

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

THIS IS NOT A SOLICITATION.

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

PLEASE READ THIS NOTICE CAREFULLY.

IF YOU WISH TO BE PAID BENEFITS UNDER THIS SETTLEMENT, SUBMIT A CLAIM FORM BY JUNE 15, 2015.

To All Members of the Following Class:

All persons and entities with facsimile numbers that during the Class Period (October 29, 2009, through and including December 15, 2014), were sent one or more facsimile communications by, from or at the direction of Analgesic Healthcare, Inc. ("AHC") and/or John Does 1-10: (i) that did not contain Personal Health Information of any person, and (ii) regardless of whether they contained an opt-out notice as described in 47 U.S.C. §227 and/or regulations promulgated to implement the TCPA. (the "Settlement Class").

"Personal Health Information" means information that (i) is created, maintained or received by any health care provider, health care plan, employer, medical device manufacturer or supplier, or health clearinghouse, and (ii) relates to the past, present, or future physical or mental health or condition of any individual, the provision of health care (including without limitation any medical device), or the past, present or future payment for the provision of healthcare (including without limitation any medical device) to any individual.

I. WHY IS THIS NOTICE BEING SENT?

You have been identified as having been sent one or more facsimile communications by, from or at the direction of AHC and/or John Does 1-10: (i) that did not contain Personal Health Information of any person, and (ii) regardless of whether they contained an opt-out notice. As a result of this lawsuit you may be eligible to receive a *pro rata* share or shares of a Settlement Fund under a proposed settlement of a class action lawsuit if they submit a Claim Form by **JUNE 15, 2015**. The lawsuit is pending in federal court in Chicago, Illinois. The hearing to approve the settlement will be held on **JULY 28, 2015 at 9:00 a.m.** before Judge Leinenweber, Courtroom 1941 of the U.S. District Court for the Northern District of Illinois, 219 S. Dearborn St., Chicago, IL 60604.

II. SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS

- (1) **Submit a Claim Form:** This is the only way to get a cash payment. The deadline to submit a claim is **JUNE 15, 2015**. Settlement Class Members who submit valid claims may expect to recover one equal share of the Distributable Settlement Fund for each facsimile transmission sent to each Settlement Class Member up to 20 shares. Settlement Class Members who were sent more than 20 faxes shall be paid for a maximum of 20 settlement shares per unique fax number. See Sections IV and V.
- (2) **Exclude Yourself:** Get no payment. This is the only option that allows you to ever be part of any other lawsuit about the legal claims in this case. The deadline to exclude yourself and "opt out" of the settlement is **JUNE 15, 2015**. See Section VII.

- (3) **Object:** Write to the Court about why you don't like the settlement or any part of it. The deadline to object is **JUNE 15, 2015**. See Section VIII.

- (4) **Go to a Hearing:** Ask to speak in Court about the fairness of the settlement. The final approval hearing is scheduled for **JULY 28, 2015 at 9:00 a.m.** See Section I.

- (5) **Do Nothing:** Get no payment. Give up rights. See Section VI.

These rights and options—and the deadlines to exercise them—are explained further in this Notice.

III. WHAT IS THE LAWSUIT ABOUT?

Plaintiffs Myrna Zidek, successor to Dr. Dennis Zidek, and Dr. William P. Gress (collectively, "Plaintiffs") sued AHC and John Does 1-10 alleging that they received unsolicited facsimile advertisements from AHC and that the sending of those faxes and others like it violated a federal law called the federal Telephone Consumer Protection Act, the Illinois Consumer Fraud Act and the Illinois common law (conversion, private nuisance, trespass to chattels). Plaintiffs sought to represent a class of persons to whom AHC sent unsolicited facsimile advertisements. AHC denies these allegations but has agreed to settle to avoid the costs and uncertainties of litigation.

IV. WHAT IS THE PROPOSED SETTLEMENT?

Under the proposed settlement, AHC has agreed to pay a Settlement Fund in the amount of \$550,000. The Settlement Fund will cover an award to Plaintiffs (\$8,000 each, in addition to their recovery as a class member), attorney's fees (in the amount of 1/3 of the Net Settlement Fund or no less than \$176,666.66), and costs of notice and administration (up to a maximum of \$20,000). After these amounts are deducted, each Settlement Class Member who submits a valid claim by **JUNE 15, 2015** will receive an equal share of the remaining funds based on the number of facsimile transmission each Settlement Class Member was sent (a "Settlement Share"). Your Settlement Share 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 3,042 persons or entities. These 3,042 persons or entities were collectively sent a total of approximately 21,279 fax transmissions. Settlement Class Members were sent between 1 and 114 facsimile advertisements. Settlement Class Members who were sent more than 20 faxes shall be paid for a maximum of 20 settlement shares per unique fax number. The number of fax transmissions sent to each Settlement Class Member varies. The recovery to the Settlement Class Members is estimated and is subject to change based on court approval.

