

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

JACQUELYN D. AJOSE,	)	
KATHY SMITH, SHARON KURTZ,	)	No. 3:14-cv-01707
PATRICIA EVETT, & JAMES L.	)	
BOYLAND	)	
on behalf of themselves and all others	)	
similarly situated,	)	
	)	JUDGE WILLIAM L. CAMPBELL, JR.
Plaintiffs,	)	MAGISTRATE JOE BROWN
	)	
v.	)	
	)	
INTERLINE BRANDS, INC.,	)	
	)	
Defendant.	)	

**DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION AND ADEQUACY OF SETTLEMENT NOTICES AND NOTICE PLAN**

I, CAMERON R. AZARI, ESQ., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I am over the age of twenty-one and 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 a legal an expert in dozens of federal and state cases involving class action notice plans.
3. I am the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”); a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. (“Epiq”).
4. Hilsoft has been involved with some of the most complex and significant notices and notice programs in recent history. With experience in more than 400 cases, including more

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than 35 MDLs, notices prepared by Hilsoft have appeared in 53 languages with distribution in almost every country, territory and dependency in the world. Judges, including in published decisions, have recognized and approved numerous notice plans developed by Hilsoft, which decisions have always withstood collateral reviews by other courts and appellate challenges.

### **EXPERIENCE RELEVANT TO THIS CASE**

5. I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in many of the largest and most significant cases, including: *In re: Takata Airbag Products Liability Litigation (Settlements with – BMW, Mazda, Subaru, Toyota, Honda and Nissan)*, MDL No. 2599 (S.D. Fla.) (\$1.2 billion in settlements regarding Takata airbags. The monumental Notice Plans included individual mailed notice to more than 51.5 million potential Class Members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle an average of 4.0 times each); *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)*, MDL No. 2672 (N.D. Cal.) (Comprehensive notice program within the *Volkswagen Emissions Litigation* that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort); *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.) (One of the largest claim deadline notice campaigns ever implemented, for BP’s \$7.8 billion settlement claim deadline relating to the Deepwater Horizon oil spill. Hilsoft designed and implemented the claim deadline notice

program, which resulted in a combined measurable paid print, television, radio and internet notice effort that reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each); *Rose v. Bank of Am. Corp.*, Case No. 11-cv-02390-EJD (N.D. Cal.) (TCPA settlement with email and postcard notice to over 6.9 million Class Members and publication notice in *Parade Magazine* and other consumer publications); *In re: Energy Future Holdings Corp., et. al. (Asbestos Claims Bar Date Notice)*, Case No. 14-10979 (CSS) (Bankr. D. Del.) (Large asbestos bar date notice effort, which included individual notice, national consumer publications and newspapers, hundreds of local newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience); *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) (\$7.2 billion settlement reached with Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications, as well as online banner notices, which generated more than 770 million adult impressions and a case website in eight languages); *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.) (Dual landmark settlement notice programs to separate “Economic and Property Damages” and “Medical Benefits” settlement classes. Notice effort included over 7,900 television spots, over 5,200 radio spots, and over 5,400 print insertions and reached over 95% of Gulf Coast residents); *In Re American Express Anti-Steering Rules Antitrust Litigation (II)* (“Italian Colors”), MDL No. 2221 (E.D.N.Y.) (Momentous injunctive settlement regarding merchant payment card processing. Notice program provided individual notice to more than 3.8

million merchants as well as coverage in national and local business publications, retail trade publications and placement in the largest circulation newspaper in each of the U.S. territories and possessions); *In Re: Checking Account Overdraft Litigation*, MDL No. 2036 (S.D. Fla.) (Multiple bank settlements involving direct mail and email to millions of class members and publication in relevant local newspapers. Representative banks include, Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M & I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank and Synovus); *In re Residential Schools Class Action Litigation*, (Canada) (Five phase notice program for the landmark settlement between the Canadian government and Aboriginal former students. Phase V of the notice program was implemented during 2014); and *In re Department of Veterans Affairs (VA) Data Theft Litigation*, MDL No. 1796 (D.D.C.) (Notices appeared across the country in newspapers, consumer magazines, and specialty publications with a total circulation exceeding 76 million).

