

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/17/2024

TIME: 01:30:00 PM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Calvin Beutler

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: I. Vega

CASE NO: **37-2020-00020808-CU-BT-CTL** CASE INIT.DATE: 06/18/2020

CASE TITLE: **Stoff vs Wells Fargo Bank NA [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Andrew J. Brown, counsel, present for Plaintiff(s).

Mark D Lonergan, counsel, present for Defendant(s).

Rebecca S. Saelao, counsel, present for Defendant(s) via remote video conference.

Brian Ellsworth, counsel, present for Plaintiff(s).

Plaintiffs submit(s) on the Court's tentative ruling except as to the notice in Spanish.

The Court hears from counsel.

The Court CONFIRMS AS MODIFIED the tentative ruling as follows:

Plaintiff's motion to provide notice of pendency of class action is **GRANTED** in part.

Discussion

"If the class is certified, the court may require either party to notify the class of the action in the manner specified by the court." CRC, rule 3.766(a). The class proponent must submit a statement regarding class notice and a proposed notice to class members. *Id.*, rule 3.766(b). As soon as practicable after certification of the class, the court must make an order determining: (1) whether notice to class members is necessary; (2) whether class members may exclude themselves from the action; (3) the time and manner of notice; (4) the content of the notice; and (5) the parties responsible for the cost of notice. *Id.* rule 3.766(c).

Here, issues one and two are not in dispute. The Court likewise finds notice to class members is necessary and class members may exclude themselves from the action. The remaining issues are addressed below.

Manner

"[N]otice must be the best practicable, 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." *Hypertouch, Inc. v. Superior Court (Perry Johnson, Inc.)* (2005) 128 Cal.App.4th 1527, 1539, internal citations and quotation marks omitted; CRC, rule 3.766(f). In determining the manner of the notice, the court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the *res judicata* effect on class members. *Id.*, rule 3.766(e).

The parties dispute whether notice should be disseminated by email or via U.S. Mail. Plaintiff proposes notice be sent via email, and for any undeliverable notices, the administrator shall send a postcard notice via U.S. mail. Brian Ellsworth Decl. [ROA # 452], Ex. D ¶¶ 4-5. The estimated cost for this method is \$46,091.75. Justin Parks Decl. [ROA # 453], Ex. B.

Defendant argues the notice should be sent via U.S. mail because it has a mailing address for every class member and gave this list to plaintiff, and because the Federal Trade Commission issued a report that concluded email class notice is generally less effective. The estimate for notice sent by U.S. mail is \$97,118.75. Parks Decl., Ex. B.

Although e-mail has become commonplace, it is not necessarily common knowledge that a person would expect important notices or communications involving legal rights concerning their mortgages to be sent via email, as opposed to being received in their U.S. address mailbox. The cost to notify the class members via U.S. mail is high, but so too are the interests, stakes, and type of relief requested high in this case. Sending the notices via U.S. mail appears to be the best practicable method to apprise class members, once the mailing addresses are updated. Parks Decl. ¶ 13.

Plaintiff nonetheless argues that e-mail notice is the best notice practicable based on Wells Fargo's apparent agreement to disseminate notice via e-mail in a different unrelated class action. Reply at 4. However, plaintiff has not shown that the circumstances in that class action are similar to here, nor that the factors under CRC, rule 3.766 were considered in that class action. Plaintiff also argues Wells Fargo's practice is to send customers emails instead of U.S. mail whenever available. Yet this is not clearly reflected in the evidence that plaintiff cited and thus not adequately supported. Reply at 7, citing Ellsworth Decl. [ROA # 397], Ex. A (Depo of PMK at pp. 83-84, 87). Accordingly, plaintiff has not shown that e-mail is the best notice practicable. Instead, the circumstances of this case warrant sending the notice via first class U.S. mail.

Plaintiff's proposal for the notice to be published in a media press release is also not adequately supported. Such new media methods are generally ordered "if personal notification is unreasonably expensive or the stake of individual class members is insubstantial, or if it appears that all members of the class cannot be notified personally." CRC, rule 3.766(f). That is not the case here. Accordingly, the request to post the notice via the media release is denied.

Content

The parties' briefs reflect they met and conferred while the motion was pending, and agreed upon some of the content language, and also identified some further proposed language in "redlines" that is disputed. The Court reviewed and approves of the proposed redlines language in exhibits B and C

attached to the declaration of Mark Lonergan. The "clean" versions at exhibits E and F are approved for dissemination. Mark Lonergan Decl. [ROA # 474], Exs. E & F.

In light of the lack of opposition to Defendant's suggestion to provide notice in Spanish, the Court directs content of the **long form** notice to also be provided in Spanish, **with an indication on the postcard in Spanish**. Opp. at 14-15; Reply at 10.

Cost

"Ordinarily it is the plaintiff's responsibility to provide notice and bear the expense of doing so, but there are circumstances in which courts have required the defendant to assist in identifying class members and/or to bear or share the expense of providing them notice." *Hypertouch, Inc. v. Superior Court, supra*, 128 Cal.App.4th at p. 1551, internal citation omitted. These include circumstances where the defendant was responsible for the difficulty in notifying the class. *Id.* at 1553.

Here, plaintiff requests that if the Court orders notice to be sent via U.S. mail instead of email, then defendant should pay for the difference in cost. Plaintiff has not shown that the circumstances here warrant requiring defendant to bear or share the expense of providing notice. Defendant has not created the difficulty in notifying the class, and there is ample justification for ordering notice to be sent via U.S. mail here.

Conclusion

For the reasons stated, plaintiff's motion to provide notice of pendency of class action is **GRANTED** in part. Notice to be sent via U.S. mail, based on the timing as set forth in the proposed plan. The content of the notice contained in exhibits E and F, attached to the declaration of Mark Lonergan, is approved, subject to also modifying the class definition to correctly reflect the description of California borrowers as "mortgagors." Plaintiff shall be responsible for the cost of the notice.

The minute order is the order of the Court.

~~Plaintiff to serve notice on all parties within two court days of this ruling. Parties waive notice of ruling.~~

IT IS SO ORDERED.



Judge Katherine Bacal