

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STEPHEN ADKINS, an individual and Michigan resident, on behalf of himself and all others similarly situated,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No: 3:18-cv-05982 WHA

**DECLARATION OF STEVEN
WEISBROT RE:
NOTICE PROGRAM**

I, Steven Weisbrot, Esq., declare under penalty of perjury as follows:

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, data breach, mass disasters, false advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.

7. Courts have repeatedly recognized my work in the design of class action notice programs. For example, 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 for a class certified under Rule 23(b)(3):

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).

A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit 1**.

8. 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 \$12 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/our_team.htm.

9. This declaration will describe the notice program that we will implement in this matter,

including the considerations that informed the development of the plan.

SUMMARY OF THE NOTICE PROGRAM

10. Because this class was certified pursuant to Fed. R. Civ. P. 23(b)(2) for injunctive relief only, notice is not required; instead, it is within the Court's discretion. The Notice Program outlined below fully comports with the Court's January 6, 2020, Order Granting Joint Motion to Modify Certified Class and Class Notice (EFC No. 721) and exceeds any requirement for notice under due process, Fed. R. Civ. P. 23, and the Northern District's Procedural Guidance for Class Action Settlements. Here, the proposed Notice Program provides individual notice to all potential Settlement Class Members who can be identified in the Defendant's records, combines a robust media campaign consisting of state-of-the-art targeted internet banner notice, print publication notice, and an advanced custom social media campaign. The Notice Program also includes a dedicated website and toll-free telephone line where Settlement Class Members can learn more about their rights in the litigation. In short, the Notice Program is the best notice that is practicable under the circumstances and exceeds many notice campaigns routinely approved in similar settlements.

EMAIL NOTICE

11. The direct notice effort in this matter will consist of sending individual email notice to all potential Settlement Class Members who have provided email addresses or phone numbers to Defendant.

12. Angeion has been advised that the Defendant will provide approximately 3,600,000 records with email addresses and approximately 400,000 records with phone numbers only. For the 400,000 records with phone numbers only, Angeion will cause a reverse lookup ("append") to be performed to attempt to locate email addresses for those records.

13. The append search utilizes data garnered from available first-party and third-party data providers to match the mobile telephone numbers and other available data points as a validity check to identify email addresses associated with those mobile numbers provided by the

Defendant. Angeion will update the Class List with Class Member email addresses obtained via the append process.

14. As an initial matter, Angeion designs the email notice to avoid many common “red flags” that might otherwise cause a potential Settlement Class Members’ spam filter to block or identify the email notice as spam. For instance, Angeion does 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 includes a link to all operative documents so that Settlement Class Members can easily access this information.

15. To avoid a “volume trigger” on spam filters, Angeion would disseminate the email notice in waves. This is why the proposed Preliminary Approval order provides a Notice Date deadline of 45 days after preliminary approval.

16. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24-72-hour rest period—which allows any temporary block at the ISP level to expire—causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience, this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

17. In summary, the direct notice effort in this matter is robust.

ONLINE NOTICE

18. In addition to the direct notice efforts described above, the Notice Program includes a robust digital media campaign focused on reaching the prototypical individual Settlement Class Member.

19. 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 will be able to focus solely on reaching the prototypical

individual Settlement Class Member. Purchasing display and mobile inventory programmatically provides the highest reach, allows for numerous advanced targeting layers, and offers the most cost-efficient rates to reach potential Settlement Class Members.

20. Multiple targeting layers will be implemented into the programmatic buy to help ensure delivery to the most appropriate users. Inventory will run on desktop and mobile devices to reach the most qualified audience.

21. The internet banner notice portion of the notice program will be implemented using a three-week desktop and mobile campaign, utilizing banner ads in standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50 and 300x50).

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 activity.¹ 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.

TARGETED SOCIAL MEDIA NOTICE

23. The Notice Program also includes a customized Facebook campaign in which Angeion will upload known Settlement Class Member email addresses directly to Facebook. Where email addresses are used as the primary log-on email address for a Facebook account, Angeion will deliver ads displayed via the Facebook platform, whether on mobile device, tablet or computer, effectively targeting verified Settlement Class Members.

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.

PUBLICATION NOTICE

24. To further disseminate notice of the Settlement, the notice program utilizes print media to reach potential Settlement Class Members.

25. One ½ page B&W insertion in *USA Today* is recommended and will be distributed on a national level, including the digital e-Edition.

RESPONSE MECHANISMS

26. The Notice Program will also implement the creation of a case-specific website, where Settlement Class Members can easily view general information about this class action litigation, review relevant Court documents, and view important dates and deadlines pertinent to the litigation. The website will be designed to be user-friendly and make it easy for Settlement Class Members to find information about the settlement. The website will also have a “Contact Us” page whereby Settlement Class Members can send an email with any additional questions to a dedicated email address.

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

PLAIN LANGUAGE NOTICE DESIGN

28. The proposed Notice forms used in this matter are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Settlement Class Members. The design of the notices follows principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at www.fjc.gov. The notice forms contain plain-language summaries of key information about Settlement Class Members’ rights and options pursuant to the litigation. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

29. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be

written in “plain, easily understood language.” Angeion Group maintains a strong commitment to adhering to this requirement, drawing on its experience and expertise to craft notices that effectively convey the necessary information to Settlement Class Members in plain language.

CONCLUSION

30. The Notice Program outlined above includes direct notice to all reasonably identifiable potential Settlement Class Members. Further, the Notice Program includes a robust media campaign comprised of internet banner ad notice, print publication and a targeted social media campaign, coupled with the implementation of a dedicated website and toll-free hotline to further inform Settlement Class Members of their rights and options in the litigation.

31. In my opinion, the Notice Plan will provide full and proper notice to Settlement Class Members before the objection and any other applicable deadlines. Moreover, it is my opinion that Notice Program fully comports with the Court’s January 6, 2020, Order Granting Joint Motion to Modify Certified Class and Class Notice (EFC No. 721) and exceeds any requirement for notice under due process, Fed. R. Civ. P. 23, and the Northern District’s Procedural Guidance for Class Action Settlements. After the Notice Plan has concluded, 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: February 7, 2020



STEVEN WEISBROT