

THE HONORABLE RICHARD A. JONES
(On Reference to the Honorable S. Kate Vaughn)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

CHRIS HUNICHEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ATONOMI LLC, a Delaware LLC, CENTRI
TECHNOLOGY, INC., a Delaware
Corporation, VAUGHAN EMERY, DAVID
FRAGALE, ROB STRICKLAND, KYLE
STRICKLAND, DON DELOACH, WAYNE
WISEHART, WOODY BENSON, MICHAEL
MACKEY, JAMES SALTER, and LUIS
PARIS,

Defendants.

ATONOMI LLC, a Delaware LLC,

Counterclaimant,

v.

CHRIS HUNICHEN,

Counter-Defendant.

ATONOMI LLC, a Delaware LLC,

Third Party Plaintiff,

v.

DAVID PATRICK PETERS, SEAN
GETZWILLER, DAVID CUTLER, CHANCE
KORNUTH, and DENNIS SAMUEL
BLIEDEN,

Counter-Defendants.

No. 19-2-cv-00615-RAJ-SKV

JOINT MOTION REGARDING
CLASS NOTICE

NOTING DATE: AUGUST 29, 2022

1 Plaintiff and Class Representative Chris Hunichen (“Plaintiff”) and Defendants Atonomi
 2 LLC, CENTRI Technology, Inc., Vaughan Emery, Rob Strickland, Don Deloach, Wayne
 3 Wisehart, Michael Mackey, James Salter, and Luis Paris, (“Defendants”) (collectively, the
 4 “Parties”), having conferred on the Motion pursuant to this Court’s Order of August 8, 2022 and
 5 chamber rules, hereby submit their joint motion regarding class notice.

6 I. INTRODUCTION AND PROCEDURAL BACKGROUND

7 On August 8, 2022, this Court granted Plaintiff’s Motion for Class Certification, and
 8 certified the following class (Dkt. No. 246, hereafter the “Class Order”):

9 All persons who purchased ATMI tokens via a Series 1 or Series 2 SAFT with Atonomi,
 10 LLC in 2018. Excluded from the Class are Defendants and persons or entities directly
 11 affiliated with any Defendant, and persons who affirmatively assented to the Atonomi
 12 “Terms of Token Sale.”

13 This Court certified for class treatment Plaintiff’s claims under the Washington Securities
 14 Act, Chapter 21.20 RCW. The Court ordered that by August 29, 2022 the parties jointly file a
 15 motion for approval of their proposed form of notice, method of distributing it to the class
 16 members, and time for distributing it in compliance with Federal Rule of Civil Procedure (“Rule”)
 17 23(c)(2)(B). Class Order.

18 Pursuant to the Class Order, the parties have met and conferred about the: (a) Class Notice
 19 Administrator; (b) method of distributing the Class Notice; (c) timing for distribution of the Class
 20 Notice; (d) the list of to whom Class Notice should be sent; and (e) the content of Class Notice.
 21 The parties agree on these questions, as set forth below. Declaration of Angus Ni ISO Joint Motion
 22 Regarding Class Notice (“Ni Decl.”), ¶ 2.

23 Plaintiffs propose, after consultation with experienced class notice administrator JND
 24 Legal Administration (“JND”), that Class members be provided direct short form notice via email
 25 (if available) with first class mail postcard notice as backup that includes all the required
 26 informational elements of Rule 23(c)(2)(B). *See* Ni. Decl., Ex. A (Plaintiff’s short form notice).
 27 The short form e-mail and postcard contain the same content and refer Class members to a website
 that will provide a more detailed long form notice in plain English, as well as provide class members

1 with the parties' pleadings and relevant orders of the Court. *See* Ni Decl., Ex. B (Plaintiff's long-
 2 form notice). Mail and email contact information from the 2018 SAFT sale is available for all the
 3 76 Class Members. *See* Ni Decl., ¶¶ 5.

4 Similar notice plans have been deemed sufficient by numerous courts. *See In re Classmates*,
 5 No. C09-45RAJ, 2010 U.S. Dist. LEXIS 154943, at *10 (W.D. Wash. Apr. 19, 2010) ("Plaintiffs
 6 propose to use e-mail to notify class members of class certification, ... E-mail notice is an excellent
 7 option here, where every class member provided an e-mail address to Classmates in the process of
 8 registering as a user"); *Ebarle v. Lifelock, Inc.*, 2016 U.S. Dist. LEXIS 128279, at *9 (N.D. Cal. Sep.
 9 20, 2016) (approving email notice, with backup mailed notice, and supplemental notice via
 10 publication); *In re Netflix Privacy Litig.*, 2012 U.S. Dist. LEXIS 93284, at *12-14 (N.D. Cal. July 5,
 11 2012) (same); *Evans v. Linden Research, Inc.*, 2013 U.S. Dist. LEXIS 153725, at *19-20 (N.D. Cal.
 12 Oct. 25, 2013) (same).¹ Each Class member will be sent notice to their email, with backup to their
 13 physical address from Atonomi's records. Ni Decl., ¶ 6. Each Class member will also be afforded
 14 two additional attempts at mail or email using address updating methods. *Id.*

