

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

G. NEIL GARRETT, D.D.S., P.C.,)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	No. 13 CV 7965
Plaintiff,)	
)	
v.)	Honorable Judge Blakey
)	Magistrate Judge Martin
NEW ALBERTSON’S, INC.,)	
doing business as JEWEL-OSCO,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

RECITALS AND DEFINITIONS

1. Parties. Defendant New Albertson’s, Inc., doing business as Jewel-Osco (“New Albertson’s” or “Defendant”) and Plaintiff G. Neil Garrett, D.D.S., P.C. (“Plaintiff”) individually and as representative of the settlement class of persons defined in the Terms section below in paragraph 3 (the “Settlement Class”), enter into this Settlement Agreement (“Settlement Agreement”). Plaintiff and Defendant are collectively referred to as the Parties.

2. Nature of Litigation. In this lawsuit, captioned *G. Neil Garrett, D.D.S., P.C. v. New Albertson’s, Inc., doing business as Jewel-Osco, and John Does 1-10*; United States District Court, Northern District of Illinois, Eastern Division, docket number 13 CV 7965, (the “Litigation”), Plaintiff alleges that New Albertson’s violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”), the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”) and common law conversion, private nuisance and trespass to chattels by causing

unsolicited facsimile advertisements to be transmitted to a nationwide class of individuals and entities.

3. Denial of Liability. New Albertson's denies violating the TCPA and Illinois state law and further denies any liability to Plaintiff and the Settlement Class for the claims alleged. New Albertson's desires to settle the claims solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all claims, known or unknown, that have been or might have been asserted by the Plaintiff or the Settlement Class against New Albertson's concerning the matters alleged in the Class Action Complaint.

4. "Class Counsel" means Edelman, Combs, Lattuner, & Goodwin LLC and its attorneys.

5. "Class Period" means the period beginning on November 3, 2013 and continuing through November 5, 2013.

6. "Plaintiff" means G. Neil Garrett, D.D.S., P.C. and each and every one of its respective past, present or future shareholders, employees (as employees of Plaintiff), agents (as agents of Plaintiff), representatives, attorneys (as counsel for G. Neil Garrett, D.D.S., P.C.), heirs, assigns, or any other person acting on its behalf or for its benefit, or any person claiming through it.

7. "Released Parties" means New Albertson's Inc. and its parent and affiliates, their predecessors and successors in interest and their present, former, and future affiliates, and the past and current officers, directors, employees, agents and insurers (in such capacities as they relate to the actions that are the subject of the Litigation). The Parties expressly agree that any person or entity named in this Agreement which is not a party to this Agreement is an intended third party beneficiary of this Agreement.

8. “Settlement Class Administrator” means the firm retained by Plaintiff with the consent of Defendant and approved by the Court to issue notice to the Settlement Class Members and to administer the settlement.

9. “Settlement Class Member(s)” means Plaintiff and any member of the Settlement Class who is not excluded from the Settlement Class by the Court.

10. “Released Claims” means any and all causes of action, suits, claims, or demands, in law or in equity, known or unknown at this time, which Plaintiff or any Settlement Class Member now have, did have, or may have in the future against the Defendant or any of the Released Parties, under any legal theory, whether or not alleged, related to or arising from the transmission of facsimiles promoting the goods or services of New Albertson’s Inc. doing business as Jewel-Osco, that was sent by or on behalf of New Albertson’s Inc. during the Class Period (collectively, hereinafter the “Released Claims”).

11. Plaintiff, individually and on behalf of the Settlement Class, desires to settle its claims against New Albertson’s Inc., having taken into account through Plaintiff’s counsel the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that further litigation will be protracted and expensive. Plaintiff represents and warrants that it owned or leased the facsimile machine which received the fax at issue in the Litigation at the time the fax was received. The warranties and representations made in this Agreement survive the execution of the Agreement.

12. Plaintiff’s counsel has investigated the facts and the applicable law. Based on the foregoing, and upon an analysis of the benefits afforded by this Settlement Agreement, Plaintiff’s counsel considers it to be in the best interest of the Settlement Class to enter into this Settlement Agreement.

13. In consideration of the foregoing and other valuable consideration, Plaintiff, Plaintiff's counsel, and New Albertson's Inc. agree to settle the claims of the Plaintiff and the Settlement Class, subject to the Court's approval, on the following terms and conditions.

TERMS

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Agreement.

2. Effective Date. If there is no objection to the Court approving this Settlement, then the Settlement Agreement shall become effective (hereinafter the "Effective Date") upon the occurrence of all of the following:

(a) The Court's entry of a Final Approval Order substantially in the form of Exhibit 4, and (b) the expiration of five business (5) days after the date that the Final Approval Order becomes a final and non-appealable order.

3. Certification of Settlement Class. Solely for the purposes of settlement, the parties stipulate to the certification of a Settlement Class, which is defined as:

All persons and entities who during the period November 3, 2013 through November 5, 2013, were sent faxes by or on behalf of defendant New Albertson's, Inc. doing business as Jewel-Osco, promoting Jewel-Osco's goods or services. (the "Settlement Class")

For settlement purposes only, the Parties agree that, as part of the Preliminary Approval Order the Court may make preliminary findings and enter an order granting provisional certification of the Settlement Class subject to final findings and certification in the Final Approval Order, and appointing both Plaintiff as class representative and Daniel A. Edelman and Julie Clark of Edelman, Combs, Lattuner & Goodwin, LLC as Settlement Class Counsel ("Settlement Class Counsel"). For settlement purposes only, the Settlement Class is certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. New Albertson's Inc. does not consent to

certification of the Settlement Class for any purpose other than to effectuate the settlement of the Litigation. If this Settlement Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) the order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated upon notice to the Court of this Settlement Agreement's termination or disapproval; (b) this Litigation will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made and neither this Settlement Agreement nor any other associated settlement document may be used in seeking class certification; and (c) New Albertson's Inc. reserves all procedural or substantive rights as of the date of execution of this Settlement Agreement

4. Defendant represents that, based on a review of the relevant phone records, facsimiles were successfully sent on behalf of Jewel-Osco during the period November 3, 2013 through November 5, 2013 to 8,925 unique fax numbers. Defendant further represents that the list of facsimile numbers provided to Class Counsel on or about March 25, 2015 (the "Fax List") accurately reflects all unique fax numbers to which the transmission of the fax at issue in this case was attempted to be sent during the Class Period or at any other time through the date of execution of this Agreement.

