

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN A. CONNER, DPM, P.C.,)
)
 Plaintiff,)
 v.)
)
 OPTUM360, LLC,)
 Defendant.)

Civil Action No. 2:17-cv-1642
Magistrate Judge Rice

FILED
JUN 11 2019

KATE BARKMAN, Clerk
By _____ Dep. Clerk

**ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AND ORDER REQUIRING NOTICE TO CLASS**

The Court has been advised that the parties to this action, Plaintiff Steven A. Conner, DPM, P.C. (“Plaintiff”) and Defendant Optum360, LLC (“Optum360”), through their respective counsel, have agreed, subject to Court approval following notice to the class members and a hearing, to settle the above-captioned lawsuit upon the terms and conditions set forth in their written settlement agreement (the “Settlement Agreement”), which has been filed with the Court, and the Court deeming that the definitions set forth in the Settlement Agreement are hereby incorporated by reference herein;

NOW, THEREFORE, based upon Plaintiff’s Motion for Preliminary Approval, the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to the Court that the proposed settlement appears fair, reasonable, and adequate, and that a hearing should and will be held on November 20, 2019, after notice to the class members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a final order and judgment should be entered in this lawsuit:

IT IS HEREBY ORDERED:

The Court has jurisdiction over the subject matter of the action and over all settling parties hereto.

In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), 1453, and 1711-1715, Defendant is directed to cause written notice of the proposed class settlement to be served as directed.

Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, this action is preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (referred to as the “class members”) with respect to the claims asserted in this action:

All persons or entities in the United States who received a telephone facsimile message on a telephone facsimile machine from or on behalf of Optum360 regarding the Optum360 Essentials Coding, Billing and Compliance Conference on April 15, 2015, May 21, 2015, June 17, 2015, July 23, 2015, August 13, 2015, September 16, 2015, or October 9, 2015.

The Class excludes Defendant, any parent, subsidiary, affiliate, or controlled person of Defendant, as well as its attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons, and the judge(s) assigned to the Action and his or her staff.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily appoints Steven A. Conner, DPM, P.C. as the “Class Representative” and Phillip A. Bock of Bock, Hatch, Lewis, and Oppenheim, LLC and Rickard Shenkan of Shenkan Injury Lawyers LLC as “Class Counsel.”

The Court preliminarily finds that this action satisfies the applicable prerequisites for class action treatment under Rule 23, namely:

- (1) the Class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the Class;

(3) the claims or defenses of the representative party are typical of the claims or defenses of the class;

(4) the representative party will fairly and adequately protect the interests of the Class;

(5) questions of law or fact common to Class Members predominate over any questions affecting only individual members; and

(6) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Sullivan v. DB Investments, Inc., 667 F.3d 273, 296 (3d Cir. 2011)

The Court preliminarily finds that the settlement of this action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, and adequate when considering, in their totality, the following factors: (A) the Class Representative and Class Counsel have adequately represented the class; (B) the Settlement Agreement was negotiated at arm's length; (C) the relief for the Class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). 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.

CAC Services Group, LLC will administer the settlement and notification to Class Members. The Settlement Administrator will be responsible for mailing and e-mailing the

approved class action notice, receiving and processing Claim Forms, preparing a list of Approved Claims, and mailing checks to the Settlement Class Members who submitted Approved Claims. All costs of administration will be paid out of the Settlement Fund.

The Court approves the form and substance of the notice and claim form, attached to the Settlement Agreement as Exhibit D. The proposed form and method for notifying the Class Members of the Settlement and its terms and conditions meet the requirements of Rule 23(c)(2)(B) and (e)(1), and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice plan is designed to notify and advise the Class Members of their rights. In accordance with the Settlement Agreement, the Settlement Administrator will cause the e-mail and U.S. mail notice to be sent to the Class List as expeditiously as possible, but in no event later than 30 days after the Court's entry of this order, *i.e.*, no later than July 10, 2019. The Settlement Administrator will confirm, and if necessary, update the mailing addresses for the class members through use of the national Change of Address Database. In addition, the Class Notice, and relevant pleadings, will be made available to Class Members through a dedicated website.

