

FULL NOTICE OF CLASS ACTION SETTLEMENT

BEST DOCTORS TCPA SETTLEMENT

Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.,
United States District Court for the District of Massachusetts
Case No.: 1-18-cv-10957-DPW

FULL NOTICE OF CLASS ACTION SETTLEMENT AGREEMENT

ATTENTION: If you are one of the 7,772 entities or persons who received one or more of the 13,425 facsimiles sent by or on behalf of Best Doctors, Inc. (“Best Doctors”) between May 14, 2014 and June 17, 2019 (a) concerning the intended recipient’s potential inclusion or listing in a Best Doctors database or the Best Doctors in America List; (b) concerning the intended recipient’s review of Best Doctors inclusion data; (c) asking the intended recipient to confirm that they are currently seeing patients; and (d) directing the intended recipient to <http://bestdoctors.com/for-physicians> for information concerning Defendant, this Notice informs you of a proposed class action Settlement Agreement that could affect your legal rights and could provide you with an Individual Award. PLEASE REVIEW THIS NOTICE FULLY AND CAREFULLY. A Court authorized this Notice. This is not a solicitation from a lawyer.

THIS NOTICE ANSWERS THE FOLLOWING QUESTIONS:

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1. WHAT IS THE LAWSUIT ABOUT, AND WHY SHOULD I READ THIS NOTICE?

There is a class action lawsuit entitled *Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.*, Case No.: 1-18-cv-10957-DPW (“**Action**”), pending in the United States District Court for the District of Massachusetts (“**Court**”) that may affect your legal rights. The plaintiff is Kenneth A. Thomas MD, LLC (“**Plaintiff**”). The **Action** alleges that Best Doctors, Inc. (“**Defendant**”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“**TCPA**”) by sending 13,425 facsimiles to 7,772 entities or persons between May 14, 2014 and June 17, 2019 (a) concerning the intended recipient’s potential inclusion or listing in a Best Doctors database or the Best Doctors in America List; (b) concerning the intended recipient’s review of Best Doctors inclusion data; (c) asking the intended recipient to confirm that they are currently seeing patients; and (d) directing the intended recipient to <http://bestdoctors.com/for-physicians> for information concerning Best Doctors (“**Subject Facsimiles**”). Defendant denies any wrongdoing and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. The Parties, however, have reached a proposed Settlement of the **Action** (“**Settlement Agreement**”) and believe that the Settlement Agreement is in the best interests of the parties and the **Class Members**. The **Settlement Agreement** and this **Full Notice** have been preliminarily approved by the Court. You have a right to know about the **Settlement Agreement** and about your options before the Court decides whether to finally approve the **Settlement Agreement**. This **Full Notice** explains the **Settlement Agreement**, your legal rights, what benefits are available, who is eligible for those benefits, and how the benefits will be distributed if approved by the Court.

2. WHY AND HOW IS THIS LAWSUIT PROCEEDING AS A CLASS ACTION, AND DO I HAVE A LAWYER IF I AM A CLASS MEMBER?

In a class action lawsuit, one or more plaintiffs assert claims on behalf of all others who allegedly are similarly situated but who are not named plaintiffs to the lawsuit (a “**Class**”). A court needs to approve whether the lawsuit will proceed as a class action, *i.e.*, whether the plaintiff(s) will be appointed as a Class representative(s) to adjudicate the claims on behalf of all members of the Class. On May 27, 2022, the Court entered an **Order Preliminarily Approving the Settlement Agreement**, conditionally certifying the **Action** as a class action for settlement purposes only, and ordering that notice be sent to **Class Members** (defined below) to inform them of, among other things, the Court’s intention to consider whether to finally approve the **Settlement Agreement** as being fair, reasonable and adequate. The Court also appointed Plaintiff as representative of, and Avi R. Kaufman of Kaufman P.A. as counsel to, the **Class Members** (“**Class Counsel**”). Finally, the Court appointed KCC Class Action Services to administer the **Settlement Agreement** (“**Settlement Administrator**”).

3. HOW DO I KNOW IF I AM A “CLASS MEMBER,” AND ARE THERE ANY EXCLUSIONS?

If you received a **Direct-Mail Notice** summarizing the **Settlement Agreement** by first-class mail, Best Doctors’ records reflect you have received one or more of the **Subject Facsimiles** (“**Class Members**”). Only **Class Members** are being offered an **Individual Award**, as set forth in the **Settlement Agreement**. Specifically excluded from the Class: (1) the trial judge presiding over this case; (2) Best Doctors, as well as any parent, subsidiary, affiliate, or control person of Best Doctors, and the officers, directors, agents, servants, or employees of Best Doctors; (3) any of the **Released Parties** (as defined in Paragraph 10.1 of the **Settlement Agreement**); (4) the immediate family of any such person(s); and (5) any Class Member who has timely sought exclusion from the **Settlement Agreement**.

4. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

Subject to the Court’s approval, Best Doctors has agreed not to send the **Subject Facsimiles** again without obtaining prior express invitation or permission from the facsimile recipients. Should Best Doctors send the Subject Facsimiles again, Best Doctors will include a statement on the facsimiles that the facsimiles are not intended to be an advertisement and seek only to provide notification of a recipient’s nomination as a “Best Doctor” and to confirm certain information. Best Doctors will remove any disclosures about contacting “Best Doctors” in the future about other services. Also, Best Doctors will include an opt-out notice as set forth in the TCPA. Upon entry of the Final Order and Judgment, the Parties have stipulated to the entry of an injunctive relief prohibiting Best Doctors from sending the Subject Facsimiles to any recipient without prior express invitation or permission from the recipient.

In addition, Best Doctors agrees to make \$738,375.00 available to fund the **Settlement Agreement**, which shall include amounts for (i) all payments to be made to **Class Members**, (ii) **Notice and Administrative Costs**, and (iii) **the Approved Costs** (“**Settlement Amount**”). The **Settlement Amount** will be deposited in a bank account controlled by the Settlement Administrator to be distributed as described in the **Settlement Agreement**. Within ten (10) business days after the **Effective Date**, the Parties and the **Settlement Administrator** shall jointly determine the net settlement amount due to **Class Members** by subtracting from the Settlement Amount, (i) the Approved Costs Award and (ii) the Notice and Administrative Costs (“**Net Settlement Amount**”). Defendant and the Settlement Administrator shall also determine the specific portion of the **Net Settlement Amount** to be paid to each **Class Member** by dividing the **Net Settlement Amount** by 13,425 and then multiplying that amount by the number of Subject Facsimiles received by each Class Member (“**Individual Awards**”).

TCPA statutory damages range from \$500.00 per violation to \$1,500.00 for a willful or knowing violation. Based on the language of the **Subject Facsimile** and differing pronouncements and interpretations of the TCPA by the Federal Communications Commission and federal courts, Plaintiff has concluded that any alleged violations of the TCPA by Best Doctors were not willful or knowing. This conclusion was reached after Plaintiff’s counsel met with the Federal Communications Commission related to the specific facts at issue in this proceeding and both parties responded to and propounded Requests for Production and Interrogatories on the other party. Plaintiff also responded to Defendant’s Requests for Admission. The **Settlement Amount** is a compromise reached between Best Doctors and the Plaintiff and reflects the inherent risk of continued litigation and a potential finding that (i) the **Subject Facsimiles** were not unsolicited advertisements under the TCPA, which would preclude Plaintiff and all putative Class Members from obtaining any recovery from the **Action**, or (ii) the **Action** could not be certified as a contested damages class action based on, among other things, the question of whether putative Class Members provided prior express permission to receive the Subject Facsimiles in connection with their prior communications with Best Doctors, which would also preclude the putative Class Members from obtaining any recovery from the **Action**. The revenue derived from any alleged marketing activities allegedly associated with the Subject Facsimiles was incidental and nominal, and there was a genuine risk that the faxes

would not be considered unsolicited advertisements under the TCPA. Based on the number of Subject Facsimiles, each putative Class Member will be entitled to receive \$55.00 per **Subject Facsimile** less pro rata Notice and Administration of Costs and Approved Costs, if any, which is within the range of per-violation payments obtained in similar TCPA class action settlements. Subject to Court approval, Plaintiff’s Counsel will apply to the Court for reimbursement of out-of-pocket costs and expenses of up to \$10,000.00. **Class Members** may object to the request for reimbursement of out-of-pocket costs and expenses in accordance with Paragraph 5 below.

5. WHAT ARE MY OPTIONS?

Option 1: You may accept the Settlement.

If you want to accept the **Settlement Agreement**, you need not do anything. Subject to the Court’s approval, you will automatically receive the benefits of the **Settlement Agreement** due to you. You will be considered a **Class Member**, you will receive an **Individual Award**, you will be bound by the Court’s decisions and judgment, and you will lose the right to bring any action against Best Doctors on your own concerning the claims being released pursuant to the **Settlement Agreement**.

Option 2: You may exclude yourself from the Settlement.

