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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

GORDON NOBORU YAMAGATA and
STAMATIS F. PELARDIS, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

RECKITT BENCKISER LLC,

Defendant.

Case No. 3:17-cv-03529-VC

**SUPPLEMENTAL DECLARATION OF
CAMERON R. AZARI, ESQ. RE
IMPLEMENTATION AND ADEQUACY
OF CLASS NOTICE PROGRAM**

CLASS ACTION

District Judge Vince Chhabria
Courtroom 4, 17th Floor

Complaint Filed: June 19, 2017

**SUPPLEMENTAL DECLARATION OF CAMERON R. AZARI, ESQ. RE CLASS
NOTICE PROGRAM**

I, Cameron Azari, declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice President with Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”); a firm that specializes in designing, developing, analyzing and implementing large-scale legal notification plans. Hilsoft is a business unit of Epiq.

4. This declaration provides updated administration stats following the implementation of the Settlement’s Class Notice Program (“Class Notice Program”) and notice (the “Notice” or “Notices”) for *Yamagata v. Reckitt Benckiser LLC*, 3:14-cv-03529-VC in the United States District Court for the Northern District of California. I previously executed my *Declaration of Cameron R. Azari, Esq. Re Class Notice Program*, on March 2, 2021, in which I detailed Hilsoft’s class action notice experience and attached Hilsoft’s *curriculum vitae*. (ECF No.

Case No. 3:17-cv-03529-VC

203-2). I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs. I also executed my *Declaration of Cameron R. Azari, Esq. Re Class Notice Program*, on May 12, 2021, in which I detailed the proposed Class Notice Program for the Settlement and provided detailed information regarding the data available to provide individual notice to Class Members. (ECF No. 221-2 at Exhibit 4). Subsequently, I executed my *Declaration of Cameron R. Azari, Esq. Re Implementation and Adequacy of Class Notice Program* (“Implementation Declaration”) on September 13, 2021, in which I detailed the implementation of the Class Notice Program and provided settlement administration statistics. (ECF No. 230-5). The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

CLASS NOTICE PROGRAM SUMMARY

5. Federal Rule of Civil Procedure 23 directs that the best notice practicable under the circumstances includes “individual notice to all members who can be identified through reasonable effort.”¹ As I stated in my Implementation Declaration, the Class Notice Program here satisfied this requirement with individual notice and supplemental media - nationally distributed digital and social media. The Class Notice Program (individual notice and supplemental media - nationally distributed digital and social media) reached over 80% of the Settlement Class. In my experience, this reach of the Class Notice Program is consistent with or exceeds other court-approved notice programs, was the best notice practicable under the circumstances of this case and satisfied the requirements of due process, including its “desire to actually inform” requirement.²

¹ Fed. R. Civ. P. 23(c)(2)(B).

² *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”); *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) (“To satisfy Rule 23(e)(1), settlement notices must ‘present information about a proposed settlement neutrally, simply, and understandably.’ ‘Notice is satisfactory if it generally describes the terms of the settlement in

1 6. The Media Plan included various forms of notice, utilizing, a newspaper
2 publication, internet banner advertising, social media, sponsored search listings, and an
3 informational release. The combined measurable reach of the overall Class Notice Program
4 (accounting for individual notice and supplemental media - nationally distributed digital and social
5 media) was over 80% of adults, aged 45+ in the United States who are vitamin/supplement users.
6 “Reach” refers to the estimated percentage of the unduplicated audience exposed to the notice.
7 The reach was further enhanced by newspaper notice, internet sponsored search listings, an
8 informational release, and a Settlement Website, which are not included in the estimated reach calculation.

9 7. The Class Notice Program was implemented and has been completed in
10 accordance with the Court’s June 24, 2021, Preliminary Approval Order. In my opinion, the
11 Class Notice Program as designed and implemented reached the greatest practicable number of
12 Class Members through the use of individual notice and targeted media notice.

CLASS NOTICE PROGRAM

14 8. As I stated in my Implementation Declaration, CAFA Notice—as required by the
15 federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, CAFA Notice was provided
16 to 57 federal and state officials on March 12, 2021. In addition, Supplemental CAFA Notice was
17 provided to 57 federal and state officials on May 20, 2021.

INDIVIDUAL NOTICE

19 9. As I stated in my Implementation Declaration, it is my understanding from
20 counsel for the parties that there are approximately 6,173,000 potential Class Members. Data
21 available for Class Members was provided to Epiq to provide individual notice.

22 10. From August 4, 2021, to August 7, 2021, Epiq sent 3,095,988 Email Notices to
23 all of the 2,568,102 identified Class Members with one or more verified valid email addresses
24 (this does not include Class Members who are Amazon customers that Amazon’s records indicate
25 purchased Move Free Advanced during the Class Period). Under the terms of the Settlement, it

26 _____
27 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
28 heard.”) (citations omitted); N.D. Cal. Procedural Guidance for Class Action Settlements,
Preliminary Approval (3) (articulating best practices and procedures for class notice).

