

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

HARVEY PROPERTY)
MANAGEMENT GROUP LLC, on)
behalf of itself and all others)
similarly situated,)

Plaintiff,)

v.)

No. 1:16-cv-3164-WTL-TAB

HMS COMPANIES, INC., d/b/a)
HMScreening, Lenders Portfolio,)
Hickory Energy, HMS Credit)
Services Company, HMS)
Maintenance Services, HMS)
Lender Recovery Services, and)
Hickory Management Services,)
and MICHAEL FLECKENSTEIN,)

Defendants.)

CLASS ACTION SETTLEMENT AGREEMENT

Plaintiff, Harvey Property Management Group LLC, by counsel, on behalf of
itself and the Settlement Class defined below, and Defendants, HMS Companies,
Inc., and Michael Fleckenstein, enter into this Settlement Agreement on the
following agreed terms:

RECITALS

1. The Class Representative brought this Lawsuit on behalf of itself and
others similarly situated, alleging that Defendants violated the federal Telephone
Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of
2005, 42 U.S.C. § 227 (the “TCPA”), and the Indiana Deceptive Consumer Sales Act,
Ind. Code § 24-5-0.5-0.1, *et seq.*, by sending unsolicited fax advertisements.

2. Discovery revealed that a former employee of Defendant HMS Companies, Inc. may have sent the fax advertisement at issue to as many as 230 fax numbers.

3. Class Counsel conducted an investigation and obtained discovery relating to the claims brought against Defendants, analyzed the legal issues in the case, and investigated the collectability of the Defendants. This Settlement Agreement was reached after a settlement conference with Magistrate Judge Timothy A. Baker on July 27, 2017. Class Counsel believes that this settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class and that this Settlement Agreement should be approved by the Court under Federal Rule of Civil Procedure 23(e).

4. Defendants are entering into this Settlement Agreement solely to avoid the costs and uncertainties of continued litigation of this Lawsuit. Defendants also believe that this settlement is fair, reasonable, and adequate, and that the Settlement Agreement should be approved by the Court under Federal Rule of Civil Procedure 23(e).

DEFINITIONS

5. “Class Counsel” means the law firm of Cohen & Malad, LLP.

6. “Class Member” means any person who is a member of the Settlement Class and who does not submit a timely request to be excluded from the Settlement Class, as provided by the Preliminary Approval Order, and who is not otherwise excluded by the Court from the Settlement Class.

7. “Class Member List” means the list of names, addresses, and fax numbers of each member of the Settlement Class to be prepared by Defendants and made up of:

All persons and entities that hold telephone numbers that were sent a fax after November 10, 2012 advertising the commercial availability of any property, goods, or services by or on behalf of HMS Companies, Inc., HMScreening, Lenders Portfolio, Hickory Energy, HMS Credit Services Company, HMS Maintenance Services, HMS Lender Recovery Services, Hickory Management Services, or Michael Fleckenstein that contains no opt-out notice, such as the fax attached as Exhibit A to the Complaint.

The list shall be provided in the form of an Excel spreadsheet.

8. “Class Representative” means the Plaintiff, Harvey Property Management Group, LLC.

9. “Court” means the United States District Court for the Southern District of Indiana.

10. “Defendants” means:

(a) HMS Companies, Inc., d/b/a HMScreening, Lenders Portfolio, Hickory Energy, HMS Credit Services Company, HMS Maintenance Services, HMS Lender Recovery Services, and Hickory Management Services; and

(b) Michael Fleckenstein.

11. “Effective Date” means the first day on which the Court has entered a final judgment approving this Settlement Agreement and either: (a) the time to appeal from the Court’s final judgment approving this Settlement Agreement has expired and no appeal has been taken; or (b) if a timely appeal of the Court’s final judgment approving this Settlement Agreement is taken, the date on which the

final judgment is no longer subject to further direct appellate review if the final judgment has not been reversed in any way.

12. “Execution Date” means the first date on which this Settlement Agreement has been executed by the Class Representatives, Class Counsel, Defendant, and Defendant’s counsel.

13. “Final Approval Hearing” means the hearing that the Court will conduct to consider whether to grant final approval to this Settlement Agreement.

14. “Final Approval Order” means the proposed Final Approval Order, in the form of Exhibit “A.”

