

EXHIBIT

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8 Retina Associates Medical Group, Inc.

9 **UNITED STATE DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DISTRICT**

12 **RETINA ASSOCIATES MEDICAL**
13 **GROUP, INC, individually and on**
14 **behalf of all others similarly**
15 **situated,**

16 Plaintiff,

17 v.

18 **KEELER INSTRUMENTS, INC.,**

19 Defendant.

20 **Case No.: 8:18-cv-01358-CJC-DFM**

21 **CLASS ACTION**

22 **DECLARATION OF SETH**
23 **LEHRMAN IN SUPPORT OF**
24 **PLAINTIFFS’ NOTICE OF**
25 **MOTION & MOTION FOR**
26 **PRELIMINARY APPROVAL OF**
27 **CLASS SETTLEMENT AND**
28 **CERTIFICATION OF**
SETTLEMENT CLASS

Judge: Hon. Cormac J. Carney

I, SETH LEHRMAN, pursuant to 28 U.S.C. Sec. 1746, declare under perjury that the following is true and correct:

1. I am one of the attorneys for the plaintiff in this action, Retina Associates Medical Group, Inc. (“Retina Associates” or “Plaintiff”).

2. I am a partner in the law firm Edwards Pottinger LLC.

3. I am an attorney licensed to practice law in the State of California since 1995 and the State of Florida since 1998. I have litigated cases in both state and federal courts in California and Florida.

1 4. I am a member in good standing of the bars of the following courts:

2 a. State Bar of California
3 San Francisco, California
4 December 1, 1995

5 b. State Bar of Florida
6 Tallahassee, Florida
7 February 3, 1998

8 c. United States District Court for the Southern District of Florida
9 Fort Lauderdale, Florida
April 17, 1998

10 d. United States District Court for the Middle District of Florida
11 Tallahassee, Florida
12 November 29, 2015

13 e. United States District Court for the Northern District of Florida
14 Jacksonville, Florida
15 June 12, 2008

16 f. United States District Court for Northern District of California
17 San Francisco, California
December 12, 1995

18 g. United States District Court for Central District of California
19 Los Angeles, California
20 August 7, 2007

21 h. Eleventh Circuit Court of Appeals
22 Atlanta, Georgia
23 February 4, 2013

24 i. Supreme Court of Florida
25 Tallahassee, Florida
26 March 3, 1998

27 j. Supreme Court of the United States
28 Washington, D.C.
April 2, 2007

1 5. The declaration is based upon my personal knowledge, except where
2 expressly noted otherwise.

3 6. I submit this declaration in support of the Plaintiff's Motion for Preliminary
4 Approval of Class Action Settlement and Certification of Settlement Class in the
5 action against defendant, Keeler Instruments, Inc. ("Keeler" or "Defendant").

6 **CLASS COUNSEL'S EXPERIENCE**

7 7. I, Seth Lehrman, along with Ron Eisenberg and Todd Friedman, am
8 Plaintiff's counsel. Accordingly, I have personal knowledge of the matters set forth
9 in this declaration and, if called to testify to them, would be competent to do so.

10 8. I, Seth Lehrman, along with Ron Eisenberg, seek appointment as Class
11 Counsel in this Action. I am informed and believe that Class Counsel are qualified
12 and able to conduct this litigation as a class action.

13 9. I am also a member of the American Association for Justice, Florida Justice
14 Association, and Broward County Justice Association.

15 10. I am a graduate of the Cornell University, Bachelors of Science and
16 Brooklyn School of Law, Juris Doctor.

17 11. I litigate complex civil litigation matters, including class actions, in state and
18 federal courts in Florida, California, and across the United States. I represent
19 individuals and businesses in class action and whistleblower cases to hold corporate
20 wrongdoers accountable.

