

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**DAVIS NEUROLOGY, P.A.,  
on behalf of itself and all other  
entities and persons similarly situated**

**PLAINTIFFS**

v.

**CASE NO. 4:16-CV-00371 BSM**

**DENTAL EQUITIES, LLC d/b/a  
PEER UNITED; FIRST ARKANSAS BANK & TRUST;  
and JOHN DOES 1-10**

**DEFENDANTS**

**ORDER CONDITIONALLY CERTIFYING A SETTLEMENT CLASS,  
PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, APPROVING  
NOTICE PLAN, AND SETTING FINAL APPROVAL HEARING**

Having reviewed and conducted a hearing on the motion for preliminary approval of the proposed class action settlement (the “settlement”) [Doc. No. 23], the following is hereby found and ordered:

1. The Parties. Plaintiffs Davis Neurology, P.A. (“class plaintiff” or “class representative”), individually and on behalf of all others similarly situated, are suing defendants Dental Equities LLC d/b/a Peer United (“Dental Equities”), First Arkansas Bank & Trust (“First Arkansas”), and John Does 1-10.

2. Settlement Terms. Unless otherwise defined herein, all terms in this order shall have the meanings ascribed to them in the settlement agreement. Pursuant to the stipulations provided in the November 7, 2016, hearing, the definition of “released parties” contained in the settlement agreement does not extend to Mastercard International Incorporated. Thus, “**released parties**” means First Arkansas and Dental Equities and all of their predecessors,

successors, subsidiaries, affiliates, divisions, and all of their present, former or subsequent respective officers, directors, members, principals, insurers, insureds, representatives, employees, shareholders, agents and assigns, or anyone working on their behalf with the exception of **Mastercard International Incorporated**.

3. Jurisdiction. Jurisdiction lies herein as to all disputes presented in the lawsuit, and as to the parties and all persons in the settlement class.

4. Scope of Settlement. The settlement agreement resolves all claims alleged in the class action complaint filed in the Pope County, Arkansas Circuit Court on January 15, 2016, and as amended on May 13, 2016. *See* ECF No. 2, 4.

5. Preliminary Approval of Proposed Settlement Agreement. A preliminary evaluation of the proposed settlement has been conducted in order to determine its fairness, adequacy, and reasonableness. Based on this preliminary evaluation, it is found that: (a) the proposed settlement agreement is fair, reasonable, adequate, and within the range of possible approval; (b) the settlement agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case aided by an experienced and neutral third-party mediator; and (c) with respect to the forms of notice of the material terms of the settlement agreement to persons in the settlement class for their consideration and reaction (**Exhibits B and E** to the settlement agreement), that notice is appropriate and reasonable.

For the reasons set forth in paragraph 5, preliminary approval of the settlement is granted as follows:

6. Class Certification for Settlement Purposes Only. Pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure, conditional certification is granted, for purpose of this settlement only, to the following settlement class:

All persons within the United States who on or after four years prior to the filing of this lawsuit, were successfully sent a facsimile transmission advertising the commercial availability or quality of any property, goods, or services by or on behalf of defendants related to "Doctors Club" credit cards.

Excluded from the settlement class are First Arkansas and Dental Equities, and any affiliate, subsidiary or division of First Arkansas or Dental Equities, along with any employees thereof, and any entities in which any of such companies have a controlling interest, as well as all persons who validly opt-out of the settlement class.

7. In connection with this preliminary certification, the following preliminary findings are made:

(a) The settlement class appears to be so numerous that joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the settlement class for purposes of determining whether the settlement should be approved;

(c) Class plaintiffs' claims appear to be typical of the claims being resolved through the proposed settlement;

(d) The class representative appears to be capable of fairly and adequately protecting the interests of all members of the settlement class in connection with the settlement;

(e) For purposes of determining whether the settlement agreement is fair, reasonable, and adequate, common questions of law and fact appear to predominate over questions affecting only individual persons in the settlement class. Accordingly, the settlement class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) For purposes of settlement, certification of the settlement class appears to be superior to other available methods for the fair and efficient settlement of the claims of the settlement class.