15. “Lawsuit” means the above-captioned action pending in the Court under Case No. 1:16-cv-3164-WTL-TAB.

16. “Net Settlement Fund” means the monies remaining from the Settlement Fund after the payment from the Settlement Fund of attorneys’ fees, litigation expenses, settlement notice and administration costs, and the Class Representative’s service fee.

17. “Notice and Settlement Administrator” means the entity chosen by Class Counsel to administer the notice and settlement distribution process involved in this settlement.

18. “Notice of Class Action Settlement” means the proposed notice to be sent to the members of the Settlement Class by facsimile, in the form of Exhibit “B”.

19. “Preliminary Approval Order” means the proposed Order Preliminarily Approving Class Action Settlement, Directing Notice, and Setting Date for Fairness Hearing, in the form of Exhibit “C.”

20. “Settlement Class” means all persons and entities listed on the Class Member List.

21. “Settlement Fund” means the sum of \$80,000 to be paid by Defendants under Paragraphs 31 and 32 of this Settlement Agreement and to be held by the Notice and Settlement Administrator for the benefit of Class Members pending the instructions for distribution and payment in this Agreement and further Court order.

PROCEDURE FOR COURT APPROVAL OF SETTLEMENT AGREEMENT

Stipulation to Certification of the Settlement Class

22. The Class Representative, Class Counsel, and Defendants stipulate that, for the purposes of settlement only, the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and that, subject to Court approval, the following class should be certified:

All persons and entities that hold telephone numbers that were sent a fax after November 10, 2012 advertising the commercial availability of any property, goods, or services by or on behalf of HMS Companies, Inc., HMScreening, Lenders Portfolio, Hickory Energy, HMS Credit Services Company, HMS Maintenance Services, HMS Lender Recovery Services, Hickory Management Services, or Michael Fleckenstein that contains no opt-out notice, such as the fax attached as Exhibit A to the Complaint.

Preliminary Approval of the Settlement Agreement by the Court

23. The Class Representative and Defendants must jointly move the Court to enter the Preliminary Approval Order promptly, starting the process for providing notice to the Class Members and proceeding to final approval of the settlement.

Notice to Settlement Class Members of Preliminary Approval

24. Direct fax notice is appropriate in this case because Defendants communicated with the Settlement Class by facsimile within the past two years.

25. No later than 21 days after the Execution Date, Defendants must provide Class Counsel with the Class Member List.

26. Class Counsel must within 10 days of the later of the date of entry of the Preliminary Approval Order or the date on which the second payment to the Settlement Fund has been made by Defendants as set forth in Paragraph 33, or within such other time as may be ordered by the Court, cause the Notice and Settlement Administrator to send the Notice of Class Action Settlement to all Settlement Class Members by facsimile, using the facsimile number provided on the Class Member List. If any initial facsimile transmission is unsuccessful, one additional attempt to send the fax notice via facsimile will be made.

27. All costs of providing notice shall be paid from the Settlement Fund, and Defendants have no right to recoup those costs, even if this Settlement Agreement is not granted final approval or if final approval is reversed on appeal.

Right of Members of the Settlement Class to Opt Out

28. Any member of the Settlement Class may exclude themselves from the Settlement Class by mailing to Class Counsel a written request for exclusion that is postmarked no later than 30 days after the date that the Notice of Class Action Settlement has been first faxed. No later than 10 days after the date for a member of the Settlement Class to exclude himself or herself from the Settlement Class has expired, Class Counsel must file with the Court a list of those persons who have timely chosen to exclude themselves.

Right of Members of the Settlement Class to Object

29. Any Class Member may object to the Settlement Agreement by filing with the Court and serving on Class Counsel and counsel for Defendants written objections postmarked no later than 30 days after the date that the Notice of Class Action Settlement has been first faxed, and must include a written statement setting forth all of the bases for the objection, accompanied by any evidence that the member of the Settlement Class intends to offer in support of any objection. Members of the Settlement Class who wish to appear in person or by counsel at the Final Approval Hearing must file with the Court and serve on Class Counsel and counsel for Defendant at least 15 days before the Final Approval Hearing a notice of their intent to appear.