21 12. I was class counsel and trial counsel, along with my partner Brad Edwards
22 and other counsel, in a class action against Jupiter Golf Club, LLC which does
23 business as Trump National Golf Club – Jupiter. *See Hirsch, et al. v. Jupiter Golf*
24 *Club, LLC*, 2017 WL 448952 (S.D.Fla. Feb. 1, 2017). In *Hirsch*, we avoided
25 dismissal, obtained class certification and defeated Defendant's summary judgment
26 challenge. I deposed Donald Trump, Eric Trump, and other witnesses and, along
27 with Brad Edwards, tried the case to verdict on behalf of plaintiffs and the class. The
28 Court awarded a full judgment of \$5.7M for plaintiffs and the class, the full relief

1 that was requested at trial, plus prejudgment interest. Following Trump National's
2 appeal of the judgment, a settlement was reached on behalf of the class that resulted
3 in Trump National paying \$5.4M, representing more than 94% of the judgment.

4 13. For several years, I have served as class-counsel in class action cases
5 involving hidden fees, unfair insurance practices, dangerous or defective products,
6 consumer fraud, false and deceptive advertising, credit reporting issues, and
7 violations of consumer protection statutes. I have successfully handled many of these
8 class action cases, producing significant results for class members.

9 14. In *Soto v. Gallup Organization, Inc.*, Case No. 13-cv-61747 (S.D. Fla.) I
10 was co-lead counsel in a nationwide class action which produced a \$12 million
11 common fund settlement of TCPA claims brought on behalf of class of 6.9 million
12 consumers who allegedly received auto-dialed survey calls to their cellular phones
13 from Gallup without prior express consent.

14 15. In *Matute and McDonald v. Main Street Acquisitions Corp.*, Case No. 11-
15 cv-62375- KMW (S.D.Fla.) I was co-lead counsel on behalf of a class of consumers
16 who alleged that they were subjected to collection activity from a debt collector that
17 had failed to maintain the statutorily required registration with the State of Florida.
18 A class action settlement was reached on behalf of the class of 969 Florida
19 consumers that provided a common fund and more than \$5 million in debt relief.

20 16. I have litigated, obtained class certification, settled and won court approval
21 of class action settlements in numerous other cases, including the following:

- 22 a. *Barr v. The Harvard Drug Group, LLC*, No. 13-cv-62019 (S.D.Fla.) Co-
23 lead counsel in statewide class action producing \$415,500 settlement fund.
24 TCPA claims brought on behalf of class of 354 dentists to whom
25 Defendant, allegedly sent fax advertisements without permission;
- 26 b. *Caterpillar Inc. C13 and C15 Engine Products Liability Litigation*.
27 Caterpillar, Inc. agreed to pay \$60 million to settle a class action brought
28 by dozens of trucking companies and truck owners in 18 states that had
purchased or leased vehicles powered by heavy-duty on-highway diesel

1 engines (C13 and C15). I was a member of the class counsel team that
2 prosecuted the litigation and produced the class settlement.

3 c. *Barr v. IDS*, No. 13-cv-61981 (S.D.Fla.) Co-lead counsel in statewide class
4 action producing \$450,000 settlement fund. TCPA claims brought on
5 behalf of class of 854 Florida dentists to whom Defendant, a dental supply
6 company, allegedly sent fax advertisements without permission.

7 d. *Mowatt v Stern, DJSP Ent., et al.* Case No. 10-cv-62302 (S.D.Fla.)--Co-
8 lead counsel in mass layoff class action filed under the WARN Act,
9 alleging over 700 employees were terminated without the required
10 statutory notice. Court finally approved a settlement fund of \$500,000,
11 affording automatic payments to class members with no claims process.

12 e. *Fraser v. Asus Computer International*, Case No. 12-00652 (N.D.Cal.)
13 Class Counsel. Class action settlement reached on behalf of purchasers of
14 Asus Transformer Prime EE TF201 tablet computer. Plaintiff had alleged
15 that the Asus tablet was defective because the GPS did not operate. The
16 settlement afforded every purchaser the right to claim \$17 and a piece of
17 hardware that enabled the GPS to work properly.

18 f. *Villaflor and Brice v. Equifax Information Services LLC*, No. 09-cv-
19 00329-MMC (N.D. Cal.) Co-lead counsel in class action lawsuit claiming
20 that Equifax violated FCRA by failing to accurately and clearly report
21 mortgage and car loans that had been paid and closed. Nationwide class
22 action settlement valued at more than \$10M that provided 60,000 class
23 members with twelve months of credit monitoring service and required
24 Equifax to change its file disclosure format and website to ensure clear and
25 accurate reporting of accounts that have been paid and closed.