5. Relief to Plaintiff and the Settlement Class. New Albertson's Inc. shall provide the following relief to Plaintiff and the Settlement Class, subject to the Court's approval:

- a. the creation of a \$400,000.00 Settlement Fund ("Settlement Fund") which shall be distributed as set forth below;
- b. notice and administration expenses will be paid from the Settlement Fund and reasonable notice expenses up to a maximum of \$25,000 may be advanced by Defendant to Class Counsel after entry of the Preliminary Approval Order and Defendant shall be given a credit on the payment of

the Settlement Fund in an amount equal to the amount advanced by Defendant; and

- c. After the notice and administration expenses are deducted from the Settlement Fund, the Settlement Fund shall be apportioned as follows:
 - i. \$5,000.00 shall be paid from the Settlement Fund to Plaintiff as an incentive award in recognition of its services as Class Representative, in addition to its recovery as a class member;
 - ii. counsel for Plaintiff and the Settlement Class, Edelman, Combs, Lattuner & Goodwin, LLC, shall request 1/3 of the Settlement Fund for attorney's fees;
 - iii. each member of the Settlement Class who submits a valid claim form will receive a check for its pro rata share of the Settlement Fund up to a maximum of \$500 per facsimile number, after the amounts set forth in subsections (b), (c)(i) and (c)(ii) are distributed.

6. Any award of attorneys' fees and costs and an incentive award to Plaintiff may be distributed within 14 days following the Effective Date. Within 30 days following the Effective Date, Plaintiff's Counsel or its agent shall distribute the Settlement Fund in accordance with this Agreement. In the event that (i) the Settlement Agreement is terminated pursuant to its terms; (ii) Defendant withdraws from the Settlement Agreement; (iii) the Settlement Agreement does not become effective; or (iv) the Final Approval Order is reversed, vacated, or modified in any material respect which is not mutually acceptable to the Parties, then Plaintiff's Counsel or their agent shall return \$400,000.00, less any reasonable costs (which shall not exceed \$7,500), that were incurred by Class Counsel to issue notice to the Settlement Class Members of the Settlement Agreement, to counsel of record for New Albertson's Inc. within three business days of that event.

7. Settlement Class Members shall have at least 60 days to submit a claim form, to opt out, or object to the proposed settlement, after notice of the proposed settlement is sent to the Settlement Class by facsimile.

8. Costs associated with notice, claims administration and distribution of settlement checks shall be paid from the Settlement Fund.

9. The settlement checks issued to the members of the Settlement Class for payment of claims under this Agreement will be void after 60 days from the date of issuance. Any Settlement Class Member who does not negotiate the claim payment check issued to such Settlement Class Member within 60 days of the date of issuance of the settlement claim payment check, agrees that such Settlement Class Member rescinds and withdraws his, her or its claim for monetary compensation under this Agreement but remains a member of the Settlement Class and is bound by the terms of this Agreement.

10. Undistributed Settlement Funds. Within 30 days following the last void date of the checks issued to Settlement Class Members for payment of claims, the Settlement Class Administrator will report to the Parties if there are any uncashed checks or unclaimed or undistributed settlement funds. In the event that there are undistributed funds in the Settlement Fund after all payments required under this Agreement are made, the parties shall then donate those funds to a *cy pres* charity selected by New Albertson's Inc., subject to Court approval.

11. Release. Upon the Effective Date, Plaintiff and the Settlement Class Members who have not been excluded from the Settlement Class, hereby fully release and discharge the Defendant and the Released Parties from any and all liability for the Released Claims.

12. This Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted or prosecuted with respect to the Released Claims. Without admitting that California law or the laws of any other state apply to this Agreement or that the release provided by Plaintiff and the Settlement Class is a general release, the Parties agree that upon the Effective Date, the Settlement Class shall be deemed to have waived and shall have expressly waived the provisions and benefits of California Civil Code §1542, which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his, her or its favor at the time of executing the release, which if known by him, her or it, must have materially affected his, her or its settlement with the debtor. Further, Plaintiff and the Settlement Class, expressly waive any and all provisions and rights or benefits which may be conferred upon them by any law, statute, ordinance or regulation which is similar, comparable or equivalent to California Civil Code §1542.

13. If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

14. Attorneys' Fees, Notice Costs and Related Matters. Class Counsel or their agent will administer the Settlement Fund for the benefit of the Settlement Class and will pay the reasonable costs of notice and settlement administration out of the Settlement Fund. New Albertson's Inc. will advance the costs of notice and administration of the settlement within 7 days after the entry of the Preliminary Approval Order up to a maximum of \$15,000. New Albertson's Inc. shall be given a credit towards payment of the Settlement Fund in an amount equal to the amount advanced by it for costs of notice and administration of the settlement. Any

amount advanced from the Settlement Fund to pay for notice and administrative expenses shall not be included in any request by Plaintiff's Counsel for reimbursement at Final Approval of the Settlement Agreement. Plaintiff's Counsel must seek approval from the Court to withdraw from the Settlement Fund any amount greater than \$25,000 to cover costs related to issuing notice to the class and administration of the settlement including issuance of settlement checks to Settlement Class Members. Class Counsel will request approval from the Court for an award of attorneys' fees in an amount not to exceed 1/3 of the Settlement Fund as set forth in Section 5.c of this Settlement Agreement. Class Counsel will not request additional fees or costs from New Albertsons, LLC or the Settlement Class other than the above-referenced sums. New Albertson's LLC agrees not to oppose an award of fees to Class Counsel of no more than 1/3 of the Settlement Fund as set forth in Section 5(c) of this Settlement Agreement. New Albertson's LLC agrees not to oppose reimbursement from the Settlement Fund of reasonable expenses incurred in sending notice to the Settlement Class and in administering the Settlement Fund except as set forth above. Settlement Class Counsel shall file a fee petition 28 days prior to the deadline set by the Court in the Preliminary Approval Order to submit claims, opt out or object to the Settlement Agreement. Settlement Class Counsel shall file an accounting detailing the disbursement of the Settlement Fund on or before the date ordered by the Court in the Final Approval Order.

