

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

DR. WILLIAM M. POLLACK v. INCROWD, INC., No. 13 C 7653

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 ARE 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 MARCH 10, 2015.**

I. WHY YOU RECEIVED THIS NOTICE

You received this notice because the records of Defendant InCrowd show that you were sent one or more facsimiles which promoted the goods or services of InCrowd during the period October 24, 2009 through and including October 24, 2013. If this is true then you are a member of the Settlement Class in a class action lawsuit filed against InCrowd.

II. WHAT IS THE LAWSUIT ABOUT?

Plaintiff, Dr. William M. Pollack ("Plaintiff"), sued InCrowd alleging that he received an unsolicited facsimile advertisement sent by InCrowd promoting its goods or services for sale. Plaintiff further complains that the fax in question did not contain an opt out notice as required by 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, private nuisance, and trespass to chattels). Plaintiff sought to represent a class of persons to whom InCrowd sent the alleged unsolicited advertising facsimiles. InCrowd denies these allegations but has agreed to settle to avoid the costs and uncertainties of litigation. InCrowd will vigorously defend the lawsuit if the proposed settlement is not approved. Plaintiff has brought this action on behalf of himself and the Settlement Class set forth below. The Court has preliminarily certified the Settlement Class which has been defined as:

All persons and entities with fax numbers who on or after October 24, 2009 through and including October 24, 2013, were sent faxes by or on behalf of InCrowd, Inc., promoting its goods or services for sale and which do not contain an opt out notice as described in 47 U.S.C. § 227 (the "Settlement Class").

III. WHO REPRESENTS YOU

The Court has appointed Edelman, Combs, Lattuner, & Goodwin, LLC to represent the Settlement Class as Class Counsel. Class Counsel may be contacted at: **Edelman, Combs, Lattuner, & Goodwin, LLC (29078), 20 S. Clark St., Suite 1500, Chicago, IL 60603; (844) 659-4747, (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, InCrowd and its insurer, Continental Casualty Company, have agreed to pay a Settlement Fund in the total amount of \$375,000 (the "Settlement Fund"). Notice and administrative expenses will be paid from the Settlement Fund up to a maximum of \$80,000. Any notice and administrative expenses in excess of \$80,000 shall be paid solely by InCrowd and shall not come out of the Settlement Fund. If this settlement is approved by the Court the Net Settlement Fund will also cover an incentive award to the plaintiff Dr. Pollack for his service as a class representative (\$2,500), and attorney's fees to Class Counsel (in the amount of \$73,750 or 25% of the Net Settlement Fund). After these amounts are deducted, each Class Member who submits a valid claim by **MARCH 10, 2015** will receive an equal share of the remaining funds based on the number of facsimile transmission each Class Member was sent, up to a maximum of \$500 per facsimile transmission. Your share of the Settlement Fund depends on how many Settlement Class Members submit Claim Forms and how many fax transmissions each Settlement Class Member was sent. This notice is being sent to approximately 427,119 persons or entities who comprise the Settlement Class. A total of approximately 1,303,287 faxes were sent to the members of the Settlement Class. Some Settlement Class Members were sent more than one fax transmission. The recovery to each Settlement Class Member who submits a valid claim will be determined based on the number of Settlement Class Members who submit claims, the number of faxes each Settlement Class Member was sent, 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 in the manner indicated (see instructions on Claim Form) by **MARCH 10, 2015**. If you do not submit a fully completed Claim Form by the date indicated you will not receive a cash payment and you will still remain a member of the Settlement Class and be bound by the terms of the Settlement Agreement. 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 the records of Defendant show that you were sent more than one fax, 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, then you waive the right to receive the full amount of your recovery and your recovery will be limited to \$599.99.
- (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 U.S. Mail) a letter of notice of your intent to be excluded from the Settlement to Class Counsel at Edelman, Combs, Lattuner & Goodwin, LLC (29078), 20 S. Clark St., Suite 1500, Chicago, IL 60603, or the Class Administrator at *Pollack v. Incrowd* Class Administrator, P.O. Box 43336, Providence, RI 02940-3336. 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 InCrowd, 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 **MARCH 10, 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 payment under the Settlement and you will not be releasing any claims you may have against InCrowd.
- (3) **Object to the Settlement.** You have the right to tell the Court that you object to the Settlement or any 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 may 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 at the top the case name and number - *Pollack v. Incrowd, Inc.*, 13 C 7653; your name, address and the fax number for the facsimile machine on which you were sent the fax by InCrowd; 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 may be filed with the Clerk of the Court on before **MARCH 10, 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 Class Counsel at the address provided in paragraph III and to Defendant's Counsel at the following address: David S. Almeida, SHEPPARD MULLIN RICHTER & HAMPTON LLP, 70 W. Madison Street, 48th Floor, Chicago, IL 60602.
- (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 InCrowd for sending you unsolicited fax advertisements.

VI. WHAT AM I GIVING UP UNDER THE SETTLEMENT?

If the settlement becomes final, you will be releasing InCrowd for any claims you may have relating in any way to any unsolicited advertising facsimiles which it sent to you during the period October 24, 2009 through and including October 24, 2013. 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 www.IncrowdFaxSettlement.com.

VII. FINAL APPROVAL HEARING

The Court has scheduled a final approval hearing before Magistrate Judge Mason on **APRIL 30, 2015 at 11:00 a.m.** in Courtroom 2266 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 7653, 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 www.IncrowdFaxSettlement.com. 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.