8. Class Representatives and Counsel. The class plaintiff is appointed to act as representative of the settlement class, and the following are appointed as class counsel pursuant to Federal Rule of Civil Procedure 23:

Joe P. Leniski, Jr.  
BRANSTETTER, STRANCH & JENNINGS  
223 Rosa Parks Av, Ste. 220  
Nashville, TN 37203

James A. Streett  
STREETT LAW FIRM.  
107 W. Main Street  
Russellville, AR 72801

9. Final Approval Hearing. A final approval hearing will be conducted at 1:00 p.m. on Monday, April 3, 2017, in Courtroom 2D, United States Courthouse, 500 West Capitol Avenue, Little Rock, AR 72201, or at such other date and time later set by court order. That hearing will determine the fairness, adequacy, and reasonableness of the settlement agreement; whether final approval of the settlement embodied by the settlement

agreement should be granted; and whether class counsel's application for attorneys' fees and expenses and incentive awards to class plaintiffs should be granted and in what amount. No later than Friday, March 3, 2017, class plaintiffs must file papers in support of class counsel's application for attorneys' fees and expenses and the incentive awards to the class representatives. No later than Wednesday, March 22, 2017, which is twelve (12) days prior to the final approval hearing, class plaintiffs must file papers in support of final approval of the settlement and respond to any written objections. Defendants may (but are not required to) file papers in support of final approval of the settlement, so long as they do so no later than Wednesday, March 22, 2017.

10. Settlement Claims Administrator. Garden City Group, Inc. is hereby appointed as claims administrator and shall be required to perform all the duties of the claims administrator as set forth in the settlement agreement and this order.

11. Class Notice. The proposed plan for giving notice to the settlement class directly (using facsimile) and through publication via establishment of a settlement website, as more fully described in the settlement agreement ("notice plan") is approved. *See* Doc. No. 26-2 at 17. The notice plan, in form, method, and content, complies with the requirements of Rule 23 and due process and constitutes the best notice practicable under the circumstances. The parties and the claims administrator are directed to complete all aspects of the notice plan no later than Sunday, December 18, 2016 ("settlement notice date").

12. The claims administrator will file with the court by no later than Monday, March 20, 2017, which is fourteen (14) days prior to the final approval hearing, proof that notice was provided in accordance with the agreement and this order.

13. Objection and Opt-Out Deadline. Persons in the settlement class who wish to object to the settlement or request to opt-out/exclude themselves must do so by Wednesday, February 1, 2017, which is the first business date forty-five (45) calendar days after the settlement notice date. Persons in the settlement class may not both object and opt-out/exclude themselves from the proposed settlement. If a person both requests to opt-out/exclude and objects, the request to opt-out/exclude will control.

14. Opt-Out/Exclusion from the Settlement Class. Persons in the settlement class may opt-out/exclude themselves from this settlement by submitting a written request containing all of the information described in this section, in the settlement agreement, and on the class notice to the claims administrator. Such request may be made by mail, fax, or via the settlement website. To be valid, opt-out requests must be sent to the claims administrator not later than Wednesday, February 1, 2017. Exclusion requests must: (a) be signed (if sent by mail or fax) or electronically signed (if submitted via the settlement website); (b) include the full name, address, and facsimile telephone of the person(s) requesting exclusion; and (c) include the following statement: I/we request to be excluded from the class settlement in Davis Neurology, PA v. Dental Equities, LLC., Case No. 4:16-CV-00371.” No exclusion request will be considered unless all of the information described above is included. A request to be excluded that is sent by means other than that as

designated in the notice, or that is not timely received by the claims administrator, shall be invalid. No person in the settlement class, or any person acting on behalf of or in concert or participation with that person, may opt-out/exclude any other person in the settlement class from the settlement class.

15. The claims administrator will retain a copy of all opt-out requests. Not later than Friday, March 24, 2017, which is ten (10) days before the final approval hearing, the claims administrator will file under seal with the court a declaration that lists all of the opt-out requests received.

16. If a timely and valid opt-out request is made by a person(s) in the settlement class, then the agreement and any determinations and judgments concerning it will not bind the excluded person(s).