Right to Terminate Based on Exclusions

30. Defendants shall have the right to withdraw from and rescind this Settlement Agreement if the number of members of the Settlement Class who

submit timely requests for exclusions meets or exceeds a predetermined threshold, which the parties have agreed to and memorialized in a separate letter agreement executed concurrently with this Settlement Agreement. The number shall be confidential except to the Court, which shall upon request be provided with a copy of the letter for *in camera* review. The Defendants shall exercise this right, if at all, by filing a notice stating their decision to withdraw from the Settlement Agreement with the Court within 5 days after Class Counsel files the list of persons who have timely chosen to exclude themselves from the Settlement Class. In such a case, the parties shall be returned to their same positions prior to the Settlement Agreement's execution, and the Settlement Agreement shall become void and have no legal effect.

Final Approval of the Settlement Agreement by the Court

31. At the Final Approval Hearing, the Class Representative and Defendants must jointly move the Court to enter the Final Approval Order.

BENEFIT TO CLASS MEMBERS

Cash Settlement Fund

32. Defendants must pay a combined total of \$80,000 to the Notice and Settlement Administrator to create the Settlement Fund.

33. Defendants shall pay this amount on the following payment schedule:

- (a) First payment of \$40,000 to be made on or before August 26, 2017;
- (b) Second payment of \$40,000 to be made on or before October 25, 2017.

These payments are inclusive of attorney's fees to class counsel and all other costs including expenses incurred to administer the settlement.

34. The Notice and Settlement Administrator will hold the Settlement Fund in a non-interest bearing account for the benefit of the Class Members and to provide for the payments set forth in this Settlement Agreement, subject to Court approval.

35. Class Counsel will be solely responsible, subject to Court approval, for making or directing any distributions from this Settlement Fund.

36. Notwithstanding the foregoing, if this Settlement fails to become final either because (a) the failure of the Court to enter the Final Approval Order; or (b) reversal of the Final Approval Order on final appeal or on remand, then the Settlement Fund, less the costs of notice and administration that have been incurred, must be returned to the Defendants within 10 business days.

Formula for Distribution to Class Members

37. Class Members' distributions from the Net Settlement Fund will be determined on a pro rata basis based on the number of Class Members, which excludes those members of the Settlement Class who opt-out of the settlement. The following formula will determine each Class Member's distribution, rounded down to the nearest penny:

$$\textit{Class Member's Distribution} = \frac{\textit{Net Settlement Fund}}{\textit{Number of Class Members (Excludes Opt Outs)}}$$

Direct Distribution to Class Members—No Claims Process

38. Within a reasonable time after the Effective Date, Class Counsel must cause the Notice and Settlement Administrator to distribute to each Class Member the Class Member's Distribution from the Net Settlement Fund, as calculated from

the formula in Paragraph 36, by check mailed directly to the Class Member's last-known address, as set forth on the Class Member List and as updated by the Notice and Settlement Administrator.

Disposition of Unclaimed Funds

39. For any unclaimed amounts remaining in the Net Settlement Fund after the first distribution (in other words, any checks that remain uncashed more than 120 after they were mailed to Class Members), Class Counsel will move the Court to distribute the funds, which may include a second distribution to Class Members or a *cy pres* award. In no event shall any unclaimed amounts remaining in the Net Settlement Fund after distribution revert to Defendants.

RELEASES AND TERMINATION OF LAWSUIT

40. Each Class Member releases all claims of any kind or nature that have been or could have been asserted against Defendants and all of their current and former parents, subsidiaries, affiliates, officers, directors, stockholders, employees, administrators, assigns, agents, attorneys, and representatives relating to the allegations in the Complaint. On the Effective Date, this Lawsuit will be terminated by operation of the Final Approval Order.

41. Defendants release all claims of any kind or nature that have been or could have been asserted against the Class Representatives, any Class Member, or Class Counsel relating to the allegations in the Complaint, or the filing or prosecution of the Lawsuit relating to such allegations.

NO ADMISSION OF LIABILITY

42. Defendants are entering into this Settlement Agreement and agreeing to the form and content of the related documents solely to compromise and settle the claims brought in the Lawsuit and to avoid the expense and uncertainty of continued litigation in the Lawsuit. Neither this Settlement Agreement nor any of the related documents should be construed as an admission of liability or any type of wrongdoing or misconduct, and Defendants expressly deny any wrongdoing, misconduct, or liability in the Lawsuit.

ATTORNEYS' FEES & EXPENSES, COSTS OF NOTICE & ADMINISTRATION, AND CLASS REPRESENTATIVE SERVICE FEE

Attorneys' Fees & Expenses

43. Defendants will take no position on any request by Class Counsel to the Court to be paid attorneys' fees from the Settlement Fund not to exceed one-third of the Settlement Fund. Any fees, costs, or expenses approved by the Court must be awarded and payable out of the Settlement Fund alone.

Class Representative Service Fee

44. Defendant will take no position on any request for the Class Representatives to be paid a Class Representative service fee from the Settlement Fund not to exceed \$5,000. Any Class Representative service fee must be approved by the Court and must be awarded and payable out of the Settlement Fund alone.

NON-DISPARAGEMENT

45. Neither the Class Representative nor Defendants (nor any party's lawyers) shall make any oral or written statement about the other party relating to

this Lawsuit that is intended or reasonably likely to disparage the other party, provided that this provision does not preclude any party (or their lawyers) from making truthful statements or disclosures that are required by applicable law, regulation, legal process, or rule of professional conduct, and provided that this provision does not restrict any communications between the Settlement Class and Class Counsel. No oral or written statements required by this Settlement Agreement or made in any filings or proceedings with the Court in the Lawsuit shall be deemed to violate this provision.

MISCELLANEOUS

Agreement to Effectuate This Settlement

46. The Class Representative, Class Counsel, Defendants, and Defendants' counsel agree to undertake their best efforts to effectuate this Settlement Agreement, including: (i) all steps that may be appropriate or necessary to secure the Court's preliminary and final approvals and entry of the Preliminary Approval Order and the Final Approval Order; and (ii) all steps that may be appropriate or necessary to oppose any challenges to or appeals from the Court's orders approving the Settlement Agreement.

Reservation of Rights If This Settlement Agreement Is Not Approved or Becomes Void

47. If this Settlement Agreement is not approved by the Court or if it becomes void, then: (i) the stipulation in Paragraph 22 of this Settlement Agreement shall become void and have no legal effect; (ii) no act, statement, or filing in furtherance of this Settlement Agreement may be used to support or oppose

the certification of any class in the Lawsuit; (iii) all the parties to this Settlement Agreement shall be returned to the same position in the Lawsuit that they were in on the day before the Execution Date; and (iv) Defendants shall be entitled to object to certification of any class in this Lawsuit.

Integration Clause

48. This Settlement Agreement, and all exhibits to it, constitute the entire agreement between the parties and can be modified only in writing. This Settlement Agreement, and all exhibits to it, constitute the entire agreement between the parties, and supersede any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter of this Settlement Agreement. The Settlement Agreement is an integrated agreement, and no promise, inducement, or agreement separate from this Settlement Agreement has been made to the parties. The terms of this Settlement Agreement, and all exhibits to it, are binding upon and inure to the benefit of each of the parties and their respective successors, heirs, and assigns.

Execution in Counterparts

49. This Settlement Agreement may be executed in counterparts, and each counterpart, when executed, shall be deemed to be an original.

No Construction Against the Drafter

50. Each party has participated in negotiating and drafting this agreement through counsel, so if an ambiguity or question of intent or interpretation arises,

this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party.

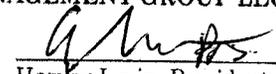
Choice of Law, Forum, and Stipulation to Jurisdiction

51. This Settlement Agreement, and all exhibits to it, will be governed by and construed in accordance with the laws of the State of Indiana, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Settlement Agreement, and all exhibits to it, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Indiana, excluding that State's choice-of-law principles. The parties to this Settlement Agreement stipulate that the Court has personal jurisdiction over them for purposes of administering, interpreting, and enforcing this Settlement Agreement. All proceedings relating to the administration, interpretation, and enforcement of this Settlement Agreement and related documents must be brought in the Court.

[This space intentionally left blank]

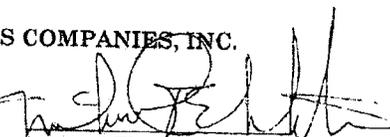
SIGNATURES

HARVEY PROPERTY
MANAGEMENT GROUP LLC

By: 
Harvey Levin, President

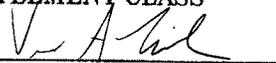
Dated: August 31, 2017

HMS COMPANIES, INC.

By: 
Michael Fleckenstein, President

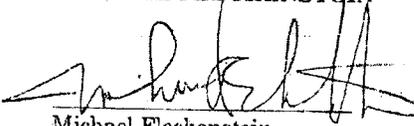
Dated: August 31, 2017

COUNSEL FOR THE CLASS
REPRESENTATIVE & THE
SETTLEMENT CLASS

By: 
Richard E. Shevitz
Vess A. Miller
Lynn A. Toops
COHEN & MALAD, LLP

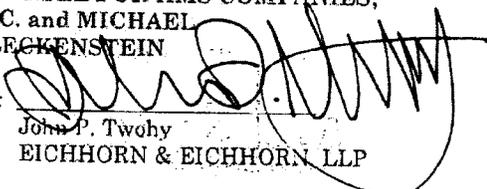
Dated: August 31, 2017

MICHAEL FLECKENSTEIN


Michael Fleckenstein

Dated: August 30, 2017

COUNSEL FOR HMS COMPANIES,
INC. and MICHAEL
FLECKENSTEIN

By: 
John P. Twohy
EICHORN & EICHORN, LLP

Dated: August 30, 2017

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**HARVEY PROPERTY
MANAGEMENT GROUP LLC**, on)
behalf of itself and all others)
similarly situated,)

Plaintiff,)

v.)

No. 1:16-cv-3164-WTL-TAB

**HMS COMPANIES, INC., d/b/a)
HMScreening, Lenders Portfolio,)
Hickory Energy, HMS Credit)
Services Company, HMS)
Maintenance Services, HMS)
Lender Recovery Services, and)
Hickory Management Services,)
and MICHAEL FLECKENSTEIN,)**

Defendants.)

FINAL APPROVAL ORDER

WHEREAS, Plaintiff, Harvey Property Management Group LLC, and Defendants, HMS Companies, Inc., and Michael Fleckenstein, by their respective counsel, entered into the Class Action Settlement Agreement (“Settlement”); and

WHEREAS, on _____, 2017, the Court entered an order pursuant to Rule 23 of the Federal Rules of Civil Procedure preliminarily approving the Settlement, certifying a Class for purposes of settlement, approving the forms of notice of the Settlement to Class Members, directing that appropriate notice of the Settlement be given to Class Members, and scheduling a hearing on final approval (the “Preliminary Approval Order”); and

WHEREAS, in accordance with the Settlement and the Preliminary Approval Order: (1) Class Counsel caused the Notice of Class Action Settlement to be distributed to all known members of the Class; and (2) the affidavit of notice filed with this Court by Class Counsel demonstrates compliance with the Preliminary Approval Order with respect to the notice and, further, that the best notice practicable under the circumstances was, in fact, given; and

WHEREAS, Class Counsel filed with the Court a listing of the names of those persons and entities who submitted valid requests for exclusion from the Class; and

WHEREAS, on _____, 201__, at _____, this Court held a hearing on whether the Settlement is fair, reasonable, adequate and in the best interests of the Class (the “Fairness Hearing”); and

WHEREAS, based upon the foregoing, having heard the statements of Class Counsel and Counsel for Defendants, and of such persons as chose to appear at the Fairness Hearing; having considered all of the files, records, and proceedings in the Lawsuit, the benefits to the Class under the Settlement and the risks, complexity, expense and probable duration of further litigation; and being fully advised in the premises;

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of this Lawsuit and jurisdiction over the Plaintiff and Defendants in this case (the “Parties”).

3. The Court hereby adopts and reaffirms the findings and conclusions set forth in the Preliminary Approval Order.

4. The Class includes all persons and entities listed on the Class Member List, excluding those person and entities that are listed on the Notice of Settlement Exclusions filed with the Court by Class Counsel.

5. The Plaintiff and Class Counsel fairly and adequately represent the interests of the Class in connection with the Settlement.

6. The Settlement is the product of good faith, arm's-length negotiations by the Plaintiff and Class Counsel, and Defendants and their counsel, and the Class and Defendants were represented by capable and experienced counsel.

7. The form, content, and method of dissemination of the notice given to members of the Class—individual faxed notice—were adequate and reasonable, constituted the best notice practicable under the circumstances, and satisfied the requirements of Rules 23(c) and (e) and Due Process.

8. The Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Class, and is approved in all respects. The Court hereby directs the Plaintiff, the Class, Class Counsel, Defendants, and Defendants' counsel to effectuate the Settlement according to its terms.

9. The Settlement Agreement provides for certain benefits to Class Members. The Court approves those benefits and approves the distribution plan for the Settlement Fund set forth in the Settlement Agreement, and Class Counsel is

authorized to implement that distribution after deductions for fees and expenses as approved by the Court.

10. Upon the occurrence of the Effective Date of the Settlement, each Class Member releases all claims of any kind or nature that have been or could have been asserted against Defendants and all of their current and former parents, subsidiaries, affiliates, officers, directors, stockholders, employees, administrators, assigns, agents, attorneys, and representatives relating to the allegations in the Complaint.

11. Upon the occurrence of the Effective Date of the Settlement, Defendants release all claims of any kind or nature that have been or could have been asserted against the Class Representatives, any Class Member, or Class Counsel relating to the allegations in the Complaint, or the filing or prosecution of the Lawsuit relating to such allegations.

12. The above-captioned Lawsuit is hereby dismissed without assessment of costs or attorneys' fees against any party.

13. This Order is a final judgment because it disposes of all claims against all parties to this Lawsuit.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated:

Hon. William T. Lawrence
Judge, United States District Court
Southern District of Indiana

Distribution:

Service of this Order will be made electronically on all ECF-registered counsel of record via email generated by the Court's ECF system.

EXHIBIT B

CLASS ACTION SETTLEMENT NOTICE

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

A proposed settlement (the “Settlement”) has been reached in the class action lawsuit of *Harvey Property Management Group LLC v. HMS Companies, Inc.*, Case No. 1:16-cv-3164-WTL-TAB (the “Class Action”), in the United States District Court for the Southern District of Indiana. **Please read this notice carefully.**

Why did I get this notice? The records of Defendants show that they transmitted one or more fax advertisements to you. Because of this, you are a Class Member, so this notice informs you of your rights.

What is this Class Action about? The Class Action alleged that Defendants violated the Telephone Consumer Protection Act by transmitting an unsolicited fax advertisement to you and others. The Defendants deny the claims and deny that they did anything wrong. No trial has been held. Instead, there is a proposed Settlement.

What does the Settlement provide? The Settlement, in exchange for a release and dismissal of the Class Action, provides for a cash payment of \$80,000 to be split equally among 230 Class Members, after deductions for attorneys’ fees, expenses, and notice and administration costs. It is estimated that each Class Member will receive a check for around \$175. Actual payment amounts could be more or less than this estimate.

What do I need to do to receive a payment from the Settlement? You do not need to do anything to receive a payment. If you do nothing, and if the Court approves the settlement, you will receive a check mailed directly to you. If your address changes, please call the number at the bottom of this notice to provide an updated address. It may be several months or more before any payments are mailed. Please be patient.

How do I get out of the Settlement? To exclude yourself from this Settlement, you must send a letter by mail postmarked no later than [DATE] to Class Counsel listed below saying that you want to be excluded. The letter must include the Caption listed below, your name, address, facsimile number, telephone number, and be signed. If you send a timely, valid exclusion request, you will not get any settlement payment, you cannot object to the Settlement, and you will not be legally bound by anything that happens in this lawsuit.

How do I object to the settlement? If you do not exclude yourself, you can object to the Settlement if you don’t like any part of it. Objections must be sent by mail postmarked no later than [DATE] to the Clerk, Class Counsel, and Defense Counsel listed below. The objection must say that you object to the settlement, include all your arguments and evidence for why the Court should not approve the settlement, and must include the Caption listed below, your name, address, facsimile number, telephone number, and be signed.

Do I have a lawyer in this Class Action? The Court appointed the law firm of Cohen & Malad, LLP to represent you and Class Members. You will not be charged for these lawyers, but they will ask the Court to award them attorneys’ fees of up to \$21,500, plus expenses incurred, to be paid from the settlement fund.

