

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES L. ORRINGTON, II, D.D.S., P.C.,)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	
Plaintiff,)	
)	
v.)	
)	
MESA LABORATORIES, INC.)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

No. 18-cv-00841

Judge Andrea R. Wood

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT**

The Motion of Plaintiff James L. Orrington, II, DDS, PC (“Plaintiff”) for Preliminary Approval of Class Action Settlement with Defendant Mesa Laboratories, Inc. (“Defendant” or “Mesa Labs”) came on for hearing on January 8, 2019.

Having considered Plaintiff’s moving papers, the signed Settlement Agreement (the “Settlement Agreement”) attached as Exhibit 1 to Plaintiff’s Motion for Preliminary Approval, and all other evidence submitted concerning Plaintiff’s motion, and being duly advised in the premises, the Court hereby finds that:

(a) Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.

(b) The settlement proposed in the Settlement Agreement has been negotiated in good faith at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class (as defined below).

(c) The Class Notice (as described in the Settlement Agreement) fully complies with Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable

under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation.

(d) With respect to the Settlement Class, this Court finds that, for settlement purposes only, 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. This Court finds that members of the Settlement Class will receive notice of the settlement through the notice program described below.

(e) This Court finds that the Notice Plan described below constitutes the best notice practicable under the circumstances and fully complies with Federal Rule of Civil Procedure 23(c)(2)(B).

IT IS THEREFORE ORDERED THAT:

1. The Class Representative and all Settlement Class Members are hereby stayed and enjoined from commencing, pursuing, maintaining, enforcing, or prosecuting, either directly or indirectly, any released claims in any judicial, administrative, arbitral, or other forum, against any of the released parties. Such injunction will remain in force until the final approval order is entered or until such time as the parties provide notice that the settlement has been terminated. Nothing herein will prevent any person in the Settlement Class, or any person actually or purportedly acting on behalf of any such person(s), from taking any actions to stay or dismiss any released claim(s). This injunction is necessary to protect and effectuate the agreement, this preliminary approval order, and the court's flexibility and authority to effectuate the agreement and to enter judgment

when appropriate and is order in aid of this court's jurisdiction and to protect its judgments. This stay and injunction does not apply to any person who requests to opt-out/exclude themselves from the settlement pursuant to paragraph 11(d) herein.

2. The settlement proposed in the Settlement Agreement has been negotiated in good faith at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class in light of the factual, legal, practical and procedural considerations raised by this case.

3. The following class (the "Settlement Class") is preliminarily certified solely for the purpose of settlement pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

All persons and entities in the United States who, on or after February 1, 2014 through the date of execution of the Parties' Settlement Agreement, were sent advertisements via facsimile by or on behalf of Mesa Labs promoting its goods or services for sale.

4. The Court makes a preliminary finding that this action satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(a) and (b). The Settlement Class as defined in the Settlement Agreement is so numerous that joinder of all members is not practicable, there are questions of law and fact common to the Settlement Class, the claims of the Class Representative are typical of the claims of the Settlement Class, and the Class Representative will fairly and adequately protect the interests of the Settlement Class. Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. For settlement purposes only, the Court preliminarily appoints Plaintiff James L. Orrington, II, DDS, PC as Class Representative of the Settlement Class and finds that it meets the requirements of Fed. R. Civ. P. 23.

6. The Court preliminarily appoints the following lawyers as Settlement Class Counsel and finds that they meet the requirements of Fed. R. Civ. P. 23: Julie Clark and Daniel A. Edelman of Edelman, Combs, Lattuner and Goodwin, LLC, 20 S. Clark Street, Suite 1500, Chicago, Illinois 60603. The Court also approves KCC, LLC 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.

7. If (i) the Settlement Agreement is terminated pursuant to its terms; (ii) the Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order do not for any reason become effective; or (iii) the Settlement Agreement, Preliminary Approval Order, and Final Approval Order are reversed, vacated, or modified in any material respect which is not agreeable to all Parties, then (a) all orders entered pursuant to the Settlement Agreement shall be deemed vacated, including without limitation the certification of the Settlement Class and all other relevant portions of this Order; (b) this case shall proceed as though the Settlement Class had never been certified; and (c) no reference to the prior Settlement Class, or any documents related thereto, shall be made for any purpose. If the settlement does not become final in accordance with the terms of the Settlement Agreement, then the Final Approval Order shall be void and shall be deemed vacated. Defendant retains the right to oppose class certification if the settlement is vacated, and the doctrines of res judicata, collateral estoppel or law of the case shall not be applied.

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

9. Class Counsel, via the Settlement Administrator, shall give notice of the settlement, its terms, the right to opt out, appear and the right to object to the settlement as set forth in the Settlement Agreement. The Settlement Agreement's plan for class notice is the best notice

practicable under the circumstances and satisfies the requirements of due process and Fed. R. Civ. P. 23. That plan is approved and adopted.