26 17. I have litigated other class action cases and complex civil actions, including
27 the following:

28 a. *U.S. v. Rothstein*, No. 09-cr-60331 (S.D.Fla.) As pro bono counsel, I
represented thirty-seven innocent victims of the largest Ponzi scheme in
South Florida. Scott Rothstein betrayed the trust of his law firm's clients
and violated the Florida Bar's Rules of Professional Responsibility when
he stole client settlement monies that were being held in the law firm's
trust account. I pursued a series of forfeiture, restitution and bankruptcy

1 claims, on behalf of his clients and obtained a 100% recovery of more than
2 \$1 million.

3 b. *Regal, et al. v. Butler & Hosch, P.A.* Case No. 15-cv-61081-BB (S.D.Fla.)
4 Lead counsel in mass layoff class action filed under the WARN Act and
5 asserting breach of contract claims, alleging over 600 employees were
6 terminated without the notice required by statute and without being paid
7 wages and benefits that were due and owing by contract. Obtained
8 judgment for \$7M on behalf of plaintiffs and class. I am representing
9 plaintiffs and class in related assignment for the benefit of creditors action
10 to collect on the judgment and recover monies for plaintiffs and the class.

11 c. *Mohamed v. Off Lease Only, Inc.* See No. 15-cv-23352, 2017 U.S. Dist.
12 LEXIS 89031 (S.D. Fla. June 8, 2017).

13 18. I am rated AV by my professional peers through the Martindale-Hubbell ©
14 Peer Review Rating system. According to Martindale-Hubbell, the "AV" rating of
15 "Very High to Preeminent" legal ability is a testament from peer legal professionals
16 of the highest level of professional excellence and of unquestionable ethics. I have
17 also been selected as a Top Rated Lawyer by ALM & Martindale-Hubbell.

18 19. I have taught the "E-discovery: How to Streamline Production and Reduce
19 Costs - Electronically Stored Information (ESI) - Guidelines and Protocols," Florida
20 Justice Association Workhorse Seminar, 2014 and "Protecting Clients' Rights
21 Following the Dissolution of a Law Firm", Guest Lecturer, 2012.

22 20. With respect to the matter at bar, I, along with co-counsel, have investigated
23 the claims that have been asserted on behalf of Plaintiff and the proposed class.

24 **CASE HISTORY**

25 21. On August 3, 2018, after receiving a fax advertising 3mL eye drops, Plaintiff
26 filed a Class Action Junk-Fax Complaint, alleging both non-willful and willful
27 violations of the TCPA based on unsolicited facsimile advertisements. (Docs. 1 &
28 1-1.). *Retina Associates Medical Group, Inc. v. Keeler Instruments, Inc.*, Case No.
8:18-cv-01358-CJC-DFM (C.D. Cal.).

1 22. Plaintiff seeks \$500 per non-willful violation and \$1,500 for each knowing
2 or willful violation, as well as injunctive relief. (*Id.* at 10.) Plaintiff's claim was
3 brought on behalf of a class of individuals who allegedly received from Keeler
4 unsolicited facsimile advertisements. (Doc. 1.) The Parties stipulated to extend the
5 time for Keeler to respond to the complaint to for Plaintiff to move for class
6 certification. (Doc. 10.) Keeler then moved to strike Plaintiff's class allegations.
7 (Docs. 13, 13-1.) Before Keeler's motion to strike was adjudicated, Plaintiff
8 amended its complaint. (Doc. 17.) Keeler answered the amended complaint and
9 pleaded seventeen affirmative defenses. (Doc. 20.) The Parties submitted a joint
10 proposed scheduling plan. (Doc. 21.) They also made their initial disclosures. On
11 December 13, 2018, Plaintiff served a Rule 30(b)(6) deposition notice on Defendant.
12 The Parties served each other with written discovery requests. The parties produced
13 documents responsive to their respective requests. On February 13, 2019, Plaintiff's
14 counsel sent Defendant's counsel a written request for a pre-filing conference
15 concerning Defendant's document production. Thereafter the parties conferred and
16 Defendant supplemented its production to address the issues raised by Plaintiff.

