

**STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

**IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT**

Daniel Lee Davis, individually and on
behalf of all others similarly-situated,

C.A. No. 2017-CP-42-03283

Plaintiff,

v.

**ORDER
ESTABLISHING NOTICE
PROCEDURES**

ISCO Industries, Inc.,

Defendant.

This matter comes before the Court on the Motion of the Plaintiff Daniel Lee Davis, individually and on behalf of all others similarly-situated, for an order establishing procedures to notify class members of the pendency of this action, appointing The Notice Company, Inc. to provide notice to class members, and directing Defendant ISCO Industries, Inc. (“ISCO”) to release the names and contact information for the class members so that Class Counsel and The Notice Company can proceed with providing actual notice of the pendency of this litigation to the class members.

Having reviewed Plaintiff’s Motion, the Court finds that the relief requested therein is consistent with Rule 23, SCRCP, GRANTS the Motion, and hereby ORDERS as follows:

The Court hereby APPOINTS The Notice Company, Inc. to administer the notice process to class members in this case.

The Court further ORDERS the Defendant to disclose to The Notice Company and class counsel the names and last known addresses of all class members (or for deceased individuals, their next of kin or, if such next of kin is unknown, whomever was provided as the “in case of

emergency” contact by the employee), for the purpose of providing direct mail notice of the pendency of this class to the class members.

The Court further ORDERS that The Notice Company shall administer notice to the class members in the manner described below, such class having been certified by this Court as follows: “All current and former employees of ISCO Industries, Inc. whose personal identifying information (‘PII’) was released as a result of the March 2016 Data Breach.” (Certification Order 13, Feb. 7, 2024).

NOTICE TO CLASS MEMBERS

Pursuant to the specific grants of authority given to this Court in Rule 23(d), SCRCPP, the Court hereby approves of the following process for providing notice to the class members of the pendency of this action and further ORDERS that The Notice Company shall implement the same as the Court-appointed notice administrator in this case. The Court finds that the notice process set forth herein satisfies the requirements of Rule 23 and Due Process under the federal and state constitutions, and further finds that such notice to absent class members constitutes the best practicable notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of this action and afford them an opportunity to present their objections and/or be removed from the class.

The Court further finds that the robust and expansive notice program outlined herein is important. The Court finds that the circumstances of the case require a multi-pronged notice approach that includes both actual notice to class members and notice by publication. Specifically, Defendant has consistently maintained that the PII of 449 individuals was released as a result of the March 2016 data breach, but a spreadsheet created by ISCO in the aftermath of the data breach

incident (and produced by the company on April 27, 2023, as part of Defendant’s Fourth Supplemental Response to Plaintiff’s First Set of Interrogatories and Requests for Production) reflects a total count of 479 affected employees. The Court notes that there are several discrepancies between Defendant’s 2017 email correspondence stating 449 individuals were affected and Defendant’s internal spreadsheet reflecting 479 affected individuals.¹ Almost seven (7) years after the filing of this lawsuit, Defendant now asserts that it believes the correct number of class members is 481 but has not produced the W2s that were released so that Class Counsel can confirm the number.²

Therefore, based on the foregoing, the Court hereby ORDERS that the class members shall receive notice as follows:

1. Within ten (10) days of the Court’s order approving notice procedures, Defendant shall provide Class Counsel and The Notice Company, Inc. (“TNC”) with the following:
 - a. a class list in the form of an Excel spreadsheet listing the names (with first name, middle initial and last name in separate fields), last-known mailing addresses (with street address, city, state and zip code listed in separate fields), and last-

¹ For example, the 2017 email reflects that in Kentucky, 134 current and 10 former employees (for a total of 144) were affected by the data breach, but Defendant’s spreadsheet lists 151 Kentucky employees (to include 17 former employees). Similarly, the 2017 email lists 47 individuals from Texas (including 3 former employees), while the spreadsheet identifies 52 Texas employees (including 9 former employees). Further, the 2017 email identified only 30 terminated employees, but the spreadsheet identified 60 former employees affected by the data breach.

² Before producing the W2s, Defendant was in exclusive possession of the names and contact information for the class members and had resisted Plaintiff’s efforts to discover the same. (*See* Pl’s. Mot. to Compel, Ex. B.) *But cf. Fangman*, C.A. No. RDB-14-0081, 2015 U.S. Dist. LEXIS 167288, at *14-23 (D. Md. Dec. 15, 2015) (permitting Plaintiffs to conduct pre-certification discovery “to identify parties who may have been affected” and allowing Plaintiffs to communicate with putative class members to “convey[] the existence of a cause of action of which the recipients would have remained unaware had they not received notification”); *Marino v. CACafe, Inc.*, Case NO. 16-cv-6291 YGR, 2017 U.S. Dist. LEXIS 64947, at *3-6 (N.D. Cal. Apr. 28, 2017) (observing that “defendants’ continued resistance to providing putative class member contact information,” along with other circumstances, “suggest that defendants sought to ensure that putative class members were not given full information before they signed releases [unilaterally sent by defendants]”).

- known email addresses of all class members (the “Class List”) (along with contact information and, if applicable, next of kin or emergency contact information), along with an affidavit attesting to the veracity and completeness of such information; and
- b. a list by state of each city or town where ISCO Industries, Inc. (“ISCO”) has maintained a plant since 2016.
2. Within thirty (30) days of the Court’s order approving notice procedures, TNC will cause the “Notice of Pendency of Class Action” or “Notice of Pendency”, substantially in the form of **Attachment A** hereto, to be mailed to the Class List via First Class Mail using a mailing envelope substantially in the form of **Attachment B** hereto. The mailing shall be subject to the following additional conditions:
- a. Prior to mailing, TNC will update the mailing addresses utilizing the National Change of Address (NCOA) service as licensed by the U.S. Postal Service (USPS).
 - b. If a Notice of Pendency is returned by the USPS to TNC with a forwarding address, TNC shall re-mail the Notice of Pendency to the forwarding address within five (5) business days.
3. The deadline for members of the Class to mail their written request for exclusion (opt out) from the Class shall be set at eighty (80) days from the date of the Court’s order approving notice procedures. To be valid, the mailed opt-out requests must be postmarked no later than this deadline.
4. Prior to mailing the Notice of Pendency, TNC will prepare a dedicated website for this case and set up a dedicated email account as follows:
- a. A dedicated website for the case will be created at: www.ISCODataBreach.com
 - b. The website will include the Notice of Pendency of Class Action, as referenced above, substantially in the form of **Attachment A** hereto, a “Summary Notice” substantially in the form of **Attachment C** hereto, a “Poster Notice” substantially in the form of **Attachment D** hereto, along with copies of the Amended Complaint, Answer to the Amended Complaint, and Order Denying Defendant’s Motion to Amend and Certifying the Class.

- c. A dedicated email address will be established and monitored by TNC to receive inquiries from potential class members.
5. Prior to mailing the Notice of Pendency, TNC will establish a toll-free telephone line to allow callers to learn about the case and to request additional information.
6. Commencing within ten (10) days of the mailing of the Notice of Pendency, TNC will cause the Summary Notice to be published in the local newspaper of record in Louisville, KY, *The Courier Journal*, along with publication in the appropriate local newspapers for each city or town where ISCO currently maintains – or maintained in the years 2015-2016 - a plant, with publication continuing for a total of three times over three weeks in each publication.
7. Commencing within ten (10) days of the mailing of the Notice of Pendency, TNC will request that the Summary Notice, or a link to the case website, be posted online at the website maintained at *www.courier-journal.com*. Such posting should continue for at least four (4) weeks.
8. Commencing within ten (10) days of the mailing of the Notice of Pendency, TNC will issue a press release substantially in the form of the Summary Notice utilizing PR Newswire's US1 National Newswire.
9. Commencing as of the date of the mailing of the Notice of Pendency, Defendant shall post copies substantially in the form of the Poster Notice, no smaller than 8 ½" x 11", in break-rooms or other areas where employees generally gather at its locations, to include its corporate headquarters in Louisville, KY and at its other plant/office locations. Such postings shall be maintained in good condition and remain posted and clearly visible while this case remains pending.

AND IT IS SO ORDERED.



Spartanburg Common Pleas

Case Caption: Daniel Lee Davis VS Isco Industries, Inc.

Case Number: 2017CP4203283

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165