To exclude yourself from the Settlement and retain your own rights to bring a separate action against Best Doctors, you must mail a letter stating that you want to be excluded from the Settlement Agreement in the Action. Please remember to include (i) the name and case number that has been assigned to this Action; (ii) the full name, e-mail and mailing address, and telephone number of the person requesting exclusion; (iii) the facsimile number to which the Subject Facsimile was sent; and (iv) a statement that he, she, or it does not wish to participate in the Settlement. You must mail your valid exclusion request, postmarked no later than September 26, 2022 (the “Bar Date”) to the Settlement Administrator at **Kenneth A. Thomas v. Best Doctors Settlement Administrator, P.O. Box 301130, Los Angeles, CA 90030-1130**. **If you mail a timely and valid request for exclusion, you will not receive an Individual Award, and you may not object to the Settlement Agreement. If you want to remain eligible to participate in the Settlement Agreement as a Class Member, you should NOT file a request for exclusion. The judgment entered by the Court will bind all Class Members who do not properly request exclusion.**

Option 3: You may object to the Settlement.

If you do not wish to exclude yourself from the **Settlement Agreement**, you may—but need not—object to it. You may object to the Settlement and/or the request for reimbursement of out-of-pocket costs and expenses. **To do so, you must file a written objection with the Court and deliver the objection to the Settlement Administrator postmarked by no later than the Bar Date.** Include: (i) the name and case number of the **Action**; (ii) the full name, address, and telephone number of the person objecting; (iii) the facsimile number to which the **Subject Facsimile** was sent; (iv) a statement of each objection; (v) a written statement detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court’s attention and any evidence the objector wishes to introduce in support of the objection(s); (vi) the identity of all counsel who represent the objector and who may appear at the **Fairness Hearing**; (vii) a list of all persons who will be called to testify in support of the objection at the **Fairness Hearing**; (viii) a list of all other putative class actions to which the objector has submitted an objection over the last ten (10) years; (ix) a statement of whether the objector and/or his or her counsel intends to attend the **Fairness Hearing**; (x) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity; and (xi) the objector’s signature (an attorney’s signature is not sufficient).

COURT

Clerk of the Court
U.S. District Court for the
District of Massachusetts
1 Courthouse Way
Boston, MA 02210

SETTLEMENT ADMINISTRATOR

Kenneth A. Thomas v. Best Doctors Settlement Administrator
P.O. Box 301130
Los Angeles, CA 90030-1130

Objections will be heard by the Court at the **Fairness Hearing**. You may appear at the **Fairness Hearing** with or without counsel. If you enter an appearance at the **Fairness Hearing** through counsel, you will be responsible for retaining such counsel and paying any fee charged by such counsel. You do not need to appear at the **Fairness Hearing** for the Court to consider your objection.

6. WHAT RIGHTS AM I GIVING UP IF I DO NOT EXCLUDE MYSELF FROM THE SETTLEMENT?

Unless you exclude yourself from the **Settlement Agreement**, upon final approval of the **Settlement Agreement** by the Court at the **Fairness Hearing**, the **Action** will be fully and finally resolved, and each and every **Class Member** will grant a full and final release to Best Doctors for any and all claims arising out of or relating to the claims that are alleged in the **Action**. A full version of the release and description of the released claims may be viewed on the settlement website referenced above or by contacting the **Settlement Administrator**.

7. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a hearing to determine, among other things, the fairness, reasonableness, and adequacy of the Settlement on October 27, 2022, at 2:30 p.m. in Courtroom #1, of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210 (“**Fairness Hearing**”). Class Counsel will file a motion for the Court to approve reimbursement of Class Counsel’s out-of-pocket costs and expenses in litigating the **Action** on or before October 12, 2022, which the Court also will consider at the **Fairness Hearing**. Upon filing, the motion and supporting documents will be posted on the settlement website, www.bestdoctorstcpasettlement.com. You need not come to the **Fairness Hearing**, as **Class Counsel** will answer any questions that the Court may have at the **Fairness Hearing**. If you have filed a timely written objection, the Court will consider it. If you file a timely objection, you may attend the **Fairness Hearing** with or without your own lawyer. If you retain a lawyer to attend the **Fairness Hearing**, you must pay your own lawyer. If the Court declines to approve the **Settlement Agreement**, there will be no **Individual Awards** issued. If the Court approves the **Settlement Agreement**, **Individual Awards** will be distributed according to the timeline approved in the Court’s **Final Order and Judgment**. Even if the Court approves the **Settlement Agreement** at the **Fairness Hearing**, there may be appeals that could delay distribution of **Individual Awards**, perhaps for more than a year.

8. WHERE CAN I GET ADDITIONAL INFORMATION?

Additional details about the **Settlement** are available on www.bestdoctorstcpasettlement.com or by contacting the **Settlement Administrator** at *Kenneth A. Thomas v. Best Doctors* Settlement Administrator, P.O. Box 301130, Los Angeles, CA 90030-1130. A complete collection of information, including copies of the pleadings, records and other papers on file in the **Action**, is also available during regular business hours at the Office of the Clerk, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210. **PLEASE DO NOT CALL THE COURT OR BEST DOCTORS FOR ADDITIONAL INFORMATION.**