

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

PHILLIPS RANDOLPH ENTERPRISES, LLC, )  
an Illinois limited liability company, )  
individually and as the representative for a class )  
of similarly-situated persons, )

Plaintiff, )

v. )

No. 08 CH 43273 )

HOME RUN INN, INC., d/b/a HOME RUN )  
INN PIZZERIA; HOME RUN INN PIZZA )  
CORPORATION; HOME RUN INN FROZEN )  
FOODS CORP.; HOME RUN INN )  
ARLINGTON; HOME RUN INN PIZZA )  
EXPRESS; HOME RUN INN PIZZA- )  
ADDISON; HOME RUN INN PIZZA- )  
ARCHER; HOME RUN INN )  
BOLINGBROOK; and JOSEPH PERRINO )

Defendants. )

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT, WITH CLAIM FORM**

**TO: All persons to whom Home Run Inn, Inc., d/b/a Home Run Inn Pizzeria, Home Run Inn Pizza Corporation, Home Run Inn Frozen Foods Corp., Home Run Inn Arlington, Home Run Inn Pizza Express, Home Run Inn Pizza-Addison, Home Run Inn Pizza-Archer, Home Run Inn Bolingbrook, Joseph Perrino and/or anyone acting on their behalf, sent or caused to be sent, without prior express invitation or permission, facsimiles advertising the commercial availability of any products or services during the period from December 31, 2002 through December 31, 2007 (the "Settlement Class").**

IF YOU WISH TO RECEIVE CERTAIN RELIEF UNDER THE CLASS SETTLEMENT,  
YOU MUST RETURN THE CLAIM FORM AT THE END OF THIS NOTICE.

You may be a member of the Settlement Class as defined above. This Notice explains the nature of the Lawsuit and the settlement terms, and informs you of your legal rights and obligations.

**A. WHAT THIS LAWSUIT IS ABOUT:** Plaintiff filed this action in the Circuit Court of Cook County, Illinois. On behalf of a putative class, Plaintiff alleged that Home Run Inn, Inc., d/b/a Home Run Inn Pizzeria, Home Run Inn Pizza Corporation, Home Run Inn Frozen Foods Corp., Home Run Inn Arlington, Home Run Inn Pizza Express, Home Run Inn Pizza-Addison,

Home Run Inn Pizza-Archer; Home Run Inn Bolingbrook, and Joseph Perrino (“HRI Defendants”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and state laws by faxing unsolicited advertisements to the Settlement Class (the “Lawsuit”). The HRI Defendants deny and intended to assert defenses to Plaintiff’s claims. To resolve the Lawsuit, the parties have reached a proposed settlement.

**B. THE PROPOSED SETTLEMENT:** The Court granted preliminary approval of a class-wide settlement and certified the Settlement Class defined above, subject to a fairness hearing that will occur on June 4, 2009 at 10:00 a.m., in Room 2102 of the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois.

Plaintiff and HRI Defendants have agreed to the settlement described below. If you remain in the Settlement Class and submit a valid Claim Form, and if the settlement is finally approved by the Court, you will be sent a check for your portion of the proceeds, up to \$500.00. If you do not wish to be bound by the settlement, you must opt out.

**1. Recovery to Class Members:** HRI Defendants agreed to pay a total of \$90,000 as the Settlement Amount to resolve the Lawsuit. The Settlement Amount will comprise the Settlement Class recovery. Each Class member, including Plaintiff, **who timely submits a valid Claim Form** and does not exclude him/herself from this settlement will receive a pro rata share (not to exceed \$500.00) of the Settlement Class recovery by check. The Settlement Class recovery is subject to a deduction for the Class Representative’s (Plaintiff Phillips Randolph Enterprises, LLC) incentive award, a deduction for attorney’s fees not to exceed one-third of the Settlement Amount, plus all approved costs and expenses, and a deduction for the costs of notice and administration of the settlement. If the amount of claims exceeds the amount available for distribution after the deduction of any of the foregoing amounts approved by the Court, then each Class Member will receive a pro rata share of the amount available for distribution. Any remaining unclaimed portion of the Settlement Class recovery will be paid to a charity or charities approved by the court.

**2. Further Prosecutions Enjoined:** On the Effective Date of the settlement, Plaintiff and the Class Members who do not opt out as described below (whether or not they submit claims) will be deemed to have released and be forever barred and permanently enjoined from directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, any other arbitration, or any other administrative, regulatory, or other proceeding against the HRI Parties (including, without limitation, the HRI Defendants)<sup>1</sup> and/or their Insurers in any jurisdiction based on or relating in any way whatsoever to any of the Released Claims, including, without limitation, to any of the claims and causes of action (or the facts or circumstances relating thereto) in or underlying the Lawsuit; and all persons shall be forever barred and permanently enjoined from filing, commencing, or

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<sup>1</sup> This Notice adopts the definitions of “HRI Parties,” “Insurers,” and “Released Claims,” used in the Settlement Agreement, which has been filed with Court under case number 08 CH 43273.

prosecuting any other lawsuit, arbitration, or other proceeding as a class action against the HRI Parties (including, without limitation, the HRI Defendants) (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Class Members who have not timely excluded themselves from the Settlement Class, if such other lawsuit, arbitration or other proceeding is based on or related to any of the Released Claims, including, without limitation, to any of the claims and causes of action (or to the facts and circumstances related thereto) in or underlying the Lawsuit.

