

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

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**YOU MAY BE A "CLASS MEMBER" AND ENTITLED TO A CASH PAYMENT UNDER THE
PROPOSED SETTLEMENT.**

**If you were sent a facsimile in September 2006 – October 2006 by or on behalf of
Accubuilt, Inc., promoting its goods or services you may be a "Class Member"
and may be entitled to a cash payment.**

This case is titled Ballard Nursing Center, Inc., v. Accubuilt, Inc., No. 08 C 260

***PLEASE READ THIS NOTICE CAREFULLY.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.
YOU MAY BENEFIT FROM READING THIS NOTICE.***

***IN ORDER TO RECEIVE A CASH PAYMENT YOU MUST RETURN THE PROOF OF CLAIM
FORM AT THE END OF THIS NOTICE. THE CLAIM FORM MUST BE POSTMARKED BY
November 9, 2009.***

1. WHY DID YOU GET THIS NOTICE?

You received this Notice/Claim Form because you met all the criteria contained in the class definition set forth in paragraph 3 below and are a member of the Settlement Class in the above captioned civil action ("Action") now pending in the United States District Court for The Northern District of Illinois, Eastern Division, against Accubuilt, Inc. The purpose of this Notice is to advise you of a proposed settlement in the Action, and of a hearing to consider that settlement to be held **November 23, 2009 at 10:00 a.m.** before Judge Ashman, Room 1386 of the Northern District of Illinois, 219 S. Dearborn, Chicago, Illinois, 60604 ("Fairness Hearing").

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff, Ballard Nursing Center, Inc., filed this action which is currently pending in United States District Court for The Northern District of Illinois, Eastern Division. On behalf of a putative class, plaintiff alleged that the defendant violated the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA") by sending unsolicited facsimile advertisements. Defendant denies these allegations but has agreed to settle to avoid the costs of litigation. Counsel for plaintiff has conducted an extensive investigation into the relevant facts and law underlying plaintiff's claims, and has concluded that the outcome of the lawsuit is uncertain and that a settlement is in the best interests of plaintiff and the Settlement Class. Defendant denies that it acted unlawfully, denies liability to plaintiff and the Settlement Class, and denies that class certification is required or appropriate if there was not a settlement. This Notice should not be understood as an expression of any opinion by the Court as to merits of any of the claims asserted by plaintiff or any of the defenses asserted by defendant.

3. WHO IS IN THE SETTLEMENT?

To see if your rights will be affected by this settlement or if you will get money from this settlement, you first have to determine if you are a class member. On August 25, 2009, the Court preliminarily approved the settlement and provisionally certified a Settlement Class ("Settlement Class") in the Action for purposes of settlement only. The Settlement Class is defined to include: *All persons and entities within Illinois to which*

defendant sent faxes during September 2006-October 2006 in the forms attached as Exhibits A-B of Plaintiff's Amended Complaint.

4. THE SETTLEMENT BENEFITS - WHAT YOU GET

Each member of the settlement class who submits a valid and timely claim form shall receive a payment in the maximum amount of \$1,000.00 per settlement member, if that member received both faxes attached as Exhibits A and B to the Complaint. In addition, Ballard Nursing Center will receive a payment of \$5,000.00 for his services in having acted as the class representative. Further, Class Counsel will apply for and defendant agrees, subject to Court approval, to pay reasonable attorney's fees and expenses, which amount shall not exceed \$29,100.00. There are approximately 970 members in the Settlement Class. In no event will defendant be required to pay any claims, attorney's fees or costs which, in the aggregate, exceed \$97,000. To the extent that payment of \$500.00 for each eligible claim submitted plus would exceed \$97,000 less attorney's fees and costs and payment of the incentive award to the named plaintiff as approved by the Court, each claimant will receive its *pro rata* share of the Fund.

5. WHAT AM I GIVING UP AS PART OF THE SETTLEMENT?

If the settlement becomes final, you will be releasing Accubuilt, Inc. of any claims relating in any way to its sending of unsolicited advertisements by fax. This release is more fully explained in paragraph 11 of the Settlement Agreement. The Settlement Agreement is available at the Clerk's Office, in the United States District Court for The Northern District of Illinois, Eastern Division, 219 S. Dearborn, Chicago, Illinois, 60604 during regular business hours. The Settlement Agreement specifically describes the released claims in necessarily legal terminology. You may speak with Class Counsel or your own lawyer if you have questions about the release.

6. HOW DO I GET A PAYMENT?

To ask for a cash payment, you must complete and return the attached Claim Form (also on www.edcombs.com) by facsimile to 312-419-0379 or by U.S. Mail to the address for Class Counsel listed below in paragraph 8. The deadline for Claim Forms is **November 9, 2009**; Claim forms **MUST BE** faxed or postmarked by **November 9, 2009**. Payments will be mailed to class members after the Court grants "final approval" of the settlement and any appeals are resolved. The Court is scheduled to consider final approval at a hearing on **November 23, 2009 at 10:00a.m.** in room 1386 of the Dirksen Federal Building before Judge Ashman.

