

**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 MARCH 7, 2016.**

**I. WHY YOU RECEIVED THIS NOTICE**

You received this notice because the records of MSC Group, Inc. and Total Medical Solutions-DME & HH, Inc. show that you may have received an unsolicited fax ad from Defendants and therefore you may be a member of the Settlement Class.

**II. WHAT IS THE LAWSUIT ABOUT?**

Plaintiff, Able Home Health, LLC ("Plaintiff"), sued MSC Group, Inc. and Total Medical Solutions-DME & HH, Inc. (collectively, "Defendants"), alleging that it received unsolicited facsimile advertisements sent by Defendants promoting its services, and the fax did not contain an opt out notice informing you how to tell the sender to stop sending you faxes, 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 Defendants sent the allegedly unlawful advertising facsimiles. Defendants deny these allegations but have agreed to settle these claims solely to avoid the costs and uncertainties of litigation. Defendants 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 with fax numbers who during the period July 23, 2010 through and including July 23, 2014, were sent faxes by or on behalf of MSC Group, Inc. and/or Total Medical Solutions-DME & HH, Inc., promoting their goods or services and which did not contain an opt out notice as described in 47 U.S.C. § 227 (the "Settlement Class").

The records of Defendants indicate that you may be a member of the Settlement Class.

**III. WHO REPRESENTS YOU**

The Court has appointed Edelman, Combs, Latturmer, & Goodwin, LLC to represent the Settlement Class as Settlement Class Counsel. Settlement Class Counsel may be contacted at: **Edelman, Combs, Latturmer, & Goodwin, LLC (30144), 20 S. Clark St., Suite 1500, Chicago, IL 60603; 312-917-4504, Fax 312-419-0379, [www.edcombs.com](http://www.edcombs.com).**

**IV. WHAT IS THE PROPOSED SETTLEMENT?**

The parties to the lawsuit have agreed to settle after extensive negotiations including a mediation before a retired federal judge. Under the proposed settlement, Defendants through their insurer have agreed to pay a total of \$675,000 (less any applicable deductible which Defendants shall pay) to settle the claims of

Plaintiff and the Settlement Class (the "Settlement Fund"). If this settlement is approved by the Court, the Settlement Fund will cover an incentive award to the Plaintiff, Able Home Health, LLC for its service as class representative (\$8,000), attorneys' fees to Settlement Class Counsel (in an amount not to exceed \$225,000), plus reimbursement of reasonable costs of notice and administration incurred (up to a maximum of \$15,000). Plaintiff's Counsel will file a petition for attorney's fees on **FEBRUARY 4, 2016**. After these amounts are deducted from the Settlement Fund, each Class Member who submits a valid claim by **MARCH 7, 2016**, will receive an equal share of the remaining funds based on its 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 3,721 persons or entities. The recovery for each Settlement Class Member is subject to court approval.

**V. SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS**

**Members of the Settlement Class have the following options:**

**(1) Remain a member of the Settlement Class and submit a Claim Form 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 **MARCH 7, 2016**. 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. It is a 1 page form that asks for basic identification information. An example is available at [www.MSCTMSFaxSettlement.com](http://www.MSCTMSFaxSettlement.com). The W-9 form 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 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, Latturmer & Goodwin, LLC (30144), 20 S. Clark St., Suite 1500, Chicago, IL 60603, FAX: (312) 419-0379 or the Settlement Class Administrator, American Legal Claim Services LLC, PO Box 23668, Jacksonville, FL 32241-3668, Fax 877-702-4316. 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 Defendants, 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 7, 2016** 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 Defendants and their insurer.

**(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 – *Able Home Health, LLC v. MSC Group, Inc. and Total Medical Solutions-DME & HH, Inc.*, 14 C 5615 – at the top; your name, address and the fax number for the facsimile machine on which you were sent the fax by Defendants; 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 **MARCH 7, 2016**. 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 Defendants' 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 Defendants for sending you unsolicited fax advertisements.

## **VI. WHAT AM I GIVING UP UNDER THE SETTLEMENT?**

If the settlement becomes final, you will be releasing Defendants and their insurers, officers, directors, shareholders and employees for any claims you may have against them arising from or in any way related to the transmission of facsimiles to you by or on behalf of Defendant(s) promoting the goods or services of Defendants. 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](http://www.edcombs.com) and on [www.MSCTMSFaxSettlement.com](http://www.MSCTMSFaxSettlement.com).

## **VII. FINAL APPROVAL HEARING**

The Court has scheduled a final approval hearing for **MARCH 27, 2016 at 10:00 a.m.** in Courtroom 2119 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, 14 C 5615, at the office of the Clerk of the Court, U.S. District Court for the Northern District of Illinois, 219 S. Dearborn St., 20<sup>th</sup> FL., Chicago, IL 60604. The Settlement Agreement (excluding exhibits) and Settlement Class Counsel's Petition for Attorney's Fees are also available on [www.edcombs.com](http://www.edcombs.com), and on [www.MSCTMSFaxSettlement.com](http://www.MSCTMSFaxSettlement.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 DEFENDANTS FOR INFORMATION.**

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