

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

Naiman v. Total Merchant Services, Inc., Civil Action No. 4:17-cv-03806-CW

If a call from Defendant or Quality Merchant Services, Michael Alimento, or Brian Alimento on behalf of Defendant was directed to your cellular telephone, you could get a payment from a class action Settlement.

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

- Defendant Total Merchant Services, Inc. (“Defendant”) has agreed to pay Seven Million Five Hundred Thousand Dollars (\$7,500,000) into a fund from which eligible persons or entities who file claims will receive cash awards. The amount of your recovery will be based on the number of calls you received and the number of people who file valid claims, but the minimum amount each valid claimant is expected to receive is \$225. You can see the number of calls you received by inputting your phone number on the Settlement Website: **www.totalTCPAsettlement.com**.
- The website also has a copy of the Settlement Agreement, which defines the special terms used in this Notice.
- The settlement resolves a lawsuit involving allegations that Quality Merchant Services, Inc., Michael Alimento, and/or Brian Alimento made automated telemarketing calls and/or calls using an artificial or prerecorded voice on the Defendant’s behalf from July 5, 2013 through June 8, 2018 to cellular telephone lines using the Spitfire dialing system.
- Court-appointed lawyers for the class (“Class Counsel”) will ask the Court for One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000) of the fund as attorneys’ fees for the time they spent investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel will also ask the Court to reimburse them an amount not to exceed \$20,591.19 for the out-of-pocket expenses they incurred in pursuing the case.
- Defendant denies all allegations of wrongdoing in the lawsuit. As part of the proposed Settlement, Defendant does not admit to any wrongdoing and continues to deny the allegations against it.
- The two sides disagree on whether Plaintiff and the class could have won at trial.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.
- This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at **www.totalTCPAsettlement.com**; contact Class Counsel at Broderick & Paronich, P.C., 99 High St., Suite 304, Boston, MA 02110, (508) 221-1510; access the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay St., Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.
- **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

QUESTIONS? CALL 1-877-327-1109 TOLL-FREE OR VISIT WWW.TOTALTCPASETLEMENT.COM

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM BY FEBRUARY 4, 2019	Ask for payment. This is the only way to receive a payment from this Settlement.
EXCLUDE YOURSELF BY FEBRUARY 4, 2019	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims being resolved.
OBJECT BY FEBRUARY 4, 2019	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING ON APRIL 2, 2019	Ask to speak in Court about the fairness of the Settlement. To be heard, you must have timely objected.
DO NOTHING	Get no payment. Give up your right to ever be part of any other lawsuit against Defendant about the legal claims in this case.

BASIC INFORMATION

1. What is this notice and why should I read it?

The purpose of this notice is to let you know that a proposed Settlement has been reached in the class action lawsuit entitled *Naiman v. Total Merchant Services, Inc.*, Civil Action No. 4:17-cv-03806-CW in the United States District Court for the Northern District of California. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this notice carefully. This notice summarizes the Settlement and your rights under it.

2. What is this lawsuit about?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

Here, the Class Representative alleges that from July 5, 2013 through June 8, 2018, Defendant violated the Telephone Consumer Protection Act ("TCPA") by the fact that Quality Merchant Services, Inc., Michael Alimento and/or Brian Alimento, on behalf of Defendant, made automated telemarketing calls and/or calls using an artificial or prerecorded voice through the Spitfire dialing system to cellular telephones. The Class Representative alleges that Defendant did not have the recipients' permission to make these calls.

The Court has certified a class for Settlement purposes only (the "Settlement Class"). U.S. District Court Judge Claudia Wilken (the "Court") is in charge of this class action.

Defendant denies that it did anything wrong and that this case would be certified as a class action in litigation.

THE SETTLEMENT

3. Why is there a Settlement?

The Court has not decided in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and his attorneys think the Settlement is best for the Settlement Class.

QUESTIONS? CALL 1-877-327-1109 TOLL-FREE OR VISIT WWW.TOTALTCPASETTLEMENT.COM

WHO IS IN THE SETTLEMENT?

4. How do I know if I am a part of the Settlement?

You are likely in the Settlement Class if, between July 5, 2013 and June 8, 2018, Quality Merchant Services called your cell phone. You can check whether you are in the Settlement Class by entering your phone number at www.totalTCPAsettlement.com.

If you have questions about whether you are part of the Settlement Class, you may call 1-877-327-1109 or visit www.totalTCPAsettlement.com for more information.

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the Settlement provide?

Defendant has agreed to pay Seven Million Five Hundred Thousand Dollars (\$7,500,000) to be divided among all Settlement Class Members who send in a valid Claim Form after any fees, costs, service awards, and Settlement administration expenses have been deducted.

Defendant has also agreed that it will take remedial steps in an effort to comply with the TCPA's requirements regarding making telephone calls using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service in response to the allegations and claims asserted in this lawsuit.

6. How much will my payment be?

Your share of the settlement will depend on the number of Claim Forms that Settlement Class Members submit, and the amount of calls you received, but the minimum amount each claimant is estimated to receive is **\$225**. In particular, the payment to each participating Settlement Class Member will be proportionate to the number of calls he or she received. You can learn the number of calls you received by inputting your phone number on the Settlement Website: www.totalTCPAsettlement.com.

HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

7. How do I make a claim?

A paper Claim Form is available by calling **1-877-327-1109**. Read the instructions on the postcard carefully, fill out the form, sign it, and mail it postmarked no later than **February 4, 2019**. You may also submit a Claim Form online by going to the Settlement Website at www.totalTCPAsettlement.com and following the directions. You also may download a paper Claim Form on the Settlement Website. Claim Forms sent by mail must be mailed to:

Total Merchant Telemarketing Settlement
Settlement Administrator
P.O. Box. 3770
Portland, OR 97208-3770

8. When will I get my payment?

The Court will hold a hearing to decide whether to approve the Settlement. The hearing is expected to be on **April 2, 2019**, and if the hearing date changes, the updated date will be posted to www.totalTCPAsettlement.com. If the Settlement is approved, appeals may still follow. It is uncertain whether the Settlement will survive these appeals, resolution of which can take more than a year.

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9. What am I giving up to get a payment and stay in the class?

Unless you exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. That means you can't sue, continue to sue, or be part of any other lawsuit against Defendant regarding the claims that are subject to the Settlement. If the Settlement is approved and becomes final and not subject to appeal, then you and all Class Members release all "Released Claims" against all "Released Parties." It also means that all of the Court's orders will apply to you and legally bind you.

The Settlement Agreement (available at www.totalTCPAsettlement.com) describes the claims you are releasing (the "Released Claims") and against whom you are releasing claims ("Released Parties") in detail, so read it carefully. To summarize, the release includes, but is not limited to, telemarketing-related claims that arise out of the improper use of an "automatic telephone dialing system" and/or an "artificial or prerecorded voice" by, or on behalf of Defendant, to make telephone calls to cellular phones.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this Settlement, but you want to keep the right to sue or continue to sue Defendant, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself—or is sometimes referred to as "opting out" of the Settlement Class.

10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter saying that you want to be excluded from the *Naiman v. Total Merchant Services, Inc.*, Civil Action No. 4:17-cv-03806-CW Settlement. Your letter must state that you wish to be excluded from this Settlement, include your name, address, and telephone number, and be signed by you. You must mail your exclusion request postmarked no later than **February 4, 2019** to the following address:

Total Merchant Telemarketing Settlement
Settlement Administrator
P.O. Box 3770
Portland, OR 97208-3770

You cannot exclude yourself on the phone or by fax or email. If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendant in the future.

11. If I don't exclude myself, can I sue Total Merchant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves. If you already have a lawsuit that may relate to the claims being released as part of this class action Settlement, you should speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **February 4, 2019**.

12. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for a payment.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed Broderick & Paronich, P.C., The Law Office of Matthew P. McCue, Heidarpour Law Firm, and Jon Fougner to represent you and other Settlement Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

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14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000) to them for attorneys' fees. This amounts to 25% of the total fund. Class Counsel will also seek recovery of their actual expenses spent on the litigation, not to exceed \$20,591.19. These payments would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel also will request a service award of \$10,000 for the named Plaintiff, to compensate him for his time and effort. The Court may award less than these amounts.

If there is money left over that is too small to be practicably distributed to class members, the Parties have proposed to the Court that it go to the National Consumer Law Center ("NCLC"). NCLC is a nonprofit organization that works for consumer justice and economic security for low-income and other disadvantaged people, including advocating against illegal telemarketing.

OBJECTING TO THE SETTLEMENT

15. How do I object to the Settlement?

You can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no Settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed Settlement in writing, in which case you may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Naiman v. Total Merchant Services, Inc.*, Case Number 4:17-cv-03806-CW); (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay St., Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California; and (c) be filed or postmarked on or before **February 4, 2019**.

The written objection must (a) contain information sufficient to allow the parties to confirm that you are a member of the Settlement Class, including your full name, address, telephone number, and signature; (b) include a statement of your specific factual and/or legal objections, as well as any witness testimony and documents that you would like the Court to consider; (c) provide the name and contact information of any attorney you intend to have assert your objections before the Court; and (d) state whether you intend to appear at the Final Approval Hearing.

16. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer directly affects you.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court is expected to hold the final fairness hearing at **2:30 p.m. on April 2, 2019**, before the Honorable Claudia Wilken at the U.S. District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses, and the Incentive Award to the Class Representative. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

Note: The date and time of the fairness hearing are subject to change by Court Order without further notice to the class. You may check www.totalTCPAsettlement.com or <https://ecf.cand.uscourts.gov> to check if the date has changed.

QUESTIONS? CALL 1-877-327-1109 TOLL-FREE OR VISIT WWW.TOTALTCPASETTLEMENT.COM

DO I HAVE TO ATTEND THE HEARING?

18. Do I have to come to the hearing?

Class Counsel will answer any questions the Court may have. But you are welcome to come to 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 your written objection was filed or mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

19. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you filed an objection and intend to appear at the hearing, you must state your intention to do so in your objection. To speak, you must state that you intend to appear at the hearing in your objection. Be sure to include your name, address, telephone number, that you are a Class Member, and your signature. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you'll get no money from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant about the legal issues released in this case.

GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review the Settlement Agreement on the Settlement Website at www.totalTCPAsettlement.com. You can also get a copy of the Settlement Agreement by writing to any of the Court-appointed attorneys.

You can call **1-877-327-1109** toll-free; write to Total Merchant Telemarketing Settlement, Settlement Administrator, P.O. Box 3770, Portland, OR 97208-3770; or visit the website at www.totalTCPAsettlement.com, where you will find answers to common questions about the Settlement, a Claim Form, and other information to help you determine whether you are a member of the Settlement Class.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

QUESTIONS? CALL 1-877-327-1109 TOLL-FREE OR VISIT WWW.TOTALTCPASETTLEMENT.COM