

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ARcare, Inc., on behalf of itself and all
others similarly situated,

Plaintiff,

Case No.: 1:16-cv-11547-DPW

v.

Cynosure, Inc.,

Defendant.

**ORDER AUTHORIZING NOTICE
AND PRELIMINARILY CERTIFYING SETTLEMENT CLASS**

After review and consideration of the Parties' Amended Settlement Agreement and Release, and the submissions related thereto, IT IS HEREBY ORDERED as follows:

1. By stipulation of the Parties, and pursuant to Federal Rule of Civil Procedure 23, the Court preliminarily certifies the following Settlement Class: "All persons or entities who were sent one or more facsimile transmissions advertising the availability or quality of property, goods, or services of Cynosure from July 27, 2012 through March 13, 2019." The Parties expressly agreed to this Settlement Class definition for settlement purposes only. Excluded from the Settlement Class are (a) all current employees, officers, and directors of Cynosure; and (b) the undersigned Judge presiding over this Action and his staff. As provided for in the Amended Settlement Agreement and Release, if this Court does not grant final approval of the settlement set forth in the Amended Settlement Agreement and Release, or if the settlement is terminated or cancelled pursuant to the terms of the Amended Settlement Agreement and Release, then the Amended

Settlement Agreement and Release, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue.

2. The Court finds that preliminary class certification is appropriate because (a) the Settlement Class is so numerous that joinder of all members is impractical, (b) there are common questions of law and fact that predominate over any questions affecting only individual class members, (c) Plaintiff will fairly and adequately protect the interests of the Settlement Class, and (d) a class action is an appropriate method for the fair and efficient adjudication of this controversy.

3. The Court appoints Plaintiff ARcare, Inc., as the "Class Representative" and appoints Phillip A. Bock of Bock, Hatch, Lewis & Oppenheim, LLC; Randall K. Pulliam of Carney Bates & Pulliam, PLLC; and Alan L. Cantor of Swartz & Swartz, P.C. as "Class Counsel."

4. The Amended Settlement Agreement and Release is incorporated by reference into this Order (with capitalized terms as set forth in the Amended Settlement Agreement and Release).

5. The Court authorizes notice that the settlement set forth in the Amended Settlement Agreement and Release appears fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and the Class Action Fairness Act of 2005 ("CAFA"), subject to final consideration at the Final Approval Hearing provided for below.

6. The Amended Settlement Agreement and Release proposes notice to the Settlement Class by facsimile, U.S. mail to class members to whom facsimile notice is unsuccessful and whose addresses can be reasonably determined, and by maintaining a settlement website. The Court finds that such notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23. The plan is approved and adopted. The Court orders that the Parties provide the notice to the

Settlement Class as proposed in the Amended Settlement Agreement and Release. The Court approves the form and content of the Notice as contained in the amended Exhibits A, B, and C to the Amended Settlement Agreement and Release as filed on March 13, 2019. The Court also approves Kurtzman Carson Consultants as the Settlement Administrator.

7. A hearing (the “Final Approval Hearing”) shall be held before this Court in Courtroom 1 of the John Joseph Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, at the date and time set forth below, to determine (a) whether the Settlement set forth in the Amended Settlement Agreement and Release is fair, reasonable, and in the best interests of the Settlement Class; (b) whether a Judgment as provided in Amended Settlement Agreement and Release should be entered granting final approval of the Settlement; (c) whether the parties’ proposed plan for distribution and accounting should be adopted; (d) whether, and in what amount, attorneys’ fees and expenses should be awarded to Class Counsel; and (e) whether, and in what amount, an incentive award should be made to the Class Representative. The Court may adjourn and/or continue the Final Approval Hearing without further notice to Settlement Class Members.

8. The Court approves as to form and content the Proof of Claim Form substantially in the form attached as Exhibit D to the Amended Settlement Agreement and Release.

