

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DR. WILLIAM M. POLLACK,)	
)	
Plaintiff,)	
)	08 CH 03430
v.)	
)	
FITNESS INNOVATIVE TECHNOLOGIES,)	
LLC, and JOHN DOES 1-10,)	
)	
Defendants.)	

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All persons or entities with facsimile numbers who on or after January 28, 2003 were sent facsimiles by or on behalf of F.I.T. promoting its goods or services for sale and with respect to whom F.I.T. cannot provide evidence of prior express permission for the sending of such faxes or evidence of a prior established business relationship with the recipients.

PLEASE READ THIS NOTICE CAREFULLY. THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU. IT IS A NOTICE OF A SETTLEMENT BEING SENT TO YOU BY COURT ORDER.

IF YOU WISH TO RECEIVE A PORTION OF THE CLASS SETTLEMENT PROCEEDS DESCRIBED BELOW, YOU MUST COMPLETE AND RETURN THE SUMMARY NOTICE/CLAIM FORM BY SEPTEMBER 29, 2009.

1. WHAT THIS LAWSUIT IS ABOUT?

Plaintiff filed this action in the Circuit Court of Cook County, Illinois. On behalf of a putative class, plaintiff alleged that the defendant Fitness Innovative Technologies, LLC (“F.I.T.”) violated the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), and state law by sending unsolicited facsimile advertisements. Defendant denies plaintiff’s allegations, and raised defenses to plaintiff’s claims.

Judge Rochford granted preliminary approval of the settlement, subject to a fairness hearing which will take place on **NOVEMBER 2, 2009 at 10:30 a.m.**, in Room 2308 of the Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602.

The Court ordered that you be sent this notice because you are a member of the class as defined above. This notice explains the lawsuit and the terms of the settlement and informs you of

your legal rights and obligations.

2. NO ADMISSION OF LIABILITY

By settling this lawsuit, Defendant is not admitting that it did anything wrong. Defendant expressly denies that it did anything wrong.

3. THE SETTLEMENT BENEFITS - WHAT YOU GET

A Settlement Fund of \$137,500 will be established. After deducting attorney's fees and costs (25% of the Settlement Fund), a payment to the Plaintiff and class representative of \$1,500, the net fund remaining will be distributed by check to class members who submit timely and valid claim forms.

The Parties have determined that the Settlement Class may consist of up to 6,169 persons and entities. Your share of the Settlement depends on the number of Class Members who submit a timely and valid claim form and the number of Class Members who opt-out. The value of each claim is worth up to \$500 per class member.

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

If the Settlement becomes final, you will be releasing Fitness Innovative Technologies, LLC and its officers, directors and employees of any claims relating in any way to their sending of unsolicited advertisements by fax. This release is more fully explained in paragraph 10 of the Settlement Agreement. The Settlement Agreement is available at the Clerk's Office, Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602, during regular business hours. The Settlement Agreement specifically describes the release claims. You may speak with Class Counsel or your own lawyer if you have questions about the release.

5. HOW DO I GET A PAYMENT?

To receive a payment from the Settlement Fund, you must complete and return the attached Claim Form by facsimile to (312) 419-0379 or by U.S. Mail to the address for Class Counsel listed below in paragraph 7. The deadline for Claim Forms is **SEPTEMBER 29, 2009**; Claim forms **MUST BE** faxed or postmarked by **SEPTEMBER 29, 2009**.

6. WHEN WOULD I GET MY PAYMENT?

Payments will be mailed to class members after the Court grants "final approval" of the Settlement and any appeals are resolved. The deadline for Claim Forms is **SEPTEMBER 29, 2009**; Claim forms **MUST BE** faxed or postmarked by **SEPTEMBER 29, 2009**. The Court is scheduled to consider final approval at a hearing on **NOVEMBER 2, 2009**.

7. WHO ARE COUNSEL FOR PLAINTIFF AND CLASS COUNSEL?

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

Daniel A. Edelman (20909)
Heather Kolbus
Edelman, Combs, Lattuner & Goodwin, LLC
120 S. LaSalle Street, 18th Floor
Chicago, IL 60603
(312) 739-4200
(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.

Class Counsel will ask the court for attorney's fees and costs of an amount not to exceed 25% of the Settlement Fund or \$34,375 and to reimburse them for the costs of notice and administration. Class Counsel will also ask for an additional payment of \$1,500 for Dr. William M. Pollack, the Class Representative, who helped the lawyers on behalf of the whole class.

8. 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 complete the Claim Form to receive a payment from the Settlement Fund.

If you want to keep the right to sue Fitness Innovative Technologies, LLC, over the legal issues in this case, 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. 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 Fitness Innovative Technologies, LLC.

To opt out, you must complete and mail or fax a notice of intention to opt-out ("Opt-Out"), which contains the following: (a) your full legal name or business name if the facsimile number was one owned or controlled by a business, address, and telephone number; (b) the telephone number for the facsimile machine on which you were sent the Fax; (c) your signature or that of the class member's representative (such as a business' officer or manager); and (d) a statement that expressly states an intent of the class member not to participate in the Settlement and to waive all rights to the benefits of the Settlement. In addition, for your Opt-Out to be valid, it must be faxed to (312) 419-

0379 by **SEPTEMBER 29, 2009** or mailed to the following address postmarked no later than **SEPTEMBER 29, 2009**:

EDELMAN, COMBS, LATTURNER & GOODWIN, LLC (20909)
120 S. LaSalle Street, 18th Floor
Chicago, IL 60603
(312) 419-0379(FAX)

9. 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. Excluding yourself is telling the Court that you don't want to be part of 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 at the addresses set forth below sent by fax or postmarked no later than **SEPTEMBER 29, 2009**, and contemporaneously file the objection with the Clerk's Office, Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602:

Class Counsel

Daniel A. Edelman
Heather Kolbus (20909)
Edelman, Combs, Latturner & Goodwin, LLC
120 S. LaSalle Street, 18th Floor
Chicago, Illinois 60603
(312) 419-0379 (FAX)

Defendant's Counsel

Garrett L. Boehm, Jr.
Tatum Lytle
Johnson & Bell, Ltd.
33 W. Monroe Street, Suite 2700
Chicago, Illinois 60603
(312) 372-9818 (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 Rochford on **NOVEMBER 2, 2009**. **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.

10. THE COURT’S FAIRNESS HEARING

The Court will hold a hearing on the Settlement in the Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602, Courtroom 2308 on **NOVEMBER 2, 2009 at 10:30 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.

11. 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, Circuit Court of Cook County, Illinois, Daley Center, 50 W. Washington, Chicago, Illinois, 60602, during regular business hours. You must bring the name of the case and case number with you, since the Clerk will need to know this information in order to obtain the court file for you to inspect. If you or your attorney need 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 include the case name and number, your name and your current return address on any letters, not just the envelopes. 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 OR DEFENDANT’S COUNSEL FOR INFORMATION.

Dated: June 11, 2009

BY ORDER OF CIRCUIT COURT OF COOK
COUNTY, ILLINOIS, CHANCERY DIVISION