6. Courts have recognized our testimony as to which method of notification is appropriate for a given case, and I have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. For example:

a) *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation* (Bosch Settlement), MDL No. 2672 (N.D. Cal.), Judge Charles R. Breyer on May 17, 2017:

*The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice*

*“apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections.” Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% “exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used.” (Dkt. No. 3188-2 ¶ 24.)*

b) *In re: Caterpillar, Inc., C13 and C15 Engine Products Liability Litigation,*

MDL No. 2540 (D.N.J.), Judge Jerome B. Simadle on September 20, 2016:

*The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

c) *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co., No. 14-*

23120 (S.D. Fla.), Judge Marcia G. Cooke on April 11, 2016:

*Pursuant to the Court’s Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court’s Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

d) *Adkins v. Nestle Purina PetCare Company, et al., No. 12-cv-2871 (N.D.*

Ill.), Judge Robert W. Gettleman on June 23, 2015:

*Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain*

*additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

e) *Gulbankian et al. v. MW Manufacturers, Inc.*, No. 1:10-cv-10392-RWZ

(D. Mass.), Judge Rya W. Zobel on December 29, 2014:

*This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.*

f) *Rose v. Bank of America Corporation, and FIA Card Services, N.A.*, Nos.

5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.), Judge Edward J. Davila on

August 29, 2014:

*The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

g) *Wong et al. v. Alacer Corp.*, No. CGC-12-519221 (Cal. Super. Ct.), Judge

James A. Robertson, II on June 27, 2014:

*Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.*

h) *In re Payment Card Interchange Fee and Merchant Discount Antitrust*

*Litigation*, No. 1:05-cv-03800 (E.D.N.Y.), Judge John Gleeson stated on December 13, 2013:

*The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards... The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

i) *Marolda v. Symantec Corporation*, No. 08-cv-05701 (N.D. Cal.), Judge

Edward M. Chen stated on April 5, 2013:

*Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

j) *In Re: Zurn Pex Plumbing Products Liability Litigation*, No. 08-cv-01958

(D. Minn.), Judge Ann D. Montgomery stated on February 27, 2013:

*The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center. The notice plan's multi-faceted approach to providing notice to settlement class members whose identity*

*is not known to the settling parties constitutes” the best notice that is practicable under the circumstances” consistent with Rule 23(c)(2)(B).*

k) *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010, MDL No. 2179 (E.D. La.), Judge Carl J. Barbier stated on January 11, 2013:*

*The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.*

*The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*

*The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.*

l) *In Schulte v. Fifth Third Bank, No. 1:09-cv-6655 (N.D. Ill.), Judge Robert M. Dow, Jr. stated on July 29, 2011:*

*The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.*

m) *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation, MDL No. 09-2046 (S.D. Tex.), Judge Lee Rosenthal stated on March 2, 2012:*

*The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement... Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice “were written in easy-to-understand plain English.” In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at \*23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided “satisf[ies] the broad reasonableness standards imposed by due process” and Rule 23. Katrina Canal Breaches, 628 F.3d at 197 (internal quotation marks omitted).*

7. Numerous other court opinions and comments as to our testimony, and opinions on the adequacy of our notice efforts, are included in Hilsoft's curriculum vitae included as **Attachment 1**.

8. In forming my expert opinions, I and my staff draw from our in-depth class action case experience, as well as our educational and related work experiences. I am an active member of the Oregon State Bar, receiving my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Hilsoft since 2008 and have overseen the detailed planning of virtually all of our court-approved notice programs since that time. Prior to assuming my current role with Hilsoft, I served in a similar role as Director of Epiq Legal Noticing (previously called Huntington Legal Advertising). Overall, I have over 18 years of experience in the design and implementation of legal notification and claims administration programs having been personally involved in well over one hundred successful notice programs. I have been directly and personally responsible for designing all of the notice planning here, including analysis of the individual notice options and the media audience data and determining the most effective

mixture of media required to reach the greatest practicable number of Settlement Class members. In my experience, the reach and frequency of the Notice Plan media effort as designed and implemented, met and exceeded due process requirements.