7. EXCLUDING YOURSELF FROM THE SETTLEMENT

If you fall within the Settlement Class definition set forth in paragraph 3 above, you will be a member of the Settlement Class unless you exclude yourself from the Settlement Class. If you want to keep the right to sue Accubuilt, Inc. over the legal issues in this case, then you must take steps to get out of the settlement. If you opt out of the settlement, 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. You must exclude yourself from *this* class to start or continue your own lawsuit against Accubuilt, Inc. To opt out, you must complete and mail or fax a notice of intention to opt-out ("Opt-Out"), which contains the following: (i) providing your full name and address; (ii) containing your (or your attorney's) signature; (iii) stating your intent to be excluded from the Settlement; and (iv) setting forth the name and number of the case. For your Opt-Out to be valid, it must be faxed to 312-419-0379 by **November 9, 2009** or mailed to the following address postmarked no later than **November 9, 2009**.

COUNSEL FOR PLAINTIFF AND CLASS COUNSEL

Daniel A. Edelman / Julie Clark (18292)
Edelman, Combs, Lattuner & Goodwin, LLC
120 S. LaSalle Street, 18th Floor, Chicago, IL 60603
(312) 917-4504 (312) 419-0379 (FAX)
www.edcombs.com

These attorneys represent your interests in this lawsuit. You may contact them with any questions that you have about the lawsuit or the settlement. You may also hire your own attorney at your own cost to advise you in this matter.

8. OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it. You must give reasons why you think the Court should not approve the settlement. The Court will consider your views if you properly submitted an objection on time. 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 have no basis to object because the case no longer affects you. If you wish to object to the settlement or to any awards to plaintiff or class counsel, then you must mail or fax a written objection to the settlement ("Objection") to class counsel and counsel for defendant by fax or postmarked no later than **November 9, 2009**, and contemporaneously file the objection with the Clerk's Office, in the United States District Court for The Northern District of Illinois, Eastern Division, 219 S. Dearborn, Chicago, Illinois, 60604:

Class Counsel

Daniel A. Edelman
Julie Clark
Edelman, Combs, Lattuner & Goodwin, LLC
120 S. LaSalle Street
Chicago, Illinois 60603
(312) 419-0379 (FAX)

Defendant's Counsel

Thomas P. Cimino, Jr.
Brian W. Ledebuhr
Vedder Price P.C
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609-5005 (FAX)

Each objection must (a) set forth the objector's full legal name or business name, if the objector is an entity, address and telephone number; (b) set forth the telephone number for the facsimile machine on which the class member was sent the fax; (c) state the Objection to the Settlement; (d) set forth a statement of the legal and factual basis for the Objection; and (e) provide copies of any documents in support of the Objection. If you do not submit a timely Objection in accordance with the requirements set forth above, you will not be treated as having filed a valid Objection to the settlement. If you do file an objection and wish it to be considered, you may also appear at the hearing before Judge Ashman **on November 23, 2009 at 10:00 a.m.** YOU ARE NOT REQUIRED TO ATTEND THIS HEARING. Please note that it is not sufficient to simply state that you object. You must state reasons why the settlement should not be approved.

9. THE COURT'S FAIRNESS HEARING

The Court will hold a hearing on the settlement in the United States District Court for The Northern District of Illinois, Eastern Division, 219 S. Dearborn, Chicago, Illinois, 60604, Courtroom 1386 **on November 23, 2009 at 10:00 a.m.** to determine, among other things, (i) whether it will be approved as fair, adequate and reasonable; (ii) what amount, if any, to award class counsel for attorney's fees and costs in the Action; and (iii) what amount, if any, to award plaintiff for his services as class representative. YOU ARE NOT REQUIRED TO ATTEND THIS HEARING. The hearing may be continued by the Court without further notice to class members. If the Court does not approve the settlement, the class action will proceed, and you may or may not get the money that this case may provide in the future.

**10. WHERE CAN I OBTAIN ADDITIONAL INFORMATION
ABOUT THE LAWSUIT AND/OR THE SETTLEMENT?**

The description of the lawsuit and settlement that is contained in this Notice is only general in nature. All papers filed in this case, including the full settlement agreement, are available for you to inspect and copy (at your expense) at the Clerk's Office, United States District Court for The Northern District of Illinois, Eastern Division, 219 S. Dearborn, Chicago, Illinois, 60604, during regular business hours. If you or your attorney require additional information, you should write or call class counsel at the addresses and telephone numbers listed above in paragraph 9 during regular business hours. Please do not contact the defendant's attorneys; they are not in a position to give you any advice about this settlement.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE OR DEFENDANT

Dated: September 17, 2009

Honorable Martin C. Ashman