

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HOLLY BLAINE VANZANT, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	No. 17 C 2535
)	
v.)	
)	Judge Jorge L. Alonso
HILL’S PET NUTRITION INC., <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

For the reasons set forth in the “Statement” section below, the Court adopts Plaintiffs’ Notice Plan [336] and appoints Epiq Class Action and Claims Solutions, Inc. as Class Notice Administrator.

STATEMENT

The Court has reviewed Plaintiffs’ Proposed Notice Plan and related filings (ECF Nos. 336, 337, 338, and 339) as well as Defendant Hill’s Pet Nutrition, Inc.’s Proposed Class Notice Plan and Administrator and related filings (ECF Nos. 334, 335, and 340). The Court has also reviewed Plaintiffs’ Motion for Leave of Court to Supplement Their Proposed Notice Plan. (ECF No. 353.)

The Court certified a statewide class of all similarly situated Illinois residents who purchased Defendant Hill’s Pet Nutrition Inc.’s Prescription Diet (“PD”) pet food from any retailer (including any veterinarian or veterinary clinic) in Illinois¹ since March 2, 2014 (ECF No. 314), to which Plaintiffs now seek to give notice of this lawsuit. The parties submit competing notice plans, each of which incorporates many of the same general components: direct notice to identifiable class members via mail and email; a supplemental media campaign utilizing social media, paid searches, and a press release; a case-specific website; and a toll-free phone number to deliver notice to potential class members. Defendant objects to Plaintiffs’ proposed veterinarian-facing notice efforts and digital and media notice targeting consumers in six neighboring states to Illinois. For the reasons that follow, the Court adopts Plaintiffs’ Notice Plan and appoints Epiq Class Action and Claims Solutions, Inc. (“Epiq”) as Class Notice Administrator.

¹ Excluded from the class definition are: (a) Defendants, their legal representatives, officers, directors, assigns, and successors; (b) Judges to whom this case is assigned and their staffs; (c) attorneys involved in this matter; and (d) all persons or entities that purchased PD pet food for resale.

DISCUSSION

The Federal Rules of Civil Procedure set forth certain requirements for notice to a class certified under Rule 23(b)(3):

[T]he court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

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

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

This notice requirement “is designed to guaranty that those bound by the ruling in a class action were accorded their due process rights to notice and an opportunity to be heard.” *Chaffee v. A&P Tea Co.*, Nos. 79 C 2735 & 79 C 3625, 1991 WL 5859, at *2 (N.D. Ill. Jan. 16, 1991). When considering whether notice is the “best notice practicable” under the circumstances, courts can consider “the size of the class, whether the class members can be easily identified, and the probability notice will reach the intended audience.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 595 (N.D. Ill. 2011) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 166-67 (1974)). The Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide issued by the Federal Judicial Center (the “FJC Guide”) recommends 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%.” Fed. Judicial Ctr., Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

The parties have agreed to the notice language on the e-mail notice, postcard notice, and long-form notice, which the Court has reviewed. The Court finds that the proposed e-mail notice, postcard notice, and long-form notice “clearly and concisely state in plain, easily understood language” the nature of the action; the class definition; the class claims, issues, and defenses; that a class member may enter an appearance through an attorney if the member so desires; that the court will exclude from the class any member who requests exclusion, the time and manner for

requesting exclusion; and the binding effect of a class judgment on members. Fed. R. Civ. P. 23(c)(2)(B).

The Court turns next to the differences between Plaintiffs' proposed notice plan ("Plaintiffs' Notice Plan") and Defendant's proposed notice plan ("Defendant's Notice Plan"). In support of Plaintiffs' Notice Plan, they submit the declaration of Cameron R. Azari, an expert in the field of legal notice and class action notice plans, a Senior Vice President of Epiq, and the Director of Legal Notice for Hilsoft Notifications, a business unit of Epiq. Plaintiffs propose Epiq as the Class Notice Administrator. Defendant alternatively proposes CPT Group, Inc. ("CPT") as Class Notice Administrator, and submits the declaration of Julie N. Green, Senior Vice President of Operations, Class Action Services of CPT, in support of its Notice Plan. There is no dispute that both Epiq and CPT are both industry leaders in class action administration.