17 23. The Parties agreed to all-day mediation in Philadelphia, where Keeler is
18 located. They attended all-day mediation with an experienced mediator, Bennett G.
19 Picker, on April 23, 2019.

20 24. Mediation was a success, but the Parties engaged in continued negotiations
21 in order to agree to the Settlement.

22 **FACTUAL BACKGROUND**

23 25. Keeler is a manufacturer of ophthalmic instruments and also sells
24 ophthalmic medication. It maintains a website with products advertised.

25 26. During the Class Period, Keeler sent to telephone facsimile machines 5,581
26 unsolicited advertisements without proper opt-out notices in connection with its
27 marketing campaigns.

1 27. Plaintiff alleged that Keeler violated the Telephone Consumer Protection
2 Act, 47 U.S.C. § 227 (“TCPA”), by sending to Plaintiff and the Class’s telephone
3 facsimile machines unsolicited advertisements that lacked proper opt-out notices.
4 (Doc. 17 at 3 ¶¶ 12, 15, 20.)

5 28. Plaintiff contend that it and the Class are entitled to statutory damages under
6 the TCPA. Keeler has vigorously denies that it violated the TCPA, and pleaded
7 seventeen affirmative defenses. (Doc. 20 ¶¶ 25, 41-57.)

8 SETTLEMENT

9 29. The Class consists of all persons who were sent Keeler’s facsimile
10 advertisements during Class Period.

11 30. Based on documents produced by Keeler in discovery, the number of
12 successful fax transmissions is approximately 5,581.

13 31. The proposed Class Members’ claims stem from the same factual
14 circumstances, specifically the sending of Keeler’s allegedly unsolicited facsimile
15 advertisements without proper opt-out notices during the Class Period.

16 32. The terms of the Settlement are set forth in the Settlement Agreement

17 33. Under the Proposed Settlement, Keeler agrees to establish a \$310,000
18 Settlement Fund to fund the following: (1) Settlement Administration Costs; (2)
19 attorneys’ fees, costs, and expenses to Class Counsel, as approved by the Court; (3)
20 an incentive award, if any, to the Representative Plaintiff; (4) Class recovery on a
21 pro rata basis up to \$1,500 each to Class Members who submit a Valid Claim Form;
22 and (5) any *cy pres* distribution. The amount of the Settlement Fund shall not be
23 reduced as a result of any members of the Class electing to opt out or be excluded
24 from the Settlement or for any other reason.

25 34. Class Members who file a Claims Form and do not Opt Out or Object will
26 each receive a pro-rata share of up to \$1,500. After Settlement Administration Costs,
27 any attorneys’ fees, costs, and expenses to Class Counsel, and any Class
28 Representative Award, it is estimated there will be approximately \$190,542 for the

1 Settlement Class to be distributed pro-rata. If each Class Member filed a Claims
2 Form and did not Opt Out or Object, then each one would receive approximately
3 \$34. If, more realistically, ten percent of the Class Members (558 members) filed
4 Claims Forms, they would receive approximately \$341 each.

5 35. The anticipated settlement amount to class members compares favorably to
6 numerous similar TCPA class action settlements which have been approved by
7 courts within the Ninth Circuit and California in particular. Attached as “**Exhibit**
8 **A**” is a chart of similar TCPA class action settlements that have received approval,
9 including the value to each proposed class member for the respective case.

10 36. In considering the Settlement, Plaintiff and Class Counsel carefully balanced
11 the risks of continuing to engage in protracted and contentious litigation, against the
12 benefits to the Class. As a result, Class Counsel support the Settlement and seek its
13 preliminary approval.

14 37. While Keeler believes that it has strong and meritorious defenses not only
15 to the action as a whole, but also as to class certification and the amount of damages
16 sought, Keeler recognizes that if a class were certified, the damages could be
17 significantly higher than the settlement amount.

