

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

GLEN ELLYN PHARMACY, INC.,)	
Plaintiff,)	10 C 2585
v.)	Judge Schenkier
ULTIMED, INC,)	
Defendant.)	

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

To: (a) all persons and entities throughout the United States; (b) who, from November 2009 to April 2010; (c) were sent facsimiles by or on behalf of Ultimed promoting its goods or services for sale.

***PLEASE READ THIS NOTICE CAREFULLY.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.
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 MAY 17, 2011.***

1. WHY DID YOU GET THIS NOTICE?

You received the Summary 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. 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 on **June 14, 2011 at 9:30 a.m.** before Judge Schenkier, Room 1041 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 (“Fairness Hearing”).

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff, Glen Ellyn Pharmacy, Inc., filed this action on behalf of a putative class. Plaintiff alleged that the defendant violated the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”) and state law 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?

On February 8, 2011, 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: (a) all persons and entities throughout the United States; (b) who, from November 2009 to April 2010; (c) were sent facsimiles by or on behalf of Ultimed promoting its goods or services for sale.

4. THE SETTLEMENT BENEFITS - WHAT YOU GET

The Settlement Agreement calls for the creation of a \$227,500 Settlement Fund which will be reduced by attorney fees awarded by the Court, not to exceed 30% of the settlement fund, an incentive award to the named plaintiff for having acted as class representative, not to exceed \$7,500 and costs related to notice and administration of the settlement. The amount remaining in the fund will be divided on a pro rata basis among those submitting timely

claim forms. There are approximately 13,500 members in the Settlement Class. For example, if 20% of the Class Members elect to submit a claim (which is greater than average for similar cases), each will receive approximately \$56.00.

5. CLASS COUNSEL'S OPINION OF THE SETTLEMENT

In an individual lawsuit or class action under TCPA, a prevailing plaintiff may be able to recover \$500 per fax in statutory damages for a non-willful violation of the statute (\$1,500, if a willful violation is shown) and any actual damages, costs of suit and injunctive relief. Of course, if an individual does not prevail, he will receive no payment. Here, in this Lawsuit, the Court has not ruled in Plaintiff's favor. The Court has also not certified a class, except pursuant to the Settlement Agreement.

Class Counsel has considered the benefits that the Settlement Class will receive under the Settlement Agreement, the defenses of Ultimed, and the attendant risks, uncertainties and delays of litigation. Additionally, Class Counsel has determined that, should the Class prevail in this action, the only potential source of recovery to the Class would likely be proceeds of an insurance policy which is a diminishing asset with limits of \$1,000,000 and would require separate, subsequent litigation in order to attempt to enforce any judgment obtained. Consequently, Class Counsel believes the terms of the settlement are fair and reasonable, and the members of the Settlement Class should accept this settlement.

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

If the settlement becomes final, you will be releasing Ultimed of any claims relating in any way to their sending of unsolicited advertisements by fax. This release is more fully explained in paragraph 16 of the Settlement Agreement. The Settlement Agreement is available at the Clerk's Office, U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 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.

7. HOW DO I SUBMIT A CLAIM?

To ask for a cash payment, you must complete and return the attached Claim Form by facsimile to (866) 834-3504 or by U.S. Mail to the address for Class Counsel listed below in paragraph 8. The deadline for Claim Forms is **MAY 17, 2011**; Claim forms **MUST BE** faxed or postmarked by **MAY 17, 2011**.

8. 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 **MAY 17, 2011**; Claim forms **MUST BE** faxed or postmarked by **MAY 17, 2011**. The Court is scheduled to consider final approval at a hearing on **June 14, 2011 at 9:30 a.m.**

9. 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 Ultimed 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* case to start or continue your own lawsuit against Ultimed. 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 (866) 834-3504 by **MAY 17, 2011** or mailed to the following address postmarked no later than **MAY 17, 2011**:

Edelman, Combs, Lattuner & Goodwin, LLC
Julie Clark
120 S. LaSalle Street, 18th Floor, Chicago, IL 60603
(312) 917-4504; (866) 834-3504 (FAX)

10. 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:

Edelman, Combs, Lattuner & Goodwin, LLC
120 S. LaSalle Street, 18th Floor
Chicago, IL 60603
(312) 739-4200; (866) 834-3504 (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 enter an appearance on your behalf in this matter.

11. 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 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 **MAY 17, 2011**, and contemporaneously file the objection with the Clerk's Office, U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604:

Class Counsel
Daniel A. Edelman
Julie Clark
Edelman, Combs, Lattuner & Goodwin LLC
120 South LaSalle Street, Suite 1800
Chicago, IL 60603
866-834-3504 fax

Defendant's Counsel
Stephanie W. Tipton
Litchfield Cavo, LLP
303 W. Madison
Suite 300
Chicago, IL 60606
312-781-6630 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 Schenkier, Room 1041 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 ("Fairness Hearing"). **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.

12. THE COURT'S FAIRNESS HEARING

The Court will hold a hearing on the settlement in before Judge Schenkier, Room 1041 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 ("Fairness Hearing") on **June 14, 2011 at 9:30 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.

13. WHERE CAN I OBTAIN ADDITIONAL INFORMATION?

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 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604. 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 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 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: **February 15, 2011**

BY ORDER OF THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION
