

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PATRICK D. MICHEL, DDS, <i>et al.</i> ,	:	
	:	Case Number: 1:10CV638
Plaintiffs,	:	
	:	Chief Judge Susan J. Dlott
v.	:	
	:	ORDER GRANTING MOTION FOR
WM HEALTHCARE SOLUTIONS, INC.,	:	PRELIMINARY APPROVAL OF
<i>et al.</i> ,	:	CLASS SETTLEMENT AND NOTICE
	:	
Defendants.	:	

This matter is before the Court on Plaintiffs’ Second Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice to the Class (Doc. 87). Plaintiffs, Patrick D. Michel, DDS; Patrick D. Michel, DDS, Inc.; Alan L. Laub, DDS; Alan L. Laub, DDS, Inc.; and Dr. Mark W. Sturdy, claim that Defendants WM Healthcare Solutions, Inc. and SK&A Information Services, Inc. have violated the Telephone Consumer Protection Act (“TCPA”), which prohibits a person from, among other things, sending an unsolicited advertisement to a telephone facsimile machine. *See* 47 U.S.C. § 227(b)(1)(C). Defendants deny the allegations.

The parties have engaged in settlement negotiations and now desire to resolve the claims on a class-wide basis. By their motion, Plaintiffs seek an order certifying a class for settlement purposes, granting preliminary approval of the Class Settlement Agreement Contingent upon Court Approval (“Proposed Settlement Agreement”), appointing Plaintiffs as class representatives and their attorneys as class counsel, and approving the proposed notice for distribution to the settlement class.

The Court held a hearing on the motion on April 4, 2013. During that hearing, the Court ordered Plaintiffs to file an amended Proposed Settlement Agreement. Plaintiffs filed an amended Proposed Settlement Agreement, Doc. 91, on which the Court now relies in considering Plaintiffs' motion.

Based on its review of the Proposed Settlement Agreement and its attachments, the Court finds and orders as follows:

1. Upon preliminary review, the Proposed Settlement Agreement (Doc. 91) appears to be within the range of possible approval, does not disclose grounds to doubt its fairness, and includes no obvious deficiencies, and the Court grants preliminary approval to it pending a final fairness hearing as provided herein.

2. For the purposes of settlement only, the Court preliminarily certifies a settlement class, hereinafter "Settlement Class," pursuant to Federal Rule of Civil Procedure 23(b)(3), defined as:

(a) all persons and entities throughout the United States (b) who, on or after August 14, 2006 and through August 23, 2012, (c) were sent unsolicited facsimile advertisements by or on behalf of defendant WM Healthcare Solutions, Inc., promoting its goods or services for sale.

There are approximately 386,308 Settlement Class members.

3. The Court preliminarily finds that the Settlement Class meets each of the class certification prerequisites under Federal Rule of Civil Procedure 23(a) (numerosity, commonality, typicality, and adequacy of representation) in that: (a) there are thousands of members of the class such that joinder is impracticable; (b) there are questions of fact and law that are common to all members of the class; (c) the claims of the class representatives are

typical of those of the other members of the class; and (d) the class representatives will fairly and adequately protect the interests of the class and have retained counsel experienced in complex commercial and class action litigation who have and will continue to adequately represent the class.

4. The Court preliminarily finds this action is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes because (i) a settlement class is superior to other available methods for the fair and efficient adjudication of this controversy, and (ii) questions of fact and law common to the members of the class predominate over any questions affecting only individual members.

5. The Court finds that Plaintiffs Patrick D. Michel, DDS; Patrick D. Michel, DDS, Inc.; Alan L. Laub, DDS; Alan L. Laub, DDS, Inc.; and Dr. Mark W. Sturdy are adequate class representatives.

6. The Court finds that Montgomery, Rennie, & Jonson, LPA and Edelman Combs Lattuner & Goodwin LLC shall serve as class counsel (hereinafter “Class Counsel”) pursuant to Federal Rule of Civil Procedure 23(g).