9. The facts in this declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Hilsoft and Epiq, who worked with us to implement the notification effort.

### **OVERVIEW**

10. In *Ajose et al. v. Interline Brands, Inc.*, Case No. 3:14-cv-01707 (United States District Court, for the Middle District of Tennessee), my colleagues and I were asked to design the Notices (or “Notice”) and a Notice Program (or “Notice Plan”) to inform Settlement Class members about their rights under the Settlement.

11. On May 22, 2018, the Court approved the Notice Plan (including proposed forms of notice) as designed by Hilsoft and appointed Epiq as the Claims Administrator in the Order Granting Preliminary Approval of Class Action Settlement; Certification of Settlement Class; and Approval of Form and Content of Proposed Notice (“Order”). The Court certified a Class defined as: “All persons who own or owned, or lease or leased, a residence or other structure located in the United States containing a toilet connector, or who otherwise suffer or have suffered property damage from the failure of a coupling nut on a toilet connector.”

12. After the Court’s preliminary approval of the Settlement, we began to implement the Notice Program. This declaration will detail the successful implementation of the Notice Program and document the completion of the notice activities to date. The declaration will also discuss the administration activity to date.

13. To date, the Notice Plan has been implemented as ordered by the Court, including dissemination of individual notice to known or potential Settlement Class members via postal mail and publication of the Notice in well-read national consumer magazines and on highly trafficked websites. Mobile website ads, sponsored internet search listings and the case website provided additional notice exposures.

14. The combined measurable effort alone reached approximately 83.2% of all adults 18 years and older in the United States who are homeowners, an average of 3.1 times each.<sup>1</sup> In my experience, the reach and frequency of the Notice Plan meets that of other court-approved notice programs, and has been designed to meet due process requirements.

15. Not reflected in the calculable reach and average frequency of exposures are additional efforts that were utilized such as mobile website ads, sponsored internet search listings and a case website.

16. All notice documents were designed to provide a clear, concise, plain language statement of Class members' legal rights and options. The Notices alert Class members that the content may affect them. No significant or required information was missing.

17. In my opinion, the Notice Program fairly and adequately covered and notified the Class without excluding any demographic group or geographic area.

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<sup>1</sup> Reach is defined as the percentage of a class exposed to notice, net of any duplication among people who may have been exposed more than once. Notice exposure is defined as the opportunity to see a notice. The average frequency of notice exposure is the average number of times that those reached by a notice would be exposed to the notice.

18. In my opinion, the Notice Plan 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.<sup>2</sup>

### **NOTICE PLANNING METHODOLOGY**

19. The Notice Plan was designed to satisfy the “best notice practicable” standard pursuant to Rule 23 of the Federal Rules of Civil Procedure. Data sources and tools that are commonly employed by experts in this field were used to analyze the reach and frequency of the paid media portion of the Notice Program. In particular, GfK Mediamark Research & Intelligence, LLC (“MRI”) data<sup>3</sup> provides statistically significant readership. These tools, along with demographic breakdowns indicating how many people use each media vehicle, as well as computer software that take the underlying data and factor out the duplication among audiences of various media vehicles, allow us to determine the net (unduplicated) reach of a particular media schedule. We combine the results of this analysis to help determine notice plan sufficiency and effectiveness.