10. The forms of notice that Class Counsel will provide are attached as Exhibits A-B to the Settlement Agreement. By February 12, 2019, Class Counsel, via the Settlement Administrator is ordered to send the Notice and Claim Form via fax substantially in the form of Exhibit A, to those identified on the Fax List. Class Counsel shall make at least three attempts to transmit the Notice by fax to those numbers where the initial transmission failed. Class Counsel, via the Settlement Administrator shall also send a Postcard, substantially in the form of Exhibit B, via U.S. Mail, to all Class Members for whom an address can be identified. If a Settlement Class Members' mailing address cannot be identified through the records produced in litigation, the Settlement Class Administrator may use a reverse look-up service and/or any other reasonable methods to identify a current mailing address. The Settlement Administrator shall take reasonable steps to attempt to forward any notices it mails to Settlement Class members which are returned with a forwarding address.

Class Counsel and the Settlement Administrator will also publish Exhibit A, and the Settlement Agreement (excluding exhibits) on their firms' websites. This combined notice program fully complies with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the proposed settlement of this lawsuit. The Court finds that no other notice is necessary. The Administrator and/or Settlement Class Counsel shall provide the Notice and/or the Claim Form to Class Members who call to request it. The Parties, by agreement, may revise the Claim Form in ways that are not material, or in ways that

are appropriate to update those documents for purposes of accuracy or formatting. KCC may proceed with the distribution of Notice as set forth in the Settlement Agreement.

11. 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.

12. 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 Persons 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 Defendant or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

13. To effectuate the settlement, the Court establishes the following deadlines for the events set forth in the Settlement Agreement and directs the Parties to incorporate the deadlines in the Notice and Claim Form:

(a) The Notice shall be sent by the Settlement Administrator on or before February 12, 2019.

(b) Claim Forms shall be returned by Class Members to Class Counsel online, by fax, or mail postmarked on or before April 15, 2019. Claims not submitted by this date shall be barred.

(c) Objections of Class Members or any appearance of an attorney on behalf of a Class Member shall be filed in this Court and served by mail postmarked to Class Counsel

and Defendant's Counsel on or before April 15, 2019 or shall be forever barred. Each objection must contain the following information: (i) the objector's name (or business name, if the objector is an entity), and address; (ii) the telephone number for the facsimile machine on which the Settlement Class Member was sent the fax; (iii) a statement of the objection to the Settlement Agreement; (iv) an explanation of the legal and factual basis for the objection; and (v) documentation, if any, to support the objection.

(d) All memoranda filed by any Class Member in connection with objections must be filed in this Court and served on Class Counsel and counsel for Defendant by fax or mail postmarked on or before May 17, 2019, or shall be forever barred.

(e) Requests by any Class Member to opt out of the settlement must be mailed to Class Counsel on or before April 15, 2019 or shall be forever barred. A notice of intention to opt out must contain the following information: (a) the Class Member's name, address, and the telephone number for the facsimile machine on which the Class Member was sent the fax; and (b) a statement to the effect that the Class Member does not want to participate in the settlement and waives all rights to any benefits of the settlement.

14. 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, may 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 at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. 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. 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.

15. 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.

16. Defendant 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 May 17, 2019.

17. Class Counsel shall file with the Court a list of the individual members of the Settlement Class seeking exclusion by May 17, 2019.

18. The final hearing to determine whether the settlement is fair, reasonable, and adequate, and whether it should be approved by the Court, will be conducted on May 24, 2019 at 9:00 a.m.

19. All papers in support of the Settlement Agreement shall be filed no later than May 17, 2019. Any responses to objections shall be filed with the Court on or before the date of the Final Approval Hearing. There shall be no replies from objectors.

20. At the Final Approval Hearing, the Court will:

(a) finally determine whether the applicable prerequisites for settlement class action treatment have been met;

(b) 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;

(c) consider Class Counsel's application for a Fee Award;

(d) consider the Class Representative's application for an Incentive Award;

(e) consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

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

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

24. All discovery and other proceedings in this litigation as between Plaintiff and Defendant 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.

25. In the event that the settlement does not become final and the Effective Date does not occur in accordance with the terms of the Settlement Agreement, then this Order shall be void and shall be deemed vacated.

26. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Settlement Class.

27. Costs associated with notice, claims administration and distribution of settlement checks shall come from the Settlement Fund. Defendant shall advance costs of notice and administration from the Settlement Fund (not to exceed \$10,000) and provide the Fax List to Class Counsel within five (5) days after this Order is entered.

28. Class Counsel to file their fee petition by March 18, 2019, twenty-eight (28) days prior to the deadline for Class Members to submit objections.

ENTERED:



Andrea R. Wood
United States District Judge

Dated: January 8, 2019