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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
6

7 **JOHN PEREZ, on behalf of himself and on**
8 **behalf of all other similarly situated**
9 **individuals,**

10 **Plaintiff,**

11 **v.**

12 **LEPRINO FOODS COMPANY, a**
13 **Colorado Corporation; LEPRINO FOODS**
14 **DAIRY PRODUCTS COMPANY, a**
15 **Colorado Corporation; and DOES 1–50,**
16 **inclusive,**

17 **Defendants.**

CASE NO. 1:17-cv-00686-AWI-BAM

ORDER ON PLAINTIFF’S PROPOSED
CLASS NOTICE AND DISTRIBUTION
PLAN

(Doc. No. 76)

16 In this class action lawsuit, John Perez is suing two cheese manufacturing companies,
17 Leprino Foods Company and Leprino Foods Dairy Products Company.¹ Before the Court is
18 Perez’s proposed class notice and distribution plan, as well as Leprino’s several objections to that
19 proposal. For the reasons that follow, the Court will direct the parties to submit an amended class
20 notice and distribution plan consistent with this order.
21

22 **BACKGROUND**

23 Perez filed his lawsuit on April 13, 2017. On January 6, 2021, the Court certified Perez’s
24 class claims for failure to pay minimum wages, Cal. Labor Code §§ 510, 558, 1194, 1198, and
25 California Industrial Welfare Commission Wage Order 8-2001 (“Wage Order 8”); failure to pay
26

27 ¹ In their briefing, the parties, including both Defendants (responding as one), make no distinction between the
28 Leprino entities. Rather, the parties treat both Defendants as if they are a single “Leprino” entity. The Court will
adopt that practice in this order.

1 wages for all hours worked, Cal. Labor Code §§ 204, 1194, and Wage Order 8; failure to provide
2 legally compliant meal and rest periods or compensation in lieu thereof, Cal. Labor Code
3 §§ 226.7, 512, and Wage Order 8; failure to pay separation wages, Cal. Labor Code §§ 201–203;
4 failure to furnish accurate wage statements, Cal. Labor Code § 226; and unfair competition law
5 violations, Cal. Bus. & Profs. Code § 17200, et seq. In the certification order, the Court directed
6 the parties to meet and confer regarding the submission of a joint stipulated class notice and
7 distribution plan. If an agreement could not be reached, the Court imposed a briefing schedule
8 that would start with Perez’s filing of his own proposal. The parties did not reach an agreement,
9 and instead submitted briefing regarding their disputes.

10 11 **LEGAL STANDARD**

12 For any class certified under Federal Rule of Civil Procedure 23(b)(3), “the court must
13 direct to class members the best notice that is practicable under the circumstances, including
14 individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P.
15 23(c)(2)(B). The rule provides that notice may be made “by one or more of the following: United
16 States mail, electronic means, or other appropriate means.” *Id.* As to its contents, “[t]he notice
17 must clearly and concisely state in plain, easily understood language” the following information:

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

24 *Id.*; see also *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (explaining that absent
25 class members must be afforded due process through notice that is “reasonably calculated, under
26 all the circumstances, to apprise interested parties of the pendency of the action and afford them an
27 opportunity to present their objections” (quoted source omitted)).

28 **DISCUSSION**

Both parties have submitted proposed class notices with their respective filings. Doc. Nos.

1 76 at 10–18 & 77 at 7–14. Although the proposals are very similar—and largely in compliance
2 with the standards of Rule 23(c)(2)(B)—the parties seek the Court’s resolution of four disputed
3 particulars. Before turning to these matters, the Court takes notice of recent proceedings in
4 Vasquez v. Leprino Foods Co., which is another wage-and-hour class action pending before this
5 Court that has been filed against the same defendants. In Vasquez, this Court approved an
6 amended class notice and distribution plan that was jointly submitted after the Court resolved
7 certain disputes between the parties. Vasquez, No. 1:17-cv-00796-AWI-BAM, Doc. No. 207
8 (E.D. Cal. Mar. 1, 2021). Although the Vasquez proceedings occurred amidst briefing here, both
9 parties have had an opportunity to represent that those proceedings have caused their concession
10 of previously disputed matters. The Court will treat these matters as being independently resolved
11 by the parties, and not further address them here.

12
13 **A. Email opt-outs**

14 The parties’ first dispute involves the form in which class members can opt out of the
15 class. Perez asserts that all opting out should be completed by submitting an “exclusion request”
16 form that requires the class member’s signature. Perez proposes that class members will be able to
17 submit an exclusion request form through regular or electronic mail. Leprino more or less agrees
18 with Perez’s position, suggesting only that Perez’s proposed class notice should be modified to
19 include an email address for the class action administrator and instructions for returning a signed
20 exclusion request form. The Court resolved a greater dispute regarding email opt-outs in the
21 Vasquez matter. The Court will direct the parties here to modify their class notice and exclusion
22 request form in the same manner as was done in that action. Doing so will incorporate the minor
23 modifications that Leprino suggests.

24
25 **B. Website**

26 The parties’ second dispute goes to the online presence for the instant class action. Perez
27 argues that a single “LeprinoClassActions” website with linked webpages for separate class
28 actions against Leprino (including this action and the Vasquez action) best ensures that class

1 members are not left confused and without a means of redirection to the correct class action
2 website. Leprino objects to this model, and argues that every class action (including this one)
3 should have a separate website. Leprino argues that the chances of confusion increase if class
4 members are sent to a website containing information regarding multiple lawsuits. Leprino adds
5 that Perez’s concern about stranded class members is overstated because the class notice will
6 inform the class members of the correct website.

