

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CARLOTTI, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

ASUS COMPUTER INTERNATIONAL;
ASUSTEK COMPUTER INC., and DOES 1-50,

Defendants.

CASE NO. 18-CV-03369-DMR

**DECLARATION OF STEVEN
WEISBROT OF ANGEION
GROUP, LLC IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at the class action notice and settlement administration firm Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as *Bloomberg*, *BNA Class Action Litigation Report*, *Law360*, the *ABA Class Action and Derivative Section Newsletter* and I am a frequent speaker on notice

issues at conferences throughout the United States and internationally.

3. I was certified as a professional in digital media sales by the Interactive Advertising Bureau (“IAB”) and I am co-author of the Digital Media section of Duke Law’s *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23*.

4. I have given public comment and written testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and suggest an educational curriculum for the judiciary concerning notice procedures.

5. Prior to joining Angeion’s executive team, I was employed as Director of Class Action services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

6. My notice work comprises a wide range of settlements that include product defect, mass disasters, false advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. For example, the Honorable Sarah Vance stated in her December 31, 2014 Order in *In Re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328:

To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web-based forms of communication in the plan.... The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process.

The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with

publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement.

As detailed below, courts have repeatedly recognized my work in the design of class action notice programs:

(a) On February 24, 2017, The Honorable Ronald B. Rubin in *James Roy et al. v. Titeflex Corporation et al.*, No. 384003V (Md. Cir. Ct.), noted when granting preliminary approval to the settlement:

What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make a decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite.*** (Emphasis added).

(b) Likewise, on July 21, 2017, The Honorable John A. Ross in *In Re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. Mo.), stated in the Court's Order granting preliminary approval of the settlement:

The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in *People* and *Sports Illustrated*, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —***is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.*** (Emphasis added).

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update

those documents for purposes of accuracy.

(c) In the *In Re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*, Case No. 17-md-02777-EMC (N.D. Cal.), in the Court's February 11, 2019 Order, the Honorable Edward M. Chen ruled:

[In addition] the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media “marketing” – is the “best notice . . . practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and “reminder” first-class mail notice when AEM becomes available).

(d) On June 26, 2018, in his Order granting preliminary approval of the settlement in *Mayhew v. KAS Direct, LLC, et al.*, Case No. 16-cv-6981 (VB) (S.D.N.Y.), The Honorable Vincent J. Briccetti ruled:

In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to “baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers,” and will target users who are currently browsing or recently browsed categories “such as parenting, toddlers, baby care, [and] organic products.” (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for

confirming the class members receive notice.

7. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over \$10 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/meet_the_team.htm.

8. This declaration will describe the notice program that Angeion has proposed to use in this Litigation, including certain considerations that informed the development of the notice program, and why it will provide due process of law to the Class.

OVERVIEW OF THE NOTICE PROGRAM

9. The notice program described herein is the best notice that is practicable under the circumstances and fully comports with due process and Rule 23 of the Federal Rules of Civil Procedure, as the parties are utilizing a robust paid media campaign consisting of state-of-the-art targeted internet banner advertisements, traditional publication notice in widely-read consumer magazines, a national press release, and direct notice to Class Members for whom email addresses or mailing addresses are available. The notice program also includes an informational Settlement Website and toll-free telephone line where Class Members can learn more about their rights and responsibilities in the Settlement.

10. As described in greater detail below, Angeion recommends a paid media program consisting of state-of-the-art targeted internet banner notice and print publication in *People* magazine as the primary vehicles used to disseminate notice of this settlement.

11. The media portion of the notice program will deliver an approximate 76.75% reach with

an average frequency of 3.03 times. What this means in practice, is that separate and apart from the newspaper notice, direct notice, and the media earned as a result of the press release (all of which are difficult to measure in terms of reach percentage but will nonetheless inform the Class of their rights and responsibilities under the settlement) 76.75% of our Target Audience will see a digital advertisement concerning the Settlement on average 3.03 times each.

12. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm”. Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges”, at 27 (3d Ed. 2010). For the reasons described in greater detail below, it is my opinion that the notice program here is the best notice that is practicable under the circumstances and fully comports with due process and Rule 23 of the Federal Rules of Civil Procedure.

CLASS DEFINITION

13. The Class is defined in the Settlement Agreement as “all persons in the United States who purchased a new ASUS Rog Strix GL502VS or ASUS Rog Strix GL502VSK laptop computer from Defendants or an authorized ASUS retailer of Defendants between May 4, 2014 and the date Preliminary Approval is entered.” Excluded from the Class are (a) the Honorable Magistrate Donna Ryu and any member of her immediate family; (b) any government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e) any entity in which Defendants have a controlling interest; (f) any of Defendants’ parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the Settlement; (i) any person who received a full refund of a Laptop’s entire purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues

alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from the Power Defect or Overheating Issue; (k) any person who signed a release regarding their Laptop; and (l) all persons who have filed a timely request for exclusion from the Class.

14. Angeion has been informed by counsel for the Defendants that approximately 24,000 Laptops were sold during the Class Period.

MEDIA NOTICE TARGET AUDIENCE

15. This matter contemplates a nationwide settlement class as defined in the Class Definition section found *supra* in paragraph 13. This notice program contemplates and includes a robust paid media campaign. To create the media notice program and verify its effectiveness, our media team used data from 2018 comSCORE//GfK MRI Media + Fusion to profile the Class and establish the following Target Audience:

- Personal Computers Household Ownership PC/Non-Apple Brand [Asus]; and
- Personal Computers When Home Computer Acquired-Any [Within the last 12 months or 1-2 years ago or 3-4 years ago]

16. Based on the Target Audience definition, the potential audience size is estimated at 7,532,000. This target audience, based on objective syndicated data, will allow the parties to report the reach and frequency to the court with the confidence that the reach within the target audience and the number of exposure opportunities is based on objective data and exceeds the Federal Judicial Center's threshold as to reasonableness in notification programs.

17. Understanding the socio-economic characteristics, interests, and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has the following characteristics:

- Adults with an average age of 45
- 57.85% are married
- 49.43% have earned a college degree
- 64.70% live in households with a total income above \$75K

- 67.31% are employed, with 52.75% working full time
- 59.43% are male

18. To identify the best vehicles to deliver messaging to the Target Audience, we reviewed traditional media quintiles, which measure the degree to which an audience uses a particular form of media relative to the general population. Here, it shows that members of the Target Audience use the internet an average of 25 hours per week. This internet usage is heavy compared against the general population's average of 20 hours per week. The Target Audience also reads an average of 5 magazine issues per month.

19. Given the strength of these mediums and our target audience's heavy reliance on those forms of media, we recommended running a publication in a magazine that resonates well with our target audience and utilizing a robust internet advertising campaign, as well as a limited newspaper campaign to comply with notice requirements of the California Legal Remedies Act ("CLRA") statute. This media schedule will allow us to deliver an effective reach level for notice messaging while maximizing efficiencies. Each form of media notice will be discussed in further detail below as well as the press release, which we have included to help stimulate claims activity, but which is not capable of precise calculations in terms of reach percentage.

ONLINE NOTICE

20. Angeion utilizes advanced targeting, machine learning, and a known and verifiable target audience profile, to ensure that members of the target audience are reached online. Through this "programmatic" approach, Angeion's focus will be on effectively reaching the prototypical individual Class Member. Purchasing display and mobile inventory programmatically provides the highest reach and allows for numerous advanced targeting layers.

21. Specifically, multiple targeting layers will be implemented to help ensure delivery to the most appropriate users, inclusive of search targeting, category contextual targeting, keyword contextual targeting, and site retargeting. The banner advertisements will run on desktop and mobile devices to reach the most qualified audience on the websites where Class Members are likely to surf, shop and browse. Search terms will be relevant to computers, laptops and the Asus

brand. Targeting users who are currently browsing or have recently browsed content in categories such as computers will further help qualify impressions to ensure that notice is served to the most relevant audience. Where available, purchase data will be utilized to further qualify the audience.