Any Class Member who desires to be excluded from the Class must send a written request for exclusion to the Settlement Administrator with a postmark date no later than 60 days after the mailing of the class notice, *i.e.*, no later than September 9, 2019. To be effective, the written request for exclusion must state the class member's full name, address, and facsimile number, along with a statement that the class member wishes to be excluded, and must be signed by the class member. Any class member who submits a valid and timely request for exclusion shall not be bound by the terms of the Settlement Agreement.

Any Class Member who intends to object to any aspect of the Settlement must file a written objection with the Court within 60 days after notice is mailed to the Class, *i.e.*, no later than September 9, 2019. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, Bock, Hatch, Lewis, & Oppenheim, LLC, 134 N. La Salle St. # 1000, Chicago, IL 60602; and Counsel for Defendant, Attention: Adam K. Levin, Hogan Lovells US LLP, 555 Thirteenth Street, NW, Washington DC 20004.

To be effective, an objection to the proposed settlement must:

- A. Contain a heading which includes the name of the case and case number;
- B. Provide the name, address, telephone facsimile number, and signature of the Class Member filing the objection;
- C. Contain the name, address, bar number and telephone facsimile number of the objecting Class Member's attorney, if represented by an attorney. If the Class Member is represented by an attorney, he/she must comply with all applicable laws and rules for filing pleadings and documents in the U.S. District Court for the Eastern District of Pennsylvania;
- D. Provide the name of any attorneys who assisted the Class Member in the preparation and filing of the objection if not covered by paragraph C above;
- E. Provide a list of all other class action cases in which the Class Member or each of the attorneys have filed objections to settlements
- F. Attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Class Member, including providing the facsimile number(s) of the Class Member;
- G. Be sent to Class Counsel and counsel for Defendant at the addresses above by first-class mail, postmarked no later than 60 days after Class Notice is sent;

- H. Be filed with the Clerk of the Court no later than 60 days after Class Notice is sent;
- I. Include a statement of such Class Member's specific objections; and
- J. State the grounds for objection, as well as identify any documents which such objector desires the Court to consider.

Any Settlement Class Member who has timely filed an objection must appear at the Final Approval Hearing, in person or by counsel, to have its objection considered by the Court, applying applicable law, in opposition to the fairness, reasonableness, and adequacy of the proposed settlement, and on the application for an award of attorneys' fees and expenses. The right to object to the proposed settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity.

The Court orders that any Class Member who does not submit a timely, written request for exclusion from the Class (i.e., becomes an Opt-Out) will be bound by all proceedings, orders and judgments in this litigation, even if such member of the Class has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Settlement Agreement release.

Pending determination of whether final approval of the Settlement Agreement should be granted, the Court enjoins Plaintiff and all members of the Class unless and until they have timely excluded themselves from (a) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant or class member in any other lawsuit, arbitration or other proceeding in any jurisdiction based on the Released Claims, (b) filing, commencing or prosecuting a lawsuit, arbitration or other proceeding as a class action on behalf of any members of the Class who have

not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims and (c) attempting to effect Opt Outs of a class of individuals in any lawsuit or arbitration proceeding based on the Released Claims, except that Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency.

The Court will conduct a hearing (the “Final Approval Hearing”) on November 20, 2019 at 601 Market Street, Philadelphia, PA 19106-1797, to review and rule upon the following issues:

A. Whether this action satisfies the applicable requirements for class action treatment for settlement purposes under Rule 23;

B. Whether the proposed settlement is fundamentally fair, reasonable, and adequate, and should be approved by the Court;

C. Whether to award attorneys’ fees and expenses to Class Counsel and whether to award an incentive award to Plaintiff;

D. Whether the Final Settlement Approval Order and Judgment should be entered, approving the settlement, dismissing this action with prejudice, and releasing the Released Claims against the Released Parties; and

E. To discuss and review other issues as the Court deems appropriate.

The Final Approval Hearing may be postponed, adjourned, transferred, or continued without further notice to class members.

The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

The Court sets the following schedule:

Date	Event
June 14, 2019	Preliminary Approval Order Entered
July 15, 2019	Notice Sent (30 days after entry of Preliminary Approval Order)
September 13, 2019	Deadline to Send Exclusion or File Objection (60 days after Class Notice sent)
November 6, 2019	Motion for Final Approval and Attorney Fees Papers Filed
November 20, 2019 at 1:30 p.m.	Final Approval Hearing Held

IT IS SO ORDERED.

Dated: 6.11.19



HON. TIMOTHY R. RICE
U.S. MAGISTRATE JUDGE