

FILED

JUL 10 2017

**JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.**

**IN THE MISSOURI CIRCUIT COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF ST. CHARLES**

SUZANNE DEGNEN, D.M.D., P.C.)	
d/b/a SUNSET TOWER FAMILY)	
DENTISTRY,)	No. 1511-CC00766-01
)	
Plaintiff,)	Div. 1
v.)	
)	
KOMET USA, LLC,)	
)	
Defendant.)	

FINAL APPROVAL ORDER AND JUDGMENT

WHEREAS, Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry and Defendant Komet USA, LLC, entered into a Proposed Settlement Agreement and filed the Proposed Settlement Agreement with the Court on March 6, 2017, along with Plaintiff's Motion for Preliminary Approval; and

WHEREAS, on March 6, 2017, this Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, preliminarily approving the settlement pursuant to the terms of the Proposed Settlement Agreement and directing that notice be given to the Settlement Class; and

WHEREAS, Plaintiff timely filed Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement on July 3, 2017;

WHEREAS, Plaintiff timely filed Plaintiff's Unopposed Motion for an Award of Attorney's Fees and an Incentive Award to the Class Representative on July 3, 2017;

WHEREAS, pursuant to the Parties' approved plan for providing notice to the Settlement Class (Notice Plan), and in compliance with Missouri Supreme Court Rule 52.08, the Settlement Class was notified of the terms of the proposed settlement and of the Hearing on Final Approval to determine, *inter alia*: (i) whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the release of the Released Claims against Released Parties; and (ii) whether judgment should be entered dismissing this Action on the merits and with prejudice; and

WHEREAS, a Final Approval Hearing was held on July 10, 2017; and

WHEREAS, prior to the Final Approval Hearing, the Notice Plan set forth in Section IX of the Settlement Agreement and approved in the Preliminary Approval Order was completed, meaning that Settlement Class Members were notified, in the best manner practicable under the circumstances, of the settlement and of their right to opt out, object, or appear at the Hearing on Final Approval in support of or in opposition to the proposed settlement; and

WHEREAS, the Court finds that the settlement is fair, reasonable, and adequate and was entered into at arms' length, in a non-collusive manner, by experienced counsel and only after extensive discovery, arms'-length negotiations between competent and well-informed counsel for both Plaintiff and Defendant, and assisted by an independent and experienced mediator.

NOW, THEREFORE, the Court, having considered all matters submitted to it at the Hearing on Final Approval and otherwise, including the complete record of this Action, and good cause appearing, the Court enters this Final Approval Order and Judgment.

IT IS HEREBY ORDERED:

1. This Order incorporates by reference the definitions in the Settlement Agreement and, unless otherwise provided herein, all capitalized terms used in this Order shall have the same meanings set forth in the Settlement Agreement.

2. The Court has subject matter and personal jurisdiction over this case, over all claims raised herein, and all Parties, including the Settlement Class.

3. The Settlement Class, which will be bound by this Final Approval Order and Judgment, shall include all Settlement Class Members who did not submit timely and valid requests for exclusion.

4. The Court finds that the prerequisites of Rule 52.08 have been satisfied for settlement purposes because (i) Settlement Class Members are so numerous that joinder of all Settlement Class Members is impracticable; (ii) there are questions of law or fact common to the Settlement Class; (iii) the claims of the Class Representative are typical of the claims of the Settlement Class; (iv) the Class Representative and Class Counsel fairly and adequately protect the interests of the Settlement Class; (v) questions of law or fact common to class members predominate over any questions affecting only individual members; and (vi) the certification of the Settlement Class for settlement purposes is an appropriate method for the fair and efficient adjudication of this matter.

5. For purposes of this settlement and this Final Approval Order and Judgment, the Court hereby certifies the following Settlement Class:

All individuals or entities in the United States who subscribed to a telephone facsimile number from September 11, 2011, through the date of preliminary approval to which a Fax Advertisement was sent

by or on behalf of Defendant during that time period: (1) with respect to whom Defendant cannot provide evidence of prior express invitation or permission for the sending of such faxes and with whom Defendant does not have an established business relationship; or (2) which Fax Advertisement (a) did not display a clear and conspicuous opt-out notice on the first page stating that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v) is unlawful, (b) lacked a telephone number for sending the opt-out request, or (c) lacked a facsimile number for sending the opt-out request.

Excluded from the Settlement Class are (a) Defendant and its employees, (b) the judge to whom the Action is assigned; and (c) any member of the judge's staff or immediate family. Having received no timely and properly requested exclusions from the Settlement Agreement, the Court finds that no Settlement Class Members are excluded from membership in the Settlement Class.

6. The Court finally certifies Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry as the Settlement Class Representative and Ronald J. Eisenberg and Robert Schultz as Class Counsel.

7. The Court finds that the Parties complied in all material respects with the Notice Plan set forth in Section IX of the Settlement Agreement. The Court finds that the Notice Plan, which reached 99% of the Settlement Class through direct notice, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, the ability of Settlement Class Members to opt out of or object to the Settlement Agreement,

and the Hearing on Final Approval. The Court further finds that the Notice Plan complies with the requirements of Rule 52.08.

8. The Court has determined that full and fair opportunity has been given to the members of the Settlement Class to opt out of the settlement, object to the settlement, or otherwise participate in the Hearing on Final Approval held on July 10, 2017, and that no members of the Settlement Class elected to opt out of the settlement, object to the settlement, or otherwise participate in the Hearing

9. The Court finds that the settlement is in all respects fair, reasonable, and adequate to Settlement Class Members. The Court therefore finally approves the settlement for all of the reasons set forth in the Motion for Final Approval of Class Action Settlement, including, but not limited to: (i) the Settlement Agreement was the product of informed, arms'-length negotiations between competent, able, and informed counsel; (ii) the record was sufficiently developed to have enabled counsel for the Parties to have adequately evaluated and considered the strengths and weaknesses of their respective positions; (iii) the Action involved disputed claims; (iv) there is inherent uncertainty and risk in the outcome of this matter; (v) the settlement provides a meaningful and valuable Settlement Benefit for the Settlement Class Members who submit claims; and (vi) the Parties were represented by highly qualified counsel who, through this case, vigorously and adequately represented their respective party's interests.

10. The settlement is in the best interests of the Settlement Class in light of the degree of recovery obtained in relation to the risks faced by the Settlement Class in litigating this Action. All requirements of Rule 52.08 and United States Constitution necessary to effectuate the Settlement have been

satisfied. The Parties shall effectuate the Settlement Agreement in accordance with its terms.

11. Pursuant to Section XV of the Settlement Agreement, upon the Effective Date, Plaintiff and the Settlement Class Members, as well as their respective assigns, heirs, executors, administrators, successors and agents, shall have released, resolved, relinquished and discharged each and all of the Released Parties from each of the Released Claims. "Released Claims" means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the use of a telephone facsimile machine, computer, or other device to send a facsimile advertisement to Settlement Class Members, to the fullest extent that those terms are used, defined or interpreted by the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., relevant regulatory or administrative promulgations and case law, including, but not limited to, claims under or for a violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., and any other statutory or common law claim arising from the use of a telephone facsimile machine, computer, or other device to send a facsimile advertisement.

12. By operation of this Final Approval Order and Judgment, Plaintiff and Settlement Class Members shall be deemed to have expressly waived any and all provisions, rights, or benefits conferred by any law of any state or territory of the United States or by common law providing that a general release does not release claims that the releaser does not know or suspect to exist at the time of giving the release, including but not limited to Section 1542 of the California Civil Code.

13. All Settlement Class Members are forever enjoined from commencing, prosecuting, or participating in any way in any action or proceeding in any court or other forum asserting any of the Released Claims against any of the Released Parties. Settlement Class Members are expressly bound by the covenant not to sue contained in Section 15.02 of the Settlement Agreement and shall not sue any Released Party with respect to any of the Released Claims, or otherwise assist others in doing so, and are barred from doing so, in any court of law or equity, or any other forum.

14. No actions taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgement or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever to the other Party or to the Settlement Class. Defendant specifically denies any liability and has entered into the Settlement Agreement for the sole purpose of avoiding the expense and inconvenience of litigation. Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of this

settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class Members or Class Counsel, or of any wrongdoing or liability of Defendant or the Released Parties.

15. Injunctive relief is ordered upon Defendant such that all future faxed advertisements Defendants send to recipients in the United States shall comply with the Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227 (TCPA), and corresponding regulations. Unless the TCPA and corresponding regulations are amended as to the opt-out notice requirements, such faxed advertisements shall include the following opt-out notice:

You may request that the sender not send any future advertisements to your telephone facsimile machine(s). In order for your request to be valid, (i) the request must clearly identify the facsimile number(s) to which the request relates; (ii) the request must be communicated to sender by calling <insert domestic, toll-free number>, sending a facsimile of the request to <insert domestic facsimile number> or by emailing the request to <insert e-mail address>; and (iii) the requesting party must not have subsequently provided express invitation or permission, whether written or unwritten, to sender to transmit advertisements to the telephone facsimile number(s) identified in the request. Sender's failure to comply, within 30 days, with a proper request is unlawful.

16. The specific act restrained by this injunction is the sending of facsimile advertisements without TCPA-compliant opt-out notices.

17. Injunctive relief in this case is ordered (a) to prevent Defendant from violating the TCPA in the future should they engage in otherwise lawful advertising by facsimile, (b) because the Class members' receipt of vouchers or money damages for faxes previously received would not alone prevent Defendant

from sending future faxes lacking proper opt-out notices, (c) because injunctive relief was sought in the Petition, and (d) because Defendant agreed to such relief in the Settlement Agreement.

18. In the event that the settlement reflected in the Settlement Agreement does not become final in accordance with the terms of the Agreement, this Judgment and all other orders entered in connection with the settlement shall be rendered null and void as provided for and in accordance with the Settlement Agreement and shall be vacated.

19. The Court has considered Plaintiff's Unopposed Motion for an Award of Attorney's Fees and an Incentive Award to the Class Representative. The Court grants such motion and awards Class Counsel one-third the \$1,171,890 in available vouchers, inclusive of costs and expenses, i.e., \$390,630, and, for the reasons set forth in Plaintiff's motion finds this amount of fees is fair and reasonable. The Court grants Class Counsel's request for an incentive award to the class representative and awards \$10,000 to Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry. The Court finds that this payment is justified by the Class Representative's devoted service to the Class. These payments shall be made from the Settlement Fund.


20. The Court orders Defendant to deliver the \$400,630 Settlement Fund to the Claims Administrator in accordance with the Settlement Agreement. This Action is hereby dismissed in its entirety with prejudice and without costs for or against any party except as otherwise provided in this Judgment. Plaintiff and Defendant waive all rights to appeal.

21. Without affecting the finality of the Judgment hereby entered, the Court retains jurisdiction over the implementation of the settlement, including any disputes arising out of the terms and conditions of the Settlement Agreement, and over the Parties for the purpose of construing, enforcing, and administering the Settlement Agreement.

22. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provision of the Settlement Agreement.

23. There is no just reason for delay in the entry of this Final Approval Order and Judgment, and immediate entry by the Clerk of Court is expressly directed.

IT IS SO ORDERED, ADJUGED, AND DECREED this 10 day of JULY, 2017.



TED HOUSE, CIRCUIT JUDGE