20. *Tools and data trusted by the communications industry and courts.* Virtually all of the nation’s largest advertising agency media departments utilize, scrutinize, and rely upon such

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<sup>2</sup> “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 . . .” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

<sup>3</sup> GfK Mediamark Research & Intelligence, LLC (“MRI”) is a leading source of publication readership and product usage data for the communications industry. MRI offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, MRI provides information to magazines, television networks, radio stations, websites, and other media, leading national marketers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI’s national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the U.S.

independent, time-tested data and tools, including net reach and de-duplication analysis methodologies, to guide the billions of dollars of advertising placed each year, providing assurance that these figures are not overstated. These analyses and similar planning tools have become standard analytical tools for evaluations of notice programs, and have been regularly accepted by courts.

21. In fact, advertising and media planning firms around the world have long relied on audience data and techniques: AAM has been a trusted source since 1914<sup>4</sup>; Nielsen<sup>5</sup> and Nielsen Audio<sup>6</sup> (formerly Arbitron Inc.) have been relied on since 1950; as well as more recently, comScore.<sup>7</sup> Today, 90-100% of media directors use reach and frequency planning;<sup>8</sup> all of the leading advertising and communications textbooks cite the need to use reach and frequency

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<sup>4</sup> Established in 1914 as the Audit Bureau of Circulations (“ABC”), and rebranded as Alliance for Audited Media (“AAM”) in 2012, AAM is a non-profit cooperative formed by media, advertisers, and advertising agencies to audit the paid circulation statements of magazines and newspapers. AAM is the leading third party auditing organization in the U.S. It is the industry’s leading, neutral source for documentation on the actual distribution of newspapers, magazines, and other publications. Widely accepted throughout the industry, it certifies thousands of printed publications as well as emerging digital editions read via tablet subscriptions. Its publication audits are conducted in accordance with rules established by its Board of Directors. These rules govern not only how audits are conducted, but also how publishers report their circulation figures. AAM’s Board of Directors is comprised of representatives from the publishing and advertising communities.

<sup>5</sup> Nielsen ratings are the audience measurement system developed by the Nielsen Company to determine the audience size and composition of television programming in the United States. Since first debuting in 1950, Nielsen’s methodology has become the primary source of audience measurement information in the television industry around the world, including “time-shifted” viewing via television recording devices.

<sup>6</sup> Nielsen Audio (formerly Arbitron Inc., which was acquired by the Nielsen Company and re-branded Nielsen Audio), is an international media and marketing research firm providing radio media data to companies in the media industry, including radio, television, online and out-of-home; the mobile industry as well as advertising agencies and advertisers around the world.

<sup>7</sup> comScore, Inc. is a global leader in measuring the digital world and a preferred source of digital marketing intelligence. In an independent survey of 800 of the most influential publishers, advertising agencies and advertisers conducted by William Blair & Company in January 2009, comScore was rated the “most preferred online audience measurement service” by 50% of respondents, a full 25 points ahead of its nearest competitor.

<sup>8</sup> See generally Peter B. Turk, *Effective Frequency Report: Its Use And Evaluation By Major Agency Media Department Executives*, 28 J. ADVERTISING RES. 56 (1988); Peggy J. Kreshel et al., *How Leading Advertising Agencies Perceive Effective Reach and Frequency*, 14 J. ADVERTISING 32 (1985).

planning;<sup>9</sup> and at least 15,000 media professionals in 85 different countries use media planning software.<sup>10</sup>

### **CAFA NOTICE**

22. As described in the attached *Declaration of Stephanie J. Fiereck, Esq. on Implementation of CAFA Notice*,” dated June 4, 2018 (“*Fiereck Declaration*”), on May 4, 2018, within the 10-day period required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, Epiq sent a CAFA notice packet (or “CAFA Notice”) to 57 federal and state officials. The CAFA Notice was mailed by certified mail to 56 officials, including the Attorneys General of each of the 50 states, the District of Columbia and the U.S. Territories. The CAFA Notice was also sent by United Parcel Service (“UPS”) to the Attorney General of the United States. The *Fiereck Declaration* is included as **Attachment 2**.

