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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID SWARTZ, an individual, on behalf
of himself, the general public, and those
similarly situated,

Plaintiff,

v.

DAVE'S KILLER BREAD, INC. and
FLOWERS FOODS, INC.,

Defendants.

CASE NO. 4:21-cv-10053-YGR

~~PROPOSED~~ ORDER APPROVING
CLASS NOTICE PLAN

Hon. Yvonne Gonzalez Rogers

1 Plaintiff David Swartz (“Plaintiff”) has moved the Court for an order, pursuant to Rule 23(c)(2)(B)
2 of the Federal Rules of Civil Procedure, approving Plaintiff’s plan for notice and opt-out procedures for
3 the Class. For the reasons set forth below, Plaintiff’s motion for approval of the proposed notice plan is
4 **GRANTED.**

5 **I. PROPOSED NOTICE PLAN**

6 On September 20, 2024, the Court certified the following class:

7 All persons in the State of California who purchased the Products between December 29,
8 2017 and September 5, 2023.

9 ECF 139 at 18.

10 Class counsel obtained bids from two reputable and experienced class action administrators, and
11 have selected Verita Global, LLC (“Verita” or “Notice Administrator”) as the proposed administrator of
12 the notice and opt-out process (“Notice Plan”). The proposed Notice Plan is set forth in detail in the
13 Declaration of Carla Peak, the Vice President of Legal Notification Services for Verita. Ms. Peak and
14 Verita have extensive experience working in the field of administering class notice. Peak Decl. ¶¶ 3–10.
15 The proposed Notice Plan is based on Ms. Peak’s experience in designing and successfully administering
16 notice and opt-out plans, and is intended to provide the best notice practicable under the circumstances of
17 this case. *Id.* ¶¶ 10, 23.

18 Verita’s initial analysis indicates that the proposed Notice Plan will reach 75.2% of likely Class
19 Members. Verita estimates that it will be able to begin executing the notice plan within 21 days of
20 receiving approval for the plan. Accordingly, Plaintiff has proposed that the Court set a “Notice Date,” or
21 date on which the website will be live, twenty-five (25) days from the order approving the Notice Plan.
22 Plaintiff proposes allowing Class Members thirty-five (35) days from the initial Notice Date to opt out of
23 the class. The proposed contents for an Online Opt-Out Form and Printable Opt-Out Form were submitted
24 with Plaintiff’s motion.
25
26
27
28

1 **II. MOTION FOR APPROVAL OF PLAINTIFFS’ NOTICE PLAN**

2 **A. LEGAL STANDARD**

3 Federal Rule of Civil Procedure 23(c)(2)(B) provides that “[f]or any class certified under Rule
4 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the
5 circumstances, including individual notice to all members who can be identified through reasonable effort.”
6 Notice of the pendency of a Rule 23(b)(3) class action is to be made by “United States mail, electronic
7 means, or other appropriate means.” Fed. R. Civ. Proc. 23(c)(2)(B).

8 The notice provided to the Class “must clearly and concisely state in plain, easily understood
9 language:”

- 10 (i) the nature of the action;
- 11 (ii) the definition of the class certified;
- 12 (iii) the class claims, issues, or defenses;
- 13 (iv) that a class member may enter an appearance through an attorney if the member so desires;
- 14 (v) that the court will exclude from the class any member who requests exclusion;
- 15 (vi) the time and manner for requesting exclusion; and
- 16 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

17 Fed. R. Civ. P. 23(c)(2)(B).

18 **B. Plaintiff’s Notice Plan Is the Best Notice Practicable Under the Circumstances.**

19 “[N]otice plans estimated to reach a minimum of 70 percent are constitutional and comply with
20 Rule 23.” *Edwards v. Nat’l Milk Producers Fed’n*, No. 11-CV-04766-JSW, 2017 U.S. Dist. LEXIS
21 145217, at *19 (N.D. Cal. June 26, 2017). Here, Verita will make repeated efforts to provide notice to
22 Class members through a robust digital media campaign supplemented by a print media campaign. Verita
23 has extensive experience with designing and implementing class notice plans, opines that the Notice Plan
24 will provide full and proper notice to Class members. Peak Decl. ¶¶ 14–19, 23.

25 Plaintiff’s proposed Notice Plan to provide direct notice to Class members is similar to the notice
26 plans approved in other class cases in the Ninth Circuit. *See Schneider v. Chipotle Mexican Grill, Inc.*,
27 336 F.R.D. 588, 596 (N.D. Cal. 2020) (granting final approval to a settlement where notice was provided
28 through an “extensive digital media plan”); *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-04922-

1 HSG, 2019 U.S. Dist. LEXIS 172924, at *14 (N.D. Cal. Oct. 4, 2019) (granting preliminary approval of
2 class action settlement where notice was provided through a digital media plan). In addition, a period of
3 35 days for Class members to opt out is sufficient for Class members to exercise their right to exclude
4 themselves from the Class. *See Clark v. QG Printing II Ltd. Liab. Co.*, No. 1:18-cv-00899-AWI-EPG,
5 2021 U.S. Dist. LEXIS 191451, at *3 (E.D. Cal. Oct. 4, 2021) (finding a 30-day period to opt out was
6 appropriate); *Kim v. Tinder, Inc.*, No. CV 18-3093-JFW(ASx), 2019 U.S. Dist. LEXIS 236838, at *8 (C.D.
7 Cal. Mar. 1, 2019) (approving a notice plan with a 30-day opt-out period).

8 **C. The Notice Plan Will Provide All the Information Required by Rule 23(c)(2)(B).**

9 Plaintiff's proposed Notice Plan complies with the requirements of Rule 23(c) and is tailored to
10 the Class and claims in this matter. The proposed Long-Form Notice describes in concise and easily
11 understood language the nature of the action, the class claims, issues, and defenses, the binding effect of
12 a class judgment on Class members, and the right to opt out of the Class. Safier Decl. Ex. A. It clearly
13 identifies the definition of the Class. *Id.* It clearly, conspicuously, and plainly describes the time and
14 manner for requesting exclusion and the deadline to opt out of the Class. *Id.* And it explains that a Class
15 member may enter an appearance through an attorney if the member so desires. *Id.* In sum, all the
16 information required under Rule 23(c)(2)(B) is readily available to Class members through the Notice
17 Plan. *See Brown v. Directv*, No. CV 13-1170-DMG (Ex), 2020 U.S. Dist. LEXIS 151283, at *5 & n.1
18 (C.D. Cal. July 23, 2020) (finding that the notice materials conveyed to class members "the nature of the
19 action, class definition, and issues in the case" and further explained "that individuals may opt out of the
20 class, describe how to do so, explain the consequences of making such a decision, and notify class
21 members that they may hire their own attorney," and noting that postcard notice did not contain all of that
22 information but clearly directed class members to the website for more information, including the long-
23 form notice).

24 **III. CONCLUSION**

25 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 26 (1) Plaintiff's proposed notice plan is approved.
27 (2) The Court appoints and designates Verita Group, LLC as the Notice Administrator.
28

- 1 (3) The contents of the Long-Form Notice, online notice, email notice (if applicable), online opt-
2 out form, and printable opt-out form proposed by Plaintiff are approved and the final
3 versions shall be substantially the same as Exhibits A, B, C (if applicable), D, E, and F to the
4 Declaration of Seth Safier.
- 5 (4) Verita shall follow the procedures set forth in the Peak Declaration.
- 6 (5) The Notice Date shall be twenty-eight (28) days after the entry of this Order.
- 7 (6) On or before the Notice Date, Verita shall publish a case website, which will include: the
8 Long-Form Notice, links to the operative pleadings and class certification order, a webpage
9 for online completion and submission of the Online Opt-Out Form, a downloadable version
10 of the Printable Opt-Out Form, and a contact information page that includes an email
11 address, mailing address, and telephone number for the Verita. Plaintiff and Verita shall
12 update the website to reflect significant developments in the case.
- 13 (7) Each Class member who wishes to be excluded from the Class must submit to the Notice
14 Administrator a written statement requesting exclusion from the Class. Such requests for
15 exclusion must be made by submitting the online form on the case website or by mailing a
16 valid exclusion request by First Class U.S. Mail to the address specified in the Long-Form
17 Notice.
- 18 (8) The deadline for Class members to request exclusion (or opt out) from the Class shall be 35
19 days from the Notice Date (the “Exclusion Deadline”). Such requests for exclusion must be
20 submitted online, postmarked, or received by the Notice Administrator by the Exclusion
21 Deadline. To be effective, the request for exclusion must:
- 22 a. Include the Class Member’s full name and address;
- 23 b. Explicitly and unambiguously state the Class Member’s desire to be excluded from
24 the Class in this lawsuit, such as by the statement that “I request to be excluded
25 from the Class in *Swartz v. Dave’s Killer Bread, Inc., Case No. 21-cv-10053-YGR*”;
26 and
- 27 c. Be individually and personally signed by the Class Member (if the Class Member is
28 represented by counsel, it must also be signed by such counsel).

- 1 (9) Any Class member who fails to submit a timely and valid written request for exclusion
2 consistent with this order shall be deemed to be a member of the Class and shall be bound by
3 the subsequent judgments of this Court pertaining to the Class, unless determined otherwise
4 by the Court.
- 5 (10) The Notice Administrator shall provide in writing to Defendants' Counsel and Class Counsel
6 the names of those Class members who have requested exclusion from the Class in a valid
7 and timely manner. Verita shall file a declaration with this Court within seven (7) days of the
8 Exclusion Deadline, reporting the results of the Notice Plan, including the number of Class
9 members who submitted valid and timely exclusion requests, and a list of the persons who
10 submitted valid and timely exclusion requests.
- 11 (11) Any Class member who validly and timely elects to be excluded shall not be bound by the
12 judgments in this action and shall not receive any share of any monetary judgment entered in
13 the Class's favor in this action. Class members who do not wish to be bound by a judgment
14 in favor of or against the Class must exclude themselves from the Class in a valid and timely
15 manner.

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18 **IT IS SO ORDERED.**

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20 DATED: March 5, 2025

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23 
24 Yvonne Gonzalez Rogers
25 United States District Court
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