

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

DR. WILLIAM M. POLLACK v. CUNNINGHAM FINANCIAL GROUP, LLC,

08 C 1405 Judge Hibbler

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All persons and entities with facsimile telephone numbers, who received a facsimile or facsimiles from Cunningham Financial Group, LLC, promoting the commercial availability of its goods or services who did not consent to the sending of such facsimile(s) and did not have an existing business relationship with Cunningham Financial Group, LLC. Copies of the facsimiles at issue can be found on www.edcombs.com.

***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 29, 2009.***

1. WHY DID YOU GET THIS NOTICE?

You received the Summary Notice/Claim Form because you have been determined to be a member of the Settlement Class. The purpose of this Notice is to advise you of a proposed Settlement, and of a hearing to consider that Settlement to be held on **JULY 7, 2009 at 9:45 a.m.** before Judge Hibbler, Room 1225 of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, Illinois 60604 (“Fairness Hearing”).

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff, Dr. William M. Pollack, filed this action in the Circuit Court of Cook County, Illinois. Defendant, Cunningham Financial Group, LLC (“CFG”) removed this case to the United States District Court for the Northern District of Illinois, Eastern Division, where it is pending. On behalf of a putative class, Plaintiff alleged that the Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”) and state law (conversion) by sending unsolicited facsimile advertisements. Defendant denies these allegations but has agreed to settle to avoid the costs and uncertainties 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. THE SETTLEMENT BENEFITS - WHAT YOU GET

A Settlement Fund of not less than \$45,360 nor more than \$150,720 will be established to provide recovery to the Class Members. The Settlement Fund will be distributed by check to class members who submit valid claim forms.

There are approximately 6,288 members in the Settlement Class. Approximately 18,864 facsimiles were sent by Defendant. Defendant estimates that most of the Class Members received more than one fax. Your share of the settlement fund depends on the number of faxes you received and the number of class members who return a claim form. The value of each fax initially shall be \$80. If there are valid claims made for more than 1,884 faxes, then the value of a claim for each fax shall be reduced pro rata so that the total value of all claims in the aggregate does not exceed \$150,720. If there are valid claims made for less than 567 faxes, then the value of a claim for each fax shall be increased pro rata, so that the total value of all claims, in the aggregate does not fall below \$45,360. The number of faxes that were sent to each claimant by Defendant will be determined after all Claim Forms are returned by a review of Defendant's records.

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

If the Settlement becomes final, you will be releasing CFG of any claims relating in any way to their sending of unsolicited advertisements by fax. This release is more fully explained in paragraph 7 of the Settlement Agreement. The Settlement Agreement is available at the Clerk's Office, United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, 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.

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 **(773) 378-1018** or by U.S. Mail to the address for **FIRST CLASS, INC., 5410 W. Roosevelt Road, Unit 222, Chicago, IL 60644-1478**, as listed below in paragraph 7. The deadline for Claim Forms is **MAY 29, 2009**; Claim forms **MUST BE** faxed or postmarked by **MAY 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 **MAY 29, 2009**; Claim forms **MUST BE** faxed or postmarked by **MAY 29, 2009**. The Court is scheduled to consider final approval at a hearing on **JULY 7, 2009 at 9:45 a.m.**

7. 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 Summary Notice/Claim Form by **MAY 29, 2009** to receive a payment from the Settlement Fund.

If you want to keep the right to sue CFG 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 CFG.

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 **(773) 378-1018** by **MAY 29, 2009** or mailed to the following address postmarked no later than **MAY 29, 2009**:

**FIRST CLASS, INC.
5410 W. Roosevelt Road, Unit 222
Chicago, IL 60644-1478
(773) 378-1018 (FAX)**

8. 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 (20908)
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 \$80,000. Class Counsel will also ask for an additional payment of \$3,000 for Dr. William M. Pollack, the Class Representative, who helped the lawyers on behalf of the whole class. These payments will be made in addition to the Settlement Fund and will not cause any reduction in the recovery to the Class Members.

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 **MAY 29, 2009**, and contemporaneously file the objection with the Clerk's Office, United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, Illinois 60604:

Class Counsel

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

Defendant's Counsel

James J. Sipchen
Edward J. Aucoin
Pretzel & Stouffer, Chartered
1 S. Wacker Drive, Suite 2500
Chicago, Illinois 60606
(312) 346-8242 (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 file an objection and wish it to be considered, you may also appear at the hearing before Judge Hibbler on **JULY 7, 2009 at 9:45 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.

10. 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 Street, Chicago, Illinois 60604, Courtroom 1225 on **JULY 7, 2009 at 9:45 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 its 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, United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, Illinois 60604, 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: February 19, 2009

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

CLAIM FORM

**SUBMIT BY MAY 29, 2009
VIA FACSIMILE OR MAIL TO:**

**FIRST CLASS, INC.
5410 W. Roosevelt Road, Unit 222
Chicago, IL 60644-1478
(773) 378-1018 (FAX)**

Fax number

Name of Company that Subscribed to Fax Line

Current Mailing Address of Subscriber of Fax Line:

Street/P.O. Box

City

State

Zip Code

I submit this Claim Form under penalty of perjury and swear that I received the above-described facsimile advertisements and that I did not have an established business relationship with Cunningham Financial Group, LLC. I also did not consent to the sending of facsimile advertisements to me by Cunningham Financial Group, LLC.

Signature