Both Plans include a component of direct notice, which is required for "all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen*, 417 U.S. at 173 ("Individual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort."); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 665 (7th Cir. 2015). Plaintiffs anticipate being able to provide direct individual notice to approximately 650,000 of the approximately 850,000 potential class members, which is approximately 76-77% of the estimated class. This figure falls within the range identified as reasonable by the FJC Guide.

Defendant's Notice Plan, on the other hand, anticipates that direct notice will only be possible for 3% of the class. It is not clear from Defendant's Notice Plan how many potential class members it estimates. Defendant appears to have chosen the 3% figure arbitrarily, however, and states that it can increase that number based upon the results of Plaintiffs' efforts to identify the names and addresses of class members. Plaintiffs have provided an update to the Court in this regard. (ECF No. 353-1.) Plaintiffs indicate that they issued discovery to Defendants and subpoenaed Amazon, Chewy, PetCo, Rx Pet Food, Walmart (retailers); Covetrus, VetSource (Online prescription processors); MWI Veterinary Supply Company, and JAT Pharmacy/ Midwest Veterinary Supply, Inc. (on-line distributors); Banfield and VCA (entities that operate multiple, large veterinary clinics in Illinois); and the 25 largest veterinary clinic wholesale purchasers of PD. Thus far, Plaintiffs have identified approximately 543,000 class members with an email and/or mailing address. That figure does not yet include data from Walmart, which should be produced shortly, or Amazon. Further, because Amazon maintains strict confidentiality of customer data and will not produce it, Plaintiffs' counsel entered into an agreement with Amazon whereby Amazon will identify its customers who fit the class definition and send them email notice, once approved by the court. Amazon's counsel represents that numerous courts have approved Amazon emailing class notice directly to its customers in lieu of producing customer data and that Amazon reports a successful delivery rate of 99% or higher. Based on all of the above, there does not appear to be a material difference between the direct notice component of the parties' respective Plans.

Next, the parties both include a media component in their competing Plans. Plaintiffs' media plan includes targeted digital advertising on Google Display Network and Yahoo Audience Network using language from the long form notice headline. Digital advertising will also be placed on the social media sites Facebook, Instagram, LinkedIn, and Reddit. Plaintiffs propose distributing these digital advertisements to target audiences—including veterinarians—in Illinois

and six neighboring states. Plaintiffs' Notice Plan anticipates that using these digital advertisements will increase the total number of class members who receive notice to 80%. Further, although excluded from Plaintiffs' reach calculation, Plaintiffs also propose internet sponsored search listings, a press release, a flyer notice, a case website, and a toll-free support line to expand the anticipated reach of notice to class members. Plaintiffs' Notice Plan is estimated to cost less than \$170,000, depending on the actual percentage of class members for whom an email address will be available.

Defendant's media plan includes targeted digital banner, online radio, and online video advertising via DSP, Facebook, Instagram, Reddit, YouTube, Spotify, Google Paid Search, and Bing Paid Search. Defendant limits its target audience to Illinois residents and does not directly target veterinarians. Like Plaintiffs, Defendant proposes a press release, a case website, and a toll-free support line. Defendant anticipates that its Notice Plan will reach 80% of the class via media methods alone, exclusive of direct notice. Defendant's Notice Plan is estimated to cost approximately \$180,000, which does not appear to include the majority of costs associated with direct notice.

Plaintiffs point out that the estimated "reach" of media and publication notice components simply means that a certain percentage of the class will have been exposed to a banner advertisement or an online radio or video advertisement. Plaintiffs cite authority supporting a click-through rate of 0.50% at most for banner advertisements. (ECF No. 339 at 2 n.2.) Indeed, the FJC Guide cautions courts against notice plans that rely heavily or exclusively on Internet advertisements and social network usage. *See* FJC Guide at 4 ("Inflated audience data via Internet ads is common. It is very expensive to reach a significant percentage of a mass audience with Internet banner ads. Watch for suggestions that Internet ads and social network usage can replace all other methods. Reach, awareness, and claims will likely be very low when such a program is complete."). The Court accordingly expresses some skepticism of Defendant's estimation that 80% of the class can be reached by media methods alone.

Next, the Court considers the two aspects of Plaintiffs' Notice Plan with which Defendant objects: (1) Plaintiffs' proposed veterinarian-facing notice efforts; and (2) Plaintiffs' proposed media notice to consumers in six neighboring states to Illinois.

