

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED

NOV 05 2020

Eric Cantagut Weinstein
CIRCUIT CLERK

AMERICA'S HEALTH & RESOURCE)
CENTER, LTD., an Illinois corporation, and)
AFFILIATED HEALTH GROUP, LTD., an)
Illinois corporation, individually and as the)
representatives of a class of similarly-)
situated persons,)

No. 20 CH 406

Plaintiffs,)

v.)

PROMOLOGICS, INC., and JANSSEN)
PHARMACEUTICALS, INC.,)

Defendants.)

ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

This matter coming before the Court on Plaintiffs' Agreed Motion for Preliminary Approval of Class Action Settlement and Notice to the Class (the "Motion"), after review and consideration of the Settlement Agreement and having been fully advised in the premises, IT IS HEREBY ORDERED and adjudged as follows:

1. Pursuant to 735 ILCS 5/2-801 and 735 ILCS 5/2-802, the settlement of this action, as embodied in the terms of the Settlement Agreement attached to the Motion, is preliminarily approved as a fair, reasonable, and adequate settlement in the best interests of the Settlement Class, in light of the factual, legal, practical, and procedural considerations raised. The Settlement Agreement is incorporated by reference into this Order (with capitalized terms as set forth in the Settlement Agreement) and is hereby preliminarily adopted as an Order of this Court.

2. Pursuant to 735 ILCS 5/2-801 and 735 ILCS 5/2-802, by stipulation of the parties, and for the purpose of settlement, the Court hereby certifies the following class:

All persons or entities who received one or more facsimiles in Illinois between September 27, 2012 and September 27, 2016, offering educational dinner seminars sponsored by Janssen and identifying the Health-Scripts® brand, or PromoLogics or Janssen, and which were caused to be sent by PromoLogics.

Excluded from the Settlement Class are (1) Defendants, any parent, subsidiary, affiliate, or controlled person of either Defendant, as well as their attorneys, officers, directors, agents, servants, or employees, and the immediate family members of such persons; (2) the named counsel in the Action and any employee of their office or firm; and (3) the judge(s) assigned to the Action and his or her staff.

3. The Court finds that certification for purposes of settlement is appropriate because (a) the Settlement Class is so numerous that joinder of all members is impractical; (b) there are questions of law and fact common to the class and they predominate over any questions affecting only individual class members; (c) Plaintiffs' claims are typical of the claims of the class; (d) Plaintiffs and their attorneys will fairly and adequately protect the interests of the class; and (e) a class action is the superior means of resolving this controversy.

4. The Court appoints America's Health & Resource Center, Ltd. and Affiliated Health Group, Ltd. as the "Class Representatives" and appoints Plaintiffs' attorneys (Phillip A. Bock/Bock, Hatch, Lewis & Oppenheim LLC) as Class Counsel.

5. The Court finds that the Settlement Agreement's plan for class notice, with notice to be provided by U.S. mail and an additional notice to be sent by facsimile, as provided in Paragraph 6 below, is the best notice practicable under the circumstances and satisfies the requirements of due process and 735 ILCS 5/2-801 and 735 ILCS 5/2-802. That plan is approved and adopted. This Court further finds that the Class Notice (attached to the Settlement Agreement as Exhibit 2) complies with 735 ILCS 5/2-801 and 735 ILCS 5/2-802, is appropriate as part of the notice plan, and is approved and adopted.

6. At the parties' request, the Court appoints Heffler Claims Group as the Settlement Administrator. The Settlement Administrator shall send the Class Notice by U.S. Mail to the mailing addresses associated with the 3,214 fax numbers on the target lists produced in the litigation (the "Notice List"). The Settlement Administrator shall also send the notice by facsimile to the 3,214 fax numbers on the Notice List. The Class Notice with attached Proof of Claim form, shall be made available on the Settlement Administrator's website, along with a copy of the Settlement Agreement. The Court finds and orders that no other notice is necessary.

7. The Class Notice informs members of the Settlement Class of their right to object to the proposed settlement. An objection must be signed under penalty of perjury and identify the following information or else the Court will disregard and strike the submitted objection as invalid and without effect: (1) the objector's name, address, telephone number, and fax number(s) at which the objector received one or more of the Faxes, (2) the specific date(s) when the objector received one or more of

the Faxes, (3) all attorneys who assisted the objector in preparing or filing the objection, (4) a list of all other class action cases in which the objector or his/her/its attorneys have submitted an objection to a class action settlement, including case name, court, case number, and how much, if any amount, was paid in connection with the objection, and (5) a statement of the reasons why the objector contends the Court should find that the proposed settlement is not fair, reasonable, adequate, and in the best interests of the Settlement Class. The objection must be served on Class Counsel and counsel for the defendants at the addresses provided in the Class Notice.

8. The Class Notice informs members of the Settlement Class of their right to exclude themselves or opt out of the proposed settlement. An exclusion request must be signed by the person requesting exclusion, and list such person's name, street address, the fax number(s) at which they believe they received the Faxes, and the name and number of this case. The exclusion request must be sent to the Settlement Administrator with copies to Class Counsel and counsel for the defendants at the addresses provided in the Class Notice. The Settlement Administrator shall submit a declaration to the Court confirming dissemination of the notice as ordered and identifying each person who requested exclusion, so the Court can identify them in the Final Order and Judgment.

9. The Court hereby sets deadlines and dates for the acts and events set forth in the Settlement Agreement and directs the Parties to incorporate the deadlines and dates in the Class Notice:

(a) Claim forms must be submitted on or before January 25, 2021, as

evidenced by postmark or other identifiable date of transmission;

(b) Objections and motions to intervene shall be filed in this Court and postmarked and served on Class Counsel and Defendants' counsel on or before January 25, 2021, or be forever barred;

(c) Memoranda supporting objections or motions to intervene must be filed in this Court, and postmarked and served on Class Counsel and Defendants' counsel on or before January 25, 2021, or be forever barred;

(d) Requests by any Class member to opt out of the settlement must be submitted on or before January 25, 2021, or be forever barred. The Court shall rule on all requests for exclusion or opt outs on February 11, 2021 at 9:00 a.m.

(e) Any memoranda responding to any objections or motions to intervene shall be filed in this Court and served on Class Counsel, Defendants' counsel and the objector or movant or his or her counsel by February 4, 2021; and

(f) The Fairness Hearing, set forth in the Class Notice, is hereby scheduled for February 11, 2021, at 9:00 a.m. in Room C-406.

BY ORDER OF THE COURT



Honorable Judge Daniel L. Jasica

Dated: 11/5/20

NOTICE OF CLASS ACTION SETTLEMENT

**Please give this to a person who makes legal decisions for your home or business.
You may benefit from this. Please read it carefully. You are not being sued.
You must submit a Proof of Claim (attached) to receive a settlement check.**

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS**

| | | |
|---|---|---------------|
| AMERICA'S HEALTH & RESOURCE CENTER, LTD., an Illinois corporation, and |) | |
| AFFILIATED HEALTH GROUP, LTD., an Illinois corporation, individually and as |) | |
| the representatives of a class of similarly-situated persons, Plaintiffs, |) | No. 20 CH 406 |
| |) | |
| v. |) | |
| |) | |
| PROMOLOGICS, INC. and JANSSEN PHARMACEUTICALS, INC., Defendants. |) | |

NOTICE OF CLASS ACTION SETTLEMENT WITH ATTACHED CLAIM FORM

TO: All persons or entities who received one or more facsimiles in Illinois between September 27, 2012 and September 27, 2016, offering educational dinner seminars sponsored by Janssen and identifying the Health-Scripts® brand or PromoLogics or Janssen, and which were caused to be sent by PromoLogics.

These persons are the "Settlement Class" or "Class" discussed below.

A. WHY HAVE YOU RECEIVED THIS NOTICE? The Court ordered us to send you this notice because your fax number was found on a list of fax numbers to which invitations to dinner seminars were attempted to be sent by fax between September 27, 2012 and September 27, 2016, and, therefore, you might be a member of the Settlement Class. If you received this Notice by mail, then your address was correlated to a fax number on the list, either before or after the address was verified with the Postal Service's National Change of Address Database.

B. WHAT IS THIS LAWSUIT ABOUT? You probably don't know anything about this class action lawsuit. The two named plaintiffs, America's Health Resource Center, Ltd. and Affiliated Health Group, Ltd. ("Plaintiffs"), filed a class action case alleging that the defendants, PromoLogics, Inc. ("PromoLogics" or "HealthScripts") and Janssen Pharmaceuticals, Inc. ("Janssen") (collectively, "Defendants"), sent unsolicited advertisements by facsimile between September 27, 2012 and September 27, 2016 (the "Faxes"). Plaintiffs alleged that Defendants violated the federal Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA") by sending those faxes without prior express invitation or permission. Defendants denied Plaintiffs' material allegations, including that the faxes are advertisements subject to the TCPA and raised various defenses. Plaintiffs originally filed the case in federal court, but dismissed that case and re-filed it here. Neither Court ruled in favor of or against any party on the merits of the claims, but the parties have reached the proposed settlement announced here.

C. WHAT IS THE PROPOSED SETTLEMENT? Without admitting any fault or liability, and in exchange for a release of all claims against Defendants regarding the faxes at issue, Defendants have agreed to make up to \$2,400,000 (the "Settlement Fund") available to pay those class members

who submit a valid claim form (attached), a *cy pres* award if total claims do not exceed \$135,000, an incentive award to each of the named Plaintiffs for serving as the "Class Representatives," to pay attorneys' fees and costs to Plaintiffs' attorneys, and to pay settlement administration costs.

According to the Defendants' transmissions lists, Defendants attempted to send 23,416 faxes to potential class members, of which 16,626 were actually received, resulting in a receipt rate of 71% (the "Receipt Rate"). Not all of the faxes sent during the class period were actually delivered. While Defendants' transmissions lists confirm the number of faxes Defendants attempted to send each individual fax number, there is no record of how many faxes, if any, each fax number actually received. Accordingly, each person who submits an approved claim in this settlement shall be mailed a check in an amount equal to the Settlement Fund divided by the total successful faxes (16,626) times the claimant's estimated number of faxes. If the total settlement payments (including the payment of Valid Claims, notice and administration costs, incentive awards, and attorneys' fees) would otherwise exceed the Settlement Fund, then the payments for Valid Claims shall be reduced *pro rata*. The "Estimated Number of Faxes" sent to a particular fax number shall be calculated as the actual number of faxes attempted to be sent to that fax number (from the transmissions lists) multiplied by the Receipt Rate (71%). (You will identify your fax number(s) on the attached Claim Form, and the Settlement Administrator will compute your award by cross checking your fax number(s) against the numbers on the target lists involved in the case, and calculating your payment.) Notwithstanding the foregoing, if a claimant submits copies of faxes they actually received or provides other acceptable proof (as determined by the parties and administrator) of the number of faxes actually received, and that number is higher than the claimant's Estimated Number of Faxes, then the Settlement Administrator will calculate the benefit based on the number of faxes actually received. You may contact the Settlement Administrator at [NUMBER] if you have any questions. **Class members who file Valid Claims will receive no less than \$92.33 per fax for each of their Estimated Number of Faxes, as calculated above, or the actual number of faxes the class member received and kept, and submitted to the administrator, whichever number is greater. However, the amount actually received will depend upon the amount of attorneys' fees, expenses, and incentive awards to the named plaintiffs approved by the Court, costs of settlement administration, and the number of Valid Claims.**

In the event more than one valid claim is received for a single fax number, the payment will be divided equally among the claimants who claimed that fax number. The Court has preliminarily approved this settlement, subject to a fairness hearing that will occur on February 11, 2021, at 9:00 a.m., in Room C-406 in the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085.

D. WHAT CAN CLASS MEMBERS DO NOW? YOU HAVE FOUR OPTIONS.

1. Return a completed Claim Form. To receive a share of the Settlement Funds, you must complete and return a signed Claim Form by mail or fax, or submit your claim online at the Settlement website (www.____.com) on or before January 25, 2021, as evidenced by postmark or other identifiable date of transmission. The Claim Form is included with this Notice. If your claim is approved, you will be mailed a check for your share of the Settlement Fund once the Settlement becomes final and either the time for appeal is over or, in the event of an appeal, the appeal is finally resolved with the court affirming the Settlement and the time for further appeal has concluded. Please be patient.

2. Do nothing. If you do nothing, you will stay in the Settlement Class, be bound by any judgment entered by the Court, and you will release your claims against Defendants about the September 27, 2012 to September 27, 2016 faxes at issue, but you will receive no payment.

3. Exclude yourself from the Settlement Class and the Settlement. You can exclude yourself from the class action and the Settlement (or “opt out”) by mailing a written request to the Settlement Administrator at Heffler Claims Group, AHRC v. PromoLogics Settlement, c/o Settlement Administrator, P.O. Box 40, Warminster, PA 18974-0040. That request must be postmarked on or before January 25, 2021, and it must list your name, the fax number(s) at which you believe you received the Faxes, street address, and the name and number of this case. You must sign your request for exclusion and mail copies, postmarked by the same date, to:

For the Settlement Class:

Phillip A. Bock
Bock, Hatch, Lewis
& Oppenheim, LLC
134 N La Salle St, Ste 1000
Chicago, IL 60602

For Janssen:

Bradley J. Andreozzi
Faegre Drinker Biddle &
Reath LLP
191 N Wacker Dr, Ste 3700
Chicago, IL 60606-1698

For PromoLogics:

Brian H. Myers
Gordon Rees
Scully Mansukhani
1 N Franklin St, Ste 800
Chicago, IL 60606

4. Object to the settlement in writing. If you object to the Settlement, and wish to file an objection rather than excluding yourself, you must submit your objection in writing to the Clerk of the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085. Your objection must be postmarked by January 25, 2021. You must also serve copies of your objection and any supporting memoranda or materials on each of the attorneys for the Settlement Class and for Defendants listed above, postmarked by the same date. Your objection must be signed under penalty of perjury and must identify (1) the case name and number, your name, address, fax number(s) at which you received the Faxes, and telephone number, (2) the specific date(s) when you received one or more of the Faxes, (3) all attorneys who assisted you in the preparation or filing of your objection, (4) a list of all other class action cases in which you or your attorneys have submitted an objection to a settlement, including case name, court, case number, and how much, if any amount, was paid in connection with the objection, and (5) a statement of the reasons why you believe the Court should find that the proposed settlement is not fair, reasonable, adequate, and in the best interests of the Settlement Class. If your objection does not comply with these requirements, the Court will strike and disregard your objection. If you file an objection and wish to present it to the Court in person, then you must appear at the final approval hearing before Judge Daniel L. Jasica in Courtroom C-406 of the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085 on February 11, 2021, at 9:00 a.m. You are not required to attend this hearing in order for your objection to be considered by the judge. If you submit an objection in writing by the postmark date, then the judge will review and consider your objection.

E. WHEN WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? The Court will hold a hearing to decide whether the proposed settlement is fair and reasonable and should be approved. At that fairness hearing, the Court will hear any objections and arguments about the proposed settlement, including the amount of the award of costs and attorneys’ fees to Class Counsel. The fairness hearing will take place on February 11, 2021, at 9:00 a.m., in Courtroom C-406 of the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085. **You do not need to attend this hearing.** The fairness hearing may be continued to a future date without further notice. If the Court does not approve the settlement, the case will proceed as if no settlement has been attempted. If the Settlement is not approved, there is no assurance that the Settlement Class will recover more than is provided in the Settlement, or anything at all.

F. WHO REPRESENTS THE CLASS? The Court appointed America's Health Resource Center, Ltd. and Affiliated Health Group, Ltd. to be the "Class Representatives" and appointed Phillip A. Bock of Bock, Hatch, Lewis & Oppenheim, LLC as "Class Counsel." At the fairness hearing, Class Counsel will request that the Court approve an incentive award of \$15,000 from the Settlement Fund to each of the Class Representatives. Additionally, Class Counsel will request that the Court award attorneys' fees of \$800,000 (one third of the total Settlement Fund) and out-of-pocket litigation expenses up to \$10,000 to Class Counsel, and award up to \$25,000 to pay the Settlement Administrator's charges, all to be paid from the Settlement Fund.

G. HOW DO I OBTAIN MORE INFORMATION ABOUT THE LAWSUIT OR THE SETTLEMENT? This description of the litigation is general and does not cover all of the issues and proceedings. To see a copy of the Class Action Complaint or the Settlement Agreement, you may visit the office of the Clerk of the Circuit Court of Lake County, 18 N. County St., Waukegan, Illinois 60085. The Clerk will make them available to you for inspection and copying at your own expense. These documents are also available on the settlement website; www._____.com. To review or copy documents at your own expense from earlier stages of the litigation, *America's Health & Resource Center, Ltd., et al. v. Promologics, Inc., et al.*, Case No. 16-cv-9281 (N.D. IL), you may visit the Clerk's Office at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, or access PACER (www.pacer.gov).

You may contact the Settlement Administrator at:

Heffler Claims Group
AHRC v PromoLogics Settlement
c/o Settlement Administrator
P.O. Box 40
Warminster PA 18974-0040
~~###-###-####~~

If you have specific questions for Class Counsel, the address is set forth above. Include the case number, your name, your fax number, and your telephone number. Or, you may call attorney Phillip A. Bock at 312-658-5501.

Do not contact the Clerk of the Court, the Judge, or the Judge's staff, because they cannot answer your questions or give you advice about this settlement.

**BY ORDER OF THE COURT
HONORABLE DANIEL L. JASICA**

CLAIM FORM – America’s Health Resource Center, Ltd., et al. v. PromoLogics, Inc., et al.

Fax Number: <populated by administrator>

You Must Complete All **THREE** Steps to Claim a Share of the Settlement Fund:

1. You Must Provide Your Contact Information.

Name: _____

Company: _____

Address: _____

City/State/Zip Code: _____

Telephone Number: _____ Email Address: _____

Fax Numbers (list all numbers): _____

2. You must Verify Ownership or Use of the Fax Number(s) Identified Above and Lack of Consent to Receive the Subject Faxes.

“Between September 27, 2012 and September 27, 2016, either:

- (1) the fax number(s) listed above was/were mine or my company’s; or
- (2) I or my company used the fax number(s) listed above;

and

(3) To the best of my knowledge, neither I nor my company consented to receive facsimiles from Janssen Pharmaceuticals, Inc., or PromoLogics, Inc. (which may have identified itself using the Health-Scripts brand), on a telephonic fax machine at the fax number(s) listed above.”

Verified as true under penalty of perjury:

(Sign your name here)

3. You must return this Claim Form by January 25, 2021:

(a) Fax this Claim Form to: <fax number for claims >

OR

(b) Mail this Claim Form to:

Heffler Claims Group
AHRC v PromoLogics Settlement
c/o Settlement Administrator

P.O. Box 40

Warminster PA 18974-0040

OR

(b) Submit this Claim Form electronically at: <website>

ENCLOSURE
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FBI