### **NOTICE PLAN**

#### ***Individual Notice – Mail***

23. On June 21, 2018, Epiq mailed 54,282 Postcard Notices via United States Postal Service (“USPS”) first class mail to plumbing and remediation companies nationwide. On June 21, 2018, Epiq also mailed 232 Detailed Notices and Claim Forms via USPS first class mail to a list of relevant insurance companies as well as any individual Class members that were

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<sup>9</sup> Textbook sources that have identified the need for reach and frequency for years include: JACK S. SISSORS & JIM SURMANEK, *ADVERTISING MEDIA PLANNING*, 57-72 (2d ed. 1982); KENT M. LANCASTER & HELEN E. KATZ, *STRATEGIC MEDIA PLANNING* 120-156 (1989); DONALD W. JUGENHEIMER & PETER B. TURK, *ADVERTISING MEDIA* 123-126 (1980); JACK Z. SISSORS & LINCOLN BUMBA, *ADVERTISING MEDIA PLANNING*, 93-122 (4th ed. 1993); JIM SURMANEK, *INTRODUCTION TO ADVERTISING MEDIA: RESEARCH, PLANNING, AND BUYING* 106-187 (1993).

<sup>10</sup> For example, Telmar is the world's leading supplier of media planning software and support services. Over 15,000 media professionals in 85 countries use Telmar systems for media and marketing planning tools including reach and frequency planning functions. Established in 1968, Telmar was the first company to provide media planning systems on a syndicated basis.

identified. On June 25, 2018, Epiq mailed an additional 214 Detailed Notices and Claim Forms via USPS first class mail to a list of relevant insurance companies and known representatives of individual Class members.

24. Additionally, a Notice Packet was mailed via USPS first class mail to all persons who requested one via the toll-free phone number. As of September 24, 2018, 429 Notice Packets have been mailed as a result of such requests. A copy of the Postcard Notice as printed and mailed is included as **Attachment 3** and a copy of the Detailed Notice and Claim Form as printed and mailed is included as **Attachment 4**.

25. Prior to the initial mailing, mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by the USPS, which contains records of all reported permanent moves for the past four years. Any addresses returned by NCOA as invalid were updated through a third-party address search service prior to mailing. All addresses were certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip codes, and verified through the Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

26. The return address on the Notices is a post office box maintained by Epiq. As of September 24, 2018, Epiq has re-mailed 5,099 Postcard Notices and 58 Detailed Notices and Claims Forms for addresses corrected through the USPS. For Postcard Notices that were returned as undeliverable, Epiq undertook additional public record research, using a third-party lookup service (“ALLFIND”, maintained by LexisNexis), which as of September 24, 2018, has resulted in the re-mailing of 27 Postcard Notices and 7 Detailed Notices and Claims Forms.

Address updating and re-mailing for undeliverable Notices is ongoing and will continue through the Final Approval Hearing.

### ***Consumer Publications***

27. The Publication Notice appeared once in the national edition of three consumer publications, as a 1/3 page ad unit, and once as a 3/10 page ad unit in the Sunday newspaper insert, *Parade*. The selected publications includes:

<b><i>Publication</i></b>	<b><i>Distribution</i></b>	<b><i># of Insertions</i></b>	<b><i>On-sale Date</i></b>	<b><i>Page Position</i></b>
<i>Better Homes &amp; Gardens</i>	National	1	7/17/18	134
<i>Parade</i>	National	1	7/1/18	8
<i>People</i>	National	1	6/29/18	48
<i>Sports Illustrated</i>	National	1	7/12/18	91

28. The combined circulation of *Better Homes & Gardens*, *Parade*, *People* and *Sports Illustrated* is 31.7 million and their combined readership<sup>11</sup> is over 135.9 million. This includes the same reader more than once, because readers of one publication read other publications as well. The Publication Notice is included as **Attachment 5**. Copies of the tear sheets for each insertion in each publication are included as **Attachment 6**.

### ***Trade Publications***

29. To supplement the individual notice efforts, the Publication Notice appeared once in each of the four selected trade publications as an approximately full page ad unit. The selected trades were:

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<sup>11</sup> “Readership” refers to the total number of readers of a specific issue of a publication, including the subscriber and any additional readers.

<i>Publication</i>	<i>Distribution</i>	<i># of Insertions</i>	<i>On-sale Date</i>	<i>Page Position</i>
<i>Buildings</i>	National	1	7/5/18	27
<i>Contractor</i>	National	1	7/16/18	45
<i>PHC News</i>	National	1	7/12/18	57
<i>Plumbing &amp; Mechanical</i>	National	1	7/10/18	59

30. The four selected trade publications have a combined circulation of approximately 218,000. Copies of the tear sheets for each insertion in each trade publication are included as **Attachment 7**.

#### *Internet and Mobile Banner Notices*

31. Internet Banner Notices measuring 728 x 90 pixels, 300 x 250 pixels, 320 x 50 pixels, 300 x 50 pixels, and or 300 x 600 pixels were placed on the online network *Conversant Ad Network* (a network delivering PC impressions to over 9,600 digital properties), *Google Ad Network*, and *Yahoo! Ad Network*. Banner Notices measuring 728 x 90 pixels, 300 x 250 pixels, and 300 x 600 pixels were placed on *Pulpo – Spanish Ad Network* and Banner Notices measuring 254 x 133 pixels were placed on *Facebook*.

32. Combined, approximately 528.6 million adult impressions were generated by the Internet and Mobile Banner Notice, which ran from June 15, 2018 to July 20, 2018. Clicking on the banner linked the reader to the case website where they could obtain information about the Settlement. Examples of the Banner Notices are included as **Attachment 8**.

#### *Internet Sponsored Search Listings*

33. To facilitate locating the case website, sponsored search listings were acquired on the three most highly-visited internet search engines: *Google*, *Yahoo!* and *Bing*. When search engine visitors search on common keyword combinations such as “Interline Class Action,”

“DuraPro Class Action,” or “Toilet Settlement,” among others, the sponsored search listing is generally displayed at the top of the page prior to the search results or in the upper right hand column.

34. The sponsored listings ran from June 15, 2018 through August 20, 2018 and have been displayed 1,101 times, resulting in 383 clicks that displayed the case website. A complete list of the sponsored search keyword combinations is included as **Attachment 9**. Examples of the sponsored search listing as displayed on each search engine are included as **Attachment 10**.

#### *Informational Release*

35. To build additional reach and extend exposures, on June 21, 2018, a party-neutral Informational Release was issued to approximately 5,000 general media (print and broadcast) outlets across the United States and 5,400 online databases and websites.

36. The Informational Release served a valuable role by providing additional notice exposures beyond that which was provided by the paid media. A copy of the Informational Release as it was distributed is included as **Attachment 11**.

#### *Case Website*

37. On June 15, 2018, a neutral, informational, case website ([www.DuraProToiletConnectorSettlement.com](http://www.DuraProToiletConnectorSettlement.com)) was established to enable potential Settlement Class members to obtain additional information and documents including the Long Form Notice in English and Spanish, Settlement Agreement, Claim Form, Complaint and answers to frequently asked questions. This website will remain active for the duration of the claims period.

38. The case website address was prominently displayed in all printed notice documents. The Banner Notices linked directly to the case website.

39. As of September 24, 2018, there have been 182,753 unique visitors to the case website and 264,964 total pageviews (“pageviews” is a count of the total number of website pages loaded and viewed by visitors to the website).

***Toll-free Telephone Number and Postal Mailing Address***

40. On June 15, 2018, a toll-free phone number (1-855-349-6393) was established to allow Class members to call and request that a Claim Form and Notice Package be mailed to them. The toll-free number also provides Class members with access to recorded information that includes answers to frequently-asked questions and directs them to the case website or speak to a live operator. This automated phone system is available 24 hours per day, 7 days per week. As of September 24, 2018, the toll-free number has handled 461 calls representing 1,706 minutes of use and live operators have handled 68 inbound calls representing 944 minutes of use and 18 outbound calls representing 34 minutes of use.