**3. Incentive Award:** Plaintiff's counsel will request the Court to approve the payment of an incentive award of up to \$5,000 to the named Plaintiff for its services as Class Representative on behalf of the Settlement Class. This incentive award will be paid out of the Settlement Amount.

**C. PLAINTIFF COUNSEL'S OPINION OF THE VALUE OF THE SETTLEMENT:**

In an individual action, a prevailing plaintiff may recover \$500.00 in statutory damages under the TCPA (\$1,500.00 if a willful violation is shown). If the plaintiff does not prevail, he would receive nothing. Under certain state laws, prevailing plaintiffs may recover greater or lesser amounts for claims about unsolicited faxed advertisements. Those state laws may also contain defenses that do not exist under the TCPA and which may prohibit any recovery whatsoever. Class Counsel is of the opinion that the proposed settlement is fair and reasonable and that the Settlement Agreement should be approved. In light of the risks and expenses of litigation, the potential defenses of the HRI Defendants, and the uncertainty of whether a contested class would be certified by the Court, Class Counsel believes it is in the best interests of the Settlement Class that the case be settled and that the settlement terms are fair and reasonable.

**D. CORRECT NAME:** If any of the persons to whom this Notice is sent have died or are divorced or changed their name, you should mail a letter to Plaintiff's counsel listed below explaining who you are and why the claim belongs to you, and include any supporting documentation. Plaintiff's counsel is:

Thomas A. Zimmerman, Jr.  
Zimmerman Law Offices, P.C.  
100 W. Monroe Street, Suite 1300  
Chicago, IL 60603  
(312) 440-0020

**E. FAIRNESS HEARING:** The Court will hold a hearing on the fairness of the proposed settlement. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including the amount of the award of costs and attorney's fees to Plaintiff's counsel, and the amount of the incentive award to the Class Representative. The hearing will take place on June 4, 2009 at 10:00 a.m., in Room 2102 in the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois. You are **not** obligated to attend this hearing unless you plan to object to the settlement. The fairness hearing may be continued to a future date without further notice to the Settlement Class.

If the settlement is not approved, the case will proceed as if no settlement has been attempted. There can be no assurance if the settlement is not approved that the Settlement Class will recover more than is provided in this settlement, or anything at all.

**F. YOUR OPTIONS:**

**1. You can remain in the Settlement Class:** If you wish to receive a portion of the settlement proceeds, you must complete, sign, and return a Claim Form indicating that you wish to participate in the settlement. **Your properly completed Claim Form must be faxed or postmarked to Plaintiff's counsel on or before May 22, 2009.** You will be represented by Plaintiff's counsel without additional charge. If you prefer, you may enter your own appearance or ask the Court to allow you to participate in the settlement through your own attorney. If you wish to participate on your own or through your own attorney, you must file an appearance with the Court and serve a copy on Plaintiff's counsel and HRI Defendants' counsel listed below. If you participate through your own attorney, rather than through Plaintiff's counsel, it will be at your own expense.

**Only those Class Members who complete and return a valid Claim Form at the end of this notice postmarked or faxed on or before May 22, 2009 may receive payment under this settlement. You must fully complete and sign the Claim Form or your claim will be rejected.**

Any party who returns a Claim Form or otherwise does not exclude him/herself from the settlement, as described below, will be bound by the Settlement Agreement and injunction against prosecuting claims against HRI Parties (including, without limitation, the HRI Defendants), as approved by the Court.

**2. You can opt out of the settlement:** You have the right to exclude yourself from both the class action and the settlement by filing a written request for exclusion with the Clerk of the Circuit Court of Cook County, 50 W. Washington St., Room 802, Chicago, Illinois 60602. By excluding yourself from the settlement you will not be legally entitled to receive any of the relief provided by the HRI Defendants under the settlement. **The request for exclusion must be filed with the Clerk of the Court on or before May 7, 2009,** and must list your name, address, fax number, and the name and number of this case. You must also mail copies of the request for exclusion to **each** of the attorneys whose address is provided below, and **such mailing must be postmarked by May 7, 2009.**

**Attorney for Plaintiff and the Class:**

Thomas A. Zimmerman, Jr.  
Zimmerman Law Offices, P.C.  
100 West Monroe Street, Suite 1300  
Chicago, IL 60603  
[www.attorneyzim.com](http://www.attorneyzim.com)

**Attorneys for HRI Defendants:**

Peter G. Rush  
Daniel J. Hayes  
K&L Gates LLP  
70 West Madison Street, Suite 3000  
Chicago, IL 60602

