

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FULTON DENTAL, LLC
individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

BISCO, INC.

Defendant.

CIVIL ACTION NO. 15-cv-11038

Judge Edmond E. Chang

Magistrate Judge Daniel Martin

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

The Motion of Fulton Dental, LLC (“Plaintiff”) for Preliminary Approval of Class Action Settlement and Notice to the Class with Defendant Bisco, Inc. (“Bisco” or “Defendant”) came on for hearing on November 9, 2017.

Having considered Plaintiff’s moving papers, the signed Settlement Agreement (the “Settlement Agreement”) attached 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) 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).

(b) 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.

(c) With respect to the Settlement Class, this Court finds that, for settlement purposes only, certification is appropriate under Federal Rule of Civil Procedure 23(a) and (b)(3). This Court finds that members of the Settlement Class will receive notice of the settlement through the notice program described below.

(d) This Court finds that the Class Notice 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. All capitalized terms herein shall have the same meaning as set forth in the Settlement Agreement, unless otherwise stated.

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.

2. 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 or entities within the United States to whom Bisco or Bisco Dental Products Co. sent a facsimile at any time from December 8, 2011 through December 8, 2015, and who are identified by their fax in Bisco's fax log Bates numbered B00020-1307.

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.

3. The Court preliminarily appoints Plaintiff as Class Representative of the Settlement Class and finds that it meets the requirements of Fed. R. Civ. P. 23.

4. The Court preliminarily appoints the following lawyers as Settlement Class Counsel and finds that they meet the requirements of Fed. R. Civ. P. 23: Broderick & Paronich, P.C., The Law Office of Matthew P. McCue, McCallum Methvin & Terrell and Burke Law Offices, LLC.

5. 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.

6. The Settlement Class Counsel 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.

7. The form of notice that Settlement Class Counsel will provide is as instructed in the Settlement Agreement, and KCC Class Action Services, LLC is appointed as the Settlement Class Administrator.

8. 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 to the Settlement Class and the claim form:

(a) Notice to the Settlement Class shall be given by December 1, 2017 ("Notice Deadline").

(b) Claim forms shall be returned by Settlement Class Members to Class Counsel or the Settlement Class Administrator online, by fax, or mail postmarked on or before January 30, 2018.

(b) Objections of any Settlement Class Members or any appearance of an attorney on behalf of a Settlement Class Member shall be filed in this Court and served on Class Counsel on or before January 30, 2018, or shall be forever barred.

(c) Requests by any Settlement Class Member to exclude him/her/itself from or opt out of the settlement must be mailed to the Settlement Class Administrator or to Settlement Class Counsel on or before January 30, 2018, or shall be forever barred. A notice of intention to opt out must contain the following information: (a) the Settlement Class Member's name, address, and the telephone number for the facsimile machine on which the Settlement Class Member was sent the fax; and (b) a statement that the Settlement Class Member requests to be excluded from the proposed Settlement Class or does not want to participate in the settlement. A notice of intention to opt out must also be signed by the Settlement Class Member seeking exclusion and mailed to Settlement Class Counsel or the Settlement Class Administrator at the address provided in the notice.

9. Defendant or the Settlement Class Administrator shall ensure compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b).

10. 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 March 7, 2018, at 10:00 a.m.

11. All papers in support of the Settlement Class Counsel's award of attorneys' fees and costs shall be filed no later than January 9, 2018.

12. All papers in support of the Settlement Agreement shall be filed no later than February 21, 2018.

13. For clarity, the deadlines the Parties shall adhere to are as follows:

Notice Deadline: December 1, 2017 (21 days from Preliminary Approval)

Fee Petition Due: January 9, 2018 (21 days before objection deadline)

Objection/Exclusion Deadline: January 30, 2018 (60 days from Notice Deadline)

Claim Deadline: January 30, 2018 (60 days from Notice Deadline)
Final Approval Submissions: February 21, 2018 (14 days before Final Approval Hearing)
Final Approval Hearing: March 7, 2018 at 10:00 a.m. (110 days after Preliminary Approval)

14. In the event that the settlement does not become final and/or 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.

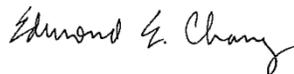
15. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Settlement Class.

16. Costs associated with notice, claims administration and distribution of settlement checks shall come from the Settlement Fund.

ENTERED:

November 9, 2017

Dated: _____



United States District Judge