41. A post office box was established to allow Class members to contact the administrator by mail with any specific requests or questions.

***Exclusions and Objections***

42. The deadline to request exclusion from the Settlement or to object to the settlement was August 20, 2018. Epiq has received a total of 11 requests for exclusion from the Settlement Class. Of these, 4 were deemed complete and timely. The list of all 4 complete and timely requests for exclusion received is included as **Attachment 12**. I am aware of no objections to the Settlement at the time of this declaration.

## **PERFORMANCE OF THE NOTICE PROGRAM**

### ***Reach & Frequency***

43. Using standard advertising media industry methodologies to calculate the overlap inherent in exposures, we arrive at a combined, measurable reach for the print publication and digital efforts of approximately 83.2% of all adults 18 years and older in the United States who are homeowners, an average of 3.1 times each. Reach was enhanced further by the sponsored search listings, informational release and the case website.

44. Many courts have accepted and understood that a 75 or 80 percent reach is more than adequate to satisfy due process. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%. In the present cases we were able to develop a notice plan that achieves this. These statistics reinforce the fact that the Notice Plan was broad in scope and was designed to reach the greatest practicable number of Class Members.

## **PLAIN LANGUAGE NOTICE DESIGN**

45. The Notices themselves are designed to be "noticed," reviewed, and—by presenting the information in plain language—understood by Class Members. The design of the Notices follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at [www.fjc.gov](http://www.fjc.gov). Many courts, and as previously cited, the FJC itself, have approved similar notices that we have written and designed. The Notices contain substantial, albeit easy-to-read, summaries of all of the key information about Class Members' rights and options.

Consistent with our normal practice, all notice documents underwent a final edit prior to actual mailing and publication for grammatical errors and accuracy.

46. All Notices were designed to increase noticeability and comprehension. Because mailing recipients are accustomed to receiving junk mail that they may be inclined to discard unread, the notice program calls for steps to bring the mailed Notice to the attention of the members of the Settlement Classes. Once people “notice” the Notices, it is critical that they can understand them. As such, the Notices, as produced, are clearly worded with an emphasis on simple, plain language to encourage readership and comprehension.

47. The Postcard Notice, Detailed Notice and Publication Notice all feature a prominent headline in bold text. This alerted readers that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice.

48. The Detailed Notice provides substantial information to members of the Settlement Classes. The Detailed Notice begins with a summary page providing a concise overview of the important information and a table highlighting key options available to members of each Settlement Class. A table of contents, categorized into logical sections, helps to organize the information, while a question and answer format makes it easy to find answers to common questions by breaking the information into simple headings.

### **CONCLUSION**

49. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential Class members and, in

a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to Class members in any way. All of these requirements were met in this case.

50. Our notice effort followed the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court’s seminal decisions which are: a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to do so:

A. “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,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).

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, 174 (1974) (citing *Mullane* at 314).

51. The Notice Program provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rule of Civil Procedure 23, and comported with the guidance for effective notice articulated in the Manual for Complex Litigation 4th.

52. As reported above, the Notice Plan effectively reached approximately 83.2% of all adults 18 years and older in the United States who are homeowners. It delivered “noticeable” Notices to capture Class members’ attention and provided them with information necessary to understand their rights and options.

53. The Notice Plan schedule afforded enough time to provide full and proper notice to Class members before any opt-out and objection deadlines.

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
September 25, 2018.

  
\_\_\_\_\_  
Cameron R. Azari, Esq.

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DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION AND ADEQUACY OF  
SETTLEMENT NOTICES AND NOTICE PLAN

**CERTIFICATE OF SERVICE**

I, J. Gerard Stranch, IV, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system to the parties listed below. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

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Dated: September 28, 2018

/s/ J. Gerard Stranch, IV  
J. Gerard Stranch, IV