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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

12 REID YEOMAN and RITA  
13 MEDELLIN, on behalf of themselves  
and all others similarly situated

CASE NO. 11cv701 WQH  
(BGS)

## ORDER

## Plaintiffs,

VS.

IKEA U.S. WEST, INC.; DOES 1-50,  
inclusive.

### Defendants.

HAYES, Judge:

The matter before the Court is the Amended Motion to Compel Notice to the Certified Class filed by Plaintiffs Reid Yeoman and Rita Medellin. (ECF No. 95).

## I. Background

On November 8, 2011, Plaintiffs filed the First Amended Class Action Complaint (“Complaint”). (ECF No. 25). Plaintiffs allege that they purchased items from an Ikea store using a credit card, and that, “[d]uring the credit card transaction, the cashier asked plaintiff[s] for [plaintiffs’] ZIP code.... [B]elieving [plaintiffs were] required to provide the requested information to complete the transaction, [plaintiffs] provided it.” *Id.* at 3. Plaintiffs allege that Defendant has a uniform policy of requesting and recording ZIP codes from customers during credit card transactions, in violation of California’s

1 Song-Beverly Credit Card Act of 1971.<sup>1</sup> *Id.* at 2.

2 On January 13, 2012, Plaintiffs filed a motion for class certification (ECF No.  
3 30), which the Court granted on May 4, 2012. (ECF No. 43). The Court certified the  
4 following class:

5 [A]ll persons from whom Ikea requested and recorded a ZIP Code in  
6 conjunction with a credit card transaction in California from February 16,  
7 2010 through the date of trial in this action (the ‘Class’).

8 Excluded from the Class are (i) transactions wherein personal information  
9 was required for a special purpose incidental but related to the individual  
10 credit card transaction, including, but not limited to, information relating  
11 to shipping, delivery, servicing, or installation of the purchased  
12 merchandise, or for special orders; and (ii) transactions wherein a credit  
card issued to a business was used. Also excluded from the Class are the  
officers and directors of Defendant and of its corporate parents,  
subsidiaries and affiliates, or any entity in which Defendant has a  
controlling interest, and the legal representatives, successors or assigns of  
any such excluded persons or entities, and the Court to which the matter  
is assigned.

13 *Id.* at 15.

14 On September 7, 2012, Defendant filed a Motion to Decertify the Class pursuant  
15 to Federal Rule of Civil Procedure 23(c) (“Motion to Decertify”). (ECF No. 51). On  
16 November 1, 2012, Plaintiffs filed a Motion to Compel Notice to the Certified Class  
17 (“Motion to Compel Notice”). (ECF No. 74). On February 27, 2013, the Court granted  
18 in part and denied in part Defendant’s motion to decertify the class (ECF No. 93), and

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19 <sup>1</sup> The Song-Beverly Credit Card Act provides:  
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21 [N]o person, firm, partnership, association, or corporation  
22 that accepts credit cards for the transaction of business shall do  
any of the following: ...  
23

24 Request, or require as a condition to accepting the credit  
25 card as payment in full or in part for goods or services, the  
cardholder to provide personal identification information, which  
the person, firm, partnership, association, or corporation accepting  
the credit card writes, causes to be written, or otherwise records  
upon the credit card transaction form or otherwise....  
26

27 For purposes of this section ‘personal identification  
28 information,’ means information concerning the cardholder, other  
than information set forth on the credit card, and including, but  
not limited to, the cardholder’s address and telephone number.  
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Cal. Civ. Code § 1747.08.

1 modified the class definition to:

2 [A]ll persons from whom Ikea requested and recorded a ZIP Code in  
3 conjunction with a credit card transaction in California from February 16, 2010  
4 through February 28, 2011 (the ‘Class’). Excluded from the Class are (i)  
5 transactions wherein personal information was required for a special purpose  
6 incidental but related to the individual credit card transaction, including, but not  
7 limited to, information relating to shipping, delivery, servicing, or installation  
8 of the purchased merchandise, or for special orders; (ii) transactions wherein  
9 a credit card issued to a business was used; and (iii) transactions executed at  
10 self-checkout kiosks.