15. Notice. Within 5 days after the entry of the Preliminary Approval Order, Defendant's Counsel shall provide Class Counsel and/or the Settlement Class Administrator with the list of numbers contained in the Fax List. Within 35 days of entry of the Preliminary Approval Order, the Settlement Class Administrator shall cause notice in the form of Exhibit 1 and a claim form in the form of Exhibit 2 to be sent via facsimile transmission to the facsimile

numbers identified on the Fax List. The Settlement Class Administrator shall make at least two additional attempts to transmit the notice by facsimile to those numbers where the initial transmission failed.

21 days after the date that the notice was first sent by facsimile, the Settlement Class Administrator may send the notice and claim form by facsimile a second time to each Settlement Class Member identified on the Fax List who did not submit a claim form or otherwise respond to the class notice by that date. In the event notice is sent by facsimile, the Class Administrator shall make at least two additional attempts to transmit the Notice by facsimile to those numbers where the initial transmission failed.

Class Counsel will also post the notice in the form of Exhibit 1, and this Settlement Agreement (excluding exhibits) on its website. Class Counsel or the Settlement Class Administrator shall provide any Settlement Class Member who contacts either of them and requests a copy of the notice (Exhibit 1) and/or the claim form (Exhibit 2) with the notice.

The Settlement Class Administrator may create a website which allows for electronic submission of Claim Forms. Any website created by the Settlement Class Administrator may also post the notice, claim form, the Preliminary Approval Order, and this Settlement Agreement (excluding exhibits).

Class Counsel and/or the Settlement Class Administrator shall retain all documents and records generated during the administration of the settlement including records of notice given to Settlement Class Members, confirmations of transmittals of such notices by facsimile, unconfirmed facsimile transmissions, records of undelivered mail, claim forms, and payment to Settlement Class Members for a period of one year following the issuance of the Final Approval Order, and the expiration of all deadlines for appeal therefrom. Class Counsel shall provide New

Albertson's with copies of any such documents or allow New Albertson's to inspect such documents, upon reasonable request by counsel for New Albertson's. The Fax List and all other documents and records generated during the administration of the settlement shall be used solely for purposes consistent with notice and administration of this settlement and for no other purpose.

16. Claim Validation. Class Counsel or the Settlement Class Administrator shall match the fax number provided by the Settlement Class Member on a returned Claim Form to a fax number on the Fax List. Class Counsel or the Settlement Claims Administrator shall also determine whether the claim is a duplicate, whether the claim form is signed and examine the claim form for completeness and validity. If the fax number contained in a claim does not match a number in the Fax List, then Class Counsel or the Settlement Class Administrator shall follow-up with the Settlement Class Member and inquire if such Settlement Class Member employed other fax numbers during the Class Period (to ascertain if any different fax number is a number on the Fax List), in an effort to determine whether the claim is a valid claim.

If the fax number or fax numbers provided on a Claim Form do not match a fax number on the Fax List, and the follow-up with the Settlement Class Member has not resolved the issue, Class Counsel or the Settlement Class Administrator shall disallow the claim. If a claim is deemed disallowed by the Settlement Class Administrator, the Class Administrator must communicate that disallowance of the claim to Class Counsel and allow Class Counsel an opportunity to investigate the basis for disallowing the claim. In the event the Parties disagree as to the validity of any Claim Form or whether to disallow a claim, then Class Counsel will present the disputed claim to the Court for resolution.

Settlement Class Members timely submitting valid claim forms shall be paid a pro rata share of the Settlement Fund after the payments made in paragraphs 5 (b), 5(c)(i) and 5(c)(ii) are distributed in accordance with this Agreement, up to a maximum of \$500 for each unique facsimile number. If a Settlement Class Member has more than one unique fax number and it is therefore possible that they will recover more than \$599.99, such Settlement Class Member will be required to submit a W-9 form. The W-9 forms will be issued to Settlement Class Members as required after entry of the Final Approval Order and before any settlement checks are issued. Settlement Class Members will have 30 days to respond to a request to complete a W-9 form. Submission of a W-9 form is a condition precedent to receiving a settlement check in excess of \$599.99. If W-9 forms need to be collected, certain dates set forth in paragraphs 6, 9, and 10 are reset and calculated as follows: within 30 days following the expiration of time for Settlement Class Members to complete a W-9 form, Class Counsel or the Settlement Class Administrator shall distribute the Settlement Fund to the Settlement Class Members who have submitted valid claims in accordance with paragraph 16; settlement checks to the Settlement Class Members will be void 60 days from date of issuance; and within 30 days following the void date on the Settlement Class Members' checks, any uncashed checks or unclaimed or undistributed funds, the disposition of which will be determined by the Court, will be disbursed. A Settlement Class Member who is entitled to recover more than \$599.99 and fails to submit a completed and valid W-9 form with the Claim Form, shall be deemed to have waived their claim to recover more than \$599.99 and the maximum amount such Settlement Class Member may recover is \$599.99. Any residual monies from those Settlement Class Members who did not submit a W-9 form, will be added back into the Settlement Fund for distribution to the Settlement Class Members or as otherwise provided in this Settlement Agreement.

17. Right to Object. Any Settlement Class Member may object to the Settlement Agreement and appear in person or through counsel at the Final Approval Hearing, at his, her or its own expense. The deadline to object to the Settlement Agreement shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that it be at least 60 days after the entry of such order. Any Settlement Class Member may object to the Settlement Agreement by filing the objection with the Court and mailing a copy of the objection to Plaintiff's Counsel and Defendant's Counsel, Ice Miller, LLP. Any objection must include: (a) the name, address, and facsimile phone number of the person(s) or entity objecting to the Settlement Agreement; (b) a statement of the objection to the Settlement Agreement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection.

