

EXHIBIT

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7 Attorneys for Plaintiff
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 RONALD J.**
23 **EISENBERG 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, Ronald J. Eisenberg, pursuant to 28 U.S.C. § 1746, declare under perjury that the following is true and correct:

1. My name is Ronald J. Eisenberg.
2. I am over twenty-one years of age and am fully competent to make the statements contained in this Declaration.

COUNSEL’S BACKGROUND

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2 3. I am a partner at Schultz & Associates LLP, a law firm in St. Louis
3 County, Missouri, and one of the attorneys for Plaintiff Retina Associates Medical
4 Group, Inc. (“Retina Associates” or “Plaintiff”) in this action.

5 4. I graduated from Miami University in 1992 and Saint Louis University
6 School of Law in 1999, where I was Managing Editor of Articles for the Saint Louis-
7 Warsaw Transatlantic Law Journal. I am admitted to United States Court of Appeals
8 for the Eighth Circuit, United States Court of Appeals for the Seventh Circuit, United
9 States Court of Appeals for the Federal Circuit, United States District Court for the
10 Eastern District of Missouri, United States Bankruptcy Court for the Eastern District
11 of Missouri, United States District Court for the Northern District of Illinois, and the
12 Missouri Bar.

13 5. I was admitted pro hac vice in this action.

14 6. I have extensive experience litigating class actions involving the
15 Telephone Consumer Protection Act (“TCPA”), mortgages, securities, and
16 consumer-protection statutes.

17 7. I have been appointed class counsel in many federal and state courts.
18 *See Ryoo Dental, Inc. d/b/a Ryoo Dental v. OCO Biomedical, Inc.*, No. 8:16-cv-
19 01626-DOC-KES (C.D. Ca. June 4, 2018) (obtaining appointment as class counsel,
20 along with Seth Lehrman, in TCPA junk-fax case involving thousands of faxes); *see*
21 *also Golan v. Veritas Entm’t, LLC*, No. 4:14CV00069 ERW, 2017 WL 193560, at
22 *5 (E.D. Mo. Jan. 18, 2017) (obtaining appointment as class counsel in contested
23 TCPA robocall case involving 3.3 million illegal calls; noting that “Plaintiffs’
24 counsel are respected attorneys who have handled litigation of this magnitude in the
25 past”); *Connector Castings, Inc. v. Arshon Silicon Technologies, Inc.*, No. 4:15-cv-
26 01148-PLC (Doc. 64) (E.D. Mo. Sept. 21, 2016) (finally approving nationwide
27 TCPA junk-fax settlement involving thousands of faxes); *Suzanne Degnen, D.M.D.*,

1 *P.C. v. Zimmer Dental, Inc.*, No. 4:15-cv-01103-RLW (Doc. 47) (E.D. Mo. Apr. 20,
2 2015) (\$1.6 million nationwide TCPA settlement); *Suzanne Degnen, D.M.D., P.C.*
3 *v. United Bankcard, Inc.*, No. 4:13-cv-00567-CEJ (E.D. Mo. 2013) (settled on class-
4 wide basis; complimented by Court on obtaining settlement of real benefit to class);
5 *BPP v. Brasseler U.S.A. Dental*, No. 1611-CC00730-01 (St. Charles County Cir. Ct.
6 Jan. 11, 2019) (appointed lead counsel in \$4.9 million nationwide TCPA junk-fax
7 settlement); *Performance Chiropractic v. Aspen Medical Prods., Inc.*, 17SL-
8 CC02661 (St. Louis County Cir. Ct. May 14, 2018) (appointed lead counsel in
9 nationwide TCPA settlement where each claiming class member is anticipated to
10 receive benefit worth at least \$600 per fax received); *BPP v. Integrated Media*
11 *Solutions, LLC*, No. 17SL-CC01069-01 (St. Louis County Cir. Ct. May 11, 2018)
12 (appointed lead counsel and obtained final approval in nationwide TCPA settlement
13 involving 25,000 faxes); *Swinter Group, Inc. v. FleetOne, L.L.C.*, No. 1611-
14 CC00730-01 (St. Charles County Cir. Ct. Jan. 19, 2018) (appointed lead counsel in
15 nationwide TCPA settlement with 15,000 class members); *Suzanne Degnen,*
16 *D.M.D., P.C. v. NCMIC Fin. Corp.*, No. 14SL-CC03477 (St. Louis County Cir. Ct.
17 Mar. 28, 2016) (nationwide settlement concerning merchant processing
18 overcharges); *Suzanne Degnen, D.M.D., P.C. v. Entrust Cos. LLC*, No. 12SL-
19 CC04715 (St. Louis County Cir. Ct. Dec. 17, 2015).

20 8. I have also defended class actions and successfully prevented class
21 certification. *See Nickell v. Shanahan*, 439 S.W.3d 223 (Mo. banc 2014) (affirming
22 dismissal of shareholder derivate suit); *Hargis v. JLB Corp.*, 357 S.W.3d 574 (Mo.
23 banc 2011) (affirming summary judgment on claim for unauthorized practice of
24 law); *see also Sakalowski v. Metron Servs., Inc.*, No. 4:10CV02052-AGF (E.D. Mo.
25 2011).

26 9. Prior to joining Schultz & Associates LLP in 2004, I worked for two
27 years as a federal judicial law clerk for the Honorable David D. Noce, Magistrate
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1 Judge, United States District Court, Eastern District of Missouri, and for three years
2 as a Staff Attorney for United States Court of Appeals for the Eighth Circuit.

3 10. Since that time, I have achieved a Martindale-Hubbell® Peer Review
4 Ratings™ of AV® Preeminent™ and a Martindale-Hubbell® Client Review Rating
5 of Preeminent 5.0 out of 5.0. In 2017 and 2019, I received Martindale-Hubbell®'s
6 Platinum Client Champion award, which is granted to less than one percent of
7 attorneys. Additionally, I earned an *Avvo* Rating of 10.0 out of 10.0 and in 2016 and
8 2017 was recognized by *Avvo* as a Top Contributor in Class Actions. In 2018, I
9 obtained a Justia Lawyer Rating of 10.0. I was also entered into The Missouri Bar's
10 2018 Pro Bono Wall of Fame.

11 11. Litigating TCPA class actions consumes the bulk of my time. Since
12 January 2014, I have litigated more than 120 TCPA class actions in federal and state
13 courts, perhaps more than any other attorney in Missouri during that time period. I
14 have also worked on TCPA junk fax class actions in federal courts in California and
15 Illinois.

16 12. My TCPA practice also includes administrative filings with the Federal
17 Communications Commission (“FCC”). Out of more than 125 parties who
18 petitioned the FCC for a retroactive waiver of compliance with the opt-out notice
19 requirement for faxes sent to recipients who provided prior express permission, I
20 represented one of only a handful of commenters who were successful in opposing
21 such petitions. *See* FCC Order, CG Docket Nos. 02-278, 05-338, DA 15-1402 (Dec.
22 9, 2015) <https://ecfsapi.fcc.gov/file/60001353495.pdf> (last visited June 6, 2019)
23 (denying Zimmer Dental, Inc.'s petition for retroactive waiver).

24 13. Apart from obtaining class certification in class actions, my firm and I
25 have been successful in motions practice and appellate practice in TCPA cases. *See,*
26 *e.g., Golan v. Veritas Entm't, LLC*, 788 F.3d 814 (8th Cir. 2015) (obtained reversal
27 of dismissal of TCPA class action seeking \$2 billion to \$6 billion in damages for 3.3
28 million illegal telephone calls); *Suzanne Degnen, DMD, PC v. Dentis USA Corp.*,

1 No. 4:17-CV-292 (CEJ), 2017 WL 2021085, at *2 (E.D. Mo. May 12, 2017)
2 (granting motion to strike several affirmative defenses); *Suzanne Degnen, D.M.D.,*
3 *P.C. v. Komet USA, LLC*, No. 4:15-cv-01631-JAR, 2016 U.S. Dist. LEXIS 10034
4 (E.D. Mo. Jan. 28, 2016) (denying defendant's motion to stay TCPA class action
5 based on cases pending before Supreme Court concerning offers of judgment and
6 Article III standing); *Connector Castings, Inc. v. Joseph T. Ryerson & Son, Inc.*, No.
7 4:15-CV-851 SNLJ, 2015 WL 6431704, at **2-5 (E.D. Mo. Oct. 21, 2015) (denying
8 defendant's motion to dismiss and motion to strike class allegations; granting
9 plaintiff's motion to strike offer of judgment).