11 *Id.* at 28-29. The February 27, 2013 Order also denied Plaintiffs’ Motion to Compel  
12 Notice without prejudice and with leave to amend “in light of the Court’s decision to  
13 both modify the class period and exclude transactions conducted at self-checkout kiosks  
14 from the class definition....” *Id.* at 28.

15 On March 28, 2013, Plaintiffs filed an Amended Motion to Compel Notice to the  
16 Certified Class (“Amended Motion to Compel Notice”). (ECF No. 95). Along with the  
17 Amended Motion to Compel Notice, Plaintiffs included three proposed notices that  
18 were “modified to conform to the revised Class definition, and the parties have agreed  
19 to the substance of the proposed notices.” *Id.* at 2; Declaration of Gene J. Stonebarger  
20 (“Stonebarger Decl.”) Exh. A “Long Form Notice,” ECF No. 95-2; Exh. B “In-Store  
21 Notice,” ECF No. 95-3; and Exh. C “Short Form Notice,” ECF No. 95-4. Plaintiffs  
22 indicate that the parties have agreed upon the following notice procedures: (1)  
23 publication notice on a website containing a copy of the Long Form Notice, case  
24 information, and contact information for Class Counsel; and (2) posting the In Store  
25 Notice at the customer service desk located in each of Ikea’s California retail stores.  
26 (ECF No. 95 at 3). Plaintiffs contend that the parties, “have met and conferred ...  
regarding a proposed notice plan but dispute whether notice should be disseminated to  
potential class members by email and whether notice should be posted at the point-of-  
sale locations in Ikea’s California stores. The parties also dispute who bears the cost  
of notice.” (ECF No. 95 at 2).

27 On April 15, 2013, Defendant filed an opposition to Plaintiffs’ Amended Motion  
28 to Compel Notice. (ECF No. 96). Defendant contends that “[P]laintiff[s]’ plan for e-

1 mail to all of Ikea's customers and posting at every point of sale throughout its stores  
2 should be rejected in favor of the other two methods proposed: (1) website notice, and  
3 (2) a single posting in each store where Ikea's other notices to customers are placed.”  
4 *Id.* at 6. Plaintiffs request that, “if direct notice is ordered, then the notice should be  
5 accompanied by a questionnaire to putative class members that will allow the Court and  
6 the parties to define the claims to be tried and validate the process the Court envisions  
7 for trial....” *Id.* at 8. Defendant attached a proposed questionnaire as Exhibit A. (ECF  
8 No. 96-1). On April 22, 2013 Plaintiffs filed a reply. (ECF No. 98).

9 **II. Discussion**

10 Plaintiffs seek an order from this Court that, in addition to the two methods of  
11 notice agreed upon by the parties, “the In-Store Notice should be posted (in tear-away  
12 form) at the point-of-sale locations in each of Ikea's California stores.” (ECF No. 95  
13 at 3). “Plaintiff[s] also propose[] that the Short Form Notice ... be sent via email to all  
14 of Ikea's customers for whom Ikea maintains an email address.” *Id.* Finally, Plaintiffs  
15 contend that “the cost of notice should be borne by Ikea....” *Id.*

16 Federal Rule of Civil Procedure 23(c)(2)(B) provides that “[f]or any class  
17 certified under Rule 23(b)(3), the Court must direct to class members the best notice  
18 that is practicable under the circumstances, including individual notice to all members  
19 who can be identified through reasonable effort.” Rule 23(c)(2)(B) provides that the  
20 notice must:

21 clearly and concisely state in plain, easily understood language: (i) the  
22 nature of the action; (ii) the definition of the class certified; (iii) the class  
23 claims, issues, or defenses; (iv) that a class member may enter an  
24 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  
class judgment on members under Rule 23(c)(3).