17. All settlement class members will be bound by all determinations and judgments concerning the agreement.

18. Objections to the Settlement. To object to the settlement, settlement class members must follow the directions in the class notice and file a written objection with the court by the objection deadline. In order to be heard, the settlement class member must make any objection in writing and file it with the court not later than Wednesday, February 1, 2017. In order to be heard, the objection must also be mailed to each of the following, postmarked no later than the last day to file the objection: (a) Class Counsel – Joe P. Leniski, Jr., Branstetter, Stranch & Jennings, PLLC, 223 Rosa Parks Avenue, Suite 200, Nashville, Tennessee 37203; and (b) FABT’s Counsel – Lewis S. Wiener, Sutherland Asbill & Brennan

LLP, 700 Sixth Street, NW, Suite 700, Washington D.C., 20001. In the written objection, the objector must set forth: (1) the name and case number of the action; (2) the objector's full name, address and facsimile telephone number; (3) an explanation of the basis upon which the objector claims to be a settlement class member; (4) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel; (5) the identity of any counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection; (6) the identity of all counsel representing the objector who will appear at the final approval hearing; (7) a list of all persons who will be called to testify at the final approval hearing in support of the objection; (8) a statement confirming whether the objector intends to personally appear and/or testify at the final approval hearing; and (9) the objector's signature (an attorney's signature is not sufficient).

19. Any settlement class member who fails to comply with paragraph 18 (and as detailed in the class notice) will not be permitted to object to the agreement at the final approval hearing; will be foreclosed from seeking any review of the agreement by appeal or other means; will be deemed to have waived his, her, or its objections; and will be forever barred from making any objections in the action or any other related action or proceeding. All settlement class members will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable to the settlement class.

20. Stay of Other Proceedings. Pending the final determination of whether the settlement should be approved, all pre-trial proceedings and briefing schedules in this lawsuit

are stayed. If the settlement is terminated or final approval does not for any reason occur, the stay will be immediately lifted.

21. Pending the final determination of whether the settlement should be approved, the class representatives and all persons in the settlement class 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 ordered in aid of this court's jurisdiction and to protect its judgments. This injunction does not apply to any person who requests to opt-out/exclude themselves from the settlement pursuant to paragraphs 13 and 14 herein.

22. If the proposed settlement is not approved or consummated for any reason whatsoever, the proposed settlement and all proceedings in connection with the proposed settlement will be without prejudice to the right of the released parties or the class representatives to assert any right or position that could have been asserted if the settlement agreement had never been reached or proposed, except insofar as the settlement agreement

expressly provides to the contrary. In such an event, the parties will return to the *status quo ante* in the lawsuit, and the certification of the settlement class will be deemed vacated and will be of no further force or effect. Should the final determination of whether the proposed settlement should be approved be withheld or not granted for any reason, or should the settlement agreement not become effective for any reason, the entire settlement amount, including any amounts advanced from the settlement amount in the escrow account for the costs of class notice and settlement administration but not yet spent, shall be returned to First Arkansas with all applicable interest. The certification of the settlement class for settlement purposes will not be considered as a factor in connection with any subsequent litigation of class certification issues.

23. No Admission of Liability. The settlement agreement and any and all negotiations, documents, and discussions associated with it, including, but not limited to, confirmatory discovery, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing by the released parties, or the truth of any of the claims. Evidence relating to the settlement agreement will not be discoverable or used, directly or indirectly, in any way, whether in the action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the settlement agreement, this order, and the final approval order.

24. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration

of the settlement that are not materially inconsistent with this order or the settlement agreement, including making, without further approval of the court, minor changes to the form or content of the class notice and claim form and other exhibits that they jointly agree are reasonable and necessary and do not materially alter the terms of the proposed settlement. The right to approve the settlement agreement with such modifications, if any, as may be agreed to by the parties is reserved to the undersigned without further notice to the members of the class.

25. Schedule of Future Events. Accordingly, the following are the deadlines by which certain events must occur:

- Sunday, December 18, 2016: Deadline to provide class notice.
- Wednesday, February 1, 2017: Deadline to file objections or submit requests for opt-out/exclusion.
- Friday, March 3, 2017: Deadline for filing of class plaintiffs' motion for attorneys' fees and incentive awards.
- Monday, March 20, 2017: Deadline for parties to file proof of class notice and deadline for settlement class members to submit claim form.
- Wednesday, March 22, 2017: Deadline for parties to file motion and memorandum in support of final approval, including responses to objections.
- Friday, March 24, 2017: Deadline for parties to file under seal a list of persons who made timely and proper requests to opt-out.
- Monday, April 3, 2017 at 1:00 p.m.: Final approval hearing.

Accordingly, the parties' motion for settlement [Doc. No. 23] is granted.

IT IS SO ORDERED this 18th day of November 2016.

  

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UNITED STATES DISTRICT JUDGE