22. To combat the possibility of non-human viewership of the digital advertisements and to verify effective unique placements, Angeion utilizes Integral Ad Science (“IAS”), the leading ad verification company to prevent fraudulent activity¹. IAS has received the Media Rating Council “MRC”² accreditation for Sophisticated Invalid Traffic (SIVT) detection for desktop and mobile web traffic. Angeion also employs Lotame, a demand management platform (“DMP”), to learn more about the online audiences that are being reached. From this data, demographic profiles can be refined and leveraged for changes in targeting strategies to increase the overall performance of the digital campaign.

23. Angeion will perform initial A/B testing of versions of the advertisements which determines which versions generate the highest click-through rate and conversion rate (i.e. completion of a claim form) and, based on those results, will use the higher performing versions for subsequent impressions. Likewise, we will track which webpages and times of day are generating the highest click-through rate and conversion rate, and to the extent practicable, redirect future impressions to those higher-performing locations instead of lower-performing locations.

24. The internet banner notice portion of the notice program will be implemented using a 4-

¹ Integral Ad Science (IAS) is a global technology and data company that builds verification, optimization, and analytics solutions to empower the advertising industry to effectively influence consumers everywhere, on every device. They solve the most pressing problems for brands, agencies, publishers, and technology companies by verifying that every impression has the opportunity to be effective, optimizing towards opportunities to consistently improve results, and analyzing digital’s impact on consumer actions. Built on data science and engineering, IAS is headquartered in New York with global operations in ten countries.

² The Media Rating Council was established in the early 1960’s at the behest of the US congress. The objective or purpose to be promoted or carried on by Media Rating Council is: To secure for the media industry and related users audience measurement services that are valid, reliable and effective. To evolve and determine minimum disclosure and ethical criteria for media audience measurement services. To provide and administer an audit system designed to inform users as to whether such audience measurements are conducted in conformance with the criteria and procedures developed.

week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50 and 300x50). A 3x frequency cap will be imposed on the internet banner notice portion of the notice program to maximize reach. The banner notice portion of the notice program is designed to result in serving approximately 16,660,000 impressions.

25. Further, to track campaign success, Angeion will implement conversion pixels throughout the Settlement website to better understand audience behavior and identify those members of the Target Audience who are most likely to convert. The programmatic algorithm will change based on success and failure to generate conversions throughout the process. Successful conversion on the Claim submission button will be the primary goal, driving optimization of the campaign.

PUBLICATION NOTICE

26. To identify the best print vehicle for delivering the message to the target audience, MRI was used to analyze and filter publications to determine the titles with the highest reach against our Target Audience. *People* was chosen as the best title for this notice program due to its strong reach towards the Target Audience. One ½-page black and white insertion is recommended. A chart explaining the circulation in the general public and within our target audience is produced below.

| Publication | Circulation | Target Audience |
|-------------|-------------|-----------------|
| People | 3,510,533 | 865,000 |

27. In order to satisfy the notice requirements of the California Consumer Legal Remedies Act (“CLRA”), the notice program will include four ¼-page ads in the California regional edition of *USA Today*. The ads will provide notice of the instant Settlement and will run for four consecutive weeks.

28. In order to further boost awareness of the settlement, gain online visibility, and gain media pickup, Angeion will cause a Press Release to be issued via PR Newswire. Issuing a press release will help create earned media via press coverage, which will drive credibility and

engagement among Settlement Class Members and beyond.

EMAIL NOTICE

29. Angeion has been advised by counsel that it will be provided with an electronic list that includes approximately 6,000 email addresses for individuals included in the Class (“Class List”). Angeion will send notice via email to the email addresses contained in the Class List.

30. Below I have outlined some of Angeion’s practices to increase deliverability and readability of email notice. Specifically, Angeion will employ the following best practices regarding the email notice.