7 Aside from Perez’s passing reference to extra costs associated with multiple websites,
8 neither side offers authority or bases for their positions beyond their differing prognostications of
9 resultant confusion. With that being the case, the Court finds favor in Leprino’s maxim that less
10 confusion will result from distinct websites for distinct lawsuits. As Leprino points out, the class
11 notice will provide class members with the correct website address, thus tying them to the single
12 class action for which they represent the putative class. Based on the parties’ respective proposals,
13 the class notice will also provide class members with ample information and access to resources
14 that can be called upon if any confusion occurs.

15
16 **C. Lawsuit description**

17 The parties’ third dispute involves the description of this action and the claims that have
18 been certified. Perez seeks inclusion of the following language under the class notice subheading
19 “What is this lawsuit about?”:

20 This lawsuit is about: (1) whether Leprino’s policies and practices effectively
21 required employees to perform pre- and post-shift activities in excess of 14
22 minutes; (2) whether Leprino’s policies and practices effectively put its hourly,
23 non-exempt employees on-call during breaks and, therefore, failed to provide
proper meal and rest breaks; and (3) whether Leprino’s meal period policies and
practices are unlawful with respect to employees who worked “straight 8” shifts.

24 Based upon those claims, the lawsuit also will involve: (1) whether employees
25 worked off the clock during on-call meal breaks; (2) whether employees are owed
26 wages for working during on-call breaks; (3) whether employees were paid
27 minimum wages; (4) whether employees were paid for all hours worked for time
28 spent in excess of 14 minutes spent on pre- and post-shift work; (5) whether
employees received accurate, itemized wage statements; (6) whether employees
who worked a “straight 8” shift or an on-duty meal period are entitled to meal
break premiums; (7) whether employees were paid all wages due at separation; and
(8) whether Leprino engaged in unfair competition.

1 In opposition, Leprino proposes that the following description should be used under the
2 same subheading:

3 This lawsuit is about: (1) whether Leprino’s policies and practices effectively
4 required employees to perform pre- and post-shift activities in excess of 14
5 minutes; (2) whether Leprino’s policies and practices effectively put its hourly,
6 non-exempt employees on-call during breaks and, therefore, failed to provide
7 proper meal and rest breaks; and (3) whether Leprino’s meal period policy is
8 unlawful with respect to employees who worked “straight 8” shifts.

9 Based upon those claims, the lawsuit also will involve: (1) whether employees were
10 paid minimum wages; (2) whether employees were paid for all hours worked; (3)
11 whether employees received accurate, itemized wage statements; (4) whether
12 employees were paid all wages due at separation; and (5) whether Leprino engaged
13 in unfair competition.

14 Leprino faults Perez’s proposal for tracking the format of the Vasquez class notice and including
15 information that is found elsewhere in the class notice. The Court is not persuaded by these
16 responses. Although Perez’s proposal makes the class notice slightly redundant, any cost of this
17 redundancy is greatly outweighed by the benefit derived from additional clarity offered to the
18 recipient class members. Moreover, as to that clarity, Perez’s proposal includes the information
19 contained in the certification order for this case, and its use of the same format as the class notice
20 that this Court approved in Vasquez is hardly to its detriment. In sum, the Court will direct the
21 parties to use Perez’s proposed language.

22 **D. Distribution plan**

23 As to the parties’ fourth dispute, Leprino contends that Perez failed to propose a class
24 action administrator, a cost estimate, and other details of a plan to distribute the class notice, as
25 directed by the Court in its certification order. In his reply, Perez proposes that the parties use the
26 same distribution plan that was jointly submitted and approved by the Court in Vasquez. Perez
27 attaches the Vasquez parties’ joint submission and the Court’s order approving that joint
28 submission to his reply. While this proposal is certainly familiar to Leprino and its counsel, the
Court will grant Leprino’s request for an opportunity to review and (potentially) respond to the
proposal given that it was first produced by Perez in his reply.

1 **E. Amended class notice and distribution plan**

2 At this stage, the Court will reserve its approval of the parties' class notice and distribution
3 plan. The parties' separate proposals generally track appropriate examples produced by the
4 Federal Judicial Center. But the Court's involvement proved necessary to resolve disputed
5 particulars that the parties' independent conferences could not settle. Now that the Court has
6 resolved these disputes—which largely did not implicate the substantive requirements of Rule
7 23(c)(2)(B)—this case can move forward once the parties submit an amended proposal that is
8 consistent with this order. Given the state of the parties' separate proposals, the Court does not
9 anticipate that additional judicial involvement and expenditure of judicial resources will be
10 required. If it is called upon, however, the Court now makes clear that it will not consider
11 objections that could have been raised and resolved here.

12
13 **ORDER**

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Court RESERVES its approval of the parties' class notice and distribution
16 plan; and
- 17 2. The parties shall FILE an amended class notice and distribution plan for the Court's
18 approval within fourteen days of service of this order. If the parties are unable to
19 file a joint proposal, then they shall simultaneously file independent briefing on the
20 matter by that same date. In the latter situation, the parties shall also
21 simultaneously file responses within seven days after initial briefs are filed and
22 replies within five days after responses are filed.

23
24 IT IS SO ORDERED.

25 Dated: March 10, 2021



26 SENIOR DISTRICT JUDGE