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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 EDUARDO NUNEZ, individually and on
12 behalf of others similarly situated,

13 Plaintiff,

14 v.

15 BAE SYSTEMS SAN DIEGO SHIP
16 REPAIR INC., a California Corporation;
and DOES 1 through 50 inclusive,

17 Defendants.
18
19

Case No.: 16-CV-2162 JLS (NLS)

**ORDER (1) ACCEPTING
PROPOSED SUPPLEMENTAL
NOTICE; (2) DIRECTING
SUPPLEMENTAL NOTICE TO THE
CLASS; AND (3) SETTING A NEW
DATE FOR THE FINAL FAIRNESS
HEARING**

(ECF No. 58)

20 Presently before the Court is Class Counsel's and Defendant BAE Systems San
21 Diego Ship Repair, Inc.'s (collectively, the "Parties") Joint Statement Regarding
22 Supplemental Notice to the Settlement Class, ("Joint Statement"). (ECF No. 58.) The
23 Parties have submitted this Joint Statement in accordance with the Court's August 2, 2017
24 Order, (ECF No. 57), which required the Parties to submit: (1) a statement confirming or
25 denying their willingness to bear the costs of re-notifying the Class, and, if the Parties wish
26 to do so, (2) a proposed supplemental notice incorporating the Court's ruling; and (3) a

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1 proposed schedule and proposed procedures for the supplemental notice, including a new
2 date for the Final Fairness Hearing. (Joint Statement 2;¹ *see also* ECF No. 57.)

3 As an initial matter, the Parties “agree to assume the additional cost for the
4 administration of re-notifying the Class Members, to be paid for jointly by Class Counsel
5 and BAE SDSR directly to the Settlement Administrator (Rust Consulting, Inc.) without
6 reducing the Settlement Fund.”² (Joint Statement 2 (emphasis in original).)

7 The Parties have attached their supplemental notice as an exhibit to their Joint
8 Statement. (Joint Statement Ex. A (“Suppl. Notice”), ECF No. 58-1.) The Parties (I) jointly
9 submit this supplemental notice for the Court’s approval, and (II) jointly propose
10 notification procedures and a renewed date for the Final Fairness Hearing. The Court
11 considers each in turn.

12 **I. Supplemental Notice**

13 Where there is a class settlement, Federal Rule of Civil Procedure 23(e)(1) requires
14 the court to “direct notice in a reasonable manner to all class members who would be bound
15 by the proposal.” “Notice is satisfactory if it ‘generally describes the terms of the settlement
16 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward
17 and be heard.’” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting
18 *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *see also Grunin v.*
19 *Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975) (“[T]he mechanics of the notice
20 process are left to the discretion of the court subject only to the broad ‘reasonableness’
21 standards imposed by due process.”).

22 In the Court’s August 2, 2017 Order, the Court noted two deficiencies in the Parties’
23 previous Class-wide notice. (*See generally* ECF No. 57.) In that Order, the Court instructed
24 the Parties to propose a supplemental notice that: (1) informs the Class Members of the
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27 ¹ Pin citations to docketed material refer to the CM/ECF numbers electronically stamped at the top of each
page.

28 ² The Parties also note that the supplemental notice will be translated into Spanish. (Joint Statement 2.)

1 entire scope of their release of liability, (*id.* at 6); and (2) alerts the Class Members to the
2 existence of Class Counsel’s Motion for Attorney’s Fees so that they can have a proper
3 opportunity to object to the motion before the Final Fairness Hearing, (*id.* at 11).

4 The Court finds that this supplemental notice satisfactorily incorporates the Court’s
5 August 2, 2017 ruling. As to the first issue, the Parties provide the following language:

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7 **1. Release Period:**

8 By participating in the \$2,900,000.00 settlement and receiving your
9 share of the net settlement, as estimated in the original Notice, you will
10 be releasing claims through the date that the District Court gives final
11 approval of the settlement. For a complete statement and the details of
12 the scope of all claims being released, please refer to the Joint
13 Stipulation of Settlement and Release (“Settlement Agreement”) on file
14 with the Court.

15 (Suppl. Notice 1 (emphasis in original).) This adequately apprises the Class Members of
16 the full scope of their release of liability; namely, that acceptance of the Settlement would
17 release their claims through the date on which the Court grants final approval of the
18 Settlement. Thus, the Court finds that this language sufficiently incorporates the Court’s
19 August 2, 2017 Order.

20 As to the second issue, the Parties provide the following language:

21 **2. Attorney’s Fees Motion:**

22 On July 6, 2017, Class Counsel filed a Motion for Attorney’s Fees in
23 this case. The information supplied in the Motion for Attorney’s Fees
24 supplements and is consistent with what was indicated in the original
25 Notice that you received. You have the right to review this motion
26 before making a decision as to whether you might elect to opt-out of
27 the settlement or to object to this specific motion.

28 If you wish to review the Settlement Agreement or the Motion for
Attorney’s Fees, you may do so in-person at the Courthouse, located at:
221 West Broadway, San Diego, California 92101, online via the
“PACER” website, which is accessible at:

1 <https://pacer.login.uscourts.gov/csologin/login.jsf>, or by contacting
2 Class Counsel [at a provided address.]
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4 (*Id.*) The Court finds that this language both alerts Class Members to the existence of the
5 Motion for Attorney’s Fees, and also provides three reasonable means for obtaining a copy
6 of the motion. More importantly, this language adequately notifies the Class Members that
7 they have an opportunity to object to the motion if they so desire. (*Id.*; *see also id.* at 3
8 (outlining objection procedures).) Thus, the Court finds that this language sufficiently
9 incorporates the Court’s August 2, 2017 ruling.