V. HOW DO I GET A PAYMENT?

If you are part of the class described above, in order to receive a monetary award under the Settlement Agreement, you must complete and submit the claim form to **www.class-settlement.com** using your unique username and password, or via mail or fax to the Class Administrator, **Class-settlement.com, PO Box 9009, Hicksville, NY 11802-9009, (888) 868-4506 (FAX)**. Claim forms must be submitted online, faxed or postmarked by **JUNE 15, 2015**. Settlement shares will be based on the number of faxes AHC's records indicate were sent to each Settlement Class Member. If AHC's records do not indicate how many faxes were sent to a Settlement Class Member, then the Settlement Class Member will be entitled to a single Settlement Share per unique fax number. Settlement Class Members may submit information to show the number of faxes they were sent if AHC's records do not indicate the number of faxes they were sent. If your payment exceeds \$599.99, you will be asked to submit a W-9 form in order to receive your payment.

VI. WHAT AM I GIVING UP?

If the settlement becomes final, you will be releasing AHC and John Does 1-10 from any claims arising from or in any way relating to non-patient facsimile communications sent during the Class Period by or at the direction of AHC or John Does 1-10 that did not contain Personal Health Information of any persons regardless of whether they contained an opt out notice in the form described in 47 U.S.C. § 227 and/or regulations promulgated by the Federal Communications Commission to implement the TCPA or any similar statute, rule, or regulation. This release is more fully explained in paragraph 11 of the Settlement Agreement. The Settlement Agreement 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.class-settlement.com and on www.edcombs.com. You will need to reference case number 13 C 7742.

VII. EXCLUDING YOURSELF FROM THE SETTLEMENT

You will be a member of the Settlement Class unless you exclude yourself from the Settlement Class. You need not take any action to remain in the Settlement Class but you need to submit a Claim Form by **JUNE 15, 2015** to be eligible to receive a payment.

If you want to keep the right to sue AHC and John Does 1-10 over any of the legal issues that were raised or could have been raised in this case by any members of the Settlement Class, then you must take steps to get out of the settlement. This is called asking to be excluded from – or sometimes called “opting out” of – the class. To exclude yourself from the settlement, you must send a letter saying that you want to be excluded from the proposed settlement class in *Zidek v. Analgesic Healthcare Inc.*, 13 C 7742. Be sure to include your name, address, the number for the facsimile machine on which you were sent a fax advertisement and your signature by **JUNE 15, 2015**. Send the letter to **Class Counsel at the address or fax number provided in paragraph IX or the Class Administrator at the address or fax number provided in paragraph V**. If you opt out, you will not receive any payment from the Settlement Fund, you cannot object to the Settlement and you will not be bound by anything that happens in this lawsuit.

VIII. OBJECTING TO THE SETTLEMENT.

Either on your own or through an attorney you hire, you can tell the Court that you don't agree with the settlement or some part of it. You must explain why you think the Court should not approve the settlement. Any objection must include your name, address, the telephone number for the facsimile machine on which you were sent the fax advertisements, a statement of your objection to the Settlement Agreement, and an explanation of the legal and factual reasons you object to the settlement and documentation, if any, to support your objection, by **JUNE 15, 2015**. The Court may only consider any objections submitted or filed by **JUNE 15, 2015**.

Objecting is simply telling the Court that you don't like something about the Settlement. You can object ONLY if you stay in the class. If you exclude yourself, you can't object. Any objections or appearances may be filed with the Court and reference case number 13 C 7742 and mailed to **Class Counsel at the address provided in paragraph IX and AHC and John Does 1-10's Counsel at the following address: Mark J. Bernet, AKERMAN LLP, 401 E. Jackson Street, Suite 1700, Tampa, FL 33602.**

IX. WHO REPRESENTS THE CLASS?

The Court has appointed the following law firm to represent you and other members of the Settlement Class in this lawsuit:

✉ **EDELMAN, COMBS, LATTURNER & GOODWIN, LLC (26182)**
20 S. Clark St., Suite 1500
Chicago, IL 60603
(312) 739-4200
(312) 419-0379 (FAX)
www.edcombs.com

This firm represents your interests in this lawsuit. You may contact them with any questions that you have about the lawsuit or the Settlement. You do not have to pay the fees of Class Counsel. You may also hire your own attorney at your own cost to appear on your behalf.

X. 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 case number 13 C 7742, at the office of the Clerk of the Court, U.S. District Court for the Northern District of Illinois, 219 S. Dearborn St., Chicago, IL 60604. The Settlement Agreement (excluding exhibits) is also available on www.class-settlement.com and on www.edcombs.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.

