

1 2012 Order. ECF No. 93 ("Apr. 2 Order"). Nevertheless, the Court
2 is still concerned about the notice that the parties propose to
3 send to potential class members. Kellner Am. Decl. Ex. B ("Not.").

4 Previously, the Court stated that the proposed notice was
5 simply too long. The Court is concerned that few class
6 members will read a fifteen-page, single-spaced Class
7 Notice without having been given some initial hint as to
8 why they should bother. The parties should provide an
industry-standard short-form notice that directs them to
the long-form notice for details.

9 Apr. 2 Order at 19. The parties have responded to this guidance by
10 averring that they "will provide a short industry standard form
11 notice that provides all the necessary information, while
12 simultaneously providing class members with a means to access more
13 detailed information if the class members desire that information."
14 Am. Mot. at 15. They then explain that the proposed notice
15 contains all the information required by Federal Rule of Civil
16 Procedure 23(e)(1).²

17 This is true, but it does not adequately address the problem
18 that the Court previously identified. The problem with the
19 proposed notice is not that it provides too little information, but
20 too much. The district court "must direct to class members the
21 best notice that is practicable under the circumstances"
22 Fed. R. Civ. P. 23(c)(2)(B). The notice must be concise. Id.
23 Indeed, as the treatise cited in Plaintiffs' moving papers
24 explains: "The notice should be brief and reasonably clear to the
25 minimally sophisticated layperson." 3 Newberg on Class Actions §
26 8:32 (4th ed.).

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28 ² Rule 23(e)(1) provides, in full, that "[t]he court must direct
notice in a reasonable manner to all class members who would be
bound by the proposal."

1 The notice proposed here is not brief, and Plaintiffs'
2 description of the eight-page, single-spaced, small-type notice as
3 "short" misses the mark. On the contrary, for a "minimally
4 sophisticated layperson," the parties' proposed notice would seem
5 lengthy and daunting; it would be unlikely to result in further
6 inquiry. The parties are to be commended for setting up a website
7 that will provide interested potential class members with further
8 detail about the settlement. See Not. at 2, 4, 7, 8 (placeholders
9 referring to planned website). But the Court is puzzled why the
10 parties do not simply send potential class members a brief, bare-
11 bones letter or postcard directing them to the website. Indeed,
12 the mailing's main objective should be to entice potential class
13 members to view the website.

14 Because the Court determines that, under the circumstances of
15 this case, the notice proposed by the parties is not the best
16 notice practicable under the circumstances nor reasonably concise,
17 as required by Rule 23, the Court DENIES WITHOUT PREJUDICE
18 Plaintiffs' amended motion for preliminary approval of the proposed
19 class settlement. Plaintiffs may submit a second amended motion
20 and supporting materials within thirty (30) days of this Order.

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22 IT IS SO ORDERED.

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24 Dated: August 1, 2012


UNITED STATES DISTRICT JUDGE

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