15 **A. Class Notice Administrator.**

16 The proposed settlement Administrator is JND Legal Administration, an experienced and
 17 diligent settlement and claims administrator. *See* Dkt No 207, Segura Decl., ¶ 3. In preparing to
 18 present this Court with the proposed Settlement with certain parties (Dkt. Nos. 205-207), Class
 19 Counsel distributed a request for proposal ("RFP") and received bids from three potential

20
 21 ¹ Under Rule 23(c), the Court "must direct to class members the best notice that is practicable under the
 22 circumstances, including individual notice to all members who can be identified through reasonable effort."
 23 Rule 23(c)(2)(B). "The notice may be by one or more of the following: United States mail, *electronic means*,
 24 or other appropriate means." *Id.* (emphasis added). "The class must be notified of a proposed settlement
 25 in a manner that does not systematically leave any group without notice" *Chinitz v. Intero Real Estate Servs.*,
 26 2020 U.S. Dist. LEXIS 224999, at *4-5 (N.D. Cal. Dec. 1, 2020) citing *Officers for Justice v. San Francisco*,
 27 688 F.2d 615, 624 (9th Cir. 1982). Individual notice must be sent to class members "whose names and
 addresses may be ascertained through reasonable effort." *Id.* quoting *Eisen v. Carlisle & Jacquelin*, 417 U.S.
 156, 173 (1974). The Federal Judicial Center has concluded that a notice plan that reaches at least 70% of the
 class is reasonable. *Id.* citing Fed. Jud. Ctr., *Judges' Class Action Notice and Claims Process Checklist and Plain
 Language Guide* 3 (2010), <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. District courts
 have "broad power and discretion vested in them by [Rule 23]" in determining the parameters of
 appropriate class notice. *Id.*, citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 345 (1979).

1 settlement administrators. *See* Dkt No. 206, Ni Decl., ¶¶ 27-29. Given the unique characteristics
2 of that Settlement Class, shared by the Class here, the RFP specifically requested that in addition
3 to all normal and customary services, proposals should provide information on the administrator’s
4 ability to, *inter alia*:

- 5 • Conduct individual notice entirely electronically;
- 6 • Allow for claims forms to be completed entirely online with electronic signatures; and
- 7 • Work with Class Members residing outside of the United States.

8 Dkt No. 206, ¶ 28. Counsel ultimately selected JND Legal Administration based on a combination
9 of their estimated costs and fees and strong reputation for competently administering complex
10 settlements. *Id.*, ¶ 31. Class Counsel shall be responsible for delivering a copy of the Order
11 Approving Class Notice to the Class Notice Administrator and ensuring that the Class Notice
12 Administrator understands its obligations thereunder.

13 **B. Time For Distribution Of Class Notice And Opt-Out Period.**

14 No later than 14 days after this Court issues its Order approving the Class Notice,
15 Plaintiff’s counsel shall provide to the Class Notice Administrator a list of the potential Class
16 members in the format requested by the Notice Administrator, including all of the following fields
17 as available: First and Last Name, Street Address (with state and ZIP code), and Electronic Mail
18 Address. *See* Ni Decl., ¶ 5. The parties propose that Distribution of the Class Notice will
19 commence no later than 30 days after issuance of the Court Order approving the Class Notice.
20 Class members shall have 60 days from the electronic or postal mailing of the Class Notice to opt-
21 out of the Class by indicating their intent to do so in writing to the Class Notice Administrator.
22 The Class Notice Administrator will advise the parties within 14 days following the close of the
23 opt-out period of the number of individuals who have opted out of the class and their identities.

24 **C. Short Form And Long Form For Class Notice.**

25 Plaintiff based the Notices on the forms approved for that purpose by the Federal Judicial
26 Center. Ni Decl., ¶ 7. Both will reference an “800” number that will provide answers to frequently
27 asked questions (“FAQ”). Ni Decl., Exs. A & B. The summary Notice is written in plain language

1 and features a question-and-answer format that clearly sets out the relevant information and
2 answers most questions Class Members may have. *Id.*. Consistent with Rules 23(c)(2)(B) and
3 23(e)(1), the Notice objectively and neutrally apprises the nature of the Action; the definition of
4 Class Members; the claims and issues; that the Court will exclude any Class Member who requests
5 exclusion; the information required to request exclusion, and 60 day deadline for doing so; the
6 binding effect of a class judgment on Class Members under Rule 23(c)(3); the right to enter an
7 appearance or intervene in the lawsuit; an “800” number to get frequently asked questions; and a
8 prominent link to the website containing long form notice and important documents in the case.
9 *See* Ni Decl. Exh. A. Because the proposed short form notice satisfies each and every element of
10 Rule 23(c)(2)(B), it should be approved.

11 The website containing the long form notice (Exh. B) tracks key language in the short form
12 notice, but provides additional detail. As recommended by the Federal Judicial Center, the long
13 form notice provides information organized with a table of contents, in plain English question and
14 answer format. *Id.* Both notices will provide Class members an “800” number from which they
15 can obtain additional or clarifying information in FAQ format. Ni Decl. ¶ 7 and Exhs. A, B.