18 38. The proposed Settlement is the result of intensive arm’s-length negotiation,
19 including an all-day mediation session before an experienced mediator on April 23,
20 2019

21 39. With the mediator’s guidance, and working independently thereafter, the
22 Parties reached a proposed resolution.

23 40. The Parties are represented by counsel experienced in complex class action
24 litigation.

25 41. Class Counsel have extensive experience in class actions, as well as
26 particular expertise in class actions relating to consumer protection and specifically
27 the TCPA.

1 42. Class Counsel—who have litigated numerous TCPA class actions—believe
2 that under the circumstances, the proposed Settlement is fair, reasonable, and
3 adequate and in the best interests of the Class Members.

4 43. My law firm and I will commit the necessary resources -- financial,
5 professional and otherwise -- to advance this litigation and ensure that this class
6 action protects the interests of the putative class.

7 44. I am committed to devoting additional time in seeing this case through to
8 conclusion, including communicating with class members.

9 45. Plaintiff and Class Counsel have no conflicts of interest with other Class
10 Members because, for purposes of the Settlement, Plaintiff’s claim is typical of those
11 of other Settlement Class Members. In addition, Class Counsel have done work in
12 identifying potential claims in the action and filed suit under the TCPA, which
13 specifically addresses unsolicited faxes.

14 46. Class Counsel are experienced in handling class actions, other complex
15 litigation, and the types of claims asserted in the action and have litigated numerous
16 TCPA fax class actions. Through those cases they have gained knowledge of the
17 applicable law. Class Counsel have committed and will commit resources to
18 representing the Class.

19 47. Plaintiff and Class Counsel have been prosecuting this litigation vigorously
20 on behalf of the Class.

21 48. Plaintiff and Class Members share the common goal of protecting and
22 improving privacy rights throughout the nation, and there is no conflict among them.

23 49. The Parties, subject to approval of the Court, have selected Kurtzman
24 Carson Consultants LLC (“KCC”) as the Settlement Administrator.

25 Executed this 21st day of June 2019, in Fort Lauderdale, Florida.

26 By: /s/ Seth M. Lehrman

27 Seth M. Lehrman

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EXHIBIT A

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Case and No.	Size of Class	Settlement Amount	Value per Class Member
<i>Robles v. Lucky Brand Dungarees, Inc.</i> Case No. 3:10-cv-04846 (NDCA)	216,000	\$9.9 Million	\$100 maximum
<i>Adams v. AllianceOne, Inc.</i> Case No. 08-cv-0248 (SDCA)	5.63 Million	\$9 Million	\$40 maximum
<i>Hartman v. Comcast Business Communications</i> 2:10-cv-00413-RSL (WDWA)	148,843	\$3.8 Million	\$25.53 maximum
<i>Hovila v. Tween Brands, Inc.</i> 09-cv-00491-RSL (WDWA)	100,000	\$5.33 Million Max	\$20 Cash; or \$45 Gift Certificate
<i>Clark v. Payless Shoesource, Inc.</i> 09-cv-00915-JCC	8 Million	\$6.25 Million	\$25 Gift Certificate
<i>Cabbage v. The Talbots, Inc.</i> 09-cv-00911-BHS (WDWA)	18,000	\$1.44 Million	\$80 Gift Certificate (\$40 Cash Value)
<i>In Re Jiffy Lube</i> 3:11-md-02261	2.3 Million	\$47 Million	\$17.29 Gift Certificate (\$12.97 Cash Redemption)

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Case and No.	Size of Class	Settlement Amount	Value per Class Member
<i>Bellows v. NCO Financial</i> 07-cv-1413-W(AJB) (SDCA)	Unknown, but in the thousands	\$950,000	\$70
<i>Lemieux v. Global Credit & Collection</i> 08-cv-1012-IEG(POR) (SDCA)	27,844	\$505,000	\$70
<i>Gutierrez v. Barclays Group</i> 10-cv-1012 (SDCA)	66,100		\$100
<i>Arthur v. Sallie Mae, Inc.</i> 10-cv-0198, (WDWA)		\$24.15 Million	Between \$20 and \$40