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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EFRAIN MUNOZ, *et al.*,
Plaintiffs,
vs.
PHH CORP. *et al.*,
Defendants.

Case No. 1:08-cv-0759-AWI-BAM

**ORDER REGARDING JOINT MOTION FOR
APPROVAL OF THE PROPOSED FORM AND
MANNER OF NOTICE OF PENDENCY OF
CLASS ACTION**
(Doc. 302)

On October 2, 2015, Plaintiffs Efrain Munoz, Leona Lovette, Stephanie Melani, Iris Grant, and John Hoffman, and Daniel Maga, II (collectively “Plaintiffs”) and Defendants PHH Corp., PHH Mortgage Corp, PHH Home Loans, LLC (collectively referred to herein as “PHH”), and Atrium Insurance Co. (“Atrium” and together with PHH, “Defendants”) filed a Joint Motion for Approval of the Proposed Form and Manner of Notice of Pendency of Class Action. (Doc. 302.)

The Court has determined that the matter is appropriate for resolution on the jointly submitted papers. Accordingly, the hearing scheduled for November 20, 2015, is **HEREBY VACATED**, and the matter is deemed submitted. Local Rule 230(g).

I. Background

On June 11, 2015, the Court certified this matter as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) on behalf of:

All persons who obtained residential mortgage loans originated and/or acquired by PHH

1 and/or its affiliates on or after June 2, 2007, and, in connection therewith, purchase
2 private mortgage insurance and whose loans were included within PHH's captive
mortgage reinsurance arrangements (the "Class").
3 (Docs. 230, 288.) The parties now request approval of the Proposed Legal Notice of Pendency of
4 Class Action. (Doc. 302-1 and 302-2.)

5 **II. Legal Standard**

6 For any class certified under Rule 23(b)(3), such as that certified here, the Court must direct to
7 class members the best notice that is practicable under the circumstances, including individual notice
8 to all members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). The
9 notice "must clearly and concisely state in plain, easily understood language" the following:

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

14 Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii). Class notice must be "reasonably calculated, under all the
15 circumstances, to apprise interested parties of the pendency of the action and afford them an
16 opportunity to present their objections." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)
17 (citation omitted).

18 **III. Discussion**

19 **A. Contents of the Notice**

20 Having reviewed the proposed class notice, the Court finds that it contains the information
21 contemplated by Rule 23(c)(2)(B)(i)-(vii). Specifically, the proposed class notice provides
22 information regarding (i) the nature and background of this action, (ii) the definition of the certified
23 class, (iii) the allegations of the class and Defendants' defenses, (iv) the option of a class member to
24 obtain an attorney; (v) the option for exclusion from the class and any result of this case, (vi) the time
25 (anticipated to be 45 days after mailing of the notice) and manner (by letter sent to an address) for
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1 requesting exclusion,¹ and (vii) the binding effect of a class judgment on class members. (Doc. 302,
2 Exs. A and B.) Additionally, the proposed class notice provides class members with options regarding
3 how to obtain more information about this case, including through a dedicated website (proposed
4 name: <http://www.PHHPMIRESPAlitigation.com>), a toll-free litigation hotline. The proposed class
5 notice also provides contact information for Plaintiffs' counsel and information on how to examine the
6 Court's file. (Docs. 302-1, Exs. A and B.)

7 **B. Mailing and Publishing of Class Notice**

8 The parties propose dissemination of the class notice through: (1) a direct mailing to individual
9 class members ("Individual Notice") ("Exhibit A"); (2) a summary notice published in a national
10 newspaper, *USA Today* ("Publication Notice"—with the exact text of the Class Notice reformatted for
11 publication purposes)("Exhibit B") (together with Exhibit A, "Class Notice"); and (3) on an internet
12 website, identified above, dedicated to the litigation. (Doc. 302 at 3.)

13 With regard to direct mailing, the parties explain that the Individual Notice will be sent by a
14 third party administrator by first-class mail to the last known address of each class member. (Doc. 302
15 at 4.) Notice "by first-class mail can satisfy the best notice practicable when there is no indication that
16 any of the class members cannot be identified through reasonable efforts." *Hunt v. Check Recovery*
17 *Sys., Inc.*, No. 05-cv-04993, 2007 WL 2220972, at *3 (N.D. Cal. Aug. 1, 2007) (affirming a Rule
18 23(b)(3) notice plan providing for delivery of notice by first class mail). Here, Defendants reportedly
19 provided a complete class list containing last known addresses and additional personal identifiers on
20 September 25, 2015. (Doc. 302 at 4.)