25 *Id.*

26 The parties in this case have “generally agreed to the substance of the notice....”  
27 (ECF No. 95 at 4). Having reviewed the proposed notices, the Court finds that these  
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1 notices satisfy the requirements of Rule 23(c)(2)(B).<sup>2</sup> Specifically, the Court approves  
2 of the forms of notice attached to Plaintiffs' Amended Motion to Compel Notice as  
3 Exhibits A, B, and C. (ECF Nos. 95-2, 95-3, 95-4). The Court also approves of the  
4 procedures agreed upon by the parties: (1) publication notice on a website containing  
5 a copy of the Long Form Notice, case information, and contact information for Class  
6 Counsel; and (2) In-Store Notice posted at the customer service desk located in each of  
7 Ikea's California retail stores. (ECF No. 95 at 3). The Court reviews each of Plaintiffs'  
8 additional proposed notice procedures to determine if they are the "best practicable  
9 under the circumstances" as required by Rule 23(c)(2)(B).

10                   **A.     Notice at Point-of-Sale Locations**

11               Plaintiffs contend that, "... posting a summary notice at each point-of-sale  
12 location in Ikea's California retail stores is economical and reasonably designed to  
13 reach Ikea's customers who are likely to have previously purchased at Ikea during the  
14 Class period and included in the Class." (ECF No. 95 at 2). Plaintiffs contend that,  
15 "[p]roviding notice at the location where the conduct at issue originally occurred is most  
16 likely to reach Class members and is the most visible to them." *Id.* at 7. "...[P]otential  
17 Class members will pass through the point of sale locations at Ikea stores but only a  
18 small percentage will go to the customer service counter." *Id.*

19               Defendant contends that posting notices at each point-of-sale location "is not  
20 practicable and is an unreasonable request that will have a negative impact on Ikea's  
21 reputation with current and future customers (the vast majority of whom are not  
22 members of the class) and interfere with its legitimate interest in efficiently serving its  
23 customers." (ECF No. 96 at 15). Defendant asserts that "the presence of notices at the

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25               <sup>2</sup> To the extent that the proposed notices advise potential Class members that they  
26 may "keep any rights to sue Ikea separately about the same claims in this lawsuit,"  
27 (ECF No. 95-2 at 2; 95-4 at 2), the Court does not make any determination as to  
28 whether individuals could bring a claim against Defendant under the The Song-Beverly  
Credit Card Act should they request to be excluded from the Class. *See, e.g.* Cal. Civ.  
Code § 1747.08 (violations of the Song-Beverly Credit Card Act have a one-year statute  
of limitations).

1 dozens of points of sale is likely to result in questions from customers to cashiers about  
2 the action, about the class, and about membership.” *Id.* at 16.

3 Plaintiffs cite numerous cases to support their position that posting notice in a  
4 conspicuous retail location is an appropriate notice procedure. (ECF No. 95 at 6).  
5 However, in none of the cases cited by Plaintiffs did the court specifically approve of  
6 multiple postings per retail location, or posting at each point-of-sale. *See Ersler v.*  
7 *Toshiba America, Inc.*, CV-07-2304, 2009 U.S. Dist. LEXIS 14374, at \*3 (E.D.N.Y.  
8 Feb. 24, 2009) (approving a plan to post notice at retailers where alleged defective  
9 televisions are sold); *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 550-  
10 51 (N.D. Ga. 1992) (approving a plan to post notice in ticket offices); *Galvan v. KDI*  
11 *Distrib.*, SACV 08-0999, 2011 U.S. Dist. LEXIS 127602, at \*12-13 (C.D. Cal. Oct. 25,  
12 2011) (approving plan to post notice at retail stores where prepaid calling cards at issue  
13 are sold); *Fiore v. Goodyear*, No. 2:09-cv-843, 2011 U.S. Dist. LEXIS 24371, at \*11  
14 (M.D. Fla. Mar. 10, 2011) (approving plan that placed only one notice form in each  
15 retail store); *Todd v. Retail Concepts Inc.*, No. 3:07-0788, 2008 U.S. Dist. LEXIS  
16 117126, at \*7 (M.D. Tenn. Aug. 22, 2008) (approving “one in-store posting” at or near  
17 the cash register of each retail store).