18. Right of Exclusion. All Settlement Class Members who properly file a timely written request for exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class Members pursuant to this Settlement Agreement. A request for exclusion must be in writing and state the name, address, and facsimile phone number (to which fax was sent) of the person(s) or entity seeking exclusion. Each request must also contain a signed statement providing that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Litigation." The request to be excluded must be mailed to Class Counsel or the Settlement Class Administrator at the address provided in the Notice and postmarked or received by Class Counsel or the Settlement Class Administrator on or before such date as set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Notice, or that is not postmarked or received by Class Counsel or the Settlement Class

Administrator within the time specified, shall be invalid and the person(s) serving such a request shall remain a Settlement Class Member and shall be bound by the terms of the Settlement Agreement, if approved. Settlement Class Members shall have at least 60 days from the date of entry of the Preliminary Approval Order to opt out of the Settlement.

19. Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall file a Motion for Preliminary Approval of this Settlement Agreement and shall present such motion to the Court requesting the entry of a Preliminary Approval Order substantially in the form of Exhibit 3 or in such other form which is mutually acceptable to the Parties.

20. Final Approval. Class Counsel shall file a memorandum in support of final approval of the Settlement, which shall include Class Counsel's request for an award of attorneys' fees and costs, at least 7 days prior to the date the Court sets for the final approval hearing. The Parties shall request the Court to enter a Final Approval Order substantially in the form of Exhibit 4, or in another form which is mutually acceptable to the Parties. Pursuant to the Class Action Fairness Act, the Final Approval Order shall not be entered until the expiration of at least 90 days from the date the preliminary approval order was entered. Entry of a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is a condition precedent to this Agreement becoming fully effective. In the event a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is not entered then this Agreement shall be null and void and is rescinded and the Preliminary Approval Order and any other orders entered by the Court in connection with the settlement of this Litigation shall be vacated and the Parties shall be returned

to the position they were in prior to the execution of this Settlement Agreement and this Litigation shall proceed as though this Settlement Agreement was never executed.

21. The fact that the Court may require non-substantive changes to documents attached as Exhibits 1 through 4 does not invalidate this Settlement Agreement.

22. Release of Attorneys' Lien. In consideration of this Settlement Agreement, Class Counsel hereby waives, discharges and releases the "Released Parties," as defined in paragraph 7 of the Recitals and Definitions above, of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Class Counsel in connection with this Litigation, other than the amount awarded by the Court as specified above.

23. Delivery of Settlement Fund. Defendant or persons acting on its behalf shall within five (5) business days after the Effective Date, shall issue a check or wire and amount equal to the Settlement Fund minus any amount advanced by Defendant to pay notice and administration costs, to the Client Trust Account of Class Counsel and Class Counsel agrees to hold such funds in trust for the benefit of the Settlement Class and shall not disburse any funds from the Settlement Fund unless in accordance with this Settlement Agreement or as ordered by the Court. Class Counsel is to provide Defendant's counsel, Ice Miller, LLP, with wire instructions for said transfer on or before the entry of the Final Approval Order.

24. Applicable Law. This Settlement Agreement shall be governed by and interpreted in accordance with the state law of the State of Illinois.

25. Miscellaneous Provisions. The parties and their attorneys agree to cooperate fully with one another in seeking approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein. Whether or not this Settlement Agreement and the settlement contemplated

hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of New Albertson's of any liability or wrongdoing whatsoever.

26. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Released Parties and Settlement Class Members, as these terms are defined in the Recitals and Definitions, and each of their respective successors and personal representatives, predecessors, affiliates, heirs, executors and assigns. It is expressly understood by the Parties that the individuals or entities of the Released Parties that are not a party to this Settlement Agreement are intended third-party beneficiaries of this Agreement.

27. Authority. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations.

28. Right to Set Aside Settlement Agreement. New Albertson's Inc., in its sole and absolute discretion, shall have the right, but not the obligation, to set aside or rescind this Settlement Agreement, if more than 50 Settlement Class Members submit non-duplicative, timely and valid requests for exclusion from this Settlement Class. New Albertson's must timely exercise its right to rescind this Settlement Agreement by filing a Notice of Rescission with the Clerk of the Court prior to the entry of a Final Approval Order by the Court.

29. Entire Agreement. Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Settlement Agreement are merged into and with this Settlement Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended, modified or changed only by a written instrument or

instruments executed by duly authorized officers or other representatives of the Parties expressly amending, modifying or changing this Settlement Agreement and may not be amended, modified or changed orally.

30. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by facsimile or e-mail shall be deemed legal and binding for all purposes.

31. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Settlement Agreement, nor to control or affect meanings, constructions or the effect of the same.

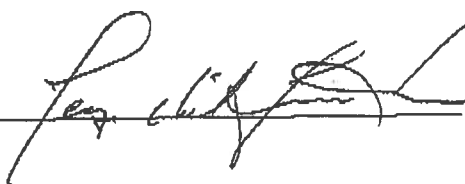
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF

DEFENDANT

G. Neil Garrett, D.D.S., P.C

New Albertson's, Inc.

By: 

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

instruments executed by duly authorized officers or other representatives of the Parties expressly amending, modifying or changing this Settlement Agreement and may not be amended, modified or changed orally.

30. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by facsimile or e-mail shall be deemed legal and binding for all purposes.

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PLAINTIFF

DEFENDANT

G. Neil Garrett, D.D.S., P.C

New Albertson's, Inc.

By: _____

By:  _____

Its: _____

Its: AUTHORIZED SIGNATORY

Dated: _____

Dated: 5.26.2015

EXHIBIT 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

THIS IS NOT A SOLICITATION.

THE SENDING OF THIS NOTICE BY FACSIMILE HAS BEEN APPROVED BY THE COURT.

YOU RECEIVED THIS NOTICE BECAUSE THE RECORDS OF DEFENDANT INDICATE YOU MAY BE A MEMBER OF THE PROPOSED SETTLEMENT CLASS IN THIS CASE. PLEASE READ THIS NOTICE CAREFULLY. IF YOU WISH TO BE PAID BENEFITS UNDER THIS SETTLEMENT, YOU MUST SUBMIT A CLAIM FORM BY **DATE, 2015.**

I. WHY YOU RECEIVED THIS NOTICE

You received this notice because the records of New Albertson's, Inc. d/b/a Jewel-Osco show that you were sent a facsimile promoting Jewel-Osco's goods or services for sale in or about the period November 3, 2013 through November 5, 2013. If this is true then you are a member of the Settlement Class in a class action lawsuit filed against New Albertson's, Inc. d/b/a Jewel-Osco.

