of the Class Members are based on a formula developed by an actuary, which takes into account each individual Class Member's W-2 wages reported by CFIC for the years 2003, 2004, 2005 and the first half of 2006; the average contribution rate of actual Plan participants; and the Plan's actual rates of return from those years through June 30, 2007. Distributions from the Class Allocation Fund will be made, based on the formula, to each Class Member who submits a timely and valid Claim Form (as described in paragraph 7 below), compared to the alleged damages suffered by the group of Class Members who submit timely and valid Claim forms. The administrative fees and expenses incurred in connection with processing Claim Forms, making distributions to Class Members, and other administration costs will NOT be deducted from the Class Allocation Fund.
7. **HOW CAN A CLASS MEMBER RECEIVE SETTLEMENT PROCEEDS?** To receive money from the Settlement, you must fill out the enclosed Claim Form. Only those Class Members who submit the enclosed Claim Form in a timely manner will share in the proceeds. **The Claim Form must be completely filled out, signed, and mailed via first class mail, postmarked on or before December 15, 2007, to the Class Counsel at the address listed on the form.** If the Claim Form is properly submitted and the Claim Form demonstrates the Class Member's entitlement to a distribution, the Class Member will receive proceeds as discussed in paragraph 6 above.
8. **WHO REPRESENTS THE CLASS AND HOW WILL THEY BE COMPENSATED?** The Court has appointed the law firm of Foulston Siefkin LLP as Class Counsel for the Class. You do not have to pay Foulston Seifkin LLP to represent you; they will be compensated as outlined below. If you want to hire your own lawyer, you can do so at your own expense. Class Counsel has been prosecuting this litigation since its inception in 2005 on behalf of the Class, advancing litigation costs and expenses without any guarantee of reimbursement or compensation.

Class Counsel will apply to the Court for the approval of payment of their attorneys' fees, expenses and costs associated with the prosecution and settlement of the claims in this Action, and for fees and expenses associated with the administration of this settlement (for example, the costs and fees associated with sending out this notice to the class, communicating with class members, receiving and tracking any requests for exclusion from the class, processing claim forms, making payments to the class, and maintaining related records). Such application will not seek in excess of \$194,500.
9. **HOW WILL THE NAMED PLAINTIFFS BE COMPENSATED?** The named plaintiffs, Jeffrey Geer, Gerald LaBouff, David Berry, Jessica Casper, Cathy James, Angela Mount, Ira L. Parker, III and Ryan Patterson, have suffered burden and inconvenience in the process of prosecuting the claims leading to this settlement, and they have procured the benefits of the equitable relief described above, not only for themselves personally, but also for the Class. Class counsel will apply to the Court for the approval of payment of an additional \$1,000 to each of the named plaintiffs as an incentive payment, in compensation for each of those named plaintiffs and in

consideration of their release of additional claims against certain other potential defendants to the Action. In addition, plaintiffs Geer and LaBouff are releasing individual claims that they have against certain of the defendants. Class counsel will apply to the Court for approval of payments to them in the amount of an additional \$9,000 each, in consideration for the dismissal of their individual claims.

10. **WHAT ARE THE REASONS FOR THE SETTLEMENT?** CFIC and all defendants have denied and continue to deny all liability with respect to any and all of the facts or claims alleged in the Action and expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, acts, or omissions alleged or that could have been alleged in the Action.

Class Counsel have conducted an investigation during and prior to the prosecution of this Action. Class Counsel have concluded that it is desirable that the Action be settled on the terms embodied in the Settlement Agreement. Class Counsel reached this conclusion after: (1) analyzing the factual and legal issues in the Action; (2) determining that further conduct of the Action through trial and any appeals that might be taken would be both protracted and expensive; (3) recognizing and acknowledging the uncertain outcome and risk of any litigation, especially in complex actions such as the Action; and (4) considering the benefits to plaintiffs and the Class Members of resolving the Action and obtaining the benefits of settlement as specified in the Settlement Agreement. Additionally, CFIC is in the process of ceasing operations, further complicating recovery. Class Counsel believe that, in consideration of all of the circumstances and after arms-length negotiations with defendants, the proposed Settlement Agreement is fair, reasonable, and adequate and confers substantial benefits on and is in the best interest of the Class.

11. **WHAT CLAIMS ARE BEING RELEASED AND WHO ARE THE RELEASED PARTIES?** If the Court approves the Settlement Agreement, the plaintiffs in their individual and representative capacities, as well as each Class Member, and each of their respective heirs, executors, administrators, representatives, attorneys, agents, and assigns, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties from any and all claims, liabilities, demands, or causes of action that were brought or potentially could have been brought in this Action, including all claims under ERISA and any other claim that could have been brought based on or arising out of the allegation that CFIC precluded or interfered with its employees' or prospective employees' right to participate in the Plan. This release shall be effective as to each Class Member and as more specifically set forth in the Settlement Agreement.

The Released Parties include CFIC, Harold Barian, Hiram E. Bloomquist, Michael J. Riley, Joe Ramis, Ken Rach, Trent Williamson, Chris Faoro, Michael Gonzales, Tod Howard, Nations Holding Company, Nations Holding Company 401(k) Plan, unidentified Administrators of the Nations Holding Company 401(k) Plan, Piggybanker Stock Company, and Chris Likens.

12. **HOW CAN I EXCLUDE MYSELF FROM THE SETTLEMENT AND RELEASE?**

If you do not want to be bound by the release in the settlement, and you want to keep the right to sue and individually pursue CFIC or the other defendants, then you must take steps to get out of the Class. This is called excluding yourself from the Class or “opting out” of the Class.

