

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHRISTAKIS VRAKAS, *et. al.*,

Plaintiffs,

v.

UNITED STATES STEEL
CORPORATION, *et. al.*,

Defendants.

Civil Action No. 17-579

Judge Cathy Bissoon

**PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL AND DISSEMINATION OF
CLASS NOTICE**

Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), Lead Plaintiff Christakis Vrakas and plaintiff Leann Reed (“Plaintiffs”) respectfully move this Court for approval of: (1) the agreed upon proposed Class Notice, consisting of a post-card notice (“Post Card Notice”) and a long form notice (“Long Form Notice”), attached hereto as Exhibits A and B respectively; and (2) the timing and method for dissemination of the Class Notice to the certified Class (the “Notice Plan”). Plaintiffs submit that the Notice Plan fully satisfies the requirements of Rule 23(c) and due process.

On December 31, 2019, the Court granted Plaintiffs’ Motion for Class Certification and certified the following class (the “Class”):

All persons or entities who purchased or otherwise acquired United States Steel Corporation common stock and options during the period from January 27, 2016 through April 25, 2017, inclusive (the ‘Class Period’), and were injured thereby. Excluded from the Class are: (1) defendants; (2) the individual defendants’ immediate family members; (3) any person who was an officer or director of the Company during the Class Period; (4) any firm, trust, corporation, or other entity in which a defendant has or had a controlling interest; and (5) the legal representatives, affiliates, heirs, successors in-interest, or assigns of any such excluded person or entity.

Dkt. No. 215 at 2 n.1.

On February 21, 2020, the Parties submitted a Joint Proposal Regarding Class Notice and Discovery Matters to the Court identifying the form, language, and timing of class notice. Dkt. No. 218. On February 25, 2020, the Court entered a Case Management Order, setting forth certain discovery deadlines, but neither approving nor denying the proposed notice plan. Dkt. No. 220. For the reasons forth below, Plaintiffs respectfully request that the Court approve the Notice Plan.

ARGUMENT

In any class action certified under Rule 23(b)(3), notice of class certification must be provided to class members using the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Wal-Mart Stores Inc. v. Dukes*, 564 U.S. 338, 362 (2011). Due process requires that “notice 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).¹ Ultimately, notice is “adequate if it may be understood by the average class member.” Alba Cote Herbert B. Newberg, 4 Newberg On Class Actions, §11:53, 167 (4th ed. 2002).

As set forth below, the proposed Notice Plan complies with due process and Fed. R. Civ. P. 23(c)(2)(B) because it is the best notice practicable and is reasonably calculated to apprise interested parties of the pendency of this action.

A. The Form and Content of the Proposed Class Notice Comports with Rule 23 and Due Process

Class notice must “detail[] the nature of the litigation and the right of class members to opt out.” *Brown v. Am. Home Prods. Corp.*, No. 99-20593, 2000 U.S. Dist. LEXIS 12275, at *120

¹ All internal citations and quotations are omitted unless other indicated. All emphasis is added unless otherwise indicated.

(E.D. Pa. Aug. 28, 2000). Under Rule 23(c)(2)(B), class 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).

Due process separately requires that class members “be provided with an opportunity to remove [themselves] from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form to the court.” *Phillips Petroleum Co. Shutts*, 472 U.S. 797, 812 (1985); *N. Sound Capital LLC v. Merck & Co.*, 938 F.3d 482, 492-93 (3d Cir. 2019).

The proposed Class Notice includes all of the information required by Fed. R. Civ. P. 23(c)(2)(B), because both the Post Card Notice and Long Form Notice: (i) describe the central elements of Plaintiffs’ claims in clear and simple language; (ii) provide the definition of the certified Class; (iii) provide that a Class member may enter an appearance through an attorney; (iv) explain the process for opting out of the Class by providing written notice to the claims administrator of the intention to opt out along with proof of membership in the Class; and (v) explain the binding effect of a judgment on the Class. The proposed Notice Plan includes a standard sixty (60) day opt out period for Class members, which courts have found is more than ample time to satisfy due process. *See Walney v. SWEPI LP*, 2017 U.S. Dist. LEXIS 8679, at *20 (W.D. Pa. Jan. 23, 2017) (setting a 60 day opt out period); *see also* MANUAL FOR COMPLEX LITIGATION (FOURTH) §21.321 (2004) (“[c]ourts usually establish a period of thirty to sixty days (or longer if appropriate) following mailing or publication of the notice for class members to opt out.”). Moreover, both the Post Card Notice and Long Form Notice provide that any individual with questions can obtain additional information from A.B. Data, the class action administrator, by telephone or via the internet, as stated in the proposed Notice Plan.

