UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Aulistar Mark, *et al.*

Plaintiffs,

–v–

Gawker Media LLC, *et al.*,

Defendants.

13-cv-4347 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

In its November 3, 2014 Order, Dkt. No. 80, the Court permitted Plaintiffs to propose forms of notice that would be disseminated to potential opt-in plaintiffs by social media. The Court has received and reviewed Plaintiffs' proposal, Dkt. No. 90-1, along with Defendants' response, Dkt. No. 92, Plaintiffs' reply, Dkt. No. 94-1, and Defendants' sur-reply, Dkt. No. 95. The Plaintiffs' request to provide notice pursuant to their proffered plan is DENIED in all respects. The proposals are substantially overbroad for the purposes of providing notice to potential opt-in Plaintiffs, and much of Plaintiff's plan appears calculated to punish Defendants rather than provide notice of opt-in rights.

In the first instance, the Court's November 3, 2014 order contemplated the use of social media by which Plaintiffs could reasonably hope to contact individual Plaintiffs, as an analogue to the typical mailing of notice and the agreed-upon use of email in this action. Plaintiffs' proposal to post notices on websites such as Reddit and Tumblr—and on pages such as "r/OccupyWallStreet" and "r/Progressive"—lacks any realistic notion of specifically targeting its notice to individuals with opt-in rights, and instead would call attention to the lawsuit mostly of individuals with no material connection to the lawsuit whatsoever. The purpose of FLSA notice is to "notify and inform those eligible to opt in to the collective action." *Ramos v. Platt*, No. 13-

cv-8957 (GHW), 2014 WL 3639194, at *4 (July 23, 2014) (quoting *Lujan Cabana Mgmt., Inc.*, No. 10-cv-755 (ILG), 2011 WL 317984, at *9 (E.D.N.Y. Feb. 1, 2011)). It is not to advertise the alleged violations by Defendants, which, even if inadvertently, is the primary effect of Plaintiffs' proposal to post on the websites. They are at best messages broadcast at the general public in the off-chance hope that a potential opt-in plaintiff will read them.

Plaintiffs' proposed use of Twitter, LinkedIn, and Facebook is also overbroad. The Court approved use of social media notice on the understanding that such notice would effectively mirror the more traditional forms of notice being used in this case. This generally means that it expected the notice to contain private, personalized notifications sent to potential plaintiffs whose identities were known and would may not be reachable by other means. To the extent that Plaintiffs' proposals are shot through with attempts to send public-facing notices—such as general tweets rather than direct messages, or publicly accessible groups—they cease to parallel the other forms of notice that the Court has already approved.[1]

Moreover, Plaintiffs' plan attempts to re-raise issues that could or should have been raised before. For example, Plaintiffs made no request to send follow-up notice in their traditional mailings or emails; there is no reason to reconsider follow-up notice as an issue now. Plaintiffs' request on this score simply comes too late. As the Court indicated in its November 3, 2014 order (Dkt. No. 80), the Court's invitation of a social media notice proposal was not to be construed as an opportunity to relitigate issues already decided or never before raised.

Accordingly, Plaintiffs' request to put into action its proffered plan for social media notice is DENIED without prejudice to Plaintiffs proposing a revised plan that cures the current overbreadth issues. Under no circumstance, however, will the time required to formulate and gain approval of an acceptable plan extend the 60-day notice period that has already begun to run.

[1] To the extent Plaintiffs attempt to draw a connection between this case and possible notices in a consumer class action, the Court notes that the potential opt-in class has never been represented as being as broad as would be found in a consumer class action. There is a fixed universe of former Gawker interns.

SO ORDERED.

Dated: March 5, 2015
New York, New York

ALISON J. NATHAN
United States District Judge