

1 may not be class members. (Doc. 191 at 1–2). Plaintiff’s Motion is fully briefed. (Docs.
2 190, 191, 192). Additionally, Defendant moved to update the lists of possible class
3 members. (Doc. 193). Defendant’s Motion is unopposed. (Doc. 194).

4 II. LEGAL STANDARD

5 Federal Rule of Civil Procedure 23(c)(2)(B) provides that “[f]or any class certified
6 under Rule 23(b)(3) . . . the court must direct to class members the best notice that is
7 practicable under the circumstances, including individual notice to all members who can
8 be identified through reasonable effort.” *Id.*; *see also Bruno v. Quten Rsch. Inst., LLC*, No.
9 SACV1100173DOCEX, 2012 WL 12886843, at *1 (C.D. Cal. July 16, 2012) (“Notice
10 plans are not expected to reach every class member; Rule 23 requires the best notice
11 ‘practicable,’ not perfect notice.”). Furthermore, the notice “must clearly and concisely
12 state in plain, easily understood language” the following:

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

20 *Id.* The purpose of these requirements is to ensure that the notice is “reasonably calculated,
21 under all the circumstances, to apprise interested parties of the pendency of the action and
22 afford them an opportunity to present their objections.” *Silber v. Mabon*, 18 F.3d 1449,
23 1454 (9th Cir. 1994) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.
24 306, 314 (1950)). However, actual receipt of notice is not required. *Id.* Furthermore, the
25 notice may be delivered via “United States mail, electronic means, or other appropriate
26 means.” Fed. R. Civ. P. 23(c)(2)(B). District courts have “broad power and discretion
27 vested in them by [Rule 23]’ in determining the parameters of appropriate class notice.”
28 *Chinitz v. Intero Real Est. Servs.*, No. 18-CV-05623-BLF, 2020 WL 7042871, at *2 (N.D.
Cal. Dec. 1, 2020) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 345 (1979)).

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1 **III. DISCUSSION**

2 **a. Substitute Lists of Possible Class Members**

3 Defendant moves to substitute the lists of possible class members with updated lists.
4 (Doc. 193). Plaintiff does not oppose this request. (Doc. 194). The updated lists more
5 accurately identify potential class members and replace decade-old addresses with more
6 current addresses. (Doc. 193 at 3–4). Accordingly, the Court grants Defendant’s Motion
7 for Leave to Substitute Lists of Possible Class Members. (Doc. 193).

8 **b. Class Notice**

9 Plaintiff asks the Court to approve: (i) the form of the Email Notice; (ii) the form of
10 the Postcard Notice; (iii) the form of the Notice of Class Action and Class Members’
11 Rights; and (iv) the Notice Plan. (Doc. 190 at 3). Defendant raises no objections against
12 the general process for providing direct notice to possible class members. (Doc. 191 at 1).
13 Upon reviewing the notice forms and plan, the Court finds that Plaintiff meets all the
14 requirements under Rule 23. (Doc. 190-1; 190-2; 190-3; 190-4). Plaintiff also moves to
15 provide supplemental notice via electronic media because the available contact information
16 for potential class members is at least ten years old. (Doc. 192 at 2). Defendant has provided
17 updated contact lists with more current addresses. (Doc. 193). Accordingly, Plaintiff’s
18 Motion to Approve Class Notice is granted in part and Plaintiff’s request for supplemental
19 notice is denied. Additionally, the Court grants Plaintiff’s request to appoint A.B. Data,
20 Ltd. as Notice Administrator.