16 Accordingly, the form and content of the class notice proposal, which is based on and
17 consistent with the Federal Judicial Center’s exemplar notices, satisfies the requirements of Rule
18 23(c)(2)(B) and Due Process. *See, e.g.*, Rule 23 Advisory Committee Notes (2003) (“The Federal
19 Judicial Center has created illustrative clear-notice forms that provide a helpful starting point for
20 actions similar to those described in the forms.”); *Johns v. Bayer Corp.*, 2013 WL 435201, *2 (S.D.
21 Cal. 2013) (“the form and information contained within the notice is based on and consistent with
22 the Federal Judicial Center’s notices, and satisfy the requirements of Rule 23 and due process.”);
23 *accord In re Wal-Mart Stores, Inc. Wage and Hour Litig.*, 2008 WL 1990806, at *7 (N.D. Cal. May
24 05, 2008); *Flanagan v. Allstate Ins. Co.*, 2007 WL 3085903, at *1 (N.D. Ill. Oct. 18, 2007) (“We
25 begin by adopting, generally, defendant’s template, since it is taken directly from the Federal
26 Justice Center’s archive of sample Notice forms.”)

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1 **D. The Proposed Email And First Class Mail Notice Satisfies Rule 23 And Due Process.**

2 Because the Court granted certification of the Class under Rule 23(b)(3), “[i]ndividual
3 notice must be sent to all class members whose names and addresses may be ascertained through
4 reasonable effort.” *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 173 (1974) (noting that the language
5 of Rule 23(c)(2) is “unmistakable”).

6 In this case, Class members all provided email addresses and physical addresses when
7 investing in the SAFT. *See* Ni Decl. ¶¶ 5-6. Where the defendant has class member e-mail
8 addresses, Rule 23 and Due Process are satisfied by providing Class members with short form
9 notice via e-mail, with a follow up short form notice mailed to any Class members whose email
10 address is returned as undeliverable. *Browning v. Yahoo! Inc.*, 2006 WL 3826714 * 8 (N.D. Cal.
11 Dec. 27, 2006) (Email notice was sent to all available addresses. A hard copy mailing was sent to
12 anyone who did not have an email address on file or where the email was returned as
13 undeliverable.); *In re Sony SXRDRear Projection Television Class Action Litig.*, 2008 WL 1956267 *
14 4 (S.D.N.Y. May 1, 2008) (E-mail notice was sent to all available e-mail addresses. A hard copy
15 mailing was sent to anyone who did not have an email address on file or where the email was
16 returned as undeliverable.) The proposal is consistent, and utilizes short form notice as a means to
17 enhance readership and avoid spam filters for e-mailed notices.

18 It is also proper for Plaintiffs’ proposed short form notice to direct Class members to a
19 website containing more detailed long form notice. *Vandervort v. Balboa Capital Corp.*, 2014 WL
20 1274049, * 2-3 (C.D. Cal. Mar. 27, 2014) (approving notice plan with faxed short form notice with
21 supplemental short form mailed notice for undelivered faxes, both directing class members to a
22 website containing long form notice); *Schulken v. Washington Mutual Bank*, 2013 WL 11568, at *2
23 (N.D. Cal. Jan. 1, 2013) (“notice to the class was sufficient here. Specifically, a short-form notice
24 was sent to all class members by U.S. mail . . . Class members were also directed to a website where
25 the full long-form notice was available, and were provided with a telephone hotline number to
26 obtain more information. . . . websites have become a widely accepted feature of successful class
27 action settlements approved by this and other courts.”) (citing cases).

1 Finally, because Defendant’s records contain e-mail addresses for all Class members,
2 supplemental notice by publication is not necessary. *Pittman v. Westgate Planet Hollywood Las*
3 *Vegas, LLC*, 2009 U.S. Dist. LEXIS 141817, at *43 (D. Nev. Sep. 1, 2009) (“Because there is little
4 or no evidence that posting or publication is likely to result in more effective notice to potential
5 class members, the Court will only require that the notice be sent by first class mail to Defendants’
6 current and former OPC and greeter employees.”); *Minter v. Wells Fargo Bank, N.A.*, 283 F.R.D.
7 268, 276 (D.Md. 2012) (where “all class members have been identified by name from defendants
8 records” and notice administrator used address updating methods, supplemental notice by
9 publication not necessary to satisfy Due Process); *Robinson v. Fountainhead Title Group Corp.*, 2009
10 WL 2842733, 1 (D.Md. Sept. 4, 2009) (holding that direct mailed notice with additional notice on
11 website satisfied Rule 23(b)(3) without supplemental publication notice).

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August 29, 2022

ARD LAW GROUP PLLC

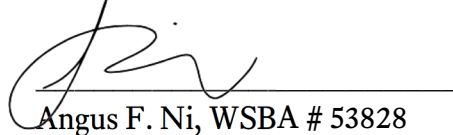
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