

**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

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into by and among Plaintiff Fulton Dental, LLC (“Plaintiff”) and the Settlement Class (as defined below), on the one hand, and Defendant Bisco, Inc. (“Defendant”), on the other hand. Plaintiff, the Settlement Class, and Defendant are collectively referred to as the “Parties.”

RECITALS AND DEFINITIONS

1. Nature of Litigation. Plaintiff filed a lawsuit against Defendant, which is pending in the United States District Court for the Northern District of Illinois, Civil Action No. 15-cv-11038 (the “Litigation”). Plaintiff alleges in the Lawsuit that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”) by causing unsolicited facsimile advertisements to be transmitted to a nationwide class of individuals and entities.

2. Denial of Liability. Defendant denies violating the TCPA, denies any wrongdoing whatsoever for any acts or omissions alleged in the Litigation, and further denies any liability to

Plaintiff or the Settlement Class for any acts or omissions alleged in the Litigation. Defendant also maintains that it has meritorious defenses to the claims alleged in the Litigation and was prepared to vigorously defend all aspects of the Litigation. Defendant desires to enter into this Settlement Agreement solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all claims, known or unknown, asserted or unasserted, actual or contingent, that have been or might have been asserted by the Plaintiff or the Settlement Class against Defendant concerning the matters alleged in the Litigation.

3. “Settlement Class Counsel” means Broderick & Paronich, P.C., The Law Office of Matthew P. McCue, McCallum Methvin & Terrell and Burke Law Offices, LLC.

4. “Settlement Class” means all persons or entities within the United States to whom Bisco, Inc. or Bisco Dental Products Co. sent a facsimile from December 8, 2011 through December 8, 2015, and who are identified by their fax numbers in Bisco’s fax log Bates numbered B00020-1307.

5. “Plaintiff” means Fulton Dental, LLC, individually and as representative of the Settlement Class.

6. “Released Parties” means, Defendant and all of its present or former predecessors, successors, subsidiaries, and all of their respective officers, directors, partners, members, principals, insurers, insureds, employees, shareholders, attorneys, servants, and affiliates (including, without limitation, Bisco Dental Products Co.).

7. “Settlement Class Administrator” means, subject to Court approval, KCC Class Action Services, LLC, which is the firm retained by Plaintiff with the consent of Defendant to issue notice to the Settlement Class Members and to administer the settlement.

8. “Settlement Class Member” means Plaintiff and any member of the Settlement Class who does not opt out and is not otherwise excluded from the Settlement Class by the Court.

9. “Released Claims” means any and all actual or potential, known or unknown, suspected or unsuspected, and filed or unfiled, claims, demands, liabilities, rights, causes of actions, suits in law or equity, damages (including, without limitation, punitive, exemplary, and multiplied damages), and fees or penalties (including, without limitation, costs, expenses, and attorneys’ fees) of any kind arising under the Telephone Consumer Protection Act, 47 U.S.C. § 227, or any other telephone/facsimile-related federal, state, or local law (whether statutory or common law), rule, regulation, or ordinance that were or could have been raised in the Litigation, and that accrued at any time between December 8, 2011 and the Effective Date of this Agreement.

TERMS

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Settlement Agreement.

2. Effective Date. The Settlement Agreement shall become effective (hereinafter the “Effective Date”) upon the occurrence of all of the following: (a) the Court’s entry of a Final Approval Order substantially in the form of Exhibit 1, and (b) (i) if there is no appeal, the expiration of one business day after the date the Final Approval Order becomes final and non-appealable or (ii) if there is an appeal or appeals, the date of completion of such appeal or appeals, and all proceedings arising from such appeal or appeals (including, without limitation, the expiration of all deadlines for motions for reconsideration or petitions for review or certiorari, all proceedings ordered on remand, and all proceedings arising from any subsequent appeal or appeals following decisions on remand), in a manner that finally affirms and leaves in place the Final Approval Order without any material modification.

3. Certification of Settlement Class. Solely for the purposes of settlement, the parties stipulate to the certification of the Settlement Class. The Parties agree to propose that Plaintiff shall be appointed class representative and that Broderick & Paronich, P.C., The Law Office of Matthew P. McCue, McCallum Methvin & Terrell, and Burke Law Offices, LLC shall be appointed Settlement Class Counsel. The Settlement Class shall be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Defendant does not consent to certification of the Settlement Class for any purpose other than to effectuate this settlement of the Litigation. If this Settlement Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) any order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated upon notice to the Court of this Settlement Agreement's termination or disapproval; (b) this Litigation will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made and neither this Settlement Agreement, nor any of its Exhibits, nor any other associated settlement document may be used in seeking class certification; and (c) Defendant reserves all procedural or substantive rights as of the date of execution of this Settlement Agreement.

