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

DAVID SWARTZ,

Plaintiff,

v.

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

Defendants.

Case No. 4:21-cv-10053-YGR

**DECLARATION OF CARLA A. PEAK  
REGARDING CLASS CERTIFICATION  
NOTICE PLAN**

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I, Carla A. Peak, pursuant to 28 U.S.C. § 1746 declare as follows:

1. My name is Carla A. Peak. I have personal knowledge of the matters set forth herein, and if called as a witness I could and would testify competently to them.

2. I am a Vice President of Legal Notification Services for Verita Global, LLC (“Verita”) f/k/a KCC Class Action Services, LLC (“KCC”), a firm that provides comprehensive class action services, including claims administration, legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. As such, I have personal knowledge of the matters set forth herein.

3. I am a nationally recognized expert in the field of legal notification and I have served as an expert in over five hundred federal and state cases involving class action notice plans.

4. Verita’s experience includes many of the largest and most complex settlement administrations of both private litigation and of actions brought by state and federal government regulators. Verita has been retained to administer more than 7,500 class actions and distributed settlement payments totaling well over a trillion dollars in assets.

5. I provide this Declaration to describe my and Verita’s experience, as well as the proposed notice plan (the “Notice Plan” or “Notice Program”) that has been designed to provide certification notice to Class Members for this class action. Verita will work with the parties to implement the Notice Plan, as well as make any decisions about notice and administration.

**EXPERIENCE**

6. Verita has administered notice plans in a wide range of class actions in the Northern District of California, for example, and without limitation: *Abante Rooter and Plumbing, Inc. v. Alarm.com Inc.*, No. 4:15-cv-06314 11; *Abdeljabbar v. Lyft, Inc.*, No. 3:18-cv-07482; *Aruliah v. Impax Laboratories, Inc.*, No. 3:14-cv-03673; *Banks v. Nissan North America, Inc.*, No. 4:11-cv-02022; *Bonoan v. Adobe, Inc.*, No. 3:19-cv-01068; *Brewer v. General Nutrition Corp.*, No. 4:11-cv-03587; *Camberis v. Ocwen Loan Servicing, LLC*, No. 3:14-cv-02970; *Cardoza v. Wal-Mart*

1 *Associates, Inc.*, No. 4:15-cv-01634; *Chen v. Chase Bank USA, N.A.*, No. 3:19-cv-01082; *Chism*  
2 *v. PepsiCo Inc.*, No. 3:17-cv-00152; *Chinitz v. Interco Real Estate Services*, No. 5:18-cv-05623;  
3 *Cisneros v. American General Financial Services, Inc.*, No. 3:11-cv-02869; *Diaz v. Google LLC*,  
4 No. 5:21-cv-03080; *Drieu v. Zoom Video Communications, Inc.*, No. 3:20-cv-02353; *Edwards v.*  
5 *National Milk Producers Federation*, No. 4:11-cv-04766; *Ehret v. Uber Technologies, Inc.*, No.  
6 3:14-cv-00113; *Heath v. Google LLC*, No. 5:15-cv-01824; *Hickcox-Huffman v. US Airways, Inc.*,  
7 No. 5:10-cv-05193; *Hendricks v. StarKist Co.*, No. 4:13-cv-00729; *Holman v. Experian*  
8 *Information Solutions, Inc.*, No. 4:11-cv-00180; *Hubbard v. National Collegiate Athletic Assoc.*,  
9 No. 4:23-cv-01593; *In re Anthem, Inc. Data Breach Litig.*, No. 5:15-md-02617; *In re California*  
10 *Gasoline Spot Market Antitrust Litig.*, No. 3:20-cv-03131; *In re Carrier IQ, Inc., Consumer*  
11 *Privacy Litig.*, No. 3:12-md-02330; *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 4:07-cv-  
12 05944; *In re College Athlete NIL Litig.*, No. 4:20-cv-03919; *In re Extreme Networks, Inc.*  
13 *Securities Litig.*, No. 5:15-cv-04883; *In re Facebook Biometric Information Privacy Litig.*, No.  
14 3:15-cv-03747; *In re HIV Antitrust Litig.*, No. 3:19-cv-02573; *In Re GEICO General Insurance*  
15 *Co.*, No. 4:19-cv-03768; *In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521; *In Re LinkedIn User*  
16 *Privacy Litig.*, No. 5:12-cv-03088; *In Re Lithium Ion Batteries Indirect Antitrust Litig.*, No. 4:13-  
17 md-02420; *In Re: NCAA Athletic Grant-In-Aid Antitrust Litig.*, No. 4:14-md-02541; *In re Nexus*  
18 *6P Products Liability Litig.*, No. 5:17-cv-02185; *In re: Nvidia GTX 970 Graphics Chip Litig.*, No.  
19 4:15-cv-00760; *In Re Optical Disk Drive Antitrust Litig.*, No. 3:10-md-02143; *Johnson v. Triple*  
20 *Leaf Tea Inc.*, No. 3:14-cv-01570; *Knight v. Concentrix Corp.*, No. 4:18-cv-07101; *McArdle v*  
21 *AT&T Mobility LLC*, No. 4:09-cv-01117; *Mullins v. Premier Nutrition Corp.*, No. 3:13-cv-01271;  
22 *Nevarez v. Forty Niners Football Company, LLC*, No. 4:16-cv-07013; *Norris v. Mazzola*, No.  
23 3:15-cv-04962; *Perks v. Activehours Inc.*, No. 5:19-cv-05543; *Perrine v. Sega of America, Inc.*,  
24 No. 3:13-cv-01962; *Schneider v. Chipotle Mexican Grill, Inc.*, No. 4:16-cv-02200; *Sheikh v. Tesla,*  
25 *Inc.*, No. 5:17-cv-02193; *Ragano v. Michaels Stores, Inc.*, No. 3:11-cv-03908; *Slovin v. Sunrun,*  
26 *Inc.*, No. 4:15-cv-05340; *Steinfeld v. Discover Financial Services*, No. 3:12-cv-01118; and *Weeks*  
27 *v. Google LLC*, No. 5:18-cv-00801.

