

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

IN RE: DENTAL SUPPLIES ANTITRUST
LITIGATION

No. 1:16-CV-00696-BMC-GRB
CONSOLIDATED

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
THIRD DISTRIBUTION OF SETTLEMENT FUNDS**

Plaintiffs,¹ through Class Counsel,² move this Court for an Order (i) authorizing a third distribution of the remaining settlement funds from the class settlement with Defendants³ to settlement class members who cashed their initial two payments; (ii) approving several check reissues; and (iii) authorizing the payment of claims administration costs incurred, or to be incurred, by Kroll Settlement Administration LLC.

In this action, Plaintiffs alleged that the Defendants artificially inflated the prices that dental practices paid for Dental Supplies and Equipment through a series of anticompetitive practices, including an agreement to fix margins, an agreement not to poach one another's sales representatives (thus preventing those sales representatives' clients from moving between Defendants, akin to a market allocation scheme), and agreements to boycott low-priced rivals.

¹ Arnell Prato, D.D.S., P.L.L.C., d/b/a/ Down to Earth Dental; Evolution Dental Sciences, LLC; Howard M. May, DDS, P.C.; Casey Nelson, D.D.S.; Jim Peck, D.D.S.; Keith Schwartz, D.M.D., P.A.; and Bernard W. Kurek, D.M.D. and Larchmont Dental Associates, P.C.

² Berger Montague PC, Cohen Milstein Sellers & Toll, PLLC, Hausfeld LLP, and Susman Godfrey LLP.

³ Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Co.
See generally ECF No. 49. Plaintiffs' federal antitrust claims against Defendants were fully

resolved in an \$80 million cash settlement, reached on September 28, 2018. ECF No. 310-1.

On June 25, 2019, this Court granted final approval of the Settlement. *See generally* ECF No. 341. This included finally approving the Plan of Allocation, *id.* ¶ 5, which the Court had previously preliminarily approved as “a straightforward and equitable method of allocat[ion]” that “fairly accounts for the relative strengths and weaknesses of the claims of different categories of Settlement Class Members,” ECF No. 317 ¶ 17. An appeal of final approval (as to the award of attorneys’ fees only) was resolved, on remand, by motion before this Court in October 2019. *See* ECF Nos. 342, 344-347.

1. Supplemental Distribution of Remaining Settlement Funds

On August 31, 2020, the Court granted Plaintiffs’ first motion for disbursement of settlement funds. ECF No. 354. As described in the Second Supplemental Declaration of Lori L. Castaneda Regarding Claims Administration (“Castaneda 2nd Supp. Decl.”), in the first distribution Kroll mailed checks to 49,910 class members. Castaneda 2nd Supp. Decl. ¶¶ 5-6. Following the Court’s approval on March 20, 2022 of a supplemental distribution to class members who had cashed their initial distribution checks, Kroll mailed second distribution checks to 36,501 class members. *Id.* ¶ 7.

Since that time, 31,547 checks (over 86% of total checks) have been negotiated and 4,954 remain uncashed. *Id.* There remains \$228,304.80 from uncashed checks and funds held in reserve. *Id.* ¶ 6. Kroll estimates that it will cost \$31,818.80 to complete the supplemental distribution. *Id.* ¶ 13. To minimize administrative expense, Kroll proposes to have checks remain valid for 60 days, as was done for the second distribution. *Id.* ¶ 14.

Based on the Plan of Allocation, Kroll has calculated payment amounts for those class members who cashed their initial two payments, removing those claimants who did not cash their second distribution checks and those whose pro rata share would have already been

fulfilled based on the minimum payment of \$5 for the second distribution. *Id.* ¶¶ 16-20. Kroll and Class Counsel again recommend a minimum payment of \$5; however, for the third distribution, Kroll proposes that those allocated less than \$5 be excluded from receiving a third distribution check, in order to control administrative fees and costs. *Id.* ¶ 21.¹

2. Check Reissues

After the second distribution was mailed and the 60-day void date passed, Kroll was contacted by a third-party claims preparer and several other claimants requesting that their checks be reissued. Castaneda 2nd Supp. Decl. ¶¶ 9-11. These reissues would total \$63,635.56, leaving \$132,850.44 to be distributed to other eligible class members. *Id.* ¶ 15.

In anticipation of the Court's approval of these reissue requests, Kroll has calculated the payment amounts for the third distribution. *Id.* ¶¶ 10-11, 16. The average additional award for the Equipment Only group would be \$11.60, with the highest additional award being \$58.52. *Id.* ¶ 23. For those who had supply purchases, the average additional award would be \$12.23, with the highest additional award being \$331.78. *Id.* In total, there would be 10,781 class members who would receive a third payment, of which 10,692 are from the Supplies group and 179 are from the Equipment Only group. *Id.*

Should the Court determine that any of the checks described above should not be reissued, Kroll can promptly revise the calculations to remove any payment requests the Court denies. *Id.* ¶ 12. Kroll's calculations are set out in the Excel file that is posted on the settlement

¹ There are 14,058 class members who cashed their second distribution checks but would only receive between \$0.01 and \$4.99 in the third distribution based on the pro rata calculations. Castaneda 2nd Supp. Decl. ¶ 21. Kroll notes that if it were to send checks to these class members, the amount of funds to be distributed to the Class would need to be further reduced to cover the additional costs of printing and postage for an additional 14,058 checks. *Id.*

website (www.dentalsuppliesantitrustclassaction.com).²

3. Payment of Claims Administration Costs

As noted above, the cost for Kroll to complete the third distribution would be \$31,818.80. Castaneda 2nd Supp. Decl. ¶ 14. This cost includes the preparation of calculations for the third distribution, printing and mailing checks to the eligible class members, and handling any requests for reissues, questions about checks, or questions on the Settlement Plan of Allocation. *Id.*

CONCLUSION

Plaintiffs respectfully request that the Court authorize the distribution of the remaining Settlement Fund in the manner set forth above.

Dated: May 5, 2023

Respectfully submitted,

/s/ Brent W. Landau

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² The file is accessible here:

https://www.dentalsuppliesantitrustclassaction.com/home/261/DocumentHandler?docPath=/Documents/Dental_Supplies_3rd_Distribution.xlsx. Because there are tens of thousands of class members, a .pdf submission of the proposed distribution would span approximately 560 pages. As a result, and for the convenience of the Court, Plaintiffs have made available an excel file that is searchable and sortable (although not editable, to maintain accuracy of the proposed distribution), rather than a massive and unsortable .pdf file.

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