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

**JANE DOE, on behalf of herself and all
others similarly situated,**

Plaintiff,

v.

**MINDGEEK USA INCORPORATED,
MINDGEEK S.A.R.L., MG
FREESITES, LTD, D/B/A PORNHUB,
MG FREESITES II, LTD, MG
CONTENT RT LIMITED, and 9219-
1568 QUEBEC, INC. D/B/A
MINDGEEK,**

Defendants.

Case No.: SACV 21-00338-CJC (ADSx)

**ORDER GRANTING IN
SUBSTANTIAL PART PLAINTIFF’S
RENEWED MOTION TO APPROVE
FORM AND MANNER OF CLASS
NOTICE [Dkts. 211, 222, 223]**

I. INTRODUCTION

The parties are familiar with the allegations and posture of this case. In short, the Court granted Plaintiff’s motion for class certification on November 17, 2023, certifying a nationwide class and a California subclass of child sexual abuse material (“CSAM”) survivors under both Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). (*See* Dkt.

1 209 [Order Granting Plaintiff’s Motion for Class Certification].) Now before the Court
2 is Plaintiff’s renewed motion to approve the form and manner of class notice. (*See* Dkt.
3 211 [Motion for Order for Approval of Form and Manner of Class Notice, hereinafter
4 “Mot.”]; Dkt. 222 [Status Report Regarding Motion to Approve Form and Manner of
5 Class Notice, hereinafter “Status Report”]; Dkt. 223 [Minute Order Renewing and
6 Taking Under Submission Plaintiff’s Motion for Order for Approval of Form and
7 Manner of Class Notice, hereinafter “Minute Order”].) For the following reasons,
8 Plaintiff’s motion is **GRANTED IN SUBSTANTIAL PART**.

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10 **II. LEGAL STANDARD**

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12 Federal Rule of Civil Procedure 23(c)(2)(B) provides:

13
14 For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule
15 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule
16 23(b)(3)—the court must direct to class members the best notice that is practicable
17 under the circumstances, including individual notice to all members who can be
18 identified through reasonable effort. The notice may be by one or more of the
19 following: United States mail, electronic means, or other appropriate means. The
20 notice must clearly and concisely state in plain, easily understood language:

- 21 (i) the nature of the action;
22 (ii) the definition of the class certified;
23 (iii) the class claims, issues, or defenses;
24 (iv) that a class member may enter an appearance through an attorney if the
25 member so desires;
26 (v) that the court will exclude from the class any member who requests exclusion;
27 (vi) the time and manner for requesting exclusion; and
28 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

1 In addition to Rule 23(c)(2)(B), class notice must also comply with constitutional due
2 process because class members are bound by the results of a certified Rule 23(b)(3) class
3 action unless they affirmatively opt out. *See Phillips Petroleum Co. v. Shutts*, 472 U.S.
4 797, 812 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974). “To meet the
5 constitutional guarantee of procedural due process, notice must be reasonably calculated,
6 under all the circumstances, to apprise interested parties of the pendency of the action
7 and afford them an opportunity to present their objections.” *Roes, 1–2 v. SFBSC Mgmt.,*
8 *LLC*, 944 F.3d 1035, 1045 (9th Cir. 2019) (cleaned up).

9 10 **III. DISCUSSION**

11
12 Plaintiff proposes a robust direct and indirect notice plan that will sufficiently
13 apprise interested parties of the pendency of this action. To summarize, JND Claims
14 Administration LLC (“JND”), an experienced notice and claims administrator, will send
15 Class Members that can be identified through Defendants’ internal records direct notice
16 through physical mail or email. (Mot at 4.) Third-party notice will be sent to non-Class
17 Members who submitted a child pornography content removal request or otherwise
18 notified Defendants about child pornography on their websites. (*Id.*) JND will also post
19 a detailed long form notice to a case-specific website. (*Id.*) Additionally, Class Counsel
20 will coordinate with the National Center for Missing & Exploited Children (“NCMEC”)
21 to further disseminate notice through NCMEC’s established channels of communication
22 with survivors of child sex trafficking, direct service providers, and advocates. (*Id.* at 4,
23 6–7.) Further, Plaintiff proposes a variety of forms of publication notice tailored to the
24 known demographics of the Class: digital ads through the search engine Google Display
25 Network and digital social media and news platforms, ads on Defendants’ websites, and
26 a global press release in a multitude of languages. (*Id.* at 7–8.) Finally, the parties have
27 worked together to ensure that Class Members may easily opt out if they so choose.
28 (*See* Dkt. 216 [Reply in Support of Motion for Order for Approval of Form and Manner

1 of Class Notice, hereinafter “Reply”] at 16; Status Report at 2 [“The parties also agree
2 that Plaintiff’s revisions to the notice attached to Plaintiff’s Reply (ECF No. 216)
3 alleviate Defendants’ concerns regarding whether class members can opt out
4 electronically[.]”].)