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1           7. Verita has also administered notice plans in a wide range of federal consumer class  
2 actions, including, without limitation: *Barrett v. Apple Inc.*, No. 5:20-cv-04812 (N.D. Cal.);  
3 *Cicciarella v. Califia Farms, LLC*, No. 7:19-cv-08785 (S.D.N.Y); *Crane v. Sexy Hair Concepts,*  
4 *LLC*, No. 1:17-cv-10300 (D. Mass.); *Elkies v. Johnson & Johnson Services, Inc.*, No. 2:17-cv-  
5 07320 (C.D. Cal.); *Eubank v. Pella Corp.*, No. 1:06-cv-04481 (N.D. Ill.); *Flaum v. Doctor's*  
6 *Associates, Inc.*, No. 0:16-cv-61198 (S.D. Fla.); *Friend v. FGF Brands (USA), Inc.*, No. 1:18-cv-  
7 07644 (N.D. Ill.); *Habberfield v. Boohoo.com USA, Inc.*, No. 2:22-cv-03899 (C.D. Cal.); *Khan v.*  
8 *Boohoo.com USA, Inc.*, No. 2:20-cv-03332 (S.D. Cal.); *Lerma v. Schiff Nutrition International,*  
9 *Inc.*, No. 3:11-CV-01056 (S.D. Cal.); *In re Morning Song Bird Food Litig.*, No. 3:12-cv-01592  
10 (S.D. Cal.); *In re Trader Joe's Tuna Litig.*, No. 2:16-cv-01371 (C.D. Cal.); *Khan v. BooHoo.com*  
11 *USA, Inc.*, No. 2:20-cv-03332 (C.D. Cal.); *McCrary v. The Elations Company, LLC*, No. 5:13-cv-  
12 00242 (C.D. Cal.); *Morrisey v. Tula Life, Inc.*, No. 2021L000646 (Cir. Ct. Ill.); *Poertner v. The*  
13 *Gillette Co. and The Procter & Gamble Co.*, No. 6:12-cv-00803 (M.D. Fla.); *Rikos v. The Procter*  
14 *& Gamble Co.*, No. 1:11-cv-00226 (S.D. Ohio); and *Suchanek v. Sturm Foods, Inc.*, No. 3:11-cv-  
15 00565 (S.D. Ill.).

16           8. I have personally been involved in many large and significant cases, including *In*  
17 *re College Athlete NIL Litig.*, No. 4:20-cv-03919 (N.D. Cal.), a \$2.57 billion antitrust class action  
18 involving Division I college athletes who were not paid for the use of their NIL and had their  
19 scholarships limited by the NCAA and Power Five Conferences; *In re Experian Data Breach*  
20 *Litigation*, No. 8:15-cv-01592 (C.D. Cal.), a national data breach class action involving over 15  
21 million T-Mobile consumers whose information was stored on an Experian server; *In re: The*  
22 *Home Depot, Inc., Customer Data Security Breach Litig.*, No. 1:14-md-02583 (N.D. Ga.), a  
23 national data breach class action involving over 40 million consumers who made credit or debit  
24 card purchases in a Home Depot store; *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-  
25 md-02343 (E.D. Tenn.), a multi-state antitrust settlement involving both third party payors and  
26 consumers that purchased or paid for the brand and generic version of the prescription drug  
27 metaxalone; *Chambers v. Whirlpool Corporation*, No. 8:11-cv-01733 (C.D. Cal.), a national  
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1 product defect case involving class members who experienced or may experience the overheating  
2 of an automatic dishwasher control board; *In re Trans Union Corp. Privacy Litigation*, MDL No.  
3 1350 (N.D. Ill.), perhaps the largest discretionary class action notice campaign involving virtually  
4 every adult in the United States and informing them about their rights in the \$75 million data  
5 breach settlement; and *In re Residential Schools Litigation*, No. 00-CV-192059 (Ont. S.C.J.), the  
6 largest and most complex class action in Canadian history incorporating a groundbreaking notice  
7 program to disparate, remote aboriginal persons qualified to receive benefits in the multi-billion  
8 dollar settlement.

