

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

**MICHIGAN URGENT CARE &
PRIMARY CARE PHYSICIANS,
P.C.,**

Plaintiff,

vs.

**MEDICAL SECURITY CARD
COMPANY, LLC D/B/A
SCRIPTSAVE AND WELLRX,
and JOHN DOES, 1-10,**

Defendants.

2:20-CV-10353-TGB

**ORDER PRELIMINARILY
APPROVING SETTLEMENT
AGREEMENT AND
CONDITIONALLY
CERTIFYING CLASS**

This matter is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of the Class Settlement Agreement in the above-captioned matter ("Lawsuit"). The Parties have submitted a Settlement Agreement ("Agreement") that the Court has reviewed, and the Court finds that it is just and proper that the Agreement be preliminarily approved.

It is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties.

2. **Class Members:** For settlement purposes only, and in accordance with Fed. R. Civ. P. 23(b)(3), the Lawsuit is hereby preliminarily and conditionally certified as a class action on behalf of the following class of consumers (hereinafter referred to as the “Class Members”):

All persons and entities who were subscribers to fax numbers that were sent faxes by or on behalf of Medical Security Card Company, LLC on or about October 3, 2019, promoting the commercial availability or quality of its goods or services for which it/they did not obtain prior consent and which did not contain an opt out notice as described in 47 U.S.C. § 227.

3. **Class Representatives and Class Counsel:** For settlement purposes only, and in accordance with Fed. R. Civ. P. 23, the Court preliminarily certifies the named Plaintiff, Michigan Urgent & Primary Care Physicians, P.C., as the Class Representative. The Court also preliminarily certifies counsel for Plaintiffs—Edelman, Combs, Lattuner & Goodwin, LLC and Adam G. Taub & Associates Consumer Law Group, PLC—as Class Counsel. This Court preliminarily finds that Class Counsel have, and will continue to, fairly and adequately represent the interests of the Class Members. Plaintiffs and Class Counsel, on behalf of the Class Members, are authorized to take all appropriate action required or permitted to be taken by the Agreement to effectuate its terms.

4. **Preliminary Class Certification:** For settlement purposes only, the Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23 for the proposed Settlement Class such that the class may be conditionally certified; namely:

- The Class Members are so numerous that joinder of all of them in the Lawsuit is reasonably impracticable;
- There are questions of law and fact common to the Class Members, which predominate over any individual questions;
- The claims of the named Plaintiff are typical of the Class Members;
- Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all of the Class Members; and
- Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to the other available methods for a fair and efficient adjudication of this controversy.

5. **Preliminary Settlement Approval:** For settlement purposes only, the Court preliminarily finds that settlement of the Lawsuit, on the terms and conditions set forth in the Agreement, appears in all respects fair, reasonable, adequate and in the best

interest of the Class Members and within the range of possible approval, especially in light of the complexity, expense, and probable duration of further litigation, the risk and delay inherent in possible appeals, the risk of collecting any judgment obtained on behalf of the Class Members, and the limited amount of any potential total recovery for the class. *See* Fed. R. Civ. P. 23(e)(2). This finding is subject to further consideration at the Final Fairness Hearing.

6. **The Class Administrator:** The Court appoints **ClassSettlement.com** as Class Administrator to assist in the administration of the Class Settlement and provide notification to Class Members. The costs and expenses for the Class Administrator shall be paid subject to the terms of the Agreement.

7. **Notice Delivery:** The Class Administrator will be responsible for delivering the approved class action notice to the Class Members as outlined in the Agreement.

8. **Notice Plan:** The Court approves the Parties' Notice Plan as set forth in the Agreement including the form and substance of the class notice presented to the Court (the "Class Notice"). This Court finds the Parties' proposed Notice Plan as set forth in the Agreement, including the Class Notice, fully satisfies the requirements of due process, the Federal Rules of Civil Procedure and any other applicable laws, and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all

persons entitled thereto. Accordingly, this Court approves the form and content of the Notice Plan and Class Notice.

9. The Class Administrator 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 April 11, 2022, i.e., no less than 14 days before the Final Fairness Hearing.

10. **Final Fairness Hearing:** The Final Fairness Hearing shall take place before the Honorable Terrence G. Berg on **April 25, 2022 by videoconference**, to determine: whether the proposed Settlement of the Lawsuit on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate as to the Class Members and should be approved; whether Judgment, as provided for in the Stipulation, should be entered; payments to Settlement Class Members, the amount of any fees and costs that may be awarded to Class Counsel, and the amount of any service award that may be awarded to Plaintiffs, as provided for in the Stipulation. The Court will also hear and consider any properly lodged objections at that time under the process set forth below.

11. **Opt-out Requests:** Subject to final approval after the Final Fairness Hearing, all Class Members who do not request exclusion (“opt-out”) from the Settlement Class certified pursuant to Federal Rule of Civil Procedure 23(b)(3) shall be bound by all determinations and judgments in this Lawsuit concerning the Settlement, including, but not limited to, the validity, binding nature and effectiveness of the releases

set forth in the Agreement. To be valid, a request for opt-out must be in writing and personally signed by the Class Member who seeks to be excluded and sent to the Class Administrator, and it must include: (1) the name and address of the Class Member and (2) a statement to the effect that the Class Member wishes to be excluded from the Class. Opt-out requests must be postmarked to the Class Administrator no later than **March 28, 2022**.

12. Any Class Member who has not previously opted-out in accordance with the terms of Paragraph 11 above may appear at the Final Fairness Hearing to argue that the proposed Settlement should not be approved. Copies of all written objection papers must be served on Class Counsel and Defendant's Counsel via U.S. mail and/or facsimile, using any of the following addresses:

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To the extent necessary or desired, the Settling Parties may respond to any properly filed objections no later than fourteen (14) days before the Final Fairness Hearing.

13. **Stay of Proceedings:** All proceedings in this Lawsuit are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation.

14. If the Agreement is terminated or is not consummated for any reason whatsoever, the preliminary certification of the Settlement Class shall be void, and Plaintiffs and Defendant shall be deemed to have reserved all their respective rights to propose or oppose any and all class certification issues.

15. This Court reserves the right to adjourn or continue the date of the Final Fairness Hearing without further notice to the Settlement Class and retains jurisdiction to consider all further applications arising out of or connected with the Settlement. This Court may approve or modify the Settlement without further notice to the Settlement Class.

SO ORDERED this 22nd day of December, 2021.

BY THE COURT:

/s/Terrence G. Berg
TERRENCE G. BERG
United States District Judge