II. WHAT IS THE LAWSUIT ABOUT?

Plaintiff, G. Neil Garrett, DDS, PC ("Plaintiff"), sued New Albertson's, Inc. d/b/a Jewel-Osco ("New Albertson's" or "Defendant"), alleging that it received an unsolicited facsimile advertisement sent by New Albertson's d/b/a Jewel-Osco, promoting Jewel-Osco's goods or services, and that did not contain an opt out notice as described in the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. Plaintiff alleged that the sending of these faxes violated the TCPA, the Illinois Consumer Fraud Act and Illinois common law (conversion, trespass to chattels, and private nuisance). Plaintiff sought to represent a class of persons to whom New Albertson's sent the allegedly unlawful advertising facsimiles. New Albertson's denies these allegations but has agreed to settle to avoid the costs and uncertainties of litigation. New Albertson's will vigorously defend the lawsuit if the proposed settlement is not approved. Plaintiff has brought this action on behalf of itself and the Settlement Class set forth below. The Court has preliminarily certified the Settlement Class which has been defined as:

All persons and entities who, during the period November 3, 2013 through November 5, 2013, were sent faxes by or on behalf of defendant New Albertson's, Inc. doing business as Jewel-Osco, promoting Jewel-Osco's goods or services (the "Settlement Class")

The records of Defendant indicate that you are a member of the Settlement Class.

III. WHO REPRESENTS YOU

The Court has appointed Edelman, Combs, Lattuner, & Goodwin, LLC to represent the Settlement Class as Settlement Class Counsel. Settlement Class Counsel may be contacted at: **Edelman, Combs, Lattuner, & Goodwin, LLC (29550), 20 S. Clark St., Suite 1500, Chicago, IL 60603; 312-739-4200, (312) 419-0379 (FAX), www.edcombs.com.**

IV. WHAT IS THE PROPOSED SETTLEMENT?

The parties to the lawsuit have agreed to settle after extensive negotiations. Under the proposed settlement, New Albertson's, Inc. has agreed to pay a Settlement Fund in the total amount of \$400,000 (the "Settlement Fund"). If this settlement is approved by the Court, the Settlement Fund will cover an incentive award to the plaintiff G. Neil Garrett, D.D.S., P.C for its service as class representative (\$5,000), attorneys' fees to Settlement Class Counsel (in the amount of 1/3 of the Net Settlement Fund or \$133,333.33), plus reimbursement of reasonable costs of notice and administration incurred. After these amounts are deducted, each Settlement Class Member who submits a valid claim by **DATE, 2015** will receive an equal share of the remaining funds in the Settlement Fund, based on its unique fax number, up to a maximum of \$500 per unique fax number. Your share

of the Settlement Fund depends on how many Settlement Class members submit Claim Forms. This notice is being sent to approximately 11,200 persons or entities who comprise the Settlement Class. The recovery for each Settlement Class member will not exceed \$500 per unique fax number and is subject to court approval.

V. SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS

(1) Remain a member of the Settlement Class and submit a claim to receive a portion of the Settlement Fund. In order to receive a cash payment under this settlement, you must fully complete and submit the Claim Form at the end of this notice in the manner indicated (see instructions on Claim Form) by **DATE, 2015**. If you do not submit a fully completed Claim Form by the date indicated, you will not receive a cash recovery and you will still remain a member of the Settlement Class and be bound by the terms of the Settlement Agreement entered into with respect to this lawsuit. Under federal tax laws, if you receive a payment in excess of \$599.99, the person making the payment is required to obtain a form W-9 from you. If you identify more than one unique fax number on the Fax List, then you must also submit a completed W-9 form which will be sent to you after the Final Approval Hearing. If you are entitled to recover payment in excess of \$599.99 and you do not submit a completed W-9 form in addition to your Claim Form, the Settlement Class Administrator will deduct tax withholdings from the settlement payment.

(2) Exclude Yourself from the Settlement. If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement by sending (via fax or US Mail) a letter of notice of your intent to be excluded from the Settlement to Settlement Class Counsel at Edelman, Combs, Lattuner & Goodwin, LLC (29550), 20 S. Clark St., Suite 1500, Chicago, IL 60603, FAX: (312) 419-0379 or the Settlement Class Administrator, [identify administrator's address and provide fax number]. The notice of exclusion must state your name (or the name of your company), address, and the fax number at which you were sent a fax from New Albertson's, LLC, and the case name and number at the top of this notice, and state that you wish to be excluded from the Settlement Class. The Notice of Exclusion must be sent or postmarked on or before **DATE, 2015** or you will remain a Settlement Class member. If you exclude yourself from the Settlement, you will not be eligible to receive a cash recovery under the Settlement and you will not be releasing any claims you may have against New Albertson's.

(3) Object to the Settlement. You have the right to tell the Court that you object to the Settlement or some part of it by filing a written objection with the Clerk of the Court advising the Court of your objection. If you wish to object to the Settlement, you must remain a member of the Settlement Class and you cannot exclude yourself from the Settlement Class. Either on your own or through an attorney you can file an objection explaining why you think the Court should not approve the settlement. You must file the objection with the Clerk of the United States District Court, Northern District of Illinois, 219 S. Dearborn, Chicago, IL 60604. The objection must contain the case name and number – *G. Neil Garrett, D.D.S., P.C. v. New Albertson's, Inc., doing business as Jewel-Osco* 13 C 7965 – at the top; your name, address and the fax number for the facsimile machine on which you were sent the fax by New Albertson's; a statement of your objection to the Settlement Agreement, an explanation of the legal and factual basis for the objection; and documentation, if any, to support your objection. The objection must be filed with the Clerk of the Court on or before **DATE**.

2015. The Court will consider your objection if you properly submit an objection on time. You must also mail a copy of your objection to Settlement Class Counsel at the address provided in paragraph III and to Defendant's Counsel at the following address: Bart T. Murphy, ICE MILLER LLP, 2300 Cabot Drive, Suite 455, Lisle, IL 60532.

(4) Do Nothing. You are not required to take any action and may simply do nothing. If you do nothing you will remain a member of the Settlement Class but you will not receive a cash recovery and will be bound by all the terms of the Settlement Agreement including, but not limited to a release of any claims you may have against New Albertson's for sending you unsolicited fax advertisements.