When and where will the Court decide whether to approve the Settlement? The Court will hold a Final Approval Hearing at [TIME] on [DATE] at the U.S. District Court for the Southern District of Indiana, 46 East Ohio, Street, Indianapolis, IN 46204, Courtroom 202. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to pay Settlement Class Counsel. You do not need to attend this hearing.

Class Counsel: Vess A. Miller, Cohen & Malad, LLP, 1 Indiana Sq., Suite 1400, Indianapolis, IN 46204	Defense Counsel: John P. Twohy, Eichhorn & Eichhorn, LLP, 200 Russell St., P.O. Box 6328, Hammond, IN 46325	Clerk: Clerk, U.S. District Court Clerk’s Office, Room 105, 46 East Ohio Street, Indianapolis, IN 46204
----------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------

Caption: *Harvey Property Management Group LLC v. HMS Companies, Inc.*, No. 1:16-cv-3164-WTL-TAB

More information? View the full Settlement Agreement at www.cohenandmalad.com/junkfaxsettlement or call Class Counsel at **1-855-634-2459** and they will answer any questions you may have.

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**HARVEY PROPERTY
MANAGEMENT GROUP LLC**, on)
behalf of itself and all others)
similarly situated,)

Plaintiff,)

v.)

No. 1:16-cv-3164-WTL-TAB

**HMS COMPANIES, INC., d/b/a)
HMScreening, Lenders Portfolio,)
Hickory Energy, HMS Credit)
Services Company, HMS)
Maintenance Services, HMS)
Lender Recovery Services, and)
Hickory Management Services,)
and MICHAEL FLECKENSTEIN,)**

Defendants.)

PRELIMINARY APPROVAL ORDER

Plaintiff, Harvey Property Management Group LLC, and Defendants, HMS Companies, Inc., and Michael Fleckenstein, by their respective counsel, have submitted a Class Action Settlement Agreement (“Settlement”) and have moved the Court under Rule 23 of the Federal Rules of Civil Procedure for an order:

- (1) preliminarily approving the terms and conditions set forth in the Settlement,
- (2) certifying a class for purposes of providing notice to the Class,
- (3) approving the form and method of notice to the Class, and
- (4) scheduling a fairness hearing to consider final approval of the Settlement.

The Court has given due consideration to the terms of the Settlement, the exhibits to the Settlement, the submissions in support of preliminary approval of the Settlement, and the record of proceedings, and now finds that the proposed Settlement should be preliminarily approved pending notice to Class Members and a final hearing on whether the Settlement is fair, reasonable, and adequate.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.
2. This Court has jurisdiction over the subject matter of this Lawsuit and jurisdiction over the Plaintiff and Defendants in the above-captioned case (the “Parties”).
3. The Court finds that for the purposes of settlement and notice the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure have been met, specifically:
 - a. The class is so numerous that joinder of all members is impracticable, as there are hundreds of class members;
 - b. There are questions of law or fact common to the class based upon the claims raised in the Lawsuit;
 - c. The Plaintiff’s claims are typical of the claims of the class;
 - d. The Plaintiff and Class Counsel will fairly and adequately protect the interests of the class;

- e. Questions of law and fact common to the class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating this Lawsuit.

The Court therefore **CERTIFIES** the following Plaintiff Class:

All persons and entities that hold telephone numbers that were sent a fax after November 10, 2012 advertising the commercial availability of any property, goods, or services by or on behalf of HMS Companies, Inc., HMScreening, Lenders Portfolio, Hickory Energy, HMS Credit Services Company, HMS Maintenance Services, HMS Lender Recovery Services, Hickory Management Services, or Michael Fleckenstein that contains no opt-out notice, such as the fax attached as Exhibit A to the Complaint.

4. The Court finds that the terms of the Settlement are within the range of a fair, reasonable, and adequate settlement between the Class and Defendant under the circumstances of this case. The Court therefore preliminarily approves the Settlement and directs the parties to the Settlement to perform and satisfy the terms and conditions of the Settlement Agreement that are triggered by such preliminary approval.

5. The proposed Notice of Class Action Settlement in the form attached to the Settlement Agreement as Exhibit "B", and the manner of distribution of such Notice by direct fax, are hereby approved by this Court as the best notice practicable to the Class. The form and manner of notice proposed in the Settlement comply with Rules 23(c) and (e) and the requirements of Due Process.

6. Pursuant to Rule 23(e), a final fairness hearing (the “Fairness Hearing”) shall be held before the undersigned at _____ o’clock, on _____, 201__ in Courtroom 202, Birch Bayh Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204 for the purpose of: (a) determining whether the Settlement is fair, reasonable, and adequate and should be finally approved; (b) determining whether a Final Approval Order should be entered; and (c) considering Class Counsel’s application for an award of attorneys’ fees and expenses pursuant to Rule 23(h). The Court may adjourn, continue, and reconvene the Fairness Hearing without further notice to the Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Class.

7. Class Counsel shall fax or cause to be faxed to each Class Member no later than the latter of ten days from the date of this Order or 10 days from the date on which all payments have been made to fully fund the Settlement Fund, a copy of the mailed Notice in the form attached to the Settlement as Exhibit “B.”

8. Class Members shall be afforded an opportunity to request exclusion from the Class. A request for exclusion from the Class must: (i) state that the Class member wishes to “opt-out” or request “exclusion” from the Class; (ii) contain the full name, current address, and telephone number of the person requesting exclusion; (iii) contain the title of the Lawsuit: “*Harvey Property Management Group LLC v. HMS Companies, Inc.*”; (iv) be signed by the person requesting exclusion; and (v) be sent to the Class Counsel by U.S. mail with a postmark on or

before thirty (30) days after the date that faxed notice is first issued (the “Exclusion Deadline”). Members of the Class who submit a timely and valid request for exclusion from the Class shall not participate in and shall not be bound by the Settlement. Members of the Class who do not timely and validly opt out of the Class in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Settlement.

9. Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement. Any objection must: (i) contain the full name and current address of the person objecting; (ii) contain the title of the Lawsuit: “*Harvey Property Management Group LLC v. HMS Companies, Inc.*” with the case number (iii) state the reasons for the Class member’s objection; (iv) be accompanied by any evidence, briefs, motions or other materials the Class member intends to offer in support of the objection; (v) be signed by the Class member; and (vi) be sent by U.S. mail, first class and postage prepaid, with a postmark no later than thirty (30) days after the date that faxed Notice is first issued (the “Objection Deadline”) to the Clerk of the Court, Class Counsel, and Counsel for Defendants. If the Class Member or his or her Counsel wishes to speak at the Fairness Hearing, he or she must file with the Court and serve on Class Counsel and Counsel for the Defendants a Notice of Intention to Appear no later than fifteen (15) days before the Fairness Hearing.

10. Any member of the Settlement Class who does not make his or her objection known in the manner provided in the Settlement and Notice shall be

deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement.

11. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement must meet the requirements set forth above, including the deadline for filing objections, and also must be accompanied by any evidence, briefs, motions or other materials the proposed intervenor intends to offer in support of the request for intervention, and must meet the requirements of the Federal Rules of Civil Procedure.

12. Any lawyer intending to appear at the Fairness Hearing must be authorized to represent a Class Member, must be duly admitted to practice law before the United States District Court for the Southern District of Indiana, and must file a written appearance.

13. Not more than ten (10) days after the Exclusion Deadline, Class Counsel shall file a Notice of Settlement Exclusions, listing the names of all persons or entities who timely and validly excluded themselves from the Settlement.

14. Defendants have agreed to pay a collective total of \$80,000 as the Settlement Fund, which they will pay to the Notice and Settlement Administrator as set forth in the Settlement to be held for the benefit of the Settlement Class and subject to further Court order.

15. No fewer than ten (10) days prior to the Fairness Hearing, Class Counsel shall file a motion for approval of the attorneys' fees and expenses to be paid from the Settlement Fund, along with any supporting materials.

16. If the Settlement does not become effective or is rescinded pursuant to the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Plaintiff and Defendants, and all Orders issued pursuant to the Settlement shall be vacated.

17. The Court may adjourn the date and/or time of the Fairness Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED.

Dated:

Hon. William T. Lawrence
Judge, United States District Court
Southern District of Indiana

Distribution:

Service of this Order will be made electronically on all ECF-registered counsel of record via email generated by the Court's ECF system.