9 9. In forming my opinions, I draw from my in-depth class action case experience. I  
10 have worked in the class action notification field for over 20 years. During that time, I have been  
11 involved in all aspects in the design and implementation of class action notice planning, as well as  
12 the drafting of plain language notice documents that satisfy the requirements of Rule 23 and adhere  
13 to the guidelines set forth in the *Manual for Complex Litigation, Fourth* and by the Federal Judicial  
14 Center (“FJC”).

15 10. The reach of the proposed Notice Program is consistent with other effective court-  
16 approved notice programs. Additionally, the Notice Program is intended to comply with the FJC’s  
17 2010 Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide (the  
18 “FJC Checklist”), which considers at least 70% reach among class members to be reasonable.

19 **NOTICE PLAN**

20 ***Class Definition***

21 11. According to the Court’s Order Granting Plaintiff’s Motion for Class Certification  
22 dated September 20, 2004 (ECF#139), the Class is defined all persons in the State of California  
23 who purchased the Products between December 29, 2017 and September 5, 2023. The Products  
24 are defined as those Products that “made a front label protein claim and fail to include the statement  
25 of the corrected amount of protein per serving expressed as the percent of daily value in the  
26 Nutrition Facts Panel during the class period.” *Id.* at 5, n. 5. These Products are identified in Exhibit  
27 A to the Court’s September 20, 2024 Order.

28

1 12. Products included in the Class definition include: (i) Killer Breads: 21 Whole  
2 Grains and Seeds; Good Seed; Powerseed; 100% Whole Wheat; and Righteous Rye; (ii) Thin  
3 Sliced Bread: 21 Whole Grains and Seeds Thin-Sliced; Good Seed Thin-Sliced; Powerseed Thin-  
4 Sliced; and Sprouted Whole Grains Thin-Sliced; (iii) Breakfast Bagels: Epic Everything Bagels;  
5 Plain Awesome Bagels; Cinnamon Raisin Remix Bagels; and Boomin’ Berry Bagels; and (iv)  
6 Burger Buns: 21 Whole Grains and Seeds Burger Buns; and Burger Buns Done Right.

7 ***Individual Notice***

8 13. It is my understanding that Defendants do not have any email or postal addresses  
9 for Class Members. Accordingly, all notice must be by publication.<sup>1</sup>

10 ***Media Campaign***

11 14. Verita will implement a robust digital media campaign. The digital media campaign  
12 will be supplemented with print publications. Approximately 7,550,000 digital impressions will  
13 be purchased programmatically via one or more ad exchanges and distributed over various  
14 websites and the social media platforms Facebook and Instagram.<sup>2</sup>

15 \_\_\_\_\_  
16 <sup>1</sup> Should any email and/or physical addresses be located prior to, or during, the notice period. Verita  
17 will send an email notice to all Class Members for which an email address is available on the Class  
18 List. Prior to distributing the email notice, all email addresses will be subject to a cleansing and  
19 validation process to, among other things, remove extra spaces and fix common domain name  
20 errors, as well as compare addresses against known bad email addresses and verify email existence  
21 with Internet Service Providers (“ISPs”). The email notice will be formatted to avoid common “red  
22 flags” that could cause the email to be blocked by spam filters. For example, the content of the  
23 notice will be placed in the body of the email rather than as an attachment to avoid spam filters  
24 and improve deliverability. The email notice will contain a link to the case website. The email  
25 campaign will return data regarding the number of emails successfully delivered and email  
26 bouncebacks. Verita will send a postcard notice to all Class Members for which a postal address is  
27 available on the Class List. Prior to mailing, the postal addresses will be checked against the  
28 National Change of Address (NCOA) database maintained by the USPS; certified via the Coding  
Accuracy Support System (CASS); and verified through Delivery Point Validation (DPV). Notices  
returned by the USPS as undeliverable will be re-mailed to any address available through postal  
service forwarding order information. For any returned mailing that does not contain an expired  
forwarding order with a new address indicated, Verita will conduct further address searches using  
credit and other public source databases to attempt to locate new addresses and will re-mail these  
notices where possible.

<sup>2</sup> If the total population base (or number of class members) is unknown, as here, it is accepted  
advertising and communication practice to use a proxy-media definition, which is based on  
accepted media research tools and methods that will allow the notice expert to establish that  
number. The percentage of the population reached by supporting media can then be established.  
Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018  
AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

1 15. The impressions will be targeted to California adults 18 years of age and older and,  
2 where applicable, users whose online behavior indicates an interest in or likely purchase of Dave’s  
3 Killer Bread. An additional emphasis will be placed on California adults 35 years of age and older.

4 16. Based on the target audience definition used, the size of the target audience is  
5 approximately 3,500,000 individuals in California.<sup>3</sup> It is important to note that the target audience  
6 is distinct from the class definition, as is commonplace in class action notice plans. Utilizing an  
7 overinclusive proxy audience maximizes the efficacy of the Notice Plan and is considered a best  
8 practice among media planners and class action notice experts alike. Using proxy audiences is also  
9 commonplace in both class action litigation and advertising generally.

10 17. The notices will appear on both desktop and mobile devices, including tablets and  
11 smartphones, in display and native ad formats. All digital media notices will include an embedded  
12 link to the case-specific website.

13 18. The digital media campaign will be monitored by Verita’s digital specialists to  
14 analyze key campaign performance indicators and make real-time modifications, as needed.

15 19. To provide additional notice, Verita will cause a summary notice to be published  
16 once a week for four consecutive weeks in the *East Bay Times*. The *East Bay Times* is the largest  
17 daily newspaper covering Contra Cost and Alameda counties. It boasts an average weekly  
18 readership of 49,478.

19 ***Response Mechanisms***

20 20. Verita will establish and maintain a case-specific website to allow Class Members  
21 to obtain additional information about the litigation as well as relevant court filings from the  
22 action. Class Members will be able to view, download, and/or print the long form notice, the Class

23 \_\_\_\_\_  
24 <sup>3</sup> MRI-Simmons provides demographic, brand preference and media-use habits, and captures in-  
25 depth information on consumer media choices, attitudes, and consumption of products and services  
26 in nearly 600 categories. comSCORE, Inc. (“comSCORE”) is a leading cross-platform  
27 measurement and analytics company that precisely measures audiences, brands, and consumer  
28 behavior, capturing 1.9 trillion global interactions monthly. comSCORE’s proprietary digital  
audience measurement methodology allows marketers to calculate audience reach in a manner not  
affected by variables such as cookie deletion and cookie blocking/rejection, allowing these  
audiences to be reach more effectively. comSCORE operates in more than 75 countries, including  
the United States, serving over 3,200 clients worldwide. According to MRI-Simmons, 72.3% of  
the target audience is 35 years of age or older.

1 Action Complaint, Defendants’ Answer to the Class Action Complaint, the Court’s Order  
2 Granting Plaintiff’s Motion for Class Certification, and any other relevant documents and court  
3 filings. Class Members will also be able to review a list of frequently asked questions and answers,  
4 and important dates and deadlines.

5 21. Verita will establish a case-specific toll-free number to allow Class Members to  
6 call to learn more about the litigation in the form of frequently asked questions. The toll-free  
7 number will also allow Class Members to request to have additional information mailed to them.

8 ***Opt-Out Processing***

9 22. Verita estimates that it will be able to begin executing the notice plan within 21  
10 days of receiving approval for the plan. Verita will process any and all opt-outs received from  
11 Class Members and provide copies to Class Counsel, Defendants, and the Court.

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**CONCLUSION**

23. I believe that the proposed Notice Plan will reach 75.2% of likely Class Members with an average frequency of 3.3 times each. It should be noted that the 75.2% reach approximation does not include the newspaper notice, the dedicated case Website, or the toll-free hotline, which are difficult to measure in terms of reach percentage but will nonetheless provide awareness and further diffuse news of the Class notice. In my opinion, the Notice Plan proposed is consistent with other effective notice programs. It is the best notice practicable and meets the “reasonably certain to inform” due process communications standard of *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). The Notice is consistent with the guidelines set forth in Rule 23, the *Manual for Complex Litigation, Fourth*, and the FJC Checklist, which considers 70% reach among class members to be a “high percentage” and reasonable. Indeed, the proposed reach percentage exceeds the guidelines, again as set forth in the Federal Judicial Center’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide to effectuate a notice program which reaches a high degree of Class Members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3<sup>rd</sup> day of February 2025, at Ocean City, New Jersey.



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Carla A. Peak