

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

FILED
APR 03 2019

RADHA GEISMANN M.D., P.C. and JOHN H.)
LARY JR., M.D., individually and on behalf of all)
others similarly-situated,)
)
Plaintiffs,)
v.)
)
REXALL, INC., and CORPORATE MAILINGS,)
INC. d/b/a CCG MARKETING SOLUTIONS,)
)
Defendants.)

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE

Cause No. 1822-CC11147

Division 20

**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”), after review and consideration of the Parties’ Settlement Agreement and having been fully advised in the premises, IT IS HEREBY ORDERED and adjudged as follows:

1. By stipulation of the Parties, and pursuant to Missouri Supreme Court Rule 52.08, the Court preliminarily certifies the following Settlement Class for settlement purposes only:

All persons or entities that were sent on or about March 5, 2013, a facsimile message stating in relevant part: “Osteo Bi-Flex Sample Offer” “Dear Partner Physician, We are excited to invite you to join the Osteo Bi-Flex Physician Sampling Program. Registration only takes a few minutes and is free! Please visit our exclusive physician’s only site at www.osteobiflex.com/physiciansampling to register to receive samples of Osteo Bi-Flex to share with your patients.”

Excluded from the Settlement Class are Defendants, members of the judiciary and employees, agents and affiliates of Defendants and all corporate affiliates of Defendants.

The Parties expressly agreed to this Settlement Class definition for settlement purposes only.

2. Having conducted a preliminary evaluation of the Settlement, the Court finds that class certification is appropriate for settlement purposes only 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) Plaintiffs are 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.

3. For settlement purposes only, the Court appoints Plaintiffs, Radha Geismann, M.D., P.C. and John H. Lary Jr., M.D. (“Plaintiffs”), as the “Class Representatives” and appoints Max G. Margulis of Margulis Law Group and Brian J. Wanca of Anderson + Wanca as “Class Counsel.”

4. The Court approves and appoints Kurtzman Carson Consultants (“KCC”) as the Settlement Administrator.

5. Pursuant to Missouri Supreme Court Rule 52.08(e), the settlement of this action, as embodied in the terms of the Settlement Agreement, is preliminarily approved.

6. The Settlement Agreement is incorporated by reference into this Order (with capitalized terms as set forth in the Settlement Agreement) and is hereby preliminarily adopted as an Order of this Court. Upon preliminary review, the Court finds that the Settlement and the Settlement Agreement were negotiated at arm’s length, that there is good cause to believe that the terms of the Settlement and the Settlement Agreement are fair, reasonable and adequate and in the best interests of the Settlement Class, and that the Settlement warrants notice of its material terms to the Settlement Class for their consideration and reaction prior to the Court holding a hearing to determine whether the Settlement and the Settlement Agreement warrant

final approval.

7. The Settlement Agreement proposes direct notice to the Settlement Class by U.S. mail. The Court preliminarily finds that such notice is the best notice practicable under the circumstances and satisfies the requirements of due process and Missouri Supreme Court Rule 52.08(c)(2). The notice plan is approved and adopted. The Court orders that the Parties provide Class Notice to the Settlement Class as proposed in the Settlement Agreement. The Court approves the form of the Class Notice as contained in Exhibit 2 to the Settlement Agreement to be mailed to the class members and approves the long form of the Class Notice to be posted on the web-page established by KCC as contained in Exhibit 3 to the Settlement Agreement.

8. The Court hereby sets the following 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 Class Notice shall be sent by the Settlement Administrator on or before April 24, 2019 (21 days from entry of this Order).

