

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:10-cv-04849-JHN-PLA	Date	September 2, 2011
Title	Jason M. Yamada v. Nobel Biocare Holding AG et al		

Present: The Honorable	JACQUELINE H. NGUYEN		
Alicia Mamer	Not Reported	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
Not present	Not present		

Proceedings: ORDER RE PLAINTIFF’S PROPOSED NOTICE TO THE CLASS AND REQUEST FOR CLARIFICATION REGARDING SCOPE OF THE CLASS [90, 91] (IN CHAMBERS)

On August 12, 2011, the Court granted Plaintiff’s motion for class certification and ordered the parties to file a proposed notice to the certified class. (Docket No. 86.) The parties filed separate status reports in light of their failure to agree on the scope of the class and the manner of disseminating the notices. (Docket Nos. 90, 91.) The Court addresses these issues in turn.

A. Form of Notice

Preliminarily, the parties have agreed on the form and content of the proposed notice. (Defs.’ Report 3; Pl.’s Report 2.) The proposed notice is attached to Plaintiff’s Report as Exhibit A. The Court has reviewed the proposed notice and finds that it is the best notice that is practicable under the circumstances. It meets the standards of Federal Rule of Civil Procedure 23(c)(2)(B), as it clearly and concisely states in plain and easily understood language (1) the nature of the action; (2) the definition of the class certified; (3) the class claims, issues or defenses; (4) that a class member may enter an appearance through an attorney if the member so desires; (5) that the Court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on members under Federal Rule of Civil Procedure 23(c)(3). Accordingly, the Court approves the proposed notice.

B. Scope of the Class and to Whom Notice Should Be Given

The parties dispute the scope of the class. The Court certified a class of

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All dentists in the United States who have purchased any NobelDirect dental implant other than the “NobelDirect Groovy.”

(August 12, 2011 Order at 4.)

Defendants argue that the Court’s order did not intend the word “dentist” to include institutions, corporations, or partnerships. (Defs.’ Report 3.) The Court disagrees. In the Court’s August 12, 2011 Order, the Court narrowed Plaintiff’s proposed class definition from “all individuals and entities” to “all dentists” to reflect the scope of the class as plead in the complaint and as stated in the Joint Rule 26(f) Report. Naturally, the current class definition was intended by the Court to necessarily include individual dentists who purchased or acquired the NobelDirect dental implant by and through any partnerships, corporations or other similar entities. Therefore, for the purpose of clarifying the scope of the class, the Court modifies the class definition to read:

All dentists in the United States who have purchased any NobelDirect dental implant other than the “NobelDirect Groovy.” The class shall include individual dentists who purchased or acquired the NobelDirect dental implant by and through any partnerships, corporations or other similar entities.

C. Timing

The parties disagree on the event that would trigger the transmission of the notice. Defendants ask that the “triggering date” be based upon the date that the Ninth Circuit Court of Appeals either accepts or rejects the pending petition for appeal pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. (Defs.’ Report 4.) Plaintiff, on the other hand, suggests that the triggering date for the issuance of the notice should be the entry of the Court’s order approving the notice.

On August 31, 2011, Defendants filed before the Ninth Circuit Court of Appeals a motion captioned, “Emergency Motion Under Rule 27-3.” (Docket No. 92.) This motion seeks to stay the dissemination of class notice pending the Ninth Circuit’s ruling on Defendants’ petition to appeal the August 12, 2011 Order. “An appeal does not stay

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proceedings in the district court unless the district judge or the court of appeals so orders.” Fed. R. Civ. P. 23(f). As it is unclear when the Ninth Circuit will issue a ruling on Defendants’ emergency motion and petition and whether such ruling will include an order staying the action, the Court finds no reason to stay the dissemination of the notice. Accordingly, the Court orders that the point of reference for purposes of the timeline for the dissemination of the notice shall be the date of the issuance of this order.

D. Manner of Delivery

The parties disagree on who should be vested with the responsibility of sending the notice. Defendants request that Plaintiff engage the services of a Notice Administrator. (Defs.’ Report 4.) On the other hand, Plaintiff seems to take the position that a Notice Administrator will not be necessary. Because this case involves approximately, 2,900 potential class members, engaging the services of a Notice Administrator would be more cost-effective. Accordingly the Court orders as follows:

- (1) Plaintiff engage the services of a Notice Administrator and require that the Notice Administrator run the Nobel data address list through a National Change of Address database to ensure the most recent address available is the one used for mailing.
- (2) The Notice Administrator shall be vested with the responsibility to mail to potential Class Members.
- (3) Notices that are returned as undeliverable by the U.S. Postal Service, shall be forwarded by the Notice Administrator if a forwarding address is included by the U.S. Postal Service.
- (4) Defendant will, no later than ten (10) days from the date of this Order, provide to Plaintiff and the Notice Administrator, in electronic format, all available postal and e-mail addresses and other contact information of class members.
- (5) The Notice Administrator will, no later than twenty days from the date of this Order, cause the Notice to be sent via e-mail to those class members for whom an email address is available;

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- (6) The Notice Administrator will, no later than twenty days from the date of this Order, cause the Notice to be sent via U.S. Mail to all class members;
- (7) The Notice Administrator will, no later than twenty days from the Date of this Order, cause the Notice to be published on the Internet;
- (8) The deadline for class members to exclude themselves (i.e., opt out) from the Class will be within 80 days of the date of this Order;
- (9) The Notice Administrator will submit to the Court a comprehensive list of class members timely seeking exclusion from the class within 120 days of the date of this Order.

The Court finds that the manner of delivery of the Class Notice directed herein comport with the requirements of Federal Rule of Civil Procedure 23 and due process and constitute the best notice practicable under the circumstances.

E. Conclusion

It is hereby ordered that the parties shall perform the above-identified matters related to class notice in the manner and time frame set forth above.

IT SO ORDERED.

_____ : _____ N/A

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