4. Relief to Plaintiff and the Settlement Class. The following relief shall be provided to Plaintiff and the Settlement Class, subject to the Court's approval:

- a. Defendant shall fund a \$262,500 settlement fund ("Settlement Fund") which shall be distributed as set forth below. The entire Settlement Fund, less any notice expenses already paid by Defendant as provided for in paragraph 7 below, will be due to be delivered to the Settlement Class Administrator within fourteen (14) days following the Effective Date. The entire Settlement Fund will be paid out and there will be no reverter to Defendant.

- b. Notice and administration expenses will be paid from the Settlement Fund. The Settlement Fund less notice and administrative expenses is the “Net Settlement Fund.”
- c. After the notice and administration expenses are deducted from the Settlement Fund, the Net Settlement Fund shall be apportioned as follows:
 - i. Plaintiff shall request no more than \$5,000 as an incentive award in recognition of its services as class representative, which amount shall be in addition to its recovery as a class member. Any incentive award shall be paid to the Plaintiff from the Net Settlement Fund.
 - ii. Settlement Class Counsel shall request no more than one-third of the total Settlement Fund for attorneys’ fees plus any recoverable costs. Any attorneys’ fees and costs shall be paid to Settlement Class Counsel solely from the Net Settlement Fund.
 - iii. Each Settlement Class Member who submits a valid claim form will be sent a check in an amount equal to his/her/its pro rata share of the Net Settlement Fund after the amounts set forth in subsections (c)(i) and (c)(ii) are deducted (“Initial Settlement Payment”). Each Settlement Class Member shall be entitled to one pro rata share of the Net Settlement Fund for each unique facsimile number owned by the Settlement Class Member.
 - iv. If there is sufficient money remaining in the Net Settlement Fund to pay each Settlement Class Member who cashed his/her/its Initial Settlement Payment a minimum of \$1.00 each after the distributions and payments identified in (c)(i)-(iii), then there shall be a second payment to such Settlement Class Members in an amount equal to his/her/its pro rata share of any funds remaining in the Net Settlement Fund (“Second Distribution”).
 - v. If there is not sufficient money remaining in the Net Settlement Fund to make a Second Distribution as provided in section (c)(iv) above, such funds remaining in the Net Settlement fund shall be distributed to a *cy pres* charity, and the parties agree to propose the National Consumer Law Center.

5. Payments. Within 30 days following the Effective Date, the Settlement Class Administrator shall distribute the Net Settlement Fund to the Settlement Class Members who have filed timely and valid claim forms in accordance with this Settlement Agreement. Any award of attorneys’ fees and costs to Settlement Class Counsel and any incentive award to Plaintiff which

are approved by the Court may be distributed to Settlement Class Counsel and Plaintiff within 14 days following the Effective Date.

6. Settlement Class Members shall have 60 days to submit a claim form (“Claims Deadline”), to opt out, or object to the proposed settlement, after the Notice Deadline. Claim forms may be submitted through the website, facsimile or via US Mail.

7. Costs associated with notice, claims administration and distribution of settlement checks shall be paid from the Settlement Fund. Defendant shall pay the Settlement Class Administrator any and all fees or costs associated with giving notice to the Settlement Class, which fees and costs shall not exceed \$19,100. The Settlement Class Administrator shall submit invoices detailing such fees and costs, which Defendant shall pay within 14 days of actual receipt. Any amounts paid by Defendant under this paragraph shall be deducted from the amount due under paragraph 4(a) above.

8. Expiration of Settlement Checks. The settlement checks issued to the members of the Settlement Class for payment of claims under this Settlement Agreement (both Initial Settlement Payment and Second Distribution, if any) will be void after 90 days from the date of issuance. Any Settlement Class Member who does not negotiate the claim payment check issued to such Settlement Class Member within 90 days of the date of issuance of the settlement claim payment check agrees that such Settlement Class Member rescinds and withdraws his, her or its claim for monetary compensation under this Settlement Agreement but remains a member of the Settlement Class and is bound by the terms of this Settlement Agreement.

9. Undistributed Settlement Funds. Within thirty (30) days after the last void date of all settlement checks (both Initial Settlement Payment and the Second Distribution, if any) issued to Settlement Class Members, the Settlement Class Administrator will report to the Parties if there

are any uncashed checks or unclaimed or undistributed amounts remaining in the Net Settlement Fund. Any such unclaimed or undistributed amounts remaining in the Settlement Fund after all payments required under this Settlement Agreement have been made shall be distributed to the National Consumer Law Center, or any other *cy pres* charities selected by the court. No undistributed settlement funds shall revert to Defendant.

10. Release. On the Effective Date, Plaintiff and the Settlement Class Members who have not opted out or been otherwise excluded from the Settlement Class shall be deemed to have fully and finally released and discharged the Released Parties from any and all liability for the Released Claims.

11. Notice. Within 21 days of entry of the Preliminary Approval Order, the Settlement Class Administrator shall cause notice and a claim form in the form of Exhibit 2 to be sent to the fax numbers produced by Bisco labeled B00020-1307 (“Notice Deadline”). That notice and claim form shall contain the address for a settlement website described below. The Settlement Class Administrator shall make at least two additional attempts to transmit the notice by facsimile to those numbers where the initial transmission failed. The Settlement Class Administrator shall create a website that allows for electronic submission of claim forms, which website shall also include copies of the complaint, the answer, the notice in the form of Exhibit 3, the claim form, the Preliminary Approval Order, and this Settlement Agreement (excluding exhibits).

12. Claim Validation. The Settlement Class Administrator shall match the fax number provided by the Settlement Class Member on a returned claim form to a fax number on the fax numbers produced by Bisco labeled B00020-1307. The Settlement Class Administrator shall also determine whether the claim is a duplicate, whether the claim form is signed and examine the claim form for completeness and validity. If the fax number does not match, then Settlement Class

Counsel or the Settlement Class Administrator shall follow-up with the Settlement Class Member and inquire if such Settlement Class Member employed other fax numbers during the class period (to ascertain if any different fax number is a number on the fax numbers produced by Bisco labeled B00020-1307), in an effort to determine whether the claim is a valid claim.

13. Initial Settlement Payment. The Settlement Class Administrator shall make the Initial Settlement Payment to Settlement Class Members submitting timely and valid claim forms within 30 days following the Effective Date.

14. Second Distribution. The Settlement Class Administrator shall make the Second Distribution, if any, to Settlement Class Members who submitted valid claim forms cashed his/her/its Initial Settlement Payment within 145 days following the Effective Date.

15. Right to Object. Any Settlement Class Member may object to the Settlement Agreement and appear in person or through counsel, at his, her or its own expense. The deadline to object (“Objection Deadline”) shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that the Objection Deadline be 60 days after the Notice Deadline. Any Settlement Class Member may object to the Settlement Agreement by filing with the Court and contemporaneously mailing a copy of the objection to Settlement Class Counsel. Any objection must be in writing and include: (a) the name, address, and facsimile phone number of the person(s) or entity objecting to the Settlement Agreement; (b) a statement of the objection to the Settlement Agreement; (c) an explanation of any and all legal and factual basis for the objection; and (d) documentation, if any, to support the objection. Any Settlement Class Member who fails to timely file and serve a written objection that complies with the foregoing requirements shall not be permitted to object to the approval of the Settlement Agreement at the final approval hearing and

shall be foreclosed from seeking review of this Settlement Agreement or the Final Approval Order by appeal or any other means.

16. Right of Exclusion. All Settlement Class Members who properly file a timely written request for exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class members pursuant to this Settlement Agreement. A request for exclusion must be in writing and must (a) state 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, (b) contain 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, (c) be signed by the Settlement Class Member seeking exclusion, and (d) be mailed to Settlement Class Counsel or the Settlement Class Administrator at the address provided in the notice and postmarked or received by Settlement Class Counsel or the Settlement Class Administrator on such date as set by the Court ("Exclusion Deadline"). The Parties shall propose that the Exclusion Deadline be 60 days after the Notice Deadline. A request for exclusion that does not include all of the foregoing information, statements, signature, or that is sent to an address other than that provided in notice, or that that is not timely submitted shall be invalid and the Settlement Class Member submitting such request shall remain a Settlement Class Member and shall be bound as a Settlement Class Member by this Settlement Agreement provided that the Final Approval Order is entered. Any Settlement Class Member who requests to be excluded cannot also object to the Settlement Agreement.

17. Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Settlement Class Counsel shall file a Motion for Preliminary Approval of this Settlement Agreement and shall present such motion to the Court requesting the entry of a

Preliminary Approval Order substantially in the form of Exhibit 4 or in such other form which is mutually acceptable to the Parties.

18. Final Approval. Settlement Class Counsel shall file a memorandum in support of final approval of the settlement at least 14 days prior to the date the Court sets for the final approval hearing. The Parties shall request the Court to enter a Final Approval Order substantially in the form of Exhibit 1, or in another form which is mutually acceptable to the Parties. Settlement Class Counsel shall file a petition for attorney's fees and costs and Plaintiff shall file a petition for incentive award no less than 21 days before the objection and exclusion deadline. The foregoing petitions will be posted on the settlement website as soon as practicable after they have been filed with the Court.

19. Right to Set Aside Settlement Agreement. Defendant, in its sole and absolute discretion, shall have the right, but not the obligation, to set aside or rescind this Settlement Agreement, if 5% or more of the Settlement Class Members submit non-duplicative, timely and valid requests for exclusion from the Settlement Class or are otherwise excluded from the Settlement Class. The Settlement Class Administrator shall provide Defendant with copies of all requests for exclusion that have been submitted no later than 14 days after the deadline to opt out of the settlement. Defendant must timely exercise its right to rescind this Settlement Agreement by filing a Notice of Rescission with the Clerk of the Court prior to the entry of a Final Approval Order by the Court.

20. Termination. Defendant shall have the right to terminate this Settlement Agreement in the event that (a) the Court refuses to grant preliminary approval of this Settlement Agreement, (b) the Court materially modifies this Settlement Agreement or the notices or orders attached as exhibits hereto, (c) the Court refuses to grant final approval of this Settlement Agreement, or

refuses to enter the Final Approval Order, in any material respect, (d) the Final Approval Order is reversed or modified on appeal or otherwise by any court, or (e) 5% or more of the Settlement Class Members submit non-duplicative, timely and valid requests for exclusion from the Settlement Class or are otherwise excluded from the Settlement Class.

21. Applicable Law. This Settlement Agreement shall be governed by and interpreted in accordance with the state law of the State of Illinois without regard to its choice of law rules.

22. Miscellaneous Provisions. The Parties and their attorneys agree to cooperate fully with one another in seeking approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein. Whether or not this Settlement Agreement and the settlement contemplated hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Defendants of any liability or wrongdoing whatsoever or the appropriateness of the claims asserted in the Litigation or similar claims for class certification.

23. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Released Parties and Settlement Class Members, and each of their respective successors and personal representatives, predecessors, affiliates, heirs, executors and assigns. It is expressly understood by the Parties that the individuals or entities of the Released Parties that are not a signatories to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

24. Authority. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder.

Plaintiff further represents and warrants that it has not assigned any claim or right or interest as against the Released Parties and that it is fully entitled to release same.

25. Entire Agreement. Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Settlement Agreement are merged into and with this Settlement Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended, modified or changed only by a written instrument or instruments executed by duly authorized officers or other representatives of the Parties expressly amending, modifying or changing this Settlement Agreement and may not be amended, modified or changed orally.

26. Waiver. No breach of any provision of this Settlement Agreement shall be deemed waived unless it is expressly waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Settlement Agreement.

27. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by facsimile or e-mail shall be deemed legal and binding for all purposes.

28. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Settlement Agreement, nor to control or affect meanings, constructions or the effect of the same.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF

DEFENDANT

Fulton Dental, LLC

Bisco, Inc.

By: 

By: _____

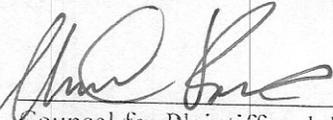
Its: Owner

Its: _____

Dated: 11-6-17

Dated: _____

SETTLEMENT CLASS COUNSEL (for its obligations hereunder)


Counsel for Plaintiff and the Settlement Class

Dated: 11/5/17

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF

Fulton Dental, LLC

By: _____

Its: _____

Dated: _____

DEFENDANT

Bisco, Inc.

By: Julie Goh

Its: Secretary / Treasurer

Dated: 2 November 2017

SETTLEMENT CLASS COUNSEL (for its obligations hereunder)

Counsel for Plaintiff and the Settlement Class

Dated: _____