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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KRISTINA RAINES and DARRICK
FIGG, individually and on behalf of others
similarly situated,

Plaintiffs,

v.

U.S. HEALTHWORKS MEDICAL
GROUP, a corporation, et al.,

Defendants.

Case No.: 19-cv-1539-DMS-DEB

**ORDER RE DISPUTE OVER CLASS
NOTICE**

Before the Court is the parties Joint Statement Re Dispute Over Class Notice. (Dispute Notice, ECF No. 171). Based on the following, the Court approves Plaintiff’s proposed class notice and most of Plaintiff’s additional requests relating to the administration of class notice.

I. BACKGROUND

The Court incorporates the background described in its Order Granting in Part and Denying in Part Plaintiff’s Motion for Class Certification. (ECF No. 162). Since class certification, the parties have disagreed over how to properly provide notice to the class members. (Dispute Notice, at 1–10). Plaintiffs proposed to Defendants their draft long-form notice as well as several proposals relating to the administration of notice to the class

1 members. (*Id.* at 1–2). Defendants dispute the legality of the proposed notice, but do not
2 otherwise specifically oppose the additional proposals by Plaintiffs. (*Id.* at 1–2).
3 Defendants argue that they lack the internal databases to identify only the members of the
4 class. (*Id.* at 5). Defendants’ proposed alternatives are decertification, a stay of notice, or
5 requiring that the class notice ask recipients whether “1) they receive[d] the health history
6 questionnaire in question; and 2) [if] they receive[d] it in connection with an application
7 for a paid position.” (*Id.* at 5–7).

8 II. DISCUSSION

9 Once a class is certified under Federal Rule 23(b)(3), “the court must direct to class
10 members the best notice that is practicable under the circumstances, including individual
11 notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P.
12 23(c)(3)(B). The notice “must clearly and concisely state in plain, easily understood
13 language:

- 14 (i) The nature of the action;
- 15 (ii) the definition of the class certified;
- 16 (iii) the class claims, issues, or defenses;
- 17 (iv) that a class member may enter an appearance through an attorney if the member
18 so desires;
- 19 (v) that the court will exclude from the class any member who requests exclusion;
- 20 (vi) the time and manner for requesting exclusion; and
- 21 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).”
22 Fed. R. Civ. P. 23(c)(2)(B)(i–vii).

23 “A class notice must only have ‘information that a reasonable person would consider
24 to be material in making an informed, intelligent decision of whether to opt-out or remain
25 a member of the class.’” *Tierno v. Rite Aid Corp.*, No. C05-02520 TEH, 2007 WL
26 4166028, at *1 (N.D. Cal. Nov. 19, 2007) (quoting *In re Nissan Motor Corp. Antitrust*
27 *Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977)). The plaintiff typically prepares the notice for
28 the court’s review and approval and gives the defendant the opportunity to object or suggest

1 changes. *Id.* at *2. Nonetheless, “the court is ultimately responsible for directing notice to
2 the class members and protecting their due process rights to remain in the class or be
3 excluded.” *Id.* (citing Fed. R. Civ. P. 23(c)).

4 **A. The Court Declines to Decertify the Class and Approves Plaintiff’s**
5 **Proposed Class Notice Language.**

6 The parties dispute whether the class notice must only be sent to members of the
7 class or may also incidentally be sent to some non-members of the class. Defendants now
8 represent that they lack the databases to precisely identify members of the class, here every
9 applicant for a paid position who underwent a post-offer, pre-placement examination and
10 was subjected to Defendant U.S. Healthworks Medical Group’s (“USHW”) health history
11 questionnaire at a USHW facility in California between October 23, 2017, and December
12 31, 2018. (ECF No. 162). Defendants note that their database “only identifies who visited
13 a USHW facility.” (*Id.* at 5).

14 Defendants contend that “class notice must only go to class members” and that
15 “scattershot notice to individuals who have nothing to do with this case” is unlawful. (*Id.*
16 at 5). For support, Defendants cite to *In re Gypsum Antitrust Cases*. 565 F.2d 1123 (9th
17 Cir. 1977). Defendants also cite to an out of circuit district court case for the proposition
18 that the Court “must balance several considerations including harm to a party that may
19 result from notice”—here harm to Defendants’ reputation and business when notice is sent
20 to non-members. *Dispute Notice*, at 5; *R & D Bus. Sys. v. Xerox Corp.*, 150 F.R.D. 87
21 (E.D. Tex. 1993). Defendants propose as solutions decertification, stay of notice, or a
22 modification to the notice language. (*Notice Dispute*, at 5–7).

23 Plaintiffs argue that, at the pre-trial notification stage, Ninth Circuit precedent does
24 not require perfect identification of class members when certifying a class or sending out
25 class notice. *See Dispute Notice*, at 3 (“[G]overning law does not require as a condition of
26 certification an ‘administratively feasible’ means to identify each and every class member
27 to an absolute certainty”) (citing *Briseno v. ConAgra Foods*, 844 F.3d 1121, 1132-33 (9th
28 Cir. 2017)). Plaintiffs also note that Defendants had previously and repeatedly represented

1 that the at-issue “health history questionnaire was used in every post-offer, pre-placement
2 examination [Defendants] conducted of job applicants.” (Dispute Notice, at 3). Finally,
3 Plaintiffs argue that Defendants’ objection should not be resolved before trial since “the
4 parties will have the opportunity to proffer evidence on the subject at trial” and the Court
5 can “fashion appropriate post-trial notice and claim administration based upon the evidence
6 adduced.” (*Id.*).

7 Plaintiffs are ultimately correct. In the Ninth Circuit, certifying a class does not
8 require that “the identity of class members . . . be ascertained with perfect accuracy at the
9 certification stage.” *Briseno*, 744 F.3d at 1132 (quoting *Mullins v. Direct Digital, LLC*,
10 795 F.3d 654, 670 (7th Cir. 2015)). Although Defendants represent that their database only
11 shows who visited one of Defendants’ California facilities, Defendants do not explain why
12 this database would be insufficiently accurate—particularly in light of evidence suggesting
13 that every putative class member was required to fill out the at-issue questionnaire. (ECF
14 No. 162, at 21). Regardless, the question of whether a prospective class member’s status,
15 such as being an applicant to a volunteer position, disqualifies them from the class is an
16 issue that can be resolved at a later time. *See Briseno*, 744 F.3d at 1131 (“Defendants will
17 have similar opportunities to individually challenge the claims of absent class members if
18 and when they file claims for damages. At the claims administration stage, parties have
19 long relied on ‘claim administrators, various auditing processes, sampling for fraud
20 detection, follow-up notices to explain the claims process, and other techniques tailored by
21 the parties and the court’ to validate claims.” (quoting *Mullins*, 795 F.3d at 667)). The
22 Court also fails to see how Defendants will suffer prejudice from issuing Plaintiff’s
23 proposed class notice at this stage of the case—particularly when Defendants’ proposed
24 solution of adding additional questions to the notice would require that notice be sent to all
25 class and non-class members in Defendants’ database.

26 Defendants otherwise do not challenge Plaintiff’s proposed class notice. The
27 proposed class notice contains all the information that is required by FRCP 23(c)(2)(B).
28

1 Accordingly, the Court declines Defendants’ invitation to decertify the class and approves
2 Plaintiff’s proposed class notice.¹

3 **B. Plaintiff’s Additional Requests.**

4 Plaintiff also requests that the Court approve a bevy of additional demands relating
5 to the administration of class notice. (Notice Dispute, at 1–2). Defendants did not
6 explicitly oppose these requests, focusing instead on opposing whether notice should be
7 sent at all. (*Id.* at 4–7). The Court finds that Plaintiff’s additional requests are reasonable
8 and comport with the requirements of Rule 23(e), except for Plaintiff’s cost shifting
9 request. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974) (“The usual rule is
10 that a plaintiff must initially bear the cost of notice to the class.”); *see also Hunt v. Imperial*
11 *Merch. Servs., Inc.*, 560 F.3d 1137, 1144(9th Cir. 2009) (“District courts may order a class
12 action defendant to pay the cost of class notification after they determine that the defendant
13 is liable on the merits.”).

14 **III. CONCLUSION**

15 Based on the foregoing, it is hereby ordered that:

- 16 1. For purposes of this Order, except as may be otherwise set forth herein, the
17 Court adopts and incorporates the definitions contained in the Joint Report. (ECF No. 171).
- 18 2. The Court hereby approves the form and content as well as transmission and
19 other use in the manner stated below of Plaintiff’s proposed Long-Form Notice, the
20 Publication Notice, and the Exclusion Request Form. The parties can make non-
21 substantive changes to these documents (such as inserting pertinent dates and the URL for
22 the related informational website identified below) before their use without further
23 approval of the Court.
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27 ¹ The Court also declines to issue a stay of notice. Defendants premised their request on their then pending
28 appeal of the Court’s class certification ruling to the Ninth Circuit. (Notice Dispute, at 6). Because the
Ninth Circuit declined review, (ECF No. 174), the Court finds no reason to issue a stay of notice.

1 3. The Court hereby appoints Verita Global to act as Class Notice and Exclusion
2 Request administrator.

3 4. Within seven (7) days of entry of this Order, Defendants file with the Court a
4 sworn declaration verifying delivery to Verita Global (Attention: Mr. Kevin Guidry) of its
5 database of names and contact details of those individuals who underwent a post-offer, pre-
6 placement examination at one of their facilities in California between Oct. 23, 2017 and
7 Dec. 31, 2018, inclusive.

8 5. Within thirty (30) days from delivery of that database (the “Notice Date”),
9 Verita Global will transmit a short-form, one-page Publication Notice to the Class [via text
10 messaging (SMS) as agreed by Defendants **OR** as information in the database permits,
11 either email or direct mail (postcard)], provided that in the case of [SMS **OR** email
12 transmission], the communication shall include a PDF attachment of or link to the Long-
13 Form Notice.

14 6. Commencing on or before the Notice Date, Verita Global will establish a
15 website (A) containing downloadable copies of the Long-Form Notice, Exclusion Request
16 Form, as well as hyperlinks to key case documents including the Third Amended
17 Complaint (ECF No. 106), the Order on Class Certification (ECF No. 162), and this Order
18 re Class Notice; (B) providing for submission of Exclusion Request Forms electronically;
19 and (C) reflecting a toll-free number whereby members of the Class can obtain additional
20 information and request that an Exclusion Request Form be mailed to them.

21 7. On or before the Notice Date, Verita Global will issue a press release in
22 substantially the form of the Publication Notice to be disseminated to major media outlets.

23 8. Commencing on or before the Notice Date, Defendants will place a link to the
24 aforementioned website prominently on their home page located [here](https://veritaglobal.com/)
25 (<https://veritaglobal.com/>) through the deadline for the filing of Exclusion Request Forms.

26 9. The deadline for members of the Class to timely electronically transmit or
27 mail an Exclusion Request Form will be thirty (30) days from the Notice Date.
28

1 10. Within fourteen (14) days following the aforementioned deadline, Verita
2 Global will provide a report to the parties verifying the identities of all members of the
3 Class who have submitted an Exclusion Request Form. Within fourteen (14) days
4 following the foregoing report, Verita Global will submit a sworn declaration to be filed
5 by Class counsel (A) confirming that it has complied with this Order and completed the
6 tasks enumerated above, and (B) identifying those members of the Class who submitted an
7 Exclusion Request Form.

8 11. Plaintiffs shall bear all initial costs and fees incurred by Verita Global in its
9 performance under the terms and conditions of this Order.

10 12. The Court finds that there is a sufficient basis for giving Notice to the Class
11 at this time. Class members are instructed to follow the instructions for exercising their
12 rights to exclude themselves from this action. Failure to timely submit an Exclusion
13 Request Form will bar a Class member from opting out of this class action and mean that
14 such a Class member will be bound by a final adjudication thereof.

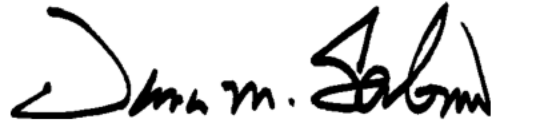
15 13. The Court finds that the forms of notice to the Class members regarding the
16 pendency of this certified class action, and the methods of dissemination to the Class
17 members in accordance with the terms of this Order, constitute valid, due and sufficient
18 notice to the Class members pursuant to Federal Rule of Civil Procedure 23, the U.S.
19 Constitution, and any other applicable law. *Briseno v. ConAgra Foods*, 844 F. 3d 1121,
20 1129 (9th Cir. 2017).

21 14. Counsel for the parties are hereby authorized to utilize all reasonable
22 procedures in connection with the administration of the notice and exclusion process which
23 are not materially inconsistent with either this Order or the Stipulation.

24 15. All provisions of this Order regarding the form and manner of providing
25 notice to the Class will remain in full force and effect unless otherwise expressly modified
26 by further order of the Court.

IT IS SO ORDERED.

Dated: January 31, 2025



Hon. Dana M. Sabraw
United States District Judge

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