**3. You can object to the settlement:** If you object to the settlement, and wish to submit an objection rather than simply excluding yourself from the class action settlement, you must submit your objection in writing to the Clerk of the Circuit Court of Cook County, 50 W. Washington St., Room 802, Chicago, Illinois 60602. **The objection must be filed with the Clerk of the Court on or before May 7, 2009,** and must refer to the name and number of this case. You must also send a copy of your objection by first class mail to the attorneys for the Plaintiff and HRI Defendants listed above, and **such mailing must be postmarked by May 7, 2009.** Any objection must include your name and address, the name and number of this case, and a statement of the reasons why you believe that the Court should find that the proposed settlement is not fair or is not in the best interests of the Settlement Class. You may also appear at the fairness hearing before the Court on June 4, 2009 at 10:00 a.m. and request to be heard by the Court as to your objection. **YOU ARE NOT REQUIRED TO ATTEND THIS HEARING UNLESS YOU WISH TO PRESENT AN ARGUMENT TO THE COURT AS TO YOUR OBJECTION.** If you timely file and serve a written objection and intend to make an appearance at the Fairness Hearing, either in person or through counsel hired at your expense, you must file with the Clerk of the Court and serve on Class Counsel and the HRI Defendants' counsel, no later than the foregoing deadline to file your objection with the Clerk of the Court, a Notice of Intention to Appear. If you do not adhere to these requirements, you will not be heard at the Fairness Hearing. Please note that it is not sufficient to simply state that you object. Your objection should state the reasons why you object to the settlement or why it should not be approved.

**4. You can do nothing:** You may choose to do nothing in which case you will remain a member of the Settlement Class and be bound by the injunction against prosecuting claims against the HRI Parties (including, without limitation, the HRI Defendants), and you will forever release your claims against them, **BUT YOU WILL NOT RECEIVE A SHARE OF THE SETTLEMENT PROCEEDS UNLESS YOU SUBMIT A CLAIM FORM.**

**G. ATTORNEY'S FEES AND COSTS:** Plaintiff's counsel will request the Court to order an award of attorney's fees in an amount not to exceed one-third of the Settlement Amount, plus expenses and costs, to Plaintiff's counsel for their services as Class Counsel. Defendants will not oppose or cause to be opposed an application by Plaintiff's counsel for attorney's fees up to that amount, plus expenses and costs. All attorney's fees, expenses, and costs approved by the Court shall be paid out of the Settlement Amount.

**H. THIS NOTICE ONLY PROVIDES A GENERAL DESCRIPTION:** This description of the case is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, including a copy of the Settlement Agreement, you should visit the office of the Clerk of the Circuit Court of Cook County, 50 W. Washington St., Room 802, Chicago, Illinois. The Clerk will make the files relating to the Lawsuit available to you for inspection and copying at your own expense.

**I. INQUIRIES:** Any questions you or your attorney may have concerning this Notice should be directed to Class Counsel, Thomas A. Zimmerman, Jr., at the address and telephone

number listed above. Please include the case name and number, your name, your fax number, and your current street address on any letters, not just the envelope. **Please do not contact the Clerk of the Court or the HRI Defendants' attorneys, because they cannot answer your questions or give you advice about this settlement.**

By Order of the Court Dated: March 9, 2009.

CIRCUIT COURT OF COOK COUNTY, ILLINOIS, CHANCERY DIVISION

**CLAIM FORM**

**RE: Phillips Randolph Enterprises, LLC v. Home Run Inn, Inc., et al.  
Case No. 08 CH 43273**

**IMPORTANT: THIS CLAIM FORM MUST BE POSTMARKED OR FAXED TO CLASS COUNSEL LISTED BELOW ON OR BEFORE MAY 22, 2009, IN ORDER TO RECEIVE YOUR SHARE OF THE SETTLEMENT AMOUNT. MAIL OR FAX THIS CLAIM FORM TO THE FOLLOWING CLASS COUNSEL:**

Thomas A. Zimmerman, Jr.  
Zimmerman Law Offices, P.C.  
100 West Monroe Street, Suite 1300  
Chicago, IL 60603  
Facsimile: (312) 440-4180

**Please print the following information. You must provide all information requested and sign the Claim Form, or the claim will be rejected.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_

Your fax number that received the unsolicited fax advertisement from Home Run Inn between December 31, 2002 and December 31, 2007: \_\_\_\_\_.

The date on or about which you received the unsolicited fax advertisement: \_\_\_\_\_.

**NOTE: You may submit this Claim Form if you received an unsolicited advertising fax from or on behalf of Home Run Inn during the timeframes listed above.**

I am (or the business or entity that I represent is) the only person or entity entitled to receive the settlement benefit being sought and I (and/or the business or entity that I represent) had ownership, authority or control over the fax number(s) listed above between the respective dates listed above. I received the above-described unsolicited facsimile advertisement between the date(s) indicated above.

**I declare under penalty of perjury and as provided by law pursuant to Section 5/1-109 of the Illinois Code of Civil Procedure, that the statements set forth herein are true and correct, except as to any matters stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.**

\_\_\_\_\_  
(YOUR SIGNATURE) YOU MUST SIGN

Date: \_\_\_\_\_