31. As an initial matter, Angeion designs the email notice to avoid common “red flags” that might otherwise cause the recipient’s spam filter to block the email notice or identify it as spam. For example, Angeion will not include the long form notice as an attachment to the email notice because attachments are often interpreted by various Internet Service Providers (“ISP”) as spam. Rather, in accordance with industry best practices, Angeion will include electronic links to all operative documents so that recipients can easily access this information.

32. Angeion also accounts for the reality that some emails will inevitably be blocked during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 12-24-hour rest period, which allows any temporary block at the ISP level to expire, will direct a second round of email notice to any email addresses that were previously identified as soft-bounces. In Angeion’s experience, this minimizes the number of emails that may have erroneously bounced by sensitive servers. As explained below, for those Class Members for whom their email addresses that were identified as a soft-bounce, direct notice will be mailed to them if a mailing address is also provided.

MAILED NOTICE

33. Angeion has further been advised that it will be provided with approximately 2,600 mailing addresses for Class Members. Angeion will send Postcard Notice of the Settlement via a United States Postal Service (“USPS”) first-class mail, postage prepaid postcard to those Class

Members with mailing addresses whom: (a) Angeion did not receive an email address; or (b) email sent to the Class Member was returned as undeliverable (i.e., a soft bounce).

34. In order to be certain that the most current mailing addresses for Class Members are utilized, prior to mailing, all addresses on the Class List will be processed through the USPS National Change of Address (“NCOA”) database. This process provides updated address information for individuals and businesses who have moved in the last four years and who filed a change of address card with the USPS.

35. Similarly, in an effort to deliver Settlement notices to the intended Class Member recipients, the notice program provides for the following: (1) notices that are returned as undeliverable by the USPS and have a forwarding address will be re-mailed to that forwarding address; and (2) notices that are returned as undeliverable by the USPS without a forwarding address will be subject to address verification searches (“skip tracing”), utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc. to locate updated addresses. Notices will then be re-mailed to updated addresses located through skip tracing.

RESPONSE MECHANISMS

36. The notice program will implement the creation of a case-specific informational Settlement website, www.asuslaptopsettlement.com, where Class Members can easily view general information about this class action, review relevant Court documents and view important dates and deadlines pertinent to the Settlement.

37. The Settlement website will be designed to be user-friendly and make it easy for Class Members to find information about the Settlement or file a claim. The website will also have a “Contact Us” page whereby Class Members can send an email with any additional questions to a dedicated email address. Class Members will also be able to submit claims directly on the Settlement website.

38. A toll-free telephone hotline devoted to this case will be implemented to further apprise Class Members of the rights and options in the Settlement. The toll-free hotline will utilize an interactive voice response (“IVR”) system to provide Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week.

REACH AND FREQUENCY

39. The integrated publication notice program incorporates advanced internet notice and publication and publications in a widely read consumer magazine that over-indexes with our Target Audience. This declaration provides the reach and frequency evidence which courts systematically rely upon in reviewing class action publication notice programs for adequacy. It further provides the objective syndicated data source, from which the percentages are derived. The reach percentage and the number of exposure opportunities, meets or exceed the guidelines as set forth in the Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*.

40. Specifically, the media notice program is designed to deliver an approximate 76.75% reach to the Target Audience with an average frequency of 3.03 times each. This reach percentage is *not* inclusive of the direct notice efforts described herein, nor does it include the Settlement Website, the toll-free telephone hotline, the CLRA print publications, press release or any notice published on the defendants’ website and social media, as those are not readily calculable in the reach percentage but will nonetheless substantially aid in informing the Class Members of their rights and options under the Settlement.

CONCLUSION

41. In my opinion, the notice program will provide full and proper notice to Class Members before any claim submission, opt-out, and objection deadlines.

42. It is my opinion that the notice program provides Class Members with Due Process of law and is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

43. After effectuating the notice program, Angeion will provide a final report verifying its effective implementation.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: July 8, 2019



STEVEN WEISBROT