9. Any Settlement Class Member who wishes to opt out from the Amended Settlement Agreement and Release shall send a signed, written request to the Settlement Administrator that includes the individual’s name, address, fax number, and a statement that he or she wants to be excluded from the Settlement in this Action. To be effective, the request must be postmarked by the date indicated below. Any Settlement Class Members who do not timely and validly request

to opt out shall be bound by the Amended Settlement Agreement and Release. Any Settlement Class Member who does opt out shall not be entitled to any share of the Settlement Fund.

10. Any Settlement Class Member who does not opt out of the Amended Settlement Agreement and Release and wishes to submit a claim seeking distribution from the settlement fund shall submit a completed Proof of Claim Form to the Settlement Administrator by fax or mail, or through the Settlement Website, by the date indicated below.

11. Any Settlement Class Member who does not opt out of the Amended Settlement Agreement and Release may object to any aspect of the Settlement. Objections must be electronically filed with the Court, or postmarked and mailed to the Clerk of Court, with copy to Class Counsel and Cynosure's counsel, by the date indicated below. For an objection to be considered by the Court, the objection must set forth: the name of the Action (*ARcare, Inc. v. Cynosure, Inc.*, No. 16 Civ. 11547 (D. Mass.)); the objector's full name, address, and fax number; an explanation of the basis upon which the objector claims to be a Settlement Class Member; all grounds for the objection, accompanied by any legal support for the objection; the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection; whether the objector intends to appear at the Final Approval Hearing and, if so, the identity of all counsel representing the objector who will appear at the Final Approval Hearing; a list of all other class action settlements to which the objector or their counsel filed an objection; a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; and the objector's signature (an attorney's signature is not sufficient).

12. All discovery and pretrial proceedings in this Action are stayed and suspended until further order of this Court.

13. Pending the final determination of the fairness, reasonableness, and adequacy of the settlement set forth in the Amended Settlement Agreement and Release, no Settlement Class Member, either directly, representatively, or in any other capacity, shall institute, commence, or prosecute any Released Claims against any Released Parties as set forth in Section XIV of the Amended Settlement Agreement and Release.

14. In the event the Court does not grant final approval of the Amended Settlement Agreement and Release or the settlement set forth in the Amended Settlement Agreement and Release is terminated according to its terms, the Amended Settlement Agreement and Release shall be considered null and void; all of Cynosure's obligations under the Amended Settlement Agreement and Release shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this the Amended Settlement Agreement and Release. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiff's right to seek class certification and Cynosure's right to oppose class certification. Any discussions, offers, or negotiations associated with the Amended Settlement Agreement and Release shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiff's right to seek class certification, and Cynosure's right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if Amended Settlement Agreement and Release had not been negotiated, made, or filed with the Court.

15. Neither the Amended Settlement Agreement and Release, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiff or

Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

16. The Court hereby sets deadlines and dates for the acts and events set forth in the Amended Settlement Agreement and Release and directs the Parties to incorporate the deadlines and dates in the Class Notice:

(a) The Notice shall be sent by the Settlement Administrator on or before March 28, 2019;

(b) Requests by any Settlement Class Member to opt out of the settlement must be submitted in writing to Settlement Administrator, postmarked on or before May 27, 2019, or be forever barred;

(c) Objections (including any supporting brief) by any Settlement Class Member shall be electronically filed with the Court, or mailed to the Clerk of the Court, with copy to Class Counsel and Cynosure's counsel, postmarked on or before May 27, 2019, or be forever barred;

(d) Memoranda in support of final approval, including the proposed plan for distribution and for the submission of a detailed accounting of the settlement funds after distribution, and all support for the requests for attorney's fees, expenses, and award to the Class Representative shall be filed by May 17, 2019; and

(e) Memoranda, if any, in response to any objections filed by a Settlement Class Member shall be filed by the named parties by June 21, 2019.

17. The Final Approval Hearing, set forth in the Class Notice, is hereby scheduled for July 11, 2019, at 2:00 p.m.

DATED: March 14, 2019



Honorable Douglas P. Woodlock
United States District Judge