

FILED

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL DISTRICT  
LAKE COUNTY, ILLINOIS

JAN 25 2019

DR. STEVEN ARKIN, individually and as )  
the representative of a class of similarly- )  
situated persons, )  
 )  
 )  
Plaintiff, )  
v. )  
 )  
SMITH MEDICAL PARTNERS, LLC and )  
H.D. SMITH, LLC, )  
 )  
 )  
Defendants. )

*Eric Cantagut Weinstein*  
CIRCUIT CLERK

Civil Action No. 18CH000984

Hon. Luis Berrones

**ORDER PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT AND APPROVING CLASS NOTICE**

This matter coming before the Court on the “Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class” (the “Motion”). The Court having reviewed in detail and considered the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiff Dr. Steven Arkin (“Plaintiff”) and Defendants H. D. Smith, LLC and Smith Medical Partners, LLC (collectively, “Defendants,” and together with Plaintiff, the “Parties”) and all other papers that have been filed with the Court related to the Settlement Agreement, IT IS HEREBY ORDERED and adjudged as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair and reasonable and adequate. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties who were represented by experienced counsel and was reached with the assistance of the Hon. James F. Holderman (Ret.) of JAMS.
3. For settlement purposes only, the Court finds that class certification is appropriate

because (a) the Settlement Class is so numerous that joinder of all members is impractical, (b) there are common questions of law and fact that predominate over any questions affecting only individual class members, (c) Plaintiff is typical and will fairly and adequately protect the interests of the Settlement Class, and (d) a class action is an appropriate method for the fair and efficient adjudication of this controversy.

4. By stipulation of the Parties, and pursuant to 735 ILCS 5/2-801 & 2-802, and for settlement purposes only, the Court preliminarily certifies the following Settlement Class:

All persons who were sent, by or on behalf of H. D. Smith, LLC or Smith Medical Partners, LLC, one or more advertisements by facsimile from September 26, 2013 through the date of preliminary approval.

The Parties expressly agreed to this Settlement Class definition for settlement purposes. Excluded from the Settlement Class are (a) the Defendants and their present and former members, managers, employees and their successors, heirs, assigns, and legal representatives; (b) all persons who opted out of the settlement by timely submitting their opt out request; and (c) members of the Illinois judiciary.

5. For settlement purposes only, the Court appoints Plaintiff, Dr. Steven Arkin, as the Class Representative and appoints Brian J. Wanca of Anderson + Wanca as Class Counsel.

6. The Court recognizes that, pursuant to the Settlement Agreement, Defendants retain all rights to object to the propriety of class certification in this litigation in all other contexts and for all other purposes should this Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved and this litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

7. Pursuant to 735 ILCS 5/2-806, the settlement of this action, as embodied in the

terms of the Settlement Agreement, is preliminarily approved.

8. The Settlement Agreement is incorporated by reference into this Order and is hereby preliminarily adopted as an Order of this Court.

9. The Settlement Agreement proposes sending the Claim Form (attached to the Settlement Agreement as Exhibit B) to the members of the Settlement Class by facsimile, and by U.S. Mail to those members of the Settlement Class to whom facsimile notice is unsuccessful after three attempts and by maintaining a settlement website. The Court finds that this Notice Plan satisfies the requirements of due process under the Illinois and United States constitutions, 735 ILCS 5/2-803, and any other applicable law. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Court approves the Claim Form as shown in Exhibit B to the Settlement Agreement. The Notice Plan is approved and adopted. The Court orders that the Parties provide the notice to the Settlement Class as proposed in the Settlement Agreement.

10. The Court also approves KCC as the Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the settlement, as more fully set forth in the Settlement Agreement.

11. KCC may proceed with the distribution of Notice as set forth in the Settlement Agreement and Notice Plan.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a Valid Claim Form in accordance with the instructions provided in the Class Notice.

13. All Claim Forms must be postmarked or received by the Settlement Administrator, either in hard copy form or electronically, no later than [74] days after the date this Order is entered,

on [DATE], 2018. Settlement Class Members who do not timely submit a Valid Claim Form shall not be entitled to receive any portion of the Settlement Fund.

14. The Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such

+Settlement Class Members request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against the Defendants or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

15. The Court hereby sets deadlines and dates for the acts and events set forth in the Settlement Agreement and directs the Parties to incorporate the deadlines and dates in the Class Notice:

(a) The Notice shall be sent by the Settlement Administrator on or before February 8, 2019;

(b) Requests by any Settlement Class member to opt out of the settlement must be submitted to Class Counsel (with a copy to Defendants' Counsel) on or before March 25, 2019, or be forever barred; and

(c) Objections and motions to intervene, including supporting memoranda, shall be filed in this Court and postmarked and served on Class Counsel and Defendants' counsel, on or before March 25, 2019, or be forever barred.

(d) Claim forms must be submitted to the Settlement Administrator on or before April 9, 2019, for forever be barred.

March 26,

16. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth in the Settlement Agreement, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than 59 days after the date this Order is entered (45 days after date class notice is sent).

17. Any Settlement Class Member who has not requested exclusion and who intends to object to this Agreement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: his/her name and address; current telephone number; facsimile number(s) upon which he/she allegedly received an unsolicited fax from either Defendant; identify whether the Class Member or his or her attorney has objected to other class settlements; and all arguments, citations, and evidence supporting the objection. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, , and to the Final Approval Order and the right to appeal the same.

18. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, must appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance is necessary for presentment and argument of your objection. For any Settlement Class Member who files a timely written objection and who indicates his/her intention to appear at the Final

Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witness he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

19. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Order and Judgment.

20. Unless the Settlement Class Member has opted out, pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

21. The Final Approval Hearing, set forth in the Class Notice, is hereby scheduled for April 26, 2019, at 9:15 a.m., in Courtroom 204 of The Circuit Court of Lake County, Illinois, 18 North County Street, Waukegan, IL 60085 for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;

(b) to determine whether this settlement is fair, reasonable, and adequate, and should be approved by the Court; and

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement.

22. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

23. All discovery and other proceedings in this litigation as between Plaintiff and Defendants are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

ENTERED:

January 25, 2018

Luis A. Berrones  
The Honorable Luis Berrones