Veterinarian-Facing Notice Efforts

Plaintiffs explain that for consumers who purchased PD pet food solely in person at their local veterinary clinics, the only data that may be available to identify them likely resides in their veterinary clinic records. Although 25 of the approximately 1,500 Illinois veterinarian offices have been subpoenaed, only a handful have thus far produced names and addresses of clients that purchased PD. Others have objected on the basis of patient-client confidentiality or failed to respond. Accordingly, direct notice to the majority of this segment of the class is not likely feasible through reasonable efforts. When individual notice to class members is not possible, "courts may use alternative means such as notice through third parties, paid advertising, and/or posting in places frequented by class members, all without offending due process." *Mullins*, 795 F.3d at 665 (citation omitted); *see also Benson v. Newell Brands, Inc.*, No. 19 C 6836, 2021 WL 5321510, at *8 (N.D. Ill. Nov. 16, 2021) (same); *cf. Hughes v. Kore of Ind. Enter., Inc.*, 731 F.3d 672, 677 (7th

Cir. 2013) (reversing decertification on class-identification grounds because notices posted conspicuously in bars where ATMs charging disputed fees were located “may be the best way to reach the bars’ regulars”).

There are three prongs to Plaintiffs’ veterinarian-facing notice efforts. Plaintiffs propose sending a flyer notice along with a cover letter to the approximately 1,500 veterinarian offices in the state of Illinois. The language on the flyer notice matches the language on the other notice forms and also includes a QR code that links to the case website. Veterinarian offices will be asked to display the flyer notice in their offices until the opt-out deadline, and veterinarians will be asked to notify any of their pet patient’s owners who they know purchased the product during the class period of the pending opt out deadline. Plaintiffs estimate that if 50% of veterinarians opt to post the flyer for a reasonable timeframe, the overall reach of may increase to 85%. The cost for the flyers is approximately \$4,000. Additionally, digital and social media notices will be targeted to veterinarians, who may in turn notify class members of the lawsuit. The cost for these digital notices is approximately \$6,000. Finally, a copy of the long form notice and the flyer will be sent to the Illinois State Veterinarian Medical Association (“ISVMA”), with a request that they provide it to veterinarians as they see fit. There is virtually no cost for this.

Defendant argues that publishing notice to veterinarians cannot be “reasonably calculated ... to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Defendant specifically argues that there is no way to determine whether veterinarians receiving notice will protect class members’ due process rights; there is no way to control what information veterinarians might pass along or to whom; and for those who do try to provide notice, the veterinarians may be put in the position of having to answer questions that they do not have answers to or may answer incorrectly.

Starting with the flyer, courts have found that when, like here, individual notice to class members is not possible, alternative notice may include posting notice in places frequented by class members. *See Hughes*, 731 F.3d at 677; *Mullins*, 795 F.3d at 665; *Benson*, 2021 WL 5321510, at *8. When a class member sees the flyer, they may decide to scan the QR code that links to the case website. This method is akin to the digital banner advertising directly targeting class members (and in fact displays more information), which both parties propose, and which requires the class member to click-through to see the full notice and case website. Of course, each veterinarian retains discretion as to whether to post the flyer. But the Court agrees with Plaintiffs that the flyer notice is a reasonable step to maximize notice to the class for little additional cost or effort.²

² Defendant also argues—without support—that posting notice in veterinarian clinics might cause (1) consumers to incorrectly assume there is something wrong with Defendant’s foods and stop feeding it to their sick pets, potentially them causing harm, and (2) harm to Defendant’s business relationships with veterinarians. It is not apparent to the Court why Defendant implies that displaying notice in veterinarian clinics would be more likely than other forms of notice to result in these harms. A consumer who sees notice of this lawsuit at a veterinarian clinic is in fact uniquely positioned to immediately ask the veterinarian staff any diet-related follow-up questions they may have. The Court is unpersuaded by these purely speculative concerns.

Next, the Court shares certain of Defendant's concerns with respect to the digital advertisements targeting veterinarians and the email notice to the ISVMA—all third parties to this lawsuit—in the hopes that they pass information along to class members and veterinarians, respectively. These speculative methods are more similar in nature to a press release to media outlets—a method that both parties propose here. With a press release, there is no guarantee that any news stories will result or that they will adequately explain class members' rights. The content is not in the control of the Court or the parties. For this reason, the FJC Guide suggests omitting such speculative notice from the estimated reach calculations. *See* FJC Guide at 4 (“Watch for estimated reach calculations that are based in part on speculative notice that might occur, e.g., news coverage about the lawsuit or settlement. Often, these news articles do not ultimately explain class members' rights, and the content is not in the court's control.”). Even if Plaintiffs omitted the digital advertisements targeting veterinarians and the email notice to the ISVMA from their estimated reach, however, their total reach estimate would remain reasonable at somewhere between 76% and 80%.