21 The Court finds that the individual notice contemplated by the parties is the best notice
22 practicable given the availability of class members' last known addresses. However, the parties have
23 failed to provide information regarding tracking of the mailing or any processes for handling mail
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25 ¹ Rule 23 does not require any particular method for allowing class members to opt out of a class. *See, e.g., Makaeff v.*
26 *Trump University, LLC*, No. 10-cv-0940-GPC-WVG, 13-cv-2519-GPC-WVG, 2015 WL 5638192, * 4-5 (S.D. Cal. Sept.
27 21, 2015) (discussing Rule 23 requirement related to notice of manner of exclusion from class; noting Federal Judicial
28 Center example forms merely include language in notice that if a class member wishes to be excluded from class, he or she
must send a letter to a given address). The Court finds the manner identified here to be sufficient. However, the parties
have failed to provide information regarding the tracking and reporting of exclusions. Therefore, the parties shall be
directed to report all exclusions to the Court.

1 returned as undeliverable. Additionally, the parties have failed to specify how the Court would be
2 informed as to the successes or failures of providing individual notice. Nonetheless, the parties'
3 request for approval of individual notice by mailing shall be granted. To address the Court's concerns,
4 Plaintiffs' counsel or the third-party administrator shall be directed to submit a declaration(s) detailing
5 the processes for handling mail returned as undeliverable, efforts undertaken to re-serve the notice,
6 along with information regarding the number of successful/unsuccessful mailings.

7 With regard to publication, within fourteen (14) days after individual notices are mailed,
8 Plaintiffs will cause the Publication Notice to appear in *USA Today*, a national publication with an
9 approximate Monday through Thursday daily circulation of 1,104,259. (Doc. 302-3 at 3.) The
10 Individual and Publication Notices also will be posted on the dedicated litigation website. Plaintiffs
11 further represent that, subject to Defendants' approval, Plaintiffs' counsel will provide summary
12 information regarding the case on the dedicated website, along with frequently asked questions and
13 relevant case documents.

14 The parties believe that the number and media variety of their notice plan will ensure the
15 dissemination of adequate and reasonable notice to a class numbering at least in the tens of thousands
16 located throughout the country. Analogous notice plans have been approved by other courts. *See,*
17 *e.g., Makaeff*, 2015 WL 563812 at *6-7 (approving multi-tiered notice plan that included
18 individualized mailings, a case-specific website, a toll-free number, and publication in *USA Today*);
19 *Flynn v. Sony Elecs., Inc.*, No. 09-cv-2109, 2015 WL 128039, at *4 (S.D. Cal. Jan. 7, 2015)
20 (approving a multi-tiered notice plan that included individualized mailings, a case-specific website,
21 and publication of notice in national magazines).

22 Having considered the parties' proposal for dissemination of class notice, the Court finds that the
23 procedures established for mailing, publication and distribution constitute the best notice practicable
24 under the circumstances, including individual notice to all members who can be identified through
25 reasonable effort. Fed. R. Civ. P. 23(c)(2)(B).

26 **IV. Conclusion and Order**

27 Based on the foregoing, IT IS HEREBY ORDERED that:

- 28 1. The Joint Motion for Approval of the Proposed Form and Manner of Notice of Pendency of

- 1 Class Action, including the Parties' Proposed Class Notice and proposed plan for distribution
2 of notice to prospective class members is GRANTED;
- 3 2. Plaintiffs' Counsel shall cause the Individual Notice, substantially in the form attached to the
4 Joint Motion as Exhibit A, to be mailed, by first class mail, postage prepaid, **within twenty-**
5 **one (21) days of the date of this Order**, to all Class members at the address of each such
6 person as set forth in the records of Defendants, or who otherwise can be identified by
7 reasonable effort;
- 8 3. Plaintiffs' Counsel shall, no later than **thirty (30) days** after mailing of the Individual Notice,
9 file with the Court proof of mailing of the Individual Notice;
- 10 4. Plaintiffs' Counsel or the third-party administrator shall, no later than **sixty (60) days** after
11 mailing of the Individual Notice, file with the Court a declaration under penalty of perjury
12 detailing the mailing processes, including information regarding the processes for addressing
13 mail returned as undeliverable, efforts made for re-service, and the success/failure rate for
14 mailing of the Individual Notice;
- 15 5. Plaintiffs' Counsel shall cause the Publication Notice, substantially in the form attached to the
16 Joint Motion as Exhibit B, to be published once in the national edition of *USA Today* within
17 **fourteen (14) days** of the mailing of the Notice. Plaintiffs' Counsel shall, no later than **thirty**
18 **(30) days** after publication, file with the Court proof of publication of the Publication Notice;
- 19 6. All members of the Class who do not timely request exclusion from the Class in the form and
20 manner set forth in the Notices, by a date to be specified in the Notices, which date shall be
21 forty-five (45) days from the mailing date of the Notice, will be bound by any judgment or
22 determination of the Court affecting the Class; and
- 23 7. Within **thirty (30) days** after expiration of the exclusion deadline, the parties shall submit a
24 report detailing the results of the exclusion process.

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26 IT IS SO ORDERED.

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28 Dated: October 16, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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