21 Defendant moves to make two modifications to the class notice forms. First,
22 Defendant requests that “the content of the various forms of notice be consistent in advising
23 that recipients are ‘possible’ class members” because it may not have obtained consumer
24 credit reports for all the potential class members. (Doc. 191 at 6). The Court, however,
25 finds that the class notice forms already provide a consistent statement explaining that the
26 recipient “*may* be a ‘Class Member.’” (Doc. 190-1 at 2; Doc. 190-2 at 2; Doc. 190-3 at 3)
27 (emphasis added). Second, Defendant makes an unsupported argument that there will be
28 less confusion if the notice forms included the following statement: “Lumen does not have

1 records which will answer whether a person who initiated but did not complete the online
2 transaction was the subject of a credit report sent to Lumen.” (Doc. 191 at 8). The Court,
3 however, believes that this statement is more likely to create confusion rather than
4 eliminate it. Therefore, the Court rejects Defendant’s requests to modify the class notice
5 forms.

6 Accordingly,

7 **IT IS ORDERED** that Defendant’s Motion for Leave to Substitute Lists of Possible
8 Class Members (Doc. 193) is **granted**.

9 **IT IS FURTHER ORDERED** that Plaintiff’s Motion to Approve Class Notice
10 (Doc. 190) is **granted in part**. Plaintiff’s request to provide Media Notice is **denied**.

11 **IT IS FURTHER ORDERED** that A.B. Data, Ltd. (“Notice Administrator”) is
12 appointed and authorized to supervise and administer the Notice procedure.

13 **IT IS FURTHER ORDERED** that Class Counsel shall provide Notice
14 Administrator with the Substitute List of Possible Class Members that Defendant served
15 on November 8, 2023, **within fourteen (14) days of the date of this Order**.

16 **IT IS FURTHER ORDERED** that for each individual on the Substitute List of
17 Possible Class Members with an email address, Notice Administrator shall use
18 commercially reasonable means to determine which, if any, are bad email addresses.

19 **IT IS FURTHER ORDERED** that for each individual on the Substitute List of
20 Possible Class Members with an email address that has not been confirmed as a bad email
21 address, Notice Administrator shall send Email Notice (Doc. 190-1) via email. Notice
22 Administrator shall use certain best practices when disseminating email to maximize
23 deliverability. Notice Administrator shall send such notice **within thirty (30) days of the**
24 **date of this Order**.

25 **IT IS FURTHER ORDERED** that for each individual on the Substitute List of
26 Possible Class Members with no email address or an email address that has been confirmed
27 as a bad email address, Notice Administrator shall confirm or update such individuals’
28 mailing address using a National Change of Address Database. For each individual with a

1 confirmed or updated mailing address, Notice Administrator shall send Postcard Notice
2 (Doc. 190-2) postage pre-paid. Notice Administrator shall send such notice **within thirty**
3 **(30) days of the date of this Order.**

4 **IT IS FURTHER ORDERED** that Notice Administrator shall issue a news release,
5 disseminated via PR *NewsWire*'s US1 distribution list **within thirty (30) days of the date**
6 **of this Order.**


7 **IT IS FURTHER ORDERED** that prior to, or contemporaneously with, the
8 sending of the Email Notice and the Postcard Notice, Notice Administrator shall establish
9 and maintain a website (the "Website") and toll-free number dedicated to the litigation to
10 address Class Member inquiries. Notice Administrator shall cause a copy of the Notice of
11 Class Action and Class Members' Rights (Doc. 190-3) to be posted on the Website, as well
12 as other relevant Court documents which can be viewed and downloaded. The Email
13 Notice and Postcard Notice shall direct Class Members to the Website.

14 **IT IS FURTHER ORDERED** that the deadline for exclusion from the Class is
15 **February 21, 2024.**

16 **IT IS FURTHER ORDERED** that within ten (10) calendar days after the period
17 allowed for Class Members to request exclusion has expired, Class Counsel shall promptly
18 file all such requests for exclusion with the Court and serve copies of the same on all
19 parties.

20 **IT IS FURTHER ORDERED** that the costs of the Notice process shall be borne
21 by Class Counsel.

22 Dated this 8th day of December, 2023.

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24 
25 Honorable Steven P. Logan
26 United States District Judge
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