

FILED

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**JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.**

**IN THE MISSOURI CIRCUIT COURT
FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF ST. CHARLES**

SUZANNE DEGNEN, D.M.D., P.C.)	
d/b/a SUNSET TOWER FAMILY)	
DENTISTRY,)	No. 1511-CC00766-01
)	
Plaintiff,)	Div. 1
v.)	
)	
KOMET USA, LLC,)	
)	
Defendant.)	

**ORDER GRANTING PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry and Defendant Komet USA, LLC, entered into a Proposed Settlement Agreement effective March 1, 2017 (“Settlement Agreement”) that provides for a class action settlement of this litigation (“Action”); and

WHEREAS, Plaintiff filed its Motion for Preliminary Approval of Class Action Settlement on March 1, 2017; and

WHEREAS, this Court has read and considered the Settlement Agreement along with the Exhibits thereto and has also read and considered Plaintiff’s Motion for Preliminary Approval of Class Action Settlement; and

WHEREAS, this Court finds that there is good cause shown for granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The capitalized terms used in this Order granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement 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 individuals or entities in the United States who subscribed to a telephone facsimile number from September 11, 2011, through the date of preliminary approval to which a Fax Advertisement was sent by or on behalf of Defendant during that time period: (1) with respect to whom Defendant cannot provide evidence of prior express invitation or permission for the sending of such faxes and with whom Defendant does not have an established business relationship; or (2) which Fax Advertisement (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) lacked a telephone number for sending the opt-out request, or (c) lacked a facsimile number for sending the opt-out request.

3. Excluded from membership in the Settlement Class (a) any employees of Defendant; (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 Representative are typical of the claims of the Settlement Class Members; that the Class Representative 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 and Robert Schultz of Schultz & Associates LLP as Class Counsel and Plaintiff Suzanne Degnen, D.M.D., P.C. d/b/a Sunset Tower Family Dentistry as Class Representative for purposes of this Settlement. The Court preliminarily finds that the Class Representative 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, including the prospective relief from Section 5.03 of the Settlement Agreement, 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 9:00 a.m. on July 10, 2017, in Division 1 at the Missouri Circuit Court for the Eleventh Judicial Circuit, County of St. Charles, 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 application for attorneys' fees and expenses and an incentive award should be approved. Consideration of Class Counsel's application for an award of attorneys' fees and expenses and an incentive award shall be separate from consideration of

whether the proposed Settlement should be approved and shall be embodied in a separate order. 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 14 days from the entry of this Preliminary Approval Order the Claims Administrator shall post on the Settlement Website a Question and Answer Notice (“Q&A Notice”), which shall set forth in a question and answer format the details of the settlement and the rights of Class Members to participate in the settlement, exclude themselves, or object to the settlement. The settlement website shall contain downloadable copies of the Preliminary Approval Order, Long Form Notice, Settlement Agreement, Claim Form, and when filed, Class Counsel’s motions for attorneys’ fees and expenses and for an incentive award for the Class Representative. The settlement website shall also contain appropriate links through which Settlement Class Members can submit a claim online.

11. No later than 30 days after this Preliminary Approval Order is entered, the Claims Administrator shall provide notice by direct mail to the owners of the facsimile numbers provided by Defendant that are believed to be associated with certain individuals or businesses who are potential Class Members.

12. The Court finds that the Parties’ plan for providing notice to the Settlement Class (“Notice Plan”) 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 set forth in Section 10.03 of the Settlement Agreement and must be submitted on or before the Claims Deadline. The Claims Deadline shall be Sept. 8, 2017. The Court hereby 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 terms of 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 June 5, 2017 ("Opt-Out Deadline"). Any Class Member who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of 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 and must be filed and served no later than June 5, 2017. 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.

17. 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 Fairness 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, that no Settlement Class Member shall be heard unless such member files a Notice of Appearance with the Court no later than June 30, 2017, and serves a copy of such notice of appearance on counsel for all Parties.

18. All papers to be considered at the Fairness Hearing, including memoranda to be filed by the Parties in support of the settlement, shall be served and filed no later than July 3, 2017.

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

IT IS SO ORDERED, ADJUGED, AND DECREED this 6th day of March, 2017.



TED HOUSE, CIRCUIT JUDGE