10 The supplemental notice also faithfully incorporates the Court’s other directives. For
11 instance, the Court noted that the renewed period for opt-outs and limited objections would
12 be forty-five days. (*Compare* ECF No. 57, at 7 (setting a forty-five-day period), *with* Suppl.
13 Notice 3 (noting the same).) Moreover, the Court clarified that, during this forty-five-day
14 period, it will not consider general objections to the Settlement because the Class has
15 already had an adequate opportunity to so object. (ECF No. 57, at 7; *id.* n.6.) Nevertheless,
16 the Court noted that it will consider objections limited to: (1) the temporal extent of the
17 release of liability, and (2) Class Counsel’s Motion for Attorney’s Fees. (*Id.* at 7, 11.) The
18 Parties’ supplemental notice sufficiently apprises Class Members of these opportunities.
19 (Suppl. Notice 2; *id.* at 3 (noting that Class Members “may only object to the settlement at
20 this stage if your objection is because: (1) you will be releasing claims through the date
21 that the District Court gives final approval of the settlement, and/or (2) you object to the
22 Motion for Attorney’s Fees filed by class counsel” (emphasis in original)).) Accordingly,
23 the Court finds that this supplemental notice is sufficient under Rule 23(e)(1) and
24 adequately incorporates the Court’s August 2, 2017 Order.

25 **II. Notification Procedures and Final Fairness Hearing Date**

26 Now that the Court has approved the Parties’ supplemental notice, the Parties
27 propose the following notification procedures:
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- 1 a) within five (5) days of the Supplemental Notice being approved by the
2 Court, that Rust will mail out the Supplemental Notice to all Settlement
3 Class Members, using the updated addresses for all Settlement Class
4 Members based on a NCOA search related to the initial mailing.
- 5 b) the Settlement Class Members will have forty-five (45) days from the date
6 of mailing of the Supplemental Notice to send in/file any Objections or
7 Opt-Out submissions as provided in the Supplemental Notice, which shall
8 determine the postmark deadline for identifying valid, timely Objections
9 and Opt-Outs.
- 10 c) on October 12, 2017, or as soon thereafter as is convenient for the Court,
11 a Final Fairness Hearing shall take place before the Honorable Janis L.
12 Sammartino in Courtroom 4D of the United States District Court for the
13 Southern District of California.
- 14 d) at least seven (7) calendar days prior to the Final Fairness Hearing, the
15 Parties shall file a Supplemental Brief to notify the Court of any Opt-Outs
16 and to address the Objections filed, if any. This Supplemental Brief will
17 also include a declaration from Rust regarding the status of any Objections
18 and/or Opt-Outs received in response to the Supplemental Notice.
- 19 e) to the extent that there are any Objections that have not been filed with the
20 Court, Rust will include such Objections with its declaration.

21 (Joint Statement 2–3.)

22 The Court finds that these procedures are generally adequate, subject to the
23 following amendments. First, the proposed Final Fairness Hearing of October 12, 2017 is
24 not available. Accordingly, the Court **SETS** the renewed date for the Final Fairness
25 Hearing on Tuesday, November 7, 2017, at 1:30 p.m. Second, the Court will need
26 additional time, beyond the proposed seven days, to review any supplemental brief filed
27 by the Parties. Accordingly, the Parties **SHALL FILE** their supplemental brief on or before
28 fourteen days from the date of the Final Fairness Hearing. With these amendments the
Court finds that these proposed procedures are adequate under Rule 23. Accordingly, the
Parties **SHALL** proceed under these procedures, consistent with the Court’s amendments,
and revise their supplemental notice to include the relevant provisions.

1 **CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** the Parties’ requests in their Joint
3 Statement (ECF No. 58). Accordingly, the Court **DIRECTS** the Parties to provide this
4 supplemental notice to the Class Members consistent with the Court’s Order. The Court
5 also **SETS** the Final Fairness Hearing date on Tuesday, November 7, 2017, at 1:30 p.m.
6 The Court **ORDERS** the following schedule for further proceedings:

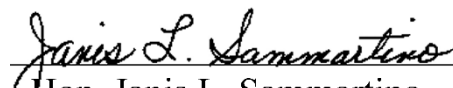
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Event	Date
Settlement Administrator to Send Supplemental Notice to Class Members	Within 5 days of the date on which this Order is electronically docketed
Last Day for Class Members to File Request for Exclusion from Settlement	No later than 45 days from the date of mailing the Notice
Last Day for Class Members to File <u>Limited</u> Objections to the Settlement/Motion for Attorney’s Fees	No later than 45 days from the date of mailing the Notice
Last Day for Class Members to File Notice of Intention to Appear at Final Fairness Hearing	No later than 45 days from the date of mailing the Notice
Parties to File Supplemental Brief	No later than 14 days before the Final Fairness Hearing
Final Fairness Hearing	November 7, 2017 at 1:30 p.m.

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23 **IT IS SO ORDERED.**

24 Dated: August 10, 2017

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26 Hon. Janis L. Sammartino
27 United States District Judge
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