

THIS IS A COURT-ORDERED NOTICE OF A CLASS ACTION LAWSUIT SETTLEMENT.

You may benefit from this. Please read it carefully. You are not being sued.

PLEASE READ THE ENTIRE DOCUMENT AND IT WILL EXPLAIN WHY YOU ARE GETTING THIS NOTICE.

You must return a completed Claim Form if you want to receive a payment.

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

RADHA GEISMANN M.D., P.C. and JOHN H. LARY JR., M.D.,)	
individually and on behalf of all others similarly-situated,)	Case No. 1822-CC11147
Plaintiffs,)	Division 20
v.)	
REXALL, INC., and CORPORATE MAILINGS, INC.)	
d/b/a CCG MARKETING SOLUTIONS,)	
Defendants.)	

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: The proposed Settlement Class, which consists of all persons or entities that were sent on or about March 5, 2013, a facsimile message stating in relevant part: “Osteo Bi-Flex Sample Offer” “Dear Partner Physician, We are excited to invite you to join the Osteo Bi-Flex Physician Sampling Program. Registration only takes a few minutes and is free! Please visit our exclusive physician’s only site at www.osteobiflex.com/physiciansampling to register to receive samples of Osteo Bi-Flex to share with your patients.”

Excluded from the Settlement Class are Defendants, members of the judiciary and employees, agents and affiliates of Defendants and all corporate affiliates of Defendants.

- A. WHY HAVE YOU RECEIVED THIS NOTICE?** The Court ordered us to send this Notice to the proposed Settlement Class and our records show you may be a part of the Settlement Class. This Notice explains the nature of the lawsuit and the settlement terms, and informs you of your legal rights and obligations.
- B. WHAT IS THIS LAWSUIT ABOUT?** This lawsuit is about faxes sent by or on behalf of the defendants, Rexall, Inc. and Corporate Mailings, Inc. (“Defendants”), on or about March 5, 2013 regarding the Osteo Bi-Flex Physician Sampling Program (“Osteo Bi-Flex Faxes”). Plaintiffs Radha Geismann, M.D., P.C. and John H. Lary Jr., M.D. filed this class action lawsuit in the Circuit Court of St. Louis City, Missouri alleging that Defendants violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by sending the faxes to the Settlement Class without prior express permission. Defendants denied Plaintiffs’ allegations and raised various defenses. The parties have reached a proposed class-wide settlement (the “Settlement”). The Court has not found that Defendants violated the TCPA and the Settlement does not determine who is correct, but rather is a compromise to resolve the lawsuit.
- C. WHAT IS THE PROPOSED SETTLEMENT?** If the Settlement is approved, Defendants have agreed to make up to \$20,700,000.00 (the “Settlement Fund”) available (i) to pay those Settlement Class Members who submit a Claim Form that is approved, (ii) to pay an incentive award to Plaintiffs Radha Geismann, M.D., P.C. and John H. Lary Jr., M.D. for serving as the class representatives, and (iii) to pay attorneys’ fees and expenses to Class Counsel. Each Settlement Class Member who submits an approved claim will be mailed a check for up to \$333.67 per fax sent to them according to the records in the litigation. Class Counsel will ask the Court to award attorneys’ fees not to exceed one-third of the Settlement Fund (\$6,900,000.00), out-of-pocket litigation expenses not to exceed \$65,000.00, and will also request an incentive award of \$4,000.00 to Radha Geismann, M.D., P.C. and \$25,000.00 to John H. Lary Jr., M.D. As part of the Settlement, the Settlement Class Members will release Defendants and certain related parties from liability arising out of the faxes. Defendants do not admit any fault or liability.
- D. WHAT CAN YOU DO NOW? YOU HAVE FOUR OPTIONS.**

If you are part of the Settlement Class, you have the following four options:

- 1. Return a completed Claim Form:** To be eligible to receive a share of the Settlement Fund, you must complete and return a signed Claim Form postmarked or submitted on or before June 24, 2019. If your claim is approved and the Court approves the Settlement, you will be mailed a check for your share of the Settlement Fund after the Court’s Final Approval Order and Judgment become Final.
- 2. Do nothing.** If you do nothing, you will not receive any payment from the Settlement Fund, but you will be considered a Settlement Class Member, you will be bound by any judgment entered by the Court, and you won’t be able to sue Defendants in a future lawsuit about the claims resolved in the Settlement.
- 3. Exclude yourself from the Settlement.** You are not required to participate in the Settlement. You have the right to exclude yourself from the Settlement by sending a written request for exclusion. Your completed, signed statement advising of your election to opt out must be postmarked no later than June 24, 2019. If your request is not postmarked by that date, you will lose your right to opt out and you will be bound by all orders and judgments entered if the Court approves the Settlement. Your request must list your name (or the name of the entity that is opting out, as applicable), street address, fax number, and

the name and number of this case, be physically signed by you, and it must clearly indicate your request for exclusion from the Settlement (for example, "Exclude me from the Rexall Settlement"). You must mail your request to the Settlement Administrator at the following address: Radha Geismann, M.D., P.C. v. Rexall, c/o KCC Class Action Services, P.O. Box 404118, Louisville, KY 40233-4118, and they will inform the attorneys and the Court of your request.