18 The Court finds that posting notices at each point-of-sale location in each of  
19 Ikea’s California locations is not practicable and not supported by law. The Court finds  
20 that posting notice at each point-of-sale location is likely to cause confusion and would  
21 encourage inquiries by non-class members, which could interfere with Ikea’s reputation  
22 and business. *See Macarz v. Transworld Sys., Inc.*, 201 F.R.D. 54, 64 (D. Conn. 2001)  
23 (stating that “sending notice to the admittedly over-inclusive group here would most  
24 likely confuse the recipients and encourage [inquiries] by non-class members.”); *In re*  
25 *Domestic Air*, 141 F.R.D. at 539-46 (same). The Court finds that posting notices at  
26 each point of sale is not practicable under the circumstances, and is therefore not  
27 required by Rule 23. Fed. R. Civ. P. 23(c)(2)(B). The Court denies Plaintiffs’ request  
28 to order notice to be posted at each point-of-sale location in Ikea’s California retail

1 stores.

2           **B. Notice by Email**

3           Plaintiffs contend that, “notice by email is effective, economical, and satisfies the  
4 requirements of Fed. R. Civ. P. 23(c)(2)(B). Email notice to Ikea’s customers for whom  
5 Ikea has email information is appropriate because it is the most cost effective manner  
6 to directly reach a significant number of potential Class members.” (ECF No. 95 at 2).

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8           Defendant contends that email notice “is so substantially over-inclusive and  
9 under-inclusive that it bears no reasonable relationship to membership in the class.”  
10 (ECF No. 96 at 6). Defendant states that its email list consists of over 1.6 million email  
11 addresses that were obtained from a variety of sources, including Ikea sign up forms,  
12 the Ikea Family program, Ikea’s website registration pages, Ikea in-store contests and  
13 giveaways, and Ikea’s partnerships with other media channels. *Id.* at 10-11. Defendant  
14 explains that, “[c]lose to 1 million of these emails were obtained before the class  
15 period” and that “... Ikea has no way to link any email in its possession with the  
16 individual putative class members who have never been identified by name, or  
17 otherwise.” *Id.*

18           Under Rule 23, a court must “direct to class members the best notice that is  
19 practicable under the circumstances, including individual notice to all members who can  
20 be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “Where the  
21 names and addresses of class members may be ascertained through reasonable efforts,  
22 individual notice must be sent.” *Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ.  
23 00214(CM), at \*2, 2010 WL 5187746 (S.D.N.Y Dec. 6, 2010) (citing *Eisen v. Carlisle*  
24 & *Jacquelin*, 417 U.S. 156, 173 (1974)). However, “if the names and addresses of class  
25 members cannot be determined by reasonable efforts, notice by publication is sufficient  
26 to satisfy the requirements of the due process clause and Rule 23.” *Id*; see also *Mullane*  
27 v. *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950); *Johnson v. General*  
28 *Mills, Inc.*, No. SACV 10-00061-CJC (ANx), 2013 WL 3213832, at \*4 (C.D. Cal. June

1 17, 2013) (notice by publication is used when identity and location of class members  
2 cannot be determined through reasonable efforts); *In re Wal-Mart Stores, Inc. Wage &*  
3 *Hour Litig.*, No. 06-02069 SBA, 2008 WL 1990806, at \*2 (C.D. Cal. May 5, 2008).

4 Notice to individuals is improper and not required by Rule 23 when it is overly  
5 broad or over-inclusive. See *In re Domestic Air*, 141 F.R.D. at 539 (court held that it  
6 was not necessary to send individual notice to all those on an over-inclusive list when  
7 there was no data which would enable the parties to determine who on the list was a  
8 class member); *In re “Agent Orange” Product Liab. Litig.*, 818 F.2d 145, 169 (2d Cir.  
9 1987) (rejecting argument that individual mail notice should have been provided to all  
10 2.4 million Vietnam Veterans, when “far fewer than that number were exposed to Agent  
11 Orange” and thus notice would have been “considerably overbroad”); *In re Nissan*  
12 *Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1099 (5th Cir. 1977) (rejecting proposed  
13 list of individuals to receive class notice, including both class members and non-class  
14 members, as being over-inclusive and as helpful as a “telephone book”).