7. Pursuant to Federal Rule of Civil Procedure 23, a final hearing on the fairness, reasonableness, and adequacy of the proposed settlement and whether final approval shall be given to it (hereinafter “Fairness Hearing”) will be held before this Court on September 10, 2013 at 2:00 p.m. for the following purposes:

(a) to finally determine whether this action satisfies the criteria for class certification set forth in Federal Rule of Civil Procedure 23(a) and (b)(3);

(b) to determine whether the proposed settlement is fair, reasonable, and adequate and should be granted final approval by the Court;

(c) to determine whether a final judgment should be entered dismissing the direct claims, crossclaims and counterclaims of SKA, WM Healthcare, Plaintiffs, and the Settlement Class with prejudice, as required by the Proposed Settlement Agreement;

(d) to consider the application of Class Counsel for an award of attorneys' fees and expenses, and for individual settlement awards to the class representatives;

(e) to hear any objections to the certification of the Settlement Class, the proposed settlement, and/or the award of attorney's fees, expenses, and incentive award; and

(f) to rule upon other such matters as the Court may deem appropriate.

8. The Court approves the proposed form of notice (Exhibit 1 to the Proposed Settlement Agreement) to be delivered via facsimile to the last known fax number of the class members as shown on Defendant's records, *provided that Class Counsel corrects the case caption on the notice so that it reads: "MICHEL, DDS, et al. v. WM HEALTHCARE SOLUTIONS, INC., et al., 10-cv-638."* The Court finds that said notice is not an "unsolicited facsimile advertisement" under the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. and/or any and all applicable state laws relating to the transmission of commercial advertisements via facsimile. Defendants will arrange to transmit the notice via facsimile to class members on or before May 15, 2013 and will make at least two attempts to transmit the notice to each Settlement Class member. Also, Class Counsel shall post the complete Notice of Pendency of Class Action Settlement (Exhibit 2 to the Proposed Settlement Agreement), excluding the claim form, on its website, www.edcombs.com, from the date of this Order until 120 days after all claims checks

are issued. Upon this Court's entry of an Order Granting Final Approval of Class Settlement, Class Counsel will arrange for payments to be distributed pursuant to Paragraphs 11(a)–(c) of the Agreement.

9. The Court finds that the Agreement's plan for notice to the proposed class members is the best notice practicable under the circumstances and is the only notice required and that such notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23(c)(2)(B).

10. Any class members who seek to receive consideration provided under the Agreement must timely return the claim form that will be provided with the Summary Notice and the complete Notice of Pendency of Class Action and Proposed Settlement, by July 15, 2013, as provided for in the notices. Any class members who seek to be excluded from the class by opting out must submit a request for exclusion to Class Counsel by July 15, 2013, as provided for in the notices.

11. Settlement Class members shall have until July 15, 2013 to enter an appearance or object to the proposed settlement. Any Settlement Class members who wish to object to the proposed settlement must submit an objection in writing to the Clerk of the United States District Court for the Southern District of Ohio, 100 East Fifth Street, Cincinnati, Ohio 45202, and mail a copy to Class Counsel and Defense Counsel by July 15, 2013, at the following addresses:

For Class Counsel:

Ms. Julie Clark, Esq.
Edelman, Combs, Lattuner & Goodwin, LLC
120 South LaSalle Street Suite 1800
Chicago, IL 60603

For Defense Counsel:

Amanda Martinsek, Esq.
Thacker Martinsek, LPA
2330 One Cleveland Center

1375 E. 9th Street
Cleveland, OH 44114

Kevin M. O'Hagan

Edward C. Eberspacher IV
O'Hagan LLC
One East Wacker Drive
Suite 3400
Chicago, Illinois 60601

Any objection must include the name and number of the case and a statement of the reasons why the objector believes that the Court should find that the proposed settlement is not in the best interests of the class. Objectors who have filed written objections to the proposed settlement may appear at the Fairness Hearing on September 10, 2013 at 2:00 p.m. and be heard on the fairness of the proposed settlement.

12. Plaintiffs, by and through Class Counsel, may file memoranda in support of final approval of the proposed settlement prior to the Fairness Hearing. Any submissions must be filed no later August 6, 2013.

13. Defendants shall file proof of compliance with the notice requirements of The Class Action Fairness Act of 2005, 28 U.S.C. §1715(b), no later than April 19, 2013.

14. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Proposed Settlement Agreement until such time as the Court grants final approval of this class action settlement and dismisses this case with prejudice.

IT IS SO ORDERED.

S/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court