

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Seal et al. v. RCN Telecom Services, LLC (No. 2016-CH-07073)

(Circuit Court of Cook County, Illinois, County Department, Chancery Division)

PLEASE READ THIS NOTICE CAREFULLY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS YOU MAY BE ENTITLED TO A CASH PAYMENT OF UP TO \$140 FROM A CLASS ACTION SETTLEMENT. THIS NOTICE EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.

**For more information, visit www.RCNTCPASettlement.com
Para una notificación en Español, visitar www.RCNTCPASettlement.com**

This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer and is not a lawsuit against you.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs claim that RCN violated the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA prohibits using an automatic telephone dialing system to make calls to cell phones without the consent of the recipient and it also prohibits making prerecorded calls or marketing calls to landlines if the recipient is listed on the national do not call list and receives more than one such call in a 12 month period. The TCPA provides for statutory damages of \$500 for each call made in violation of the Act. Plaintiffs allege that RCN made unauthorized calls in violation of the TCPA including “wrong number” calls for purposes of collecting on accounts or other business reasons and using an ATDS to place calls to the cell phones of persons who were no longer its customers but had been assigned a cell phone number which was previously assigned to an RCN customer whose service was terminated and then reassigned to them. If more than once such call was made it is a violation of the TCPA. Plaintiffs also allege that RCN made more than one marketing call in a 12 month period after receipt of an opt-out request in violation of the TCPA. It is possible that unauthorized calls were made under other circumstances as well. If you are unsure as to whether you received an unauthorized call covered by this settlement, you may call Class Counsel toll-free at (888) 317-3843. RCN has not admitted liability for TCPA violations and enters into this settlement solely to avoid the expense and inconvenience of litigation.

AM I A MEMBER OF THE SETTLEMENT CLASS?

You are a member of the settlement class if:

- (1) during 4/1/11 to 10/15/13 you received an automated call on your cell phone without your consent;
- (2) during the period 10/16/13 to 11/01/16 you received an automated *marketing call* on your cell phone for which you did not provide express written consent;
- (3) during the period 10/16/13 to 11/01/16 you received an automated *non-marketing call* on your cell phone for which you did not provide express consent;
- (4) during the period 4/1/11 to 11/01/16 you received more than one *marketing call* in a one-year period that was made by or on behalf of RCN without your consent when registered on the National Do Not Call List; or
- (5) during the period 4/1/11 to 11/01/16 you received a *pre-recorded marketing call* on your landline from RCN which you did not consent to receive.

If you have any questions about whether you are a member of the Settlement Class, you may contact Class Counsel toll-free at (888) 317-3843. If you are not a member of the Settlement Class you are not entitled to submit a claim.

WHY IS THIS A CLASS ACTION?

A class action is a lawsuit in which one or more persons called “Class Representatives” sue on behalf of people who have similar claims. All of these people together are a “Settlement Class” or “Settlement Class Members.” The Settlement, if finally approved by the Court, resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

WHY IS THERE A SETTLEMENT?

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a Settlement, which resolves all claims against RCN and its agents. The Settlement requires RCN to pay money to the Settlement Class, as well as pay settlement administration expenses, attorneys' fees and costs to class counsel, and an incentive payment to the class representatives, where approved by the court. As part of the Settlement, RCN has also agreed to implement certain service improvements to prevent certain unauthorized calling. The Settlement is not an admission of wrongdoing by RCN and does not imply that there has been, or would be, any finding that RCN violated the law. RCN denies that it violated the TCPA or any similar laws.

The court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the court overseeing this lawsuit must give final approval to the Settlement before it can be effective. The court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, to voice their support or opposition to final approval of the Settlement, and to submit a Claim Form to receive the relief offered by the Settlement. If the court does not give final approval to the Settlement, or if it is terminated, the Settlement will be void, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

WHAT ARE MY OPTIONS?

If you are a member of the Settlement Class, you have the following four options:

(1) Submit a Claim by March 15, 2017.