B. The Proposed Method for Dissemination Of Class Notice Meets the Requirements of Rule 23 and Due Process

Under the Notice Plan, Plaintiffs propose to send a Post Card Notice to all potential Class members through direct mail. *See Ex. A.* As discussed above, the Postcard Notice will provide all of the information necessary to satisfy due process but in an abbreviated form, while also providing a website address, maintained by A.B. Data, for Class members to visit if they would like to view the Long Form Notice, as well as other relevant documents. The Long Form Notice provides the same details as the Postcard Notice, but with further explanation. Courts routinely approve the mailing of a shorter form Post Card Notice, similar to that proposed here, as the initial shareholder contact finding it sufficient to satisfy due process, while also decreasing costs. *See, e.g., Udeen v. Subaru of Am., Inc.*, 2019 U.S. Dist. LEXIS 172460, at *17-18 (D.N.J. Oct. 4, 2019) (approving short form postcard notice that contained link to a more detailed long form notice online); *Jackson v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 192892, *4-5 (W.D. Pa. Oct. 27, 2014) (approving postcard notice); *Good v. Nationwide Credit, Inc.*, 314 F.R.D. 141, 156 (E.D. Pa. 2016) (same).

Federal Rule of Civil Procedure 23 recognizes that it might be impossible to identify some Class members for purposes of providing actual notice. Thus, if the names and addresses of class members cannot be determined by reasonable effort, notice by publication is sufficient to satisfy the requirements of due process and Rule 23. *Mullane Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950); *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993). In order to ensure the broadest reach for Class notice, Plaintiffs also propose notice by publication in BusinessWire, a well-publicized news source.²

² *See Sabol v. Hydroxatone LLC*, 2013 U.S. Dist. LEXIS 202764, at *9-10 (D. N.J. Mar. 28, 2013) (distributing notice via BusinessWire).

Plaintiffs submit that the proposed method for disseminating the proposed Class Notice—through direct mailing of Post Card Notice, with website access to a Long Form Notice and simultaneous publication—satisfies due process. The Notice Plan will be administered by A.B. Data, a preeminent firm that specializes in the administration of class action notice plans,³ and will include: (1) Post Card Notice through first-class mail to all potential Class members, which contains a link to view the Long Form Notice online; (2) publication of the Long Form Notice in BusinessWire, a well-publicized news source⁴; (3) Long Form Notice posted to the Court’s website pursuant to Local Rule 23.H; and (4) Long Form Notice posted to a case-specific website containing information about the action and relevant court documents, including the Amended Class Action Complaint for Violations of the Federal Securities Laws, Memorandum Order dated September 29, 2018 granting in part and denying in part Defendants’ motion to dismiss, and Memorandum Order dated December 31, 2019 granting Plaintiffs’ motion for class certification. The shareholder website will be maintained by A.B. Data. These methods of notice are commonly used in securities fraud class actions such as this. *See In re Wilmington Trust Sec. Litig.*, No. 10-cv-0090-ER, 2018 U.S. Dist. LEXIS 114132, at *24 (D. Del. July 9, 2018) (notice by mail, being posted to a website maintained by the claims administrator, and publication); *Yedlowski v. Roka Bioscience, Inc.*, 2016 U.S. Dist. LEXIS 155951, at *26-27 (D.N.J. Nov. 10, 2016) (same); *In re Rent-Way Secs. Litig.*, 305 F. Supp. 2d 491, 498 (W.D. Pa. 2003) (notice by mailing and publication).

³ *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (recognizing A.B. Data as “an experienced settlement administrator in complex class action litigation.”).

⁴ *See Sabol v. Hydroxatone LLC*, 2013 U.S. Dist. LEXIS 202764, at *9-10 (D. N.J. Mar. 28, 2013) (distributing notice via BusinessWire).

For Class members who acquired U.S. Steel common stock during the Class Period, U.S. Steel has requested that its transfer agent provide (at Plaintiffs' expense) a list of all shareholders and nominee brokers⁵ who held U.S. Steel common stock during the Class Period to A.B. Data. The nominee brokers will either provide the Notice to their clients directly or will provide A.B. Data with the client list and A.B. Data will send the Notice to such clients. Within thirty (30) days of receiving the shareholder list, A.B. Data shall send the proposed Post Card Notice to all shareholders on the list by first-class mail. A.B. Data will also provide publication notice in BusinessWire. Any notice sent by mail and returned as undeliverable with a forwarding address provided by the United States Postal Service will be processed, updated, and re-mailed. If no forwarding address is provided, A.B. Data will attempt to obtain an updated address using an information provider that the A.B. Data subscribes to and will re-mail such notices to any updated addresses. For Class members who acquired U.S. Steel stock options, A.B. Data will identify such option holders through its standard outreach to banks and brokers and by publication notice. A type-set proposed Class notice in the format which it will be sent to Class members is attached hereto as Exhibit B. Plaintiffs submit that these efforts are commonly used in class actions like this and are designed to reach the broadest potential Class possible.

⁵ Investors typically purchase securities through a brokerage account set up with a brokerage firm. When an investor buys securities through a brokerage firm, most firms will automatically put the securities into "street name," which is the name of the brokerage firm, rather than the name of the individual who is the legal owner of a security. As is commonplace, Plaintiffs believe, based on the shareholder list received from U.S. Steel, that the majority of U.S. Steel shares are held in street name.

CONCLUSION

The proposed Notice Plan meets the requirements of Rule 23 and due process, and it provides the certified Class with the best notice that is practicable under the circumstances. Plaintiffs, therefore, respectfully request that the Court grant this motion.

Dated: May 28, 2020

Respectfully submitted,

/s/ Vincent Coppola
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CERTIFICATE OF SERVICE

I, Vincent Coppola, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 28th day of May.

/s/ Vincent Coppola

Vincent Coppola