4. **Object to the Settlement in writing.** If you disagree with any of the terms of the Settlement, and want to file an objection instead of excluding yourself from the Settlement, you must submit your objection in writing to the Clerk of the Circuit Court of the City of St. Louis, Missouri, 10 N. Tucker Blvd, St. Louis, MO 63101. Your objection must either be e-filed, filed in-person with the Clerk, or postmarked no later than June 24, 2019. Any objection must include your name, fax number(s), and current street address, the name of any attorney(s) representing or advising you in connection with your objection (if applicable), the name and number of this case, a statement of all reasons why you believe that the Court should not approve all or any portion of the Settlement, a list of all other objections you or your attorney (if applicable) have made within the last five (5) years, and any documents you wish the Court to consider. Please note that it is not sufficient to simply state that you object. You must state the reasons why you believe the Settlement should not be approved (such as, for example, why the Court should find that the proposed Settlement is not fair, reasonable, adequate, and in the best interests of the Settlement Class). In addition to filing your objection with the Clerk, you or your lawyer must send copies of your objection and any related documents to Class Counsel and the lawyers for Defendants at the following addresses:

<u>Class Counsel</u>	<u>Rexall, Inc.'s Attorney</u>	<u>Corporate Mailings, Inc.'s Attorney</u>
Max G. Margulis	Lauri A. Mazzuchetti	Matthew J. Fedor
Margulis Law Group	Kelley Drye & Warren LLP	Drinker Biddle & Reath LLP
28 Old Belle Monte Rd.	One Jefferson, 2 nd Floor	600 Campus Drive
Chesterfield, MO 63017	Parsippany, NJ 07054	Florham Park, NJ 07932
636-536-7022 – Residential	973-503-5900	973-549-7000
maxmargulis@margulislaw.com	LMazzuchetti@KellyDrye.com	matthew.fedor@dbr.com

- E. **WHEN WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?** The Court will hold a final fairness hearing to decide whether the proposed Settlement is fair, reasonable and adequate and should be approved. At that final fairness hearing, the Court will consider any objections and arguments about the proposed Settlement, including the amount of the award of costs and attorneys' fees to Class Counsel. The final fairness hearing will take place on September 9, 2019, at 10:30 a.m., Division 20 of the Circuit Court of the City of St. Louis, Missouri, 10 N. Tucker Blvd, St. Louis, MO 63101. **You do not need to attend this hearing.** The final fairness hearing may be continued to a future date without further notice. If the Settlement is not approved, there is no assurance that the Class will recover more than is provided in the Settlement, or recover anything at all.
- F. **WHO REPRESENTS THE SETTLEMENT CLASS MEMBERS?** The Court has appointed Plaintiffs, Radha Geismann, M.D., P.C., and John H. Lary Jr., M.D., to be the "Class Representatives." The Court has appointed the following attorneys to be "Class Counsel":

Max G. Margulis	Brian J. Wanca
Margulis Law Group	Anderson + Wanca
28 Old Belle Monte Rd.	3701 Algonquin Rd, Ste 500
Chesterfield, MO 63017	Rolling Meadows, IL 60008

You can hire your own lawyer if you so choose, but then you will need to pay your own legal fees. At the final fairness hearing, Class Counsel will request that the Court approve the payment of an incentive award of \$29,000.00 from the Settlement Fund to Plaintiffs for their services on behalf of the Class. Additionally, Class Counsel will request that the Court award them attorneys' fees not to exceed one-third of the Settlement Fund (\$6,900,000.00), plus reasonable out-of-pocket litigation expenses, not to exceed \$65,000.00.

- G. **HOW DO I OBTAIN MORE INFORMATION ABOUT THE LAWSUIT OR THE SETTLEMENT?** This description of the case is general and does not cover all of the issues and proceedings in the case. A web page has been set up, www.RexallClassSettlement.com, which will contain the complaint and fax, the settlement agreement, the Class Notice and Claim Form, and other information as agreed by the Parties. To see the complete public case file you may visit the office of the Clerk of the Circuit Court of the City of St. Louis, Missouri, 10 N. Tucker Blvd, St. Louis, MO 63101. The Clerk will make the files relating to the lawsuit available to you for inspection and copying at your own expense.

If you have specific questions, write to Class Counsel at any of their addresses above. Include the case number, your name, your fax number, and your telephone number. Or, you may call Class Counsel, Brian J. Wanca at 1-855-827-2329.

Please do not contact the Clerk of the Court, the Judge, or the Judge's staff, because they cannot answer your questions or give you advice about this Settlement.

**BY ORDER OF THE COURT
HONORABLE JUDGE JOAN MORIARTY**