

IN THE MISSOURI CIRCUIT COURT
FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
ST. LOUIS COUNTY

FILED

FEB 11 2020

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

ASSOCIATED MANAGEMENT
SERVICES, INC., and CHARLES
D. FUSZNER, D.M.D., P.C.,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

MEDICAL WASTE SERVICES,
LLC d/b/a MEDICAL WASTE
SERVICES and LARRY D. CASEY,

Defendants.

No. 19SL-CC00832-01

Div. 35

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs Associated Management Services, Inc., and Charles D. Fuszner, D.M.D., P.C., and Defendants Medical Waste Services, LLC d/b/a Medical Waste Services and Larry D. Casey entered into a proposed Settlement Agreement and Release (Settlement Agreement) that provides for a class-wide settlement of this litigation (Action); and

WHEREAS, Plaintiffs filed Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Plaintiffs' Motion) on February 10, 2020; and

WHEREAS, this Court has read and considered the Settlement Agreement along with the Exhibits thereto and has also read and considered Plaintiffs' Motion; and

WHEREAS, this Court finds that there is good cause shown for granting Plaintiff's motion;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The capitalized terms used in this Order granting Plaintiffs' Motion shall have the same meanings set forth in the Settlement Agreement.

2. Pursuant to Missouri Supreme Court Rule 52.08, and for settlement purposes only, the Court preliminarily determines that this Action may proceed as a class action on behalf of the following Settlement Class:

All persons in the United States who from February 25, 2015, until February 11, 2020, (1) were sent by or on behalf of Defendants a telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services, (2) with respect to whom Defendants cannot provide evidence of prior express invitation or permission for the sending of such fax or (3) with whom Defendants did not have an established business relationship, and (4) the fax identified in subpart (1) of this definition (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) did not display a clear and conspicuous opt-out notice on the first page with a telephone number for sending the opt-out request, or (c) did not display a clear and conspicuous opt-out notice on the first page with a facsimile number for sending the opt-out request.

3. Excluded from membership in the Settlement Class (a) any employees of Defendants and their employees; (b) the judge to whom the Action is assigned; and (c) any member of the judge's staff or immediate family.

4. The Court preliminarily finds, solely for purposes of considering this Settlement, that the requirements of Rule 52.08 are conditionally satisfied, including requirements that the Settlement Class Members are too numerous to be joined in a single action; that common issues of law and fact exist; that the claims of the Class Representatives are typical of the claims of the Settlement Class Members; that the Class Representatives and Class Counsel can adequately protect the interests of the Settlement Class Members; that questions of law or fact common to class members

predominate over any questions affecting only individual members; and that a settlement class is superior to alternative means of resolving the claims and disputes at issue in this Action.

5. Certification of the Settlement Class shall be solely for settlement purposes and without prejudice to the Parties in the event that the Settlement is not finally approved by the Court or otherwise does not take effect. Certification of the Settlement Class shall be vacated and shall have no effect in the event that the Settlement is not finally approved by this Court or otherwise does not take effect.

6. The Court conditionally appoints Ronald J. Eisenberg as Class Counsel and Plaintiffs Associated Management Services, Inc., and Charles D. Fuszner, D.M.D., P.C., as Class Representatives for purposes of this Settlement. The Court preliminarily finds that the Class Representatives and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class Members.

7. Subject to further consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the Settlement Class and as falling within the range of possible final approval.

8. The Final Approval Hearing shall be held before this Court at 10:30.m. on May 6, 2020, in Division 35 at the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, to address: (a) whether the proposed Settlement should be finally approved as fair, reasonable, and adequate and whether the Final Approval Order should be entered; and (b) whether Class Counsel's motion for attorney's fees and expenses and incentive awards should be approved. The Court may continue this hearing without providing further notice to Settlement Class Members.

9. The Court approves, as to form and content, the Long Form Notice and Direct Mail Notice attached as Exhibits B and C to the Settlement Agreement, respectively.

10. No later than 10 days from the entry of this Order the Claims Administrator shall post on the Settlement Website downloadable copies of this Order, as well as the Long Form Notice, Settlement Agreement, and Claim Form. When filed, Plaintiffs' Motion for an Award of Attorney's Fees and Expense and Incentive Awards to the Class Representatives shall also be posted on the Settlement Website.

11. No later than 14 days after this Order is entered, the Claims Administrator shall provide notice by direct mail to the owners of the facsimile numbers provided by Defendants that are believed to be associated with certain individuals or businesses who are potential Class Members. For any Direct Notice that is returned undeliverable, the Claims Administrator shall attempt to locate an updated mailing address and re-send the Direct Notice.

12. The Court finds that the Parties' plan for providing notice to the Settlement Class described in Section IX of the Settlement Agreement and in Paragraphs 10-11 of this Order (i) constitutes the best notice practicable under the circumstances, (ii) constitutes due and sufficient notice to the Settlement Class, and (iii) satisfies the requirements of Rule 52.08 and the United States Constitution.

13. Any Settlement Class Member shall be entitled to make only one claim. A claim must satisfy the requirements of Sections 10.02 and 10.03 of the Settlement Agreement and must be submitted on or before the Claims Deadline. The Claims Deadline shall be 30 days after the Final Approval Hearing. The Court approves the Claim Form attached as Exhibit E to the Settlement Agreement.

14. Any member of the Settlement Class who wishes to be excluded from the Settlement Class, and therefore not be bound by the Settlement Agreement, must advise the Claims Administrator in writing of that intent. To be effective, opt out requests must comply with the requirements of Section XII of the Settlement Agreement and must be postmarked no later than 75 days from today (Opt-Out Deadline). Any Class Member who submits a valid and timely request for exclusion will not be a Settlement Class Member and not be bound by the Settlement Agreement.

15. The Parties shall submit a list of valid opt outs to the Court after the Opt-Out Deadline passes and at or before the Final Approval Hearing.

16. Any Settlement Class Member who does not submit a valid and timely request for exclusion may object to the fairness of the Settlement Agreement. Objections must comply with the requirements set forth in Section 12.02 of the Settlement Agreement.

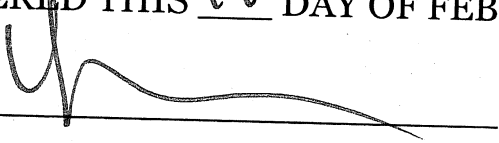
17. Any Settlement Class Member who does not make an objection in the manner required herein shall waive and forfeit any and all rights to appear separately or object and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action.

18. Any Settlement Class Member who files a timely Objection that satisfies the requirements of Section 12.02 of the Settlement Agreement may appear at the Final Approval Hearing, either in person or through an attorney hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the settlement; provided, however, no Settlement Class Member shall be heard unless such member files a notice of appearance with the Court no later than 10 days prior to the Final Approval Hearing, and serves a copy of such notice on counsel for all Parties.

19. All papers to be considered at the Final Approval Hearing, including memoranda to be filed by the Parties in support of the settlement, shall be served and filed no later than 7 days before the hearing.

21. Except as provided herein, the Action is stayed pending the Court's final decision on the fairness of the proposed settlement.

SO ORDERED THIS 11th DAY OF FEBRUARY, 2020



Lorne J. Baker, Associate Circuit Judge
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