(b) Requests by any person or entity in the Settlement Class to be excluded from the Settlement must be mailed to the Settlement Administrator and postmarked no later than June 24, 2019 (81 days from entry of this Order), or be forever barred. To be valid, any request for exclusion must (i) be in writing, (ii) list the name of the person or entity requesting exclusion, along with the street address, and fax number, (iii) identify the name and number of this case, (iv) be physically signed by the person or entity requesting exclusion, and (v) contain a clear statement requesting exclusion from the Settlement. A Request for Exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Class Notice within the time specified will be invalid, and the person or entity making the

request will be deemed to be a Settlement Class Member and shall be bound by this Agreement if approved by the Court. No person or entity in the Settlement Class may request to be excluded through a “mass” or “class” request for exclusion;

(c) Any person or entity in the Settlement Class may object to all or any portion of the Settlement or the Settlement Agreement, and to request that this Court deny final approval of the Settlement and the Settlement Agreement. The Objection must be submitted in writing to the Clerk of the Circuit Court of the City of St. Louis, Missouri, 10 N. Tucker Blvd, St. Louis, MO 63101, and must include (i) the full name, fax number(s), current street address of the Settlement Class Member and, if applicable, any attorney(s) representing or advising them in connection with the objection, (ii) the name and number of this case, (iii) a statement of all reasons why the objecting Settlement Class Member believes the Court should not approve all or any portion of the Agreement and the Settlement, (iv) copies of any documents the objecting Settlement Class Member wants the Court to consider, (v) a statement indicating whether the objecting Settlement Class Member intends to appear at the final fairness hearing (either personally, or through counsel); and (vi) a list of all other objections the objecting Settlement Class Member or his attorney has made within the last five (5) years. Objections and any motions to intervene, including supporting memoranda, must either be e-filed, filed in-person with the Clerk, or postmarked no later than June 24, 2019 (81 days from entry of this Order), and copies served on Class Counsel and Defendants’ counsel by that date at the addresses specified in the Notice of Proposed Class Action Settlement. Any Settlement Class Member who fails to timely file a written objection by this deadline will be deemed to have waived his, her, or its objections, will not be permitted to object to the Settlement at the final approval hearing, and will be foreclosed from seeking review of the preliminary or final approval of the Settlement Agreement by appeal

or other means.

(d) Settlement Class Members who desire to receive a monetary payment from the Settlement Fund must complete, sign, and submit a Claim Form by fax or mail. Claim Forms shall be sent to the Settlement Administrator and must be faxed or postmarked on or before June 24, 2019 (81 days from the entry of this Order), or they shall be deemed untimely, shall be denied, and no monetary payment will be received by the Settlement Class Member who submitted an untimely Claim Form. In order to receive a share of the Settlement Fund, a Settlement Class Member's Claim Form must be determined to be an "Approved Claim" in accordance with the Settlement Agreement.

9. Preliminary certification of the Settlement Class is binding only with respect to the Settlement and the parties' efforts to obtain preliminary and final approval of the Settlement and the Settlement Agreement. Neither this Order, nor any act performed or document executed pursuant to or in further of the Settlement may be deemed to be or may be used as an admission, concession, or evidence of any liability, fault or wrongdoing on the part of Defendants, the validity or value of any Released Claims, the truth of any allegations by Plaintiffs, the propriety of class certification on a contested basis, or the validity or deficiency of any substantive, procedural or equitable defense that was or could have been asserted in the by Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

10. In the event the Settlement Agreement is terminated pursuant to its terms, then (a) the preliminary certification of the Settlement Class and any other judgment or order entered by this Court will be void and deemed vacated, *nunc pro tunc*, and without prejudice to Defendants' right to contest class certification and all other rights and defenses, (b) this action shall be dismissed without prejudice, and (c) the Parties shall be restored to their respective positions

status quo ante as if the Settlement Agreement had never been entered into, except for any provisions of the Settlement Agreement that expressly survive termination.

11. Plaintiffs are directed to file a motion for final approval of the Settlement and the Settlement Agreement and a response to any objections and Plaintiffs and Class Counsel are also directed to file their motion for an award of reasonable attorneys' fees, costs, and an incentive award for serving as Class Representatives by no later than 14 days before Final Approval Hearing on Sept 9, 2019 at 10:30am

12. The final approval hearing is hereby scheduled for September 9, 2019, at 10:30 a.m., in Division 20 of the Circuit Court of the City of St. Louis, Missouri, 10 N. Tucker Blvd, St. Louis, MO 63101, which shall be set forth in the Class Notice.

ENTER:

April 3, 2019

So Ordered:

Joan Moriarty

The Honorable Judge Joan Moriarty