To receive the money award of up to \$140 available to Settlement Class members under the Settlement you must submit a Claim Form to the Settlement Administrator either by submitting your claim online through the Settlement Website or by mailing a completed and signed claim form to the Settlement Administrator at RCN TCPA Settlement, PO Box 4153, Portland, OR 97208-4153. You must submit a completed Claim Form on or before **March 15, 2017** or your claim will not be accepted. You may obtain a Claim Form by contacting the Settlement Administrator at (844) 418-6625 or by email at info@RCNTCPASettlement.com and requesting a Claim Form. If you mail the Claim Form it must be postmarked on or before **March 15, 2017** or your claim will be rejected. If the Settlement is approved, a check will be mailed to you. By remaining a member of the Settlement Class you will be providing RCN with a release of any claims you have under the TCPA or similar statutes for calls RCN made to you during the Class Period. ***Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement, and is the only thing you need to do to receive a payment.*** By submitting a claim you are agreeing to allow the parties to subpoena your telephone records to verify your claim. If either party wants to verify your claim you will receive an authorization form allowing such party to obtain your telephone records for the Class Period. If you fail to execute the authorization form your claim will be denied.

(2) Exclude Yourself From the Settlement by February 1, 2017.

If you do not wish to participate in the Settlement you may submit a request to exclude yourself from the Settlement to the Settlement Administrator by mail or online. The request must be submitted or postmarked on or before **February 1, 2017** to be valid. If you do not submit a request to be excluded you will automatically be included in the Settlement Class. If you submit a valid request to be excluded, you will not receive any cash payment, but you will not release any claims you may have against RCN and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have on your own. To exclude yourself from the Settlement, you must mail a signed letter to the Settlement Administrator at RCN TCPA Settlement, PO Box 4153, Portland, OR 97208-4153, postmarked by **February 1, 2017**. You may also exclude yourself online at www.RCNTCPASettlement.com. If you mail a request for exclusion it must state that you exclude yourself from this Settlement and must include the case name *Seal et al. v. RCN Telecom Services, LLC*, as well as your full name, address, and the telephone numbers at which you received an automated call from RCN.

(3) Object to the Settlement by February 1, 2017.

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Court of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 West Washington Street, Room 802, Chicago, Illinois 60602. The objection must be received by the Court no later than February 1, 2017. You must also send a copy of your objection to Class Counsel—Michael J. McMorrow, McMorrow Law P.C., 1 N. LaSalle St., 44th Fl.,

Chicago, IL 60602 and to Counsel for RCN: Bart Murphy, Ice Miller, LLP, 2300 Cabot Dr., Ste. 455, Lisle, IL 60532. Any objection to the proposed Settlement must include your full name; address; the telephone number(s) at which you received an automated call or text message from RCN; the telephone carrier associated with each such identified telephone number; whether each identified telephone number is a cellular phone or a residential landline; and all grounds for the objection with factual and legal support for the stated objection. If you hire an attorney in connection with making an objection, that attorney must also file with the court a notice of appearance by no later than the objection deadline of February 1, 2017. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

You may appear at the Final Approval Hearing, to be held on **February 22, 2017 at 2:00 p.m.** in **Courtroom 2102** of the Circuit Court of Cook County, Richard J. Daley Center, 50 West Washington Street, Courtroom 2102, Chicago, Illinois 60602, in person or through counsel to show cause of why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, and/or the request for attorneys' fees and expenses, and/or the request for compensation awards to the Class Representatives are required to indicate in their written objection their intention to appear at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as to identify any exhibits they intend to introduce at the Final Approval Hearing.

(4) Do Nothing.

You are not required to take any action. If you do nothing, you will remain a member of the Settlement Class but you will not receive any money award and you will still provide a release to RCN as set forth in the Settlement Agreement and be bound by all orders and judgments of the court.

WHAT DOES THE SETTLEMENT PROVIDE?

RCN has agreed to create a \$6,000,000 Settlement Fund for the Class Members and agreed to implement certain service improvements to prevent certain unauthorized calling in the future. All Settlement Class Members are entitled to submit a Claim Form in order to receive a payment out of the Settlement Fund. If the Settