

**IN THE MISSOURI CIRCUIT COURT
FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
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

FINAL APPROVAL ORDER AND JUDGMENT

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 and filed it with the Court on February 10, 2020, along with Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement; and

WHEREAS, on February 11 2020, this Court entered an Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, preliminarily approving the settlement pursuant to the terms of the proposed Settlement Agreement and Release (Settlement Agreement) and directing that notice be given to the Settlement Class; and

WHEREAS, Plaintiffs timely filed Plaintiffs' Motion for Final Approval of Class Action Settlement on April 29, 2020;

WHEREAS, Plaintiffs timely filed Plaintiffs' Motion for an Award of Attorney's Fees and Incentive Awards to the Class Representatives on April 29, 2020;

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 via Zoom on May 6, 2020; 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 obtaining relevant information about the class and the facts, and arms'-length negotiations between competent and well-informed counsel for both Plaintiffs and Defendants.

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 Representatives are typical of the claims of the Settlement Class; (iv) the Class Representatives 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 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.

Excluded from the Settlement Class are (a) Defendants and their employees, (b) the judge to whom this Action is assigned; and (c) any member of the judge's staff or immediate family. Having received zero 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. The Court finally certifies Plaintiffs Associated Management Services, Inc., and Charles D. Fuszner, D.M.D., P.C., as the Settlement Class Representatives and Ronald J. Eisenberg as Class Counsel.

6. 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 90.5% 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.

7. 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 May 6, 2020, 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.

8. 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 Plaintiffs' 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 facts were 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.

9. 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.

10. Pursuant to Section XV of the Settlement Agreement, upon the Effective Date, Plaintiffs 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 TCPA, relevant regulatory or administrative promulgations, and case law, including, but not limited to, claims under or for a violation of the TCPA, 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.

11. By operation of this Final Approval Order and Judgment, Plaintiffs 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.

12. 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.

13. No actions taken by the Parties, either previously or in connection with the negotiations or proceedings connected with the 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. Defendants specifically deny any liability and 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 the Released Parties.

14. Injunctive relief is ordered upon Defendants such that all future unsolicited 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 unsolicited 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. In order for your request to be valid, (i) the request must clearly identify the facsimile number 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 identified in the request. Sender's failure to comply, within 30 days, with a proper request is unlawful.

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

16. In the event that the settlement reflected in the Settlement Agreement does not become final in accordance with the terms of the Settlement 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.

17. The Court has considered Plaintiffs' Motion for an Award of Attorney's Fees and Expense and Incentive Awards to the Class Representatives. The Court grants such motion and awards Class Counsel \$82,500, inclusive of costs and expenses, and, for the reasons set forth in Plaintiffs' motion finds this amount to be fair and reasonable. The Court grants Class Counsel's request for incentive awards to the Class Representatives and awards \$10,000 to Plaintiff Associated Management Services, Inc., and \$5,000 to Plaintiff Charles D. Fuszner, D.M.D., P.C. The Court finds that these payments are justified by the Class Representative's devoted service to the Class and significant financial benefit conferred to the Class.

18. These payments shall be made from the Settlement Fund.

19. The Court orders Defendants to deliver the \$250,000 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 Final Approval Order and Judgment. Plaintiffs and Defendants waive all rights to appeal.

20. 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.

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

22. By agreement of the Parties, Count II of the Amended Petition is dismissed with prejudice.

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.

SO ORDERED THIS ____ DAY OF May, 2020

Lorne J. Baker, Associate Circuit Judge

SO ORDERED:



Judge

Division 35

May 11, 2020