10 CASE HISTORY

11 14. On August 3, 2018, after receiving a fax advertising 3mL eye drops,
12 Retina Associates filed a Class Action Complaint in Retina Associates Medical
13 Group, Inc. v. Keeler Instruments, Inc., Case No. 8:18-cv-01358-CJC-DFM (C.D.
14 Cal.), alleging both minimal violations of the TCPA based on unsolicited facsimile
15 advertisements, as well as knowing or willful violations. (Docs. 1 & 1-1.) Retina
16 Associates sought \$500 per violation and \$1,500 for knowing or willful violations,
17 as well as injunctive relief. (Doc. 1 at 10.) Retina Associates's claim was brought
18 on behalf of a class of individuals who allegedly received from Keeler unsolicited
19 facsimile advertisements. (Doc. 1.) The Parties stipulated to extend the time for
20 Keeler to respond to the complaint to for Plaintiff to move for class certification.
21 (Doc. 10.) Keeler then moved to strike Plaintiff's class allegations. (Docs. 13, 13-
22 1.) Before Keeler's motion to strike was rule, Retina Associates amended its
23 complaint. (Doc. 17.) Keeler answered the amended complaint and pleaded
24 seventeen affirmative defenses. (Doc. 20.) The Parties submitted a joint proposed
25 scheduling plan. (Doc. 21.) They also made their initial disclosures. On February
26 22, 2019, the Court entered a Scheduling Order and referred the case to private
27 mediation. (Doc. 22 ¶ 5.) The Parties stipulated to a protective order governing
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1 discovery, and the Court granted the stipulation. (Docs. 24, 30.) The Parties served
2 each other with written discovery requests.

3 15. The Parties agreed to all-day mediation in Philadelphia, where Keeler
4 is located. They attended all-day mediation with an experienced mediator, Bennett
5 G. Picker, on April 23, 2019. Mediation was a success, but the Parties engaged in
6 continued negotiations in order to agree to the Settlement.

7 16. During the Class Period, Keeler sent to telephone facsimile machines
8 5,581 faxes that Retina Associates alleges were unsolicited advertisements.

9 17. After mediation, the Parties continued discussing the terms and
10 negotiating the precise language of the Settlement Agreement (“Agreement”) that is
11 being submitted for preliminary approval.

12 18. The settlement is an extremely favorable result, particularly when
13 considered in light of the risks to Retina Associates in continuing the action and in
14 comparison to other TCPA class action settlements, both in California and
15 nationwide.

16 19. There were substantial risks that Retina Associates would not have been
17 able to obtain a meaningful recovery for the class and that even if Retina Associates
18 were to prevail on the merits of its claim, any judgment inevitably would be subject
19 to appeal.

20 20. Keeler’s defenses also presented numerous risks to Retina Associates’
21 ability to prove liability and to gain class certification.

22 21. Despite these obstacles, Retina Associates obtained a strong settlement
23 that provides a speedy cash payment—possibly up to \$1,500—to each participating
24 class member.

25 22. Plaintiff and Class Counsel have no conflicts of interest with other
26 Class Members because, for purposes of the Settlement, Plaintiff’s claim is typical
27 of those of other Settlement Class Members. In addition, Class Counsel have done
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1 work in identifying potential claims in the action and filed suit under the TCPA,
2 which specifically addresses unsolicited faxes.

3 23. Class Counsel are experienced in handling class actions, other complex
4 litigation, and the types of claims asserted in the action and have litigated numerous
5 TCPA fax class actions. Through those cases they have gained knowledge of the
6 applicable law. Class Counsel have committed and will commit resources to
7 representing the Class.

8 24. Plaintiff and Class Counsel have been prosecuting this litigation
9 vigorously on behalf of the Class.

10 25. Plaintiff and Class Members share the common goal of protecting and
11 improving privacy rights throughout the nation, and there is no conflict among them.

12 26. In sum, the settlement confers an immediate benefit on the class and
13 eliminates the risk of continued litigation under circumstances where a favorable
14 outcome could not be assured.

15 27. I have done significant work on this case and I am committed to
16 devoting additional time and resourced in seeing this case through to conclusion.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on June 21, 2019.

19
20 By: /s/ Ronald J. Eisenberg
21 Ronald J. Eisenberg