5
6 By and large, Defendants do not dispute Plaintiff’s proposed notice plan, and the
7 Court finds that the notice and plan satisfy the statutory and constitutional requirements
8 because, given the nature and complexity of this case, “a multi-faceted notice plan is the
9 best notice that is practicable under the circumstances.” *Doe v. Stephen*, 2022 WL
10 1700445, at *5 (S.D. Iowa Feb. 2, 2022) (cleaned up). However, the parties disagree as
11 to four issues related to class notice: (1) whether the approved class notice should be
12 posted on Defendants’ websites, (2) whether the notice plan should include a global
13 press release, (3) whether the Court’s order on class notice should require Plaintiff to
14 bear all costs, and (4) whether Plaintiff’s counsel should be required to coordinate with
15 counsel in a similar pending class action in the Northern District of Alabama (“Alabama
16 *Doe* case”) on the issue of class notice. (*See* Status Report at 2; Minute Order at 2.)
17 Separately, Plaintiff seeks the Court’s approval to use personally identifying information
18 (“PII”) produced by Defendants to identify potential Class Members and disseminate
19 class notice. (Mot. at 11.) The Court addresses each issue below.

20
21 **A. Notice on Defendants’ Websites**
22

23 Defendants argue there is no need to post class notice on their websites because
24 Plaintiff’s other proposed forms of notice will be sufficient, rendering any ads on
25 Defendants’ websites redundant and suggestive of punishment. (Dkt. 212
26 [Memorandum in Opposition to Motion for Order for Approval of Form and Manner of
27 Class Notice, hereinafter “Opp.”] at 3–6.) Plaintiff responds by asserting that “notice on
28 MindGeek’s websites is especially appropriate because Class members likely regularly

1 visit MindGeek’s websites to ensure CSAM has not been reposted, which is consistent
2 with Plaintiff’s experience.” (Reply at 2.) But as Defendants correctly point out, Class
3 Members who have visited Defendants’ sites and reached out to Defendants to have
4 content of them taken down will receive direct notice. NCMEC will also assist in
5 distributing notice through a variety of channels, there will be many other digital ads
6 delivered through popular sites, which are projected to deliver tens of millions of
7 impressions, and a global press release (discussed below). (*See Mot.* at 7–8.) Therefore,
8 this form of notice only addresses potential Class Members who visit Defendants’
9 websites regularly but have never issued a takedown request *and* who are not likely to
10 receive notice through any of Plaintiff’s other proposed methods of notice. Because
11 requiring Defendants to post class notice on their websites “has the potential to appear
12 punitive, while the incremental chance that potential plaintiffs who do not otherwise
13 receive notice would see it and become aware of their right is small,” the Court will not
14 require Defendants to do so. *Mark v. Gawker Media LLC*, 2014 WL 5557489, at *4
15 (S.D.N.Y. Nov. 3, 2014).

16 17 **B. Global Press Release**

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19 Defendants claim that a global press release translated into many languages is
20 unnecessary and would serve only as a “publicity vehicle” because the “certified claims
21 do not have extraterritorial application.” (Opp. at 7.) Plaintiff argues that the claims do
22 have extraterritorial application. (Reply at 7.) In any event, the Court does not need to
23 resolve that dispute at this time. It is always the case that any publication notice,
24 including a global press release, will be overinclusive. *See Jermyn v. Best Buy Stores,*
25 *L.P.*, 2010 WL 5187746, at *8 (S.D.N.Y. Dec. 6, 2010). But the Court must direct the
26 best notice that is practicable under the circumstances. Even for trafficking that took
27 place entirely in the United States, the survivors may well not be fluent in English given
28 the international component of human trafficking. Survivors may also no longer be in

1 the country. The Court agrees with Plaintiff that a wide-reaching press release helps
 2 assure the best notice practicable under the circumstances. *See Flynn v. Sony Elecs.,*
 3 *Inc.*, 2015 WL 128039, at *3 (S.D. Cal. Jan. 7, 2015) (“[S]imply because the publication
 4 reaches residents outside of the Class does not necessarily mean that the notice is
 5 overbroad.”). And unlike requiring notice on Defendants’ websites, the Court does not
 6 believe that a global press release risks the appearance of punishment.

7

8 **C. Class Notice Costs**

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10 Defendants request that “[a]ny order approving the notice plan should make clear,
 11 consistent with Supreme Court precedent, that plaintiff bears the cost of the notice.”
 12 (Opp. at 14.) Defendants are correct that “[t]he usual rule is that a plaintiff must initially
 13 bear the cost of notice to the class.” *Eisen*, 417 U.S. at 178. Plaintiff does not seek to
 14 depart from this rule and “does not request an order requiring MindGeek to bear notice
 15 costs at this stage.”¹ (Reply at 8.) Therefore, there is no reason for the Court to issue a
 16 hypothetical ruling on the issue of class notice costs. If Plaintiff pursues costs related to
 17 class notice at some later date, whether warranted or unwarranted, the parties may
 18 properly brief and argue the issue then. *See Hunt v. Imperial Merch. Servs., Inc.*, 560
 19 F.3d 1137, 1143 (9th Cir. 2009) (“[M]any district courts have placed notice costs on the
 20 class action defendant once the defendant’s liability has been established.”); *Bakov v.*
 21 *Consol. World Travel, Inc.*, 68 F.4th 1053, 1059 (7th Cir. 2023) (“We thus agree with
 22 the courts that have said that the district court may elect to shift the cost of class notice
 23 (with or without a security bond) to the defendant after the plaintiff’s success on the
 24 merits has been established.”).

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 28 ¹ Plaintiff did request an order requiring Defendants to bear the associated costs with posting class notice
 on its various websites, but that issue is moot in light of the Court’s ruling that Defendants will not be
 required to post class notice on their websites.

1 **D. Coordination with Alabama *Doe* Case**

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3 Lastly, Defendants argue that “[t]o avoid confusion arising from two competing
4 notice plans targeted toward the same class of individuals, the Court should require
5 plaintiff to coordinate with class counsel in the Alabama *Doe* case to create a single,
6 combined and standardized notice plan that is consistent across both classes.” (Opp. at
7 20.) But this case has never been coordinated with the Alabama *Doe* case, nor does it
8 appear that Defendants have ever moved to do so. Further, any order on this issue by the
9 Court would not be binding on the Alabama plaintiffs. If specific issues (over which this
10 Court has jurisdiction) related to the Alabama *Doe* case arise, the Court trusts that the
11 parties will timely bring them to the Court’s attention.

12
13 **E. Use of PII for Class Notice Dissemination**

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15 The Court previously ordered that Plaintiff would not use PII produced by
16 Defendants or information derived from the produced PII to contact any individuals,
17 “except in the event Plaintiff’s motion for class certification under Federal Rule of Civil
18 Procedure 23 is granted and then only with an Order from the Court permitting and
19 prescribing the contact allowed.” (Dkt. 121 [Order Re Production of Personally
20 Identifying Information].) Because the Court granted class certification, such
21 information is necessary for direct notice to Class Members, and Defendants do not
22 object to Plaintiff’s request to use PII, the Court approves Plaintiff’s request to identify
23 potential Class Members and disseminate class notice. (*See* Reply at 17.)

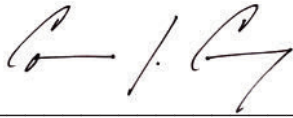
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25 **IV. CONCLUSION**

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27 For the foregoing reasons, Plaintiff’s motion to approve form and manner of class
28 notice is **GRANTED IN SUBSTANTIAL PART**. Notice in the form agreed upon by

1 the parties shall be dispatched in accordance with Plaintiff's proposal, with the exception
2 that Defendants will not be required to post notice on their websites. Plaintiff is
3 authorized to use PII to identify potential Class Members and disseminate class notice.

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DATED: January 26, 2024



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE