

United States District Court For The District Of Massachusetts

A federal court authorized this notice. This is not a solicitation from a lawyer.

- An \$8.5 million Settlement has been reached with Cynosure, Inc. (“Cynosure”) in a lawsuit where the Plaintiff alleges that Cynosure violated a federal statute and regulations when it sent facsimile advertisements. Cynosure denies any liability or wrongdoing.
- The Settlement offers payments to persons or entities who were sent one or more facsimile transmissions advertising the availability or quality of property, goods, or services of Cynosure from July 27, 2012 through March 13, 2019. Cynosure has identified those individuals and provided them with notice by fax and/or mail. If you received that notice from Cynosure, you may be a Settlement Class Member.
- Your legal rights are affected whether you act or don’t act. Please read this notice carefully.

| SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|--|---|
| SUBMIT A CLAIM FORM FOR A PAYMENT | By submitting a Proof of Claim Form, Settlement Class Members will be eligible to receive payments for being sent one or more facsimile transmissions advertising the availability or quality of property, goods, or services of Cynosure. |
| EXCLUDE YOURSELF | Get no benefits from the Settlement. This is the only option that allows you to sue Cynosure, or participate in any other lawsuit against Cynosure, about claims related to facsimile transmissions advertising the availability or quality of property, goods, or services of Cynosure between July 27, 2012 and March 13, 2019. |
| OBJECT | Write an objection to the Court if you don’t like the Settlement. |
| GO TO A HEARING | Ask to speak in Court about the fairness of the Settlement. |
| DO NOTHING | You will not receive a payment, and you will give up your right to participate in further litigation against Cynosure about claims related to facsimile transmissions advertising the availability or quality of property, goods, or services of Cynosure between July 27, 2012 through March 13, 2019. |

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to those who qualify. Please be patient.

What This Notice Contains

BASIC INFORMATION.....3

- 1. Why is there a notice?
- 2. What is this litigation about?
- 3. Why is this a class action?
- 4. Why is there a Settlement?

WHO IS PART OF THE SETTLEMENT?3

- 5. Who is included in the Settlement?
- 6. What if I am not sure whether I am included in the Settlement?

THE SETTLEMENT BENEFITS.....4

- 7. What does the Settlement provide?
- 8. How much will my payment be?
- 9. When will I receive my payment?
- 10. What am I giving up if I do not exclude myself from the Settlement?

HOW TO RECEIVE A PAYMENT5

- 11. How can I receive a payment?
- 12. How will my claim be decided?

EXCLUDING YOURSELF FROM THE SETTLEMENT5

- 13. How do I exclude myself from the Settlement?
- 14. If I do not exclude myself, can I sue Cynosure for the same thing later?
- 15. If I exclude myself, can I still get a payment?

THE LAWYERS REPRESENTING THE ENTIRE SETTLEMENT CLASS6

- 16. Do I have a lawyer in the case?
- 17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT7

- 18. How do I tell the Court if I do not like the Settlement?
- 19. What is the difference between objecting and asking to be excluded?

THE FINAL APPROVAL HEARING8

- 20. When and where will the Court decide whether to approve the Settlement?
- 21. Do I have to attend the hearing?
- 22. May I speak at the hearing?

GETTING MORE INFORMATION.....8

- 23. How do I get more information?

BASIC INFORMATION

1. Why is there a notice?

A court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Douglas P. Woodlock of the United States District Court for the District of Massachusetts is overseeing this case. This litigation is known as *ARcare, Inc. v. Cynosure, Inc.*, No. 16 Civ. 11547 (D. Mass.). The entity that sued, ARcare, Inc. (“ARcare”), is called the “Plaintiff.” Cynosure, Inc. (“Cynosure”) is the “Defendant.”

2. What is this litigation about?

The lawsuit concerns whether Cynosure sent advertisements by facsimile that violated a law called the Telephone Consumer Protection Act.

The complaint in the lawsuit is posted on the website www.cynosettlement.com and contains all of the allegations and claims asserted against Cynosure. Cynosure denies any liability or wrongdoing.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, ARcare, Inc.) sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims are members of a “Class.”

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiff or Cynosure. Instead, both sides have agreed to a Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members (except those who exclude themselves) receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Cynosure did anything wrong. Cynosure denies all claims in this case. The Class Representative and its lawyers think the proposed Settlement is best for everyone who is affected.

WHO IS PART OF THE SETTLEMENT?

If you received notice of the Settlement by mail and/or fax, then Defendant’s records indicate you may be a Settlement Class Member.

5. Who is included in the Settlement?

You are a member of the Settlement Class if, between July 27, 2012 and March 13, 2019, you were sent one or more facsimile transmissions advertising the availability or quality of property, goods, or services of Cynosure.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class, or you have any other questions about the Settlement, visit the Settlement website at www.cynosettlement.com or call the toll-free number, **1-866-298-4191**. You may also send questions to *ARcare, Inc. v. Cynosure, Inc.*, Settlement Administrator, P.O. Box 404115, Louisville, KY 40233-4115.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

If the Settlement is approved and becomes final, it will provide benefits to Settlement Class Members who file a valid claim and do not exclude themselves. Cynosure agreed to pay \$8,500,000.00 for the Settlement, which will be used to make payments to eligible Settlement Class Members, to pay any Court-ordered award of attorneys' fees and costs to Class Counsel, to pay any Court-ordered service award to Plaintiff for serving as the Class Representative, and to pay any costs of Settlement administration, including the cost of notice and any taxes. Cynosure has also agreed not to send advertising faxes that do not comply with the Telephone Consumer Protection Act or applicable federal regulations for two years after this Settlement is finally approved.

8. How much will my payment be?

Each Settlement Class Member who files a valid claim will receive a *pro rata* share of the Settlement Fund after deduction of any attorneys' fees and costs the Court approves for Class Counsel, any award to the Class Representative approved by the Court, the cost of Settlement administration, and any taxes on the Settlement. If a Settlement Class Member submits copies of cynosure faxes they received during the Class Period, they will be considered to have submitted one claim for every valid fax submitted. *See* Amended Settlement Agreement and Release ¶¶ 74-81.

9. When will I receive my payment?

Settlement Class Members who submit valid claims will receive their payments, by check, only after the Court grants final approval to the Settlement and after any appeals are resolved (*see* "The Final Approval Hearing" below). If there are appeals, resolving them can take time. Please be patient.

10. What am I giving up if I do not exclude myself from the Settlement?

Unless you exclude yourself from the Settlement, you will be bound by the Settlement. This means that you can't sue Cynosure in court for claims related to fax advertisements sent between July 27, 2012 and March 13, 2019. If you do not exclude yourself, the Amended Settlement Agreement and Release and all decisions by the Court will bind you. The Amended Settlement Agreement and Release is available at www.cynosettlement.com and describes the claims that you give up if you remain in the Settlement. *See* Amended Settlement Agreement and Release ¶¶ 82-84.

HOW TO RECEIVE A PAYMENT

11. How can I receive a payment?

To receive a payment, you must submit a claim. If you received notice of the Settlement by fax or mail, that notice included a Proof of Claim Form. You can also request that a Claim Form be mailed to you by calling **1-866-298-4191** or by writing to *ARcare, Inc. v. Cynosure, Inc.*, Settlement Administrator, P.O. Box 404115, Louisville, KY 40233-4115.

To be eligible for payment, you must complete, sign, and return the Proof of Claim Form by submitting it online at www.cynosettlement.com, faxing it to 1-866-298-4192, or mailing it to the following address:

ARcare, Inc. v. Cynosure, Inc.
Settlement Administrator
P.O. Box 404115
Louisville, KY 40233-4115

Claims must be postmarked or submitted no later than **June 26, 2019**.

12. How will my claim be decided?

After you submit your claim, the Settlement Administrator will confirm whether you are a Settlement Class Member and therefore entitled to a payment. If your application is incomplete or does not establish that you are entitled to a payment, the Settlement Administrator will notify you to correct any problems with your claim. If you do not correct the problems, your claim will be denied.

The Amended Settlement Agreement and Release, available at www.cynosettlement.com, provides more detail on how claims will be decided.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want benefits from the Settlement, and you want to keep the right to sue Cynosure about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

13. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must send a letter or other written document by mail to the Settlement Administrator. Your request must include:

- Your name, address, and fax number;
- A statement that you want to be excluded from the Settlement in *ARcare, Inc. v. Cynosure, Inc.*, No. 16 Civ. 11547 (D. Mass.); and
- Your signature.

You must mail your exclusion request, postmarked no later than **May 27, 2019**, to *ARcare, Inc. v. Cynosure, Inc.*, Settlement Administrator, P.O. Box 404115, Louisville, KY 40233-4115.

14. If I do not exclude myself, can I sue Cynosure for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Cynosure for the claims that the Settlement resolves. You must exclude yourself from the Settlement in order to maintain your own lawsuit.

15. If I exclude myself, can I still get a payment?

No. You will not get a payment if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING THE ENTIRE SETTLEMENT CLASS

16. Do I have a lawyer in the case?

The Court has appointed the following lawyers as Class Counsel to represent the entire Settlement Class. They are:

| | | |
|---|---|---|
| Phillip A. Bock BOCK, HATCH, LEWIS & OPPENHEIM 134 N LaSalle St., Suite 1000 Chicago, IL 60602 Tel.: 312-658-5501 Fax: 312-658-5555 E-mail: phil@classlawyers.com | Randall K. Pulliam CARNEY, BATES & PULLIAM, PLLC 519 West 7th Street Little Rock, AR 72201 Tel.: 501-312-8500 E-mail: rpulliam@cbplaw.com | Alan Cantor SWARTZ & SWARTZ, P.C. 10 Marshall Street Boston, MA 02108 Tel.: 617-742-1900 Fax: 617-367-7193 E-mail: acantor@swartzlaw.com |
|---|---|---|

If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel intend to request attorneys’ fees of one fourth of the Settlement Fund (\$2,125,000.00) and reasonable costs and litigation expenses of prosecuting the class action. The attorneys’ fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will decide the amount of any fees and expenses to award. Class Counsel will also request that a service payment of \$5,000.00 be paid from the Settlement Fund to the Class Representative for service as a representative of the whole Settlement Class. The Court will decide the amount of any service payment.

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and costs, and/or the service payment to the Class Representative. To object, you must file the objection electronically with the Court, or mail your objection first-class postage prepaid to the each of the following addresses:

| | | |
|---|--|--|
| Clerk of the Court U.S. DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, 1 Courthouse Way Boston, MA 02210 | Phillip A. Bock BOCK, HATCH, LEWIS & OPPENHEIM 134 N. LaSalle St., Suite 1000 Chicago, IL 60602 | Alan E. Schoenfeld WILMER CUTLER PICKERING HALE AND DORR LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007 |
|---|--|--|

Your objection must include:

- The name of the case (*ARcare, Inc. v. Cynosure, Inc.*, No. 16 Civ. 11547 (D. Mass.));
- Your full name, address, and fax number;
- An explanation of the basis upon which you claim to be a Settlement Class Member;
- The reasons you object to the Settlement, along with any supporting materials;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reasons related to the objection;
- Whether you intend to appear at the Final Approval Hearing and, if so, the identity of any counsel representing you who will appear on your behalf;
- A list of all other class action settlements to which you or your counsel filed an objection;
- A list of any witnesses you plan to call at the Final Approval Hearing; and
- Your signature.

The requirements to object to the Settlement are described in detail in the Amended Settlement Agreement and Release in ¶¶ 59-60. Your objection must be filed or postmarked by **May 27, 2019**.

19. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement *only if you do not exclude yourself*. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to do so.

20. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing on **July 11, 2019** at 2:00 p.m. in Room 1 of the United States District Court for the District of Massachusetts, located at 1 Courthouse Way, Boston, MA 02210. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.cynosettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

21. Do I have to attend the hearing?

No. Class Counsel will answer questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper addresses, and it complies with the other requirements described in ¶¶ 59-60 of the Amended Settlement Agreement and Release, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must comply with the requirements in Question 18 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the proposed Settlement. More details are available in the Amended Settlement Agreement and Release. For a complete, definitive statement of the Settlement terms, refer to the Amended Settlement Agreement and Release at www.cynosettlement.com. You also may write with questions to *ARcare, Inc. v. Cynasure, Inc.*, Settlement Administrator, P.O. Box 404115, Louisville, KY 40233-4115 or call the toll-free number, **1-866-298-4191**.