VI. WHAT AM I GIVING UP UNDER THE SETTLEMENT?

If the settlement becomes final, you will be releasing New Albertson's, Inc. for any claims you may have relating in any way to any unsolicited advertising facsimiles which were sent during the period November 3, 2013 through November 5, 2013 promoting Jewel-Osco's goods or services for sale. This release is more fully explained in the Settlement Agreement which is available at the Clerk's Office during regular business hours, U.S. District Court for the Northern District of Illinois, 219 S. Dearborn St., Chicago, IL 60604, and is also posted on www.edcombs.com and on [\[the settlement administrator's website\]](#).

VII. FINAL APPROVAL HEARING

The Court has scheduled a final approval hearing for **DATE, 2015 at TIME a.m.** in Courtroom _____ of the United States District Courthouse for the Northern District of Illinois at 219 S. Dearborn St., Chicago, IL 60604. You do not have to appear at this hearing. You or your attorney may attend this hearing if you desire and request to address the Court regarding any matters relating to this Settlement.

VIII. WHERE CAN I GET MORE INFORMATION?

This notice is intended only as a summary of the lawsuit and proposed settlement. It is not a complete statement of the lawsuit or the proposed settlement. You may inspect the pleadings and other papers (including the proposed Settlement Agreement) that have been filed in this case number, 13 C 7965, at the office of the Clerk of the Court, U.S. District Court for the Northern District of Illinois, 219 S. Dearborn St., 20th FL., Chicago, IL 60604. The Settlement Agreement (excluding exhibits) is also available on www.edcombs.com, and on [\[settlement administrator's website\]](#). If you have questions about this notice or the proposed settlement, you may contact Settlement Class Counsel at the address and phone number listed above. **DO NOT CONTACT THE COURT OR DEFENDANT FOR INFORMATION.**

BY ORDER OF THE U.S. DISTRICT COURT, N.D. III.

EXHIBIT 2

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

G. NEIL GARRETT, D.D.S., P.C.,)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	13 CV 7965
Plaintiff,)	
)	
v.)	Honorable Judge Blakey
)	Magistrate Judge Martin
NEW ALBERTSON’S, INC.,)	
doing business as JEWEL-OSCO,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT**

The Motion of Plaintiff G. Neil Garrett, D.D.S., P.C. (“Plaintiff”) for Preliminary Approval of Class Action Settlement and to issue notice to the Settlement Class came on for hearing on [INSERT DATE], 2015.

The capitalized terms used herein shall have the same meaning as defined in the Settlement Agreement which is attached as Appendix A to Plaintiff’s Motion for Preliminary Approval (the “Settlement Agreement”). Having considered Plaintiff’s moving papers, the signed Settlement Agreement and all other evidence submitted concerning Plaintiff’s motion, and being duly advised in the premises, the Court hereby finds that:

(a) The settlement proposed in the Settlement Agreement (the “Settlement”) has been negotiated in good faith at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class (as defined below).

(b) The class notice (as described in the Settlement Agreement) fully complies with Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice

practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation.

(c) With respect to the Settlement Class, this Court finds that, for settlement purposes only, certification is appropriate under Federal Rule of Civil Procedure 23(a) and (b)(3). This Court finds that members of the Settlement Class will receive notice of the settlement through the notice program described below.

(d) This Court finds that the class notice described below constitutes the best notice practicable under the circumstances and fully complies with Federal Rule of Civil Procedure 23(c)(2)(B).

IT IS THEREFORE ORDERED THAT:

1. The settlement proposed in the Settlement Agreement has been negotiated in good faith at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class in light of the factual, legal, practical and procedural considerations raised by this case.

2. The following class (the "Settlement Class") is preliminarily certified solely for the purpose of settlement pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

All persons and entities who during the period November 3, 2013 through November 5, 2013, were sent faxes by or on behalf of defendant New Albertson's, Inc. doing business as Jewel-Osco, promoting its goods or services. (the "Settlement Class")

The Court makes a preliminary finding that this action satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(a) and (b). The Settlement Class is so numerous that joinder of all members is not practicable, there are questions of law and fact common to the Settlement Class, the claims of the Class Representative (as defined below) are typical of the claims of the Settlement Class, and the Class Representative will fairly and adequately protect

the interests of the Settlement Class. Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. The Court preliminarily appoints Plaintiff G. Neil Garrett, D.D.S., P.C. as class representative of the Settlement Class (“Class Representative”) and finds that it meets the requirements of Fed. R. Civ. P. 23.

4. The Court preliminarily appoints the following lawyers as Settlement Class Counsel and finds that they meet the requirements of Fed. R. Civ. P. 23: Daniel A. Edelman and Julie Clark of Edelman, Combs, Latturner and Goodwin, LLC, 20 S. Clark Street, Suite 1500, Chicago, Illinois 60603.

5. The Court orders New Albertson’s, Inc. to deliver \$15,000 to Settlement Class Counsel within 7 days of the entry of the Preliminary Approval Order to be used to cover the expenses of notice and administration of the Settlement. New Albertson’s, Inc. shall be given a credit in the amount of \$15,000 toward payment of the total Settlement Fund. Any costs paid by Defendant for notice and administrative expenses shall not be included in any request by Settlement Class Counsel for reimbursement at Final Approval of the Settlement Agreement. Settlement Class Counsel must seek approval from the Court to withdraw from the Settlement Fund any amount greater than \$15,000 to cover costs related to notice and administration expenses.

6. If (i) the Settlement Agreement is terminated pursuant to its terms; (ii) the Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order do not for any reason become effective; or (iii) the Settlement Agreement, Preliminary Approval Order, and

Final Approval Order are reversed, vacated, or modified in any material respect which is not agreeable to all Parties, then (a) all orders entered pursuant to the Settlement Agreement shall be deemed vacated, including without limitation the certification of the Settlement Class and all other relevant portions of this Order, (b) this case shall proceed as though the Settlement Class had never been certified, and (c) no reference to the prior Settlement Class, or any documents related thereto, shall be made for any purpose. If the settlement does not become final in accordance with the terms of the Settlement Agreement, then the Final Approval Order shall be void and shall be deemed vacated. Defendant retains the right to oppose class certification if the settlement is vacated, and the doctrines of res judicata, collateral estoppel or law of the case shall not be applied.

7. The Settlement Class Administrator shall give notice of the settlement, its terms, the right to opt out, appear and the right to object to the settlement as set forth in the Settlement Agreement. The Settlement Agreement's plan for class notice is the best notice practicable under the circumstances and satisfies the requirements of due process and Fed. R. Civ. P. 23. That plan is approved and adopted and Settlement Class Counsel is ordered to ensure notice is issued to the Settlement Class as set forth in the Settlement Agreement.

8. The form of notice that Settlement Class Counsel or their agent will provide is attached as Exhibit 1 to the Settlement Agreement. By **[INSERT DATE], 2015**, the Settlement Class Administrator is ordered to send the notice substantially in the form of Exhibit 1 and a Claim Form substantially in the form of Exhibit 2 by facsimile to each Settlement Class Member identified on the Fax List. The Settlement Class Administrator shall make at least two attempts to transmit the notice by facsimile to those numbers where the initial transmission failed. Settlement Class Counsel will also publish Exhibit 1 and the Settlement Agreement, excluding

exhibits, on www.edcombs.com. The Settlement Class Administrator may create a website which allows for the electronic submission of claim forms. Any website created by the Settlement Class Administrator, may also post the notice, claim form, this order, and Settlement Agreement (excluding exhibits). This combined notice program fully complies with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of this Litigation. Within 21 days after the date that notice was sent by facsimile, the Settlement Class Administrator may provide a second round of notice in the form of Exhibit 1 to the Settlement Agreement by facsimile to those Settlement Class Members who have not responded to the class notice. The Court finds that no other notice is necessary. The Settlement Class Administrator and/or Settlement Class Counsel shall provide the notice and/or the claim form to Settlement Class Members who request it.

9. To effectuate the settlement, the Court establishes the following deadlines for the events set forth in the Settlement Agreement and directs the Parties to incorporate the deadlines in the Notice and Claim Form:

(a) Claim Forms shall be returned by Settlement Class Members to Settlement Class Counsel or the Settlement Class Administrator online, by fax, or by mail with a postmark on or before **[INSERT DATE], 2015**. Claims not submitted by this date shall be barred.

(b) Objections of Settlement Class Members or any appearance of an attorney on behalf of a Settlement Class Member shall be filed in this Court and served by mail postmarked to Settlement Class Counsel and Defendant's Counsel on or **[INSERT DATE], 2015**, or shall be forever barred. Each objection must contain the following

information: (a) the objector's name (or business name, if the objector is an entity), address, (b) the telephone number for the facsimile machine on which the Settlement Class Member was sent the fax; (c) a statement of the objection to the Settlement Agreement; (d) an explanation of the legal and factual basis for the objection; and (e) documentation, if any, to support the objection.

(c) All memoranda filed by any Settlement Class Member in connection with objections must be filed in this Court and served on Settlement Class Counsel and Defendant's Counsel by fax or mail postmarked on or before **[INSERT DATE], 2015**, or shall be forever barred.

(d) Requests by any Settlement Class Member to opt out of the settlement must be mailed to Settlement Class Counsel or the Settlement Class Administrator on or before **[INSERT DATE], 2015**, or shall be forever barred. A notice of intention to opt out must contain the following information: (a) the Settlement Class Member's name, address, and the telephone number for the facsimile machine on which the Settlement Class Member was sent the fax; and (b) a statement to the effect that the Settlement Class Member does not want to participate in the settlement and waives all rights to any benefits of the settlement.

10. Settlement Class Counsel or the Settlement Class Administrator shall file an affidavit attesting to the fact that notice was issued in accordance with the Settlement Agreement by **[INSERT DATE], 2015**.

11. Defendant shall file proof of compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b), no later than **[INSERT DATE], 2015**.

12. Settlement Class Counsel shall file with the Court a list of the individual members of the Settlement Class seeking exclusion by **[INSERT DATE], 2015**.

13. The final hearing to determine whether the settlement is fair, reasonable, and adequate, and whether it should be approved by the Court, will be conducted on **[INSERT DATE], 2015** at _____.

14. All papers in support of the Settlement Agreement shall be filed no later than **[INSERT DATE], 2015**. Any responses to objections shall be filed with the Court on or before **[INSERT DATE], 2015**. There shall be no replies from objectors.

15. In the event that the settlement does not become final and the Effective Date does not occur in accordance with the terms of the Settlement Agreement, then this Order shall be void and shall be deemed vacated, and the Settlement Fund advanced shall be returned less any costs incurred to notify the Settlement Class Members of the Settlement Agreement to counsel of record for Lumber Liquidators within three business days of that occurrence.

16. The Court may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the final approval hearing without further notice to the Settlement Class.

17. **[IDENTIFY SETTLEMENT CLASS ADMINISTRATOR]**, shall be the Settlement Class Administrator.

18. Class Counsel to file their fee petition by **[INSERT DATE], 2015**, twenty-eight (28) days prior to the deadline for Class Members to submit objections.

ENTER:

Dated: _____

United States District Judge

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

G. NEIL GARRETT, D.D.S., P.C.,)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	No. 13 CV 7965
Plaintiff,)	
)	
v.)	Honorable Judge Blakey
)	Magistrate Judge Martin
NEW ALBERTSON'S, INC.,)	
doing business as JEWEL-OSCO,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

[PROPOSED] ORDER FINALLY APPROVING THE SETTLEMENT

On **[INSERT DATE], 2015**, this Court entered an order granting preliminary approval (the "Preliminary Approval Order") of the settlement between Plaintiff, on its own behalf and on behalf of the Settlement Class (as defined below), and Defendant, as memorialized in the Settlement Agreement attached as Appendix A to Plaintiff's Motion for Preliminary Approval of Settlement (the "Settlement Agreement"). Capitalized terms used herein shall have the same meaning as in the Settlement Agreement.

On **[INSERT DATE], 2015**, the Court held a fairness hearing (the "Fairness Hearing"), for which members of the Settlement Class had been given appropriate notice and were invited, including those with any objections. An opportunity to be heard was given to all persons requesting to be heard in accordance with the Preliminary Approval Order. **XX** persons appeared in Court seeking to address the settlement pursuant to the Settlement Agreement. Having considered the Parties' Settlement Agreement, Plaintiff's Memorandum in Support of Final Approval of the Class Action Settlement and all other evidence submitted,

IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction over Plaintiff, Defendant, members of the Settlement Class, and the claims asserted in the Litigation.
2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.
3. This Court grants final approval of the Settlement Agreement, including but not limited to the releases in the Settlement Agreement, and finds that it is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all members of the Settlement Class who have not opted out are bound by this Order Finally Approving the Settlement and the Settlement Agreement.

Class Certification

4. The previously certified class (the "Settlement Class") is now finally certified pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3):

All persons and entities with fax numbers who during the period November 3, 2013 through November 5, 2013, were sent faxes by or on behalf of defendant New Albertson's, Inc. doing business as Jewel-Osco promoting its goods or services. (the "Settlement Class")

5. The Court finds that certification of the Settlement Class solely for purposes of settlement is appropriate in that (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any questions affecting only individual class members; (c) Plaintiff's claims are typical of the claims of the Settlement Class; (d) Plaintiff will fairly and adequately protect the interests of the Settlement Class; (e) Edelman, Combs, Lattuner & Goodwin, LLC is adequate class counsel; and (f) a class action is the superior method for the fair and efficient adjudication of this controversy.

6. G. Neil Garrett, D.D.S., P.C. is designated as representative of the Settlement Class (the “Class Representative”).

7. Daniel A. Edelman and Julie Clark of Edelman, Combs, Lattuner and Goodwin, LLC are appointed as Settlement Class Counsel.

Class Notice

8. The class notice (as described in the Settlement Agreement) fully complies with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of the Litigation. The Court has approved the forms of notice to the Settlement Class.

9. With respect to the Settlement Class, this Court finds that certification is appropriate under Federal Rule of Civil Procedure 23(a) and (b)(3). Notice was given by facsimile to each Settlement Class Member who was identified on the Fax List. Settlement Class Counsel also posted the Settlement Agreement (without exhibits) and notice on their firm’s website, www.edcombs.com. The class notice, claim form, Preliminary Approval Order, and Settlement Agreement (without exhibits) were also posted on [settlement administrator’s website.] These forms of class notice fully comply with the requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and are due and sufficient notice to all persons entitled to notice of the settlement of this lawsuit. A total of [XX] valid and timely claim forms were submitted.

Objections and Opt-Outs

10. No objections were filed by Settlement Class Members.

11. **[Identify opt outs]** validly requested exclusion from the Settlement Class and is [are] hereby excluded from the Settlement Class.

Class Compensation

12. In accordance with the terms of the Settlement Agreement, Defendant shall pay \$400,000 for the Settlement Fund, less any costs advanced for notice and administrative expenses to Settlement Class Counsel pursuant to the procedures set forth in the Settlement Agreement. Defendant has advanced \$_____ from the Settlement Fund for costs of notice and administration. Therefore, Defendant shall pay the remaining \$385,000 of the Settlement Fund pursuant to the procedures set forth in the Settlement Agreement.

Releases

13. Upon entry of this Order Finally Approving the Settlement, Plaintiff and each Settlement Class member shall be deemed to have granted the releases set forth in the Settlement Agreement.

Award of Attorneys' Fees, Costs, and Incentive Award

14. The Court has considered Settlement Class Counsel's application for attorneys' fees. The Court awards Settlement Class Counsel the sum of \$_____ as an award of attorney's fees to be paid from the Settlement Fund within 14 days of the Effective Date, and finds this amount of fees is fair and reasonable. Any costs advanced by New Albertson's Inc. from the Settlement Fund for notice and administrative expenses are not reimbursed.

15. The Court grants Settlement Class Counsel's request for an incentive award to the Class Representative and awards \$5,000 to G. Neil Garrett, D.D.S., P.C. The Court finds that this payment is justified by the Class Representative's service to the Settlement Class. This payment shall be made from the Settlement Fund within 14 days of the Effective Date.

Other Provisions

16. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

17. Neither the Settlement Agreement, the Preliminary Approval Order, this Order finally approving the settlement, nor any of their provisions, nor any of the documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order and Order Finally Approving the Settlement), negotiations, or proceedings relating in any way to the settlement, shall be construed as or deemed to be evidence of an admission or concession of any kind by any person, including Defendant, and shall not be offered or received in evidence in this or any other action or proceeding except in an action brought to enforce the terms of the Settlement Agreement or except as may be required by law or court order.

18. The Court orders Defendant or its agent to deliver the Settlement Fund less the \$15,000 advanced for notice and administration costs to the Client Trust Account of Class Counsel, within five business days of the Effective Date.

19. The Parties are directed to deliver the amount of any uncashed settlement checks or undistributed settlement funds which it receives to _____ as a *cy pres* recipient(s).

20. Settlement Class Counsel or the Settlement Class Administrator shall file a final accounting detailing the distribution of the Settlement Fund by **[INSERT DATE], 2015**.

21. Within 14 days of entry of this Order, the Settlement Class Administrator shall send a letter and W-9 forms to the Settlement Class Members who are entitled to recover more than \$599.99, explaining they are required to submit a W-9 form to the Settlement Class

Administrator within 30 days of the date of the letter. Settlement Class Members to whom such letters are issued shall have 30 days after the date the letter was sent to respond and submit a completed a W-9 form to the Settlement Class Administrator. The Settlement Class Administrator shall withhold taxes on payments to Settlement Class Members who fail to timely submit a completed and valid W-9 form

22. Within 30 days following the expiration of time for Settlement Class Members to complete a W-9 form, the Settlement Class Administrator shall distribute the Settlement Fund to the Settlement Class Members who have submitted valid claims.

24. The Court hereby dismisses this Litigation against Defendant with prejudice and without costs, and the releases specified in the Settlement Agreement are hereby approved and the claims released pursuant to those provisions are released and discharged as of the Effective Date. The Parties are ordered to take all necessary actions to complete the settlement in accordance with the Settlement Agreement and shall comply with the terms of the Settlement Agreement.

ENTER:

Dated: _____

United States District Judge