1 is my understanding that Amazon sent an email notice (the “Amazon Email Notice”) directly to
2 these approximately 859,695 Class Members.

3 11. On August 6, 2021, Epiq sent 1,135,471 Postcard Notices via USPS first class
4 mail to all identified Class Members for whom a facially valid email address was not available,
5 but a physical address was available. On August 25, 2021, Epiq also sent 546,946 Postcard
6 Notices via USPS first class mail to all identified Class Members who did not have a delivered
7 Email Notice after several attempts for whom a physical address was available.

8 12. Prior to mailing, all mailing addresses provided were checked against the National
9 Change of Address (“NCOA”) database maintained by the USPS.³ In addition, the addresses were
10 certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code,
11 and verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses.
12 This address updating process is standard for the industry and for the majority of promotional
13 mailings that occur today.

14 13. Additionally, a Notice Claim Package (Long Form Notice and Claim Form) was
15 mailed to all persons who requested one via the toll-free telephone number or by mail. As of
16 September 22, 2021, 4,420 Notice Claim Packages have been mailed as a result of such requests.

17 14. The return address on the Notices sent by Epiq is a post office box that Epiq
18 maintains for this case. The USPS automatically forwards Postcard Notices with an available
19 forwarding address order that has not expired (“Postal Forwards”). For Postcard Notices returned
20 as undeliverable, Epiq re-mails the Postcard Notices to any new address available through USPS
21 information (for example, to an address provided by the USPS on the returned mail piece if the
22 forwarding order has expired, but is still within the time period in which the USPS returns the
23 piece with a forwarding address indicated), and to addresses Epiq obtains from a third-party
24 address lookup service. As of September 22, 2021, Epiq has re-mailed 42,587 Postcard Notices

25
26 ³ The NCOA database contains records of all permanent change of address submissions received by
27 the USPS for the last four years. The USPS makes this data available to mailing firms and lists
28 submitted to it are automatically updated with any reported move based on a comparison with the
person’s name and known address.

1 to Class Members where a forwarding address was provided or address research identified a new
 2 address. As of September 22, 2021, Epiq has received a total of 60,918 undeliverable Postcard
 3 Notices (which includes any re-mailed Postcard Notices that were also returned as undeliverable).

4 ***Notice Results***

5 15. In total, approximately 3,955,683 Email Notices were sent to Class Members by
 6 Epiq and Amazon and 1,135,471 Class Members were directly mailed the summary Postcard
 7 Notice. The individual notice effort were supplemented by a targeted media campaign.

8 16. As of September 22, 2021, a Postcard Notice or an Email Notice were delivered
 9 by Epiq to 3,653,580 of the 3,703,573 identified Settlement Class Members to whom Epiq sent
 10 Notice. This means a deliverable rate of 98.6% was accomplished for the individual notice efforts.

11 ***Reminder Email Notice***

12 17. From September 10, 2021, to September 12, 2021, Epiq sent 1,919,318 Reminder
 13 Email Notices to Class Members with a valid email address who have not already filed a Claim at
 14 the time the Reminder Email was sent. The Reminder Email provides concise text (stressing the
 15 impending Claim filing deadline) and includes a link directly to the Settlement Website.

16 **Media Plan**

17 ***CLRA Publication Notice***

18 18. As I stated in my Implementation Declaration, a Publication Notice was published
 19 in four (4) insertions spread over four (4) weeks in the San Francisco regional edition of *USA*
 20 *Today* weekday edition as a ¼ page ad unit. The Publication Notice ran on the dates and pages as
 21 follows:

<i>Publication</i>	<i>On-Sale Date</i>	<i>Page Position</i>
<i>USA Today</i> (San Francisco regional edition)	8/9/2021	3B
<i>USA Today</i> (San Francisco regional edition)	8/16/2021	5A
<i>USA Today</i> (San Francisco regional edition)	8/23/2021	5A
<i>USA Today</i> (San Francisco regional edition)	8/30/2021	4B

Targeted Internet Banner Advertising

19. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target class members as part of providing notice of class certification and/or a settlement for a class action case. According to GfK MRI syndicated research, over 84% of adults, aged 45+ in the United States who are vitamin/supplement users are online.⁴

20. The Class Notice Program included targeted banner advertising on selected advertising networks, which were targeted to Class Members. The Internet Banner Advertisements linked directly to the Settlement Website, thereby allowing visitors easy access to relevant information and documents. The Internet Banner Advertisements used language from the Email Notice headline, which allowed users to identify themselves as potential Class Members. As an additional way to draw the interest of Class Members, and to be consistent with FJC recommendations that a picture or graphic may help class members self-identify, the Internet Banner Advertisements prominently featured high-resolution pictures of the Move Free Advanced packaging.

