

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
GLEN ELLYN PHARMACY, INC. v. FDS, INC., No. 15 C 8927
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 JULY 28, 2016.

I. WHY YOU RECEIVED THIS NOTICE

You received this notice because the records of Defendant FDS, Inc. ("FDS" or "Defendant") and Lagniappe Pharmacy Services, LLC ("LPS") (collectively FDS and LPS are referred to as the "FDS Parties") show that you were sent one or more facsimiles during the period August 21, 2011 to August 21, 2015. which promoted the goods or services of FDS and/or LPS. If this is true, then you may be a member of the Settlement Class in a class action lawsuit filed against FDS.

II. WHAT IS THE LAWSUIT ABOUT?

Plaintiff Glen Ellyn Pharmacy, Inc. ("Plaintiff") sued FDS alleging that it received unsolicited facsimile advertisements sent by FDS promoting its goods or services for sale. Plaintiff further complains that the faxes 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 and constituted common law conversion. Plaintiff sought to represent a class of persons to whom FDS sent the alleged unsolicited advertising facsimiles. FDS denies these allegations but has agreed to settle to avoid the costs and uncertainties of litigation. FDS 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 were subscribers to fax numbers that were sent faxes by or on behalf of FDS or LPS between August 21, 2011 and August 21, 2015, promoting the commercial availability or quality of its or their property, goods or services for which it/they did not obtain prior consent and which did not contain an opt out notice as described in 47 U.S.C. § 227.

III. WHO REPRESENTS YOU

The Court has appointed Daniel A. Edelman and Julie Clark of Edelman, Combs, Lattuner, & Goodwin, LLC to represent the Settlement Class as Class Counsel. Class Counsel may be contacted at: **Edelman, Combs, Lattuner, & Goodwin, LLC (31810), 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, FDS has agreed to fund a Settlement Fund in the amount of \$337,000 (the "Settlement Fund"). Notice and administrative expenses will be paid from the Settlement Fund (up to a maximum of \$15,000.00). If this settlement is approved by the Court the Net Settlement Fund will also cover a \$5,000 incentive award to Plaintiff Glen Ellyn Pharmacy, Inc. for its services as class representatives, and attorneys' fees to Class Counsel (an amount not to exceed \$105,666.66, which is 1/3 of the Settlement Fund). Settlement Class Counsel will file a Petition for Attorney Fees by **June 30, 2016**. After these amounts are deducted, each Class Member who submits a valid claim by **July 28, 2016** will receive an equal (pro rata) share of the remaining funds. Your share of the Settlement Fund depends on how many Settlement Class members submit Claim Forms. This notice

is being sent to approximately 17,000 Settlement Class members who were sent a total of 61,615 faxes. Some Settlement Class members received more than one fax. 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.

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 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 **July 28, 2016**. If you do not submit a fully completed Claim Form by the date indicated you will not receive payment, 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 you are entitled to recover payment in excess of \$599.99, 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. The value of each individual settlement payment cannot be determined until the Claims Deadline has passed and all claims have been verified.

(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 US Mail) a letter of notice of your intent to be excluded from the Settlement to Class Counsel, Daniel A. Edelman and Julie Clark at Edelman, Combs, Lattuner & Goodwin, LLC (31810), 20 S. Clark St., Suite 1500, Chicago, IL 60603. 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 the FDS Parties, 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 **July 28, 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 payment under the Settlement and you will not be releasing any claims you may have against the FDS Parties.

(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 – Glen Ellyn Pharmacy, Inc. v. FDS, Inc., No. 15 C 8927; your name, address and the fax number for the facsimile machine on which you were sent the fax by FDS; 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 **July 28, 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 Class Counsel at the address provided in paragraph III and to Defendant's Counsel at the following address: Lewis S. Wiener, Sutherland Asbill & Brennan LLP, 700 Sixth Street, NW, Suite 700 Washington, DC 20001.

(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 claim(s) you may have against the FDS Parties for sending you unsolicited fax advertisements.

VI. WHAT AM I GIVING UP under the settlement?

If the settlement becomes final, you will be releasing the FDS Parties from any claims you may have relating to or arising from the transmission of in any way any unsolicited advertising facsimiles sent to you from August 21, 2011 to August 21, 2015. 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.

VII. FINAL APPROVAL HEARING

The Court has scheduled a final approval hearing before Judge John Robert Blakey on **September 27, 2016 at 10:00 a.m.** in Courtroom 1725 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 8132, 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 or (312) 917-4504. 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. Ill.