15 In *Jermyn v. Best Buy Stores*, the Southern District of New York found that  
16 individual notice by email was improper because Best Buy’s email list would provide  
17 notice to “an overinclusive group of individuals.” 2010 WL 5187746, at \*7. In *Jermyn*,  
18 a class was certified of customers who were denied the benefit of Best Buy’s price  
19 match program. *Id.* Plaintiff proposed email notification to Best Buy’s entire email list.  
20 *Id.* The court found that, “there is no link between customers who have shared their  
21 email addresses with Best Buy and customers who were denied a price match.” *Id.* The  
22 court found that, “Jermyn’s proposed email notice will provide *individual* notice to an  
23 overinclusive group of individuals.... [I]ndividual notice to an overinclusive group is  
24 not required by Rule 23.” *Id.* (citing e.g., *In re “Agent Orange” Product Liab. Litig.*,  
25 818 F.2d at 169). “The list of email addresses, while limited to New York, may not  
26 necessarily correspond to customers who were denied a valid price match.” *Id.*

27 In this case, like in *Jermyn*, there is no link between individuals who may have  
28 provided their email addresses at some point between February 10, 2010 and February

1 28, 2011, and individuals who are members of the class. The list of 1.6 million  
2 individuals who gave Ikea their email addresses for a wide variety of purposes bears no  
3 reasonable relationship to the group of individuals whose zip codes were requested and  
4 recorded in conjunction with a credit card transaction. The Court concludes that notice  
5 by email is considerably overbroad, overinclusive, and not the best method “practicable  
6 under the circumstances” as required by Rule 23. Fed. R. Civ. P. 23(c)(2)(B). At this  
7 stage in the proceedings, before any liability has been found, the Court denies Plaintiffs’  
8 request to order notice by email to Defendant’s list of over 1.6 email addresses.

9 **C. Cost of Notice**

10 Plaintiffs contend that, “Ikea should be solely responsible for the cost of  
11 providing notice.” (ECF No. 95 at 10). Plaintiffs contend that even though plaintiff  
12 usually bears the cost of notice, the cost may be shifted after a showing of success on  
13 the merits. (ECF No. 95 at 9). Plaintiffs contend that, “there is no question that the  
14 Class claims have substantial merit.” *Id.* Plaintiffs also contend that “the relative  
15 resources of the parties weigh in favor of shifting the cost of notice to Ikea.” *Id.* at 10.  
16 Defendant contends that, “Plaintiff[s] must bear the cost of notice since there has been  
17 no decision on the merits which would warrant cost shifting.” (ECF No. 96 at 7).

18 “The usual rule is that a plaintiff must initially bear the costs of notice to the  
19 class.” *Eisen*, 417 U.S. at 178. The Ninth Circuit has found that “interim litigation  
20 costs, including class notice costs, may be shifted to defendant after plaintiff’s showing  
21 of some success on the merits, whether by preliminary injunction, partial summary  
22 judgment, or other procedure.” *Hunt v. Imperial Merchant Servs., Inc.*, 560 F.3d 1137,  
23 1143 (9th Cir. 2009).

24 At this stage in the proceedings, before any liability has been found, the Court  
25 finds that the cost of notice should remain with Plaintiff. Plaintiff’s request to order  
26 Defendant to bear the costs of notice is denied.

27 **III. Conclusion**

28 IT IS HEREBY ORDERED that the Amended Motion to Compel Notice to the

1 Certified Class filed by Plaintiffs (ECF No. 95) is GRANTED in part and DENIED in  
2 part. Notice shall be provided to the Class in the manner agreed upon by the parties:  
3 (1) by the creation and maintenance of a website containing the Long-Form Notice, case  
4 information, and contact information for Class Counsel; and (2) by posting the In-Store  
5 Notice at the customer service desk located in each of Ikea's California retail stores.  
6 Plaintiffs' requests for (1) email notice by Ikea to all of its customers for whom Ikea has  
7 an email address, and (2) the posting of in-store notice at each point-of-sale register for  
8 30 days, are DENIED. Plaintiffs shall bear all costs associated with notice to the class.

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10 DATED: November 5, 2013

11   
12 **WILLIAM Q. HAYES**  
13 United States District Judge

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