21. The Class Notice Program included Internet Banner Advertisements in various sizes, which were placed on the advertising networks, *Google Display Network* and *Verizon (Yahoo) Audience Network*. Combined, these ad networks cover 90% of the United States' population that is online. All Internet Banner Advertisements ran on desktop, mobile and tablet devices and were distributed to the selected targeted audiences nationwide.

22. Internet Banner Advertisements were also targeted (remarketed) to people who visited the Settlement Website as well as those individuals whose online behaviors and interests mimicked those who clicked through to the Settlement Website. Targeting the Internet Banner Advertisements to these "lookalike" audiences across the *Google Display Network* is a sophisticated advertising technique that provides an effective and efficient way to distribute class notice and drive settlement awareness.

⁴ MRI-Simmons 2020 Survey of the American Consumer®.

23. The Class Notice Program also included advertising on social media, which consisted of Internet Banner Advertisements on *Facebook* and on *Instagram* in various sizes. *Facebook* is the leading social networking site in the U.S. and combined with *Instagram* covers over 300 million users in the United States. The *Facebook* and *Instagram* Internet Banner Advertisements were distributed to a variety of target audiences relevant to Move Free Advanced based on an individual's demonstrated interests and/or likes.

24. More details regarding the target audiences, distribution, and specific ad sizes of the Internet Banner Advertisements, are included in the following table.

<i>Network/Property</i>	<i>Target</i>	<i>Distribution</i>	<i>Ad Sizes</i>	<i>Delivered Impressions</i>
<i>Google Display Network</i>	Custom Intent: Vitamins, Supplements	National	728x90, 300x250, 300x600, 970x250	31,260,526
<i>Google Display Network</i>	Custom Affinity: Vitamins, Supplements	National	728x90, 300x250, 300x600, 970x250	32,194,817
<i>Facebook</i>	Interests: Vitamin Shoppe, Vitamin Center, Vitamin Club, Vitamin World	National	Newsfeed & Right Hand Column	33,414,947
<i>Facebook</i>	Interests: Affordable Supplements, Supplemental Nutrition	National	Newsfeed & Right Hand Column	32,935,598
<i>Instagram</i>	Interests: Vitamin Shoppe, Vitamin Center, Vitamin Club, Vitamin World	National	Newsfeed	13,783,041
<i>Instagram</i>	Interests: Affordable Supplements, Supplemental Nutrition	National	Newsfeed	14,046,960
<i>Verizon Media</i>	Health Channel	National	728x90, 300x250, 300x600, 970x250	36,604,363
Total				194,240,252

25. Combined, more than 194.2 million targeted impressions were generated by the Internet Banner Advertisements, which ran from August 6, 2021, through September 14, 2021, nationwide.⁵ Clicking on the Internet Banner Advertisements linked the reader to the Settlement

⁵ The third-party ad management platform, ClickCease is being used to audit the digital Banner Notice ad placements. This type of platform tracks all Banner Notice ad clicks to provide real-time

1 Website to easily obtain detailed information about the case and file a Claim Form.

2 26. Throughout the implementation of the Class Notice Program, Hilsoft continuously
3 monitored the effectiveness of the Class Notice Program to ensure impression goals were met to
4 satisfy a combined reach of at least 80%.

5 ***Sponsored Search Listings***

6 27. The Class Notice Program includes purchasing sponsored search listings to
7 facilitate locating the Settlement Website. Sponsored search listings are acquired on the three
8 most highly-visited internet search engines: *Google, Yahoo!* and *Bing*. When search engine
9 visitors search on selected common keyword combinations related to the case, the sponsored
10 search listing are generally displayed at the top of the page prior to the search results or in the
11 upper right-hand column. Representative search terms include word and phrase variations of
12 arthritis pain, joint pain, Move Free Advanced, glucosamine, and chondroitin. The sponsored
13 search listings are displayed nationwide. As of September 22, 2021, the sponsored listings have
14 been displayed 74,625 times, resulting in 20,657 clicks that displayed the Settlement Website.

15 ***Informational Release***

16 28. To build additional reach and extend exposures, on August 6, 2021, a party-neutral
17 Informational Release was issued broadly over PR Newswire to approximately 5,000 general
18 media (print and broadcast) outlets, including local and national newspapers, magazines, national
19 wire services, television and radio broadcast media across the United States as well as
20 approximately 4,500 websites, online databases, internet networks and social networking media.
21 These media sources include numerous websites and blogs covering health, wellness and aging
22 topics such as WebMD, Harvard Public Health Review, Healthy Aging, American Pharmaceutical
23 Review, and VeryWell Health. In addition, the Informational Release in Spanish was issued to
24 the Hispanic newswire. The Hispanic newswire reaches approximately 7,000 U.S. Hispanic media
25 contacts including online placement of over 100 Hispanic websites nationally.

26 _____
27 ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines
28 dangerous IP addresses. This helps reduce wasted, fraudulent or otherwise invalid traffic (*e.g.*, ads
being seen by ‘bots’ or non-humans, ads not being viewable, etc.).

1 29. The Informational Release included the address of the Settlement Website and the
2 toll-free telephone number. The Informational Release served a valuable role by providing
3 additional notice exposures beyond that which was provided by the paid media.

4 ***Settlement Website, Toll-free Telephone Number, and Postal Mailing Address***

5 30. The Settlement Website (www.MoveFreeAdvancedSettlement.com) continues to
6 be available 24 hours per day, 7 days per week. Class Members are able to obtain detailed
7 information about the case, review key documents, and file a Claim Form and a Request for
8 Exclusion on the Settlement Website. As of September 22, 2021, there have been 498,478 unique
9 visitors to the website and 2,780,717 website pages presented.

10 31. The toll-free telephone number (855-435-0524) continues to be available 24 hours
11 per day, 7 days per week. Class Members are able to call for additional information, listen to
12 answers to FAQs, and request that a Notice Claim Package be mailed to them. To provide
13 additional support to Class Members, live agents are available via the toll-free number during
14 normal business hours. As of September 22, 2021, the toll-free telephone number has handled
15 11,694 calls representing 40,558 minutes of use and service agents have handled 1,719 incoming
16 calls representing 15,605 minutes of use and 31 outbound calls representing 59 minutes of use.

17 32. The post office box for correspondence about the case continues to be available
18 to allow Class Members to contact the Settlement Administrator by mail with any specific requests
19 or questions.

20 ***Requests for Exclusion and Objections***

21 33. The deadline to request exclusion from the Settlement or to object to the
22 Settlement is October 14, 2021. As of September 22, 2021, Epiq has received 79 requests for
23 exclusion. As of September 22, 2021, I am aware of two objections to the Settlement. I have
24 reviewed all objections and none relate to notice or settlement administration.

25 ***Notice and Claim Administration Expenses***

26 34. The combined, approximate cost to provide notice and handle the settlement
27 administration is currently estimated at \$2,351,908. The actual total cost for providing settlement
28

1 administration is dependent upon variables such as the number of calls to the toll-free line, the
2 number of claims submitted, the validity and completeness of those claim submissions and the
3 number of Class Members sent a payment, etc.

4 CONCLUSION

5 35. In class action notice planning, execution, and analysis, we are guided by due
6 process considerations under the United States Constitution, and by case law pertaining to the
7 recognized notice standards under Rule 23. This framework directs that the notice plan be
8 optimized to reach the class and, in a settlement notice situation such as this, that the notice or
9 notice plan itself not limit knowledge of legal rights—nor the ability to exercise other options—
10 to class members in any way. All of these requirements were met in this case.

11 36. The Class Notice Program included individual, direct notice and reminder direct
12 notice to millions of identified Class Members and targeted supplemental media (via nationally
13 distributed digital and social media), which ensured reaching over 80% of the Settlement Class.
14 The reach was further enhanced by newspaper notice, internet sponsored search listings, an
15 informational press release to thousands of media outlets, and a Settlement Website. In 2010, the
16 Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and
17 Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the
18 adequacy of a proposed notice effort is whether all the notice efforts together will reach a high
19 percentage of the class. It is reasonable to reach between 70–95%." Here, we have developed
20 and implemented a Class Notice Program that achieved a reach within that standard.

21 37. The notice efforts followed the guidance for how to satisfy due process obligations
22 that a notice expert gleans from the United States Supreme Court's seminal decisions, which are:
23 a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably
24 calculated to do so:

- 25 A. "But when notice is a person's due, process which is a mere gesture is not
26 due process. The means employed must be such as one desirous of actually
27 informing the absentee might reasonably adopt to accomplish it," *Mullane*
28 *v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).

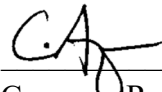
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B. “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at 314.

38. The Class Notice Program described above provided for the best notice practicable under the circumstances of this case, conformed to all aspects of the Rule 23, and comported with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth.

39. The Class Notice Program schedule afforded sufficient time to provide full and proper notice to Class Members before the exclusion request and objection deadlines.

I declare under penalty of perjury of the laws of the United States and the State of California that the foregoing is true and correct. Executed on September 23, 2021, at Beaverton, Oregon.



Cameron R. Azari