If you do not exclude yourself from the Class and the settlement is approved by the Court, you will be bound by all the Court’s orders and judgments entered in the case, including the dismissal and release of any claims you may have against the Released Parties. You will give up the right to sue any Released Party for any of the claims that are encompassed by this settlement.

To request exclusion from the Class, and preserve your right to pursue claims at your own expense, you must send a letter by mail saying that you want to be excluded from the Class in Geer v. CFIC. Your letter must state: (1) your name, address, and telephone number, and (2) that you wish to be excluded from the Class. **The request to opt out must be signed and mailed via first class mail, postmarked on or before December 15, 2007, to the Class Counsel (Foulston Siefkin LLP) at the address listed below.** Only those Class Members who properly submit the information in a timely manner will be excluded from the settlement. All members of the Class, other than those who have requested exclusion in this manner, shall be bound by the proposed Settlement Agreement and by any judgment or determination of the Court affecting the Class.

If you exclude yourself from the Class, you will retain your rights, if any, to pursue available remedies against the Released Parties at your own cost and expense. If you have already filed or intend to file a lawsuit against any of the Released Parties concerning the Decline Form or any other alleged conduct covered by this settlement, you must still submit an opt out request.

13. **WHAT IS THE SETTLEMENT APPROVAL PROCEDURE?** The Court has scheduled a Final Fairness Hearing at the following location, date, and time: U.S. District Court for the District of Kansas, 401 N. Market, 232 U.S. Courthouse, Wichita, Kansas, on January 15, 2008 at 10:00 a.m. Although you may attend this hearing in person or through your own attorney, you are not required to do so. At the Final Fairness Hearing, the Court will consider, among other matters, whether the settlement and the Class Counsels’ request for their fees and reimbursement of expenses should be granted final approval as fair, adequate, and reasonable, and in the best interests of the Class.

14. **HOW CAN I COMMENT ON OR OBJECT TO THE SETTLEMENT?** If you choose to remain in the Class and you wish to comment in support of or object to any aspect of the proposed settlement, you may do so, but you must file your comments or objections in writing with the Court. The comments or objections should relate to the following: (1) why the proposed Settlement Agreement should or should not be approved as fair, reasonable, adequate, and made in good faith; (2) why a judgment should or should not be entered thereon; (3) why an incentive award or other payment to the named plaintiffs in respect of the dismissal of their individual claims should or should not be made; and/or (4) why Class Counsel should or should not be awarded the

attorneys' fees or reimbursement of expenses and costs requested. In order to be heard to contest the approval of the terms and conditions of the proposed settlement, the Order and Final Judgment to be entered approving the same, or the attorneys' fees, costs, and reimbursement of expenses requested, a Class Member or their attorney must file with the Clerk of the Court, U.S. District Court for the District of Kansas, 401 N. Market, 204 U.S. Courthouse, Wichita, Kansas, 67202, no later than December 15, 2007, a written statement of objections, including copies of any supporting papers and briefs (which must contain proof that the individual is a Class Member), and a written notice of intent to appear (if the Class Member or his or her attorney(s) intends to appear at the Final Fairness Hearing). The Class Member or attorney must serve a copy of all documents filed with the Court on Plaintiff Class Counsel, by first class U.S. Mail, postmarked no later than December 15, 2007, at the following address:

Geer ERISA Class Action Settlement
c/o Boyd Byers, Esq.
Foulston Siefkin LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, KS 67206-4466

Any Class Member who does not make an objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, good faith, or reasonableness of the proposed settlement, the Order and Final Judgment to be entered approving the settlement, or the request for attorneys' fees and reimbursement of expenses.

15. **WHAT IS THE DIFFERENCE BETWEEN EXCLUDING AND OBJECTING?** Excluding yourself (or "opting out") is telling the Court that you do not want to be part of the Class, you do not want to be bound by the settlement, and you do not want to participate in the settlement.

Objecting is telling the Court that you want to be part of the Class, but you do not like something about the settlement, including the amount of attorneys' fees and expenses requested. You can object to the resolution of the class claims only if you stay in the Class and participate in the settlement if it is ultimately approved.

16. **WHAT IF I DO NOTHING?** If you do nothing, and you do not send a request to opt out of the class post-marked no later than December 15, 2007, you will be considered a Class Member. You will be bound by the settlement; you will lose your right to pursue any claims covered by the settlement against any of the Released Parties, and you will not receive a distribution payment.
17. **WHERE CAN I GET ADDITIONAL INFORMATION?** This Notice contains only a summary of the proposed settlement. More information is contained in the proposed Settlement Agreement. You may appear in person during regular business hours at the Clerk of the District Court, United States District Court for the District of Kansas, 401 N. Market, 204 U.S. Courthouse, Wichita, Kansas, and review the Settlement Agreement, pleadings, records, and other papers on file in this Action. Or, if you need further

information or access to documents, please visit the website [\[www.XXXX.com\]](http://www.XXXX.com) or contact Class Counsel in writing at the following:

By mail:

Geer ERISA Class Action Settlement
c/o Boyd Byers, Esq.
Foulston Siefkin LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, KS 67206-4466

By facsimile:

Geer ERISA Class Action Settlement
c/o Boyd Byers, Esq.
(316) 267-6345

By e-mail:

[\[xxxxxxx@foulston.com\]](mailto:xxxxxxx@foulston.com)

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE FOR INFORMATION ABOUT THE CASE.