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## **CORRECTED: Jiffy Lube Franchisee To Pay Up To \$47M To Settle Spam Text MDL**

By **Lana Birbrair**

Law360, New York (August 02, 2012, 8:30 PM ET) -- A Jiffy Lube International Inc. franchisee agreed to pay between \$35 million and \$47 million in cash and services on Wednesday to settle class claims by customers who received spam texts, exiting California multidistrict litigation against it.

In a motion for preliminary approval of the settlement, the plaintiffs noted that Jiffy Lube franchisee Heartland Automotive Services Inc. had agreed to send certificates to its customers offering them \$17.29 off any Jiffy Lube service. After the offers expire, the class members would also be eligible to redeem the certificates for about \$13 in cash, placing the total value of the settlement in services and cash at between about \$35 million and \$47 million.

The proposed settlement was hampered by the fact that fellow defendant TextMarks Inc., which sent the text messages about discounts for Jiffy Lube services on behalf of Heartland, could not financially contribute to any deal and because Heartland demonstrated that it could not financially resolve the case under traditional settlement models, according to the motion.

Nevertheless, the plaintiffs argued, the settlement should be approved because in addition to the significant financial benefit for class members, the settlement also provides for an injunction designed to prevent Heartland from sending additional texts to its customers without their written consent.

Last August, the U.S. Judicial Panel on Multidistrict Litigation consolidated several class actions against Jiffy Lube and Heartland over allegations that the companies sent spam text messages to consumers without their consent. By the time of the settlement, Jiffy Lube was no longer a party to the suit.

In March, Heartland suffered a setback in the MDL accusing it of violating the Telephone Consumer Protection Act when a California federal judge rejected its argument that the TCPA violated the First Amendment by unconstitutionally restricting speech.

U.S. District Judge Jeffrey Miller rejected Heartland's motion to dismiss the consolidated class action complaint, siding with the plaintiffs and the U.S. government, which intervened to defend the TCPA.

Representatives for the parties were not immediately available for comment Thursday.

The plaintiffs are represented by interim lead class counsel Edelson McGuire LLC and Michael McMorro of Smith & McMorro PC, as well as liaison class counsel Law Offices of

Douglas J. Campion.

Heartland is represented by Fernando Aenlle-Rocha, Rachel Feldman and J. Jonathan Hawk, Glenn Kurtz and Kim Haviv of White & Case LLP.

The case is In re: Jiffy Lube International Inc. Text Spam Litigation, case number 3:11-md-02261, in the U.S. District Court for the Southern District of California.

--Additional reporting by Bibeka Shrestha. Editing by Cara Salvatore.

(Correction: A previously published version of this article incorrectly stated that Jiffy Lube International Inc. would be paying the settlement. The error has been corrected.)

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