That is not to say that veterinarian-facing efforts should be prohibited. The Court does not share Defendant's concern that veterinarians may unfairly be put in the position of having to answer questions that they do not have answers to or may answer incorrectly. As Plaintiffs note, it is Defendant who requires a veterinarian prescription as a prerequisite to purchasing PD. Additionally, the notice language agreed upon by the parties directs class members with questions regarding their pets' diet to consult their veterinarian. It is reasonable to provide notice of this lawsuit to veterinarians so that they are not blindsided by class members' questions. It is also reasonable to assume that many veterinarians who receive non-diet-related questions regarding this lawsuit are capable of either directing class members to the flyer, notifying them of the case website and/or toll-free telephone number, or simply responding that they are not a party to the lawsuit and do not have any information. The risk that veterinarians may provide inaccurate information regarding this lawsuit is—as with press releases and news articles—out of the Court's control, but it does not require keeping veterinarians in the dark. Other district courts have approved veterinarian-facing notice efforts in pet food class actions, including digital advertising targeting veterinarians and/or notices to veterinarian associations with the option to display notice at veterinarian clinics. *See In re: Midwestern Pet Foods Mktg., Sales Practices and Prod. Liab. Lit.*, 3:21-cv-00007 (S.D. Ind.); *In re Pet Food Prods. Liab. Lit.*, (MDL No. 1850, Case No. 07-2867).

Plaintiffs' veterinarian-facing notice efforts are tailored to attempt to provide the “best notice that is practicable under the circumstances” to a segment of the class for which direct notice is not possible. Fed. R. Civ. P. 23(c)(2)(B). Although Defendant maintains that its Notice Plan is estimated to reach 80% of class members through media methods alone, exclusive of direct notice, as noted above, the Court remains skeptical of this high figure. In short, Defendant's Notice Plan does not offer a better alternative method than Plaintiffs' for reaching those class members who purchased PD solely in person at their local veterinarian clinic.

Geographic Reach of Digital Notice

Defendant next argues that Plaintiffs' media campaign is overinclusive and prejudicial because it seeks to notify individuals who reside not only in Illinois but also in six neighboring

states—Wisconsin, Iowa, Missouri, Kentucky, Ohio, Indiana, and Michigan. Defendant argues that this case concerns sales of PD products to Illinois residents, so “the notice should be largely limited to the geographical areas where class members are likely to be found.” *Tylka v. Gerber Prods. Co.*, 182 F.R.D. 573, 578 (N.D. Ill. 1998). But that is precisely what Plaintiffs’ Notice Plan is designed to do. Plaintiffs’ proposal to target those six neighboring states is not arbitrary; Plaintiffs explain that the population of Illinois has decreased due to migration during the class period, and the U.S. Census shows that the largest segment of Illinois residents leaving the state moved into one of those six states. The very case that Defendant relies upon in fact requires publication notice of an Illinois Consumer Fraud and Deceptive Practices Act consumer class action in six states neighboring Illinois. *Id.* By comparison, the court found that publishing notice *nationwide* “could mislead millions of ineligible individuals, generate considerable confusion, and unreasonably harm” the defendant. *Id.* Here, Plaintiffs do not propose nationwide notice.

CONCLUSION

For all of these reasons, the Court finds that Plaintiffs’ Notice Plan is designed to provide to class members “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort” and is reasonably calculated, under the circumstances, to apprise the class of the pendency of the litigation and of their right to object to or to exclude themselves from the class. Fed. R. Civ. P. 23(c)(2)(B). Accordingly, the Court adopts Plaintiffs’ Notice Plan (ECF No. 336) and appoints Epiq as Class Notice Administrator.

SO ORDERED.

ENTERED: January 31, 2024

A handwritten signature in black ink, appearing to read 'J. Alonso', enclosed within a large, loopy oval shape.

HON. JORGE ALONSO
United States District Judge