

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

*IN RE BROILER CHICKEN ANTITRUST
LITIGATION*

This Document Relates To:
Commercial and Institutional Indirect
Purchaser Actions

Case No. 1:16-cv-08637

Hon. Thomas M. Durkin
Magistrate Judge Jeffrey T. Gilbert

**MEMORANDUM OF LAW IN SUPPORT OF
COMMERCIAL AND INSTITUTIONAL INDIRECT PURCHASER PLAINTIFFS'
UNCONTESTED MOTION FOR APPROVAL OF CLASS NOTICE PLAN**

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I. Introduction

In any case certified under Federal Rule of Civil Procedure 23(b)(3), the Court must direct notice to the certified class. On May 27, 2022, the Court certified two Classes – the Certified Damages Class and the Certified Injunctive Relief Class – under both Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). The Certified Damages Class is defined as:

All entities that purchased Broilers indirectly from a Defendant or named co-conspirator in an Indirect Purchaser State for their own use in commercial food preparation from January 1, 2009, until July 31, 2019.

Dkt. 5644 at 3. The Certified Injunctive Relief Class is defined as:

All entities that purchased Broilers indirectly from a Defendant or named co-conspirator in the United States for their own use in commercial food preparation from January 1, 2009, until July 31, 2019.

Id. at 4.

Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), Plaintiffs now move the Court for an order approving the form and manner of class notice in this certified class action. Class Counsel have conferred with Defense Counsel, who takes no position on the proposed form or manner of notice.

The proposed form and manner of notice dissemination here is supported by a Court appointed and experienced notice and claims administrator, A.B. Data, Ltd. (“A.B. Data”). Class Counsel and A.B. Data have worked collaboratively in preparing the notice. As set forth in more detail in the supporting Declaration of Eric Schachter, Senior Vice President of A.B. Data’s Class Action Administration Division, A.B. Data has been acting as Settlement Administrator in this case pursuant to previously reached settlements that were finally approved by this Court on April 18, 2022 (ECF 5536). As such, A.B. Data is fully familiar with the facts contained herein based upon personal knowledge.

Class Counsel has worked with Mr. Schachter and his team at A.B. Data to develop the proposed forms of class notice as well as the proposed manner of dissemination to the Class, and Mr. Schachter submits a declaration in support of the proposed notice plan attesting to its adequacy and constitutionality. The proposed forms of notice provide all of the information required by Rule 23(c)(2)(B) to the Class, in language that is plain and easy to understand. With this motion, Plaintiffs provide proposed forms for the mailed Long-Form Notice (“Long Form Notice”) and mailed Short-Form Notice (“Short Form Notice”). The Class notice and the manner of dissemination proposed here meet the requirements of Federal Rule of Civil Procedure 23 and of constitutional due process and should be approved.

II. Argument

A. Plaintiffs’ Proposed Class Notice Clearly and Fairly Apprises Class Members of the Nature of this Class Action and the Scope of Their Rights and Should be Approved.

In any class action certified under Rule 23(b)(3), the Court must direct notice of class certification to class members using the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The class notice must “clearly and concisely state in plain, easily understood language” the following: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney; (v) that the court will exclude from the class any member who requests exclusion; (v) the time and manner for requesting exclusion; and (vi) the binding effect of a class judgment on class members. *Id.*

Because class members are bound by the results of a certified Rule 23(b)(3) class action unless they affirmatively opt out, this class notice is required as a matter of constitutional due

process in order to protect the rights of the absent class members. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). To satisfy the demands of due process, notice must convey “the information sufficient to apprise interested parties of the pendency of the action, and provide[] an opportunity to appear and be heard[.]” *In re System Software Associates, Inc.*, No. 97 C 177, 2000 WL 283099 at *10 (N.D. Ill. March 8, 2000) (citing to *Air Lines Stewards & Stewardesses Ass’n. v. American Airlines, Inc.*, 455 F.2d 101, 108 (7th Cir.1972)).

In the context of a class notice, notice is adequate where it “clearly and fairly apprises potential class members of the nature of this action as well as the scope of their rights.” *Issen v. GSC Enterprises, Inc.*, 538 F. Supp. 745, 750 (N.D. Ill. 1982). The class notice for a Rule 23(b)(3) class “must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” *Shurland v. Bacci Café & Pizzeria on Ogden, Inc.*, 271 F.R.D. 139, 147-148 (N.D. Ill. 2010) (quoting Fed. R. Civ. P. 23(c)(2)(B)).

Plaintiffs’ proposed Long Form Notice and Short Form Notice (the “Proposed Notices”) meet all of these requirements and are consistent with the model class notice guidelines set forth in a leading class action treatise. See 3 *Newberg on Class Actions* § 8:4 at 253-59 (6th ed. 2002). The proposed notices provide an overview of the nature of the action, the definition of the certified class, and the class claims. They also explain that a class member may hire his or her own lawyer at his or her own expense, that the court will exclude any class member who requests an exclusion, that Exclusion Requests must be sent to the Broilers CIIPP Settlement at A.B. Data, Ltd. and be

postmarked or received by a date to be set by Court Order, and that a judgment issued by the Court, whether or not favorable to Plaintiffs, will apply to and legally bind class members.

The Proposed Notices plainly satisfy the requirements of due process and the specific requirements of Rule 23(c)(2)(B).

B. The Proposed Manner of Notice Dissemination is Reasonable and Represents the Best Notice Practicable under the Circumstances.

A fundamental concept of class notice is to “ensur[e] due process through individual notice of class members who can be identified through reasonable effort.” *Hossfeld v. Lifewatch, Inc.*, No. 13 C 9305, 2021 WL 1422779 at *2 (N.D. Ill. March 4, 2021) (citing to *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974)). Although Rule 23 requires that reasonable efforts be made to reach all Class members, “neither Rule 23 nor the Constitution requires that a class member actually receive notice: notice suffices if it is reasonably calculated to reach the absent parties.” 3 *Newberg and Rubenstein on Class Actions* § 8:36 (6th ed.)

As described in the supporting Declaration of Eric Schachter, A.B. Data estimates the Class to consist of approximately 1,100,000 individuals. A.B. Data will mail and/or email the Short-Form Notice to these potential Class Members and will make the more detailed Long-Form Notice available on the case website, www.chickencommercialsettlement.com. Schachter Decl. 4. If A.B. Data has both a mailing address and an email address, the notice will be sent to both. To reach as many potential Class Members as possible, A.B. Data, as they have with respect to the previous settlement classes, will implement certain best practices when disseminating email notices, such as avoiding SPAM and junk filters by not using email attachments and certain trigger words, and sending the emails in tranches over a period of days or weeks.

Additionally, A.B. Data will pursue a proposed media schedule that includes a combination of digital advertisements on websites, social media, and search engines. This includes banner ads

on food industry websites; targeted banner ads on Google Display Network and YouTube; and a news release disseminated via earned media. Digital ads will be run in seven different food industry websites. Schachter Decl. 8. A.B. Data will also disseminate a news release via the PR Newswire distribution service to more than 10,000 print, broadcast, and digital media newsrooms across the United States. It will also be distributed to food-industry trade publications. *Id.* at 10.

Finally, to assist potential Class members in understanding the information concerning the lawsuit and their rights, A.B. Data will continue to maintain the existing case-specific toll-free telephone number and case-specific website. The toll-free telephone number will be updated to present callers with a series of choices to hear prerecorded information concerning the Certified Classes. If callers need further help, they will have an option to speak with a live operator during business hours. *Id.* at 11. The case-specific website will be updated with information concerning the Certified Classes, including a summary of the case, all relevant documents including the Class Certification Order, and important dates and deadlines. *Id.* at 12. The toll-free telephone number and case-specific website are included on both Proposed Notice Forms.

A.B. Data estimates that this notice program will deliver an estimated reach of at least 80% of the target audience. *Id.* at 15. A.B. Data also opines that this Notice Plan described herein is the best practicable under the circumstances for reasons of outreach and efficiency and that the proposed Notice program satisfies the requirements of Rule 23.

C. The Proposed Manner of Payment for the Notice is Reasonable.

A.B. Data anticipates the costs of this proposed notice plan to be roughly \$635,000.00. This includes the costs of the digital media, press release, printed notices, and postage for the printed notices. Class Counsel proposes a withdrawal from the existing settlement escrow accounts of the “Settling Defendants” to cover these costs. The escrow accounts from the prior settlements

in this case contain over \$2 million that was originally slated to be used for class notice and administration purposes.

III. Conclusion

For these reasons, CIIPPs respectfully request that the Court grant their Uncontested Motion for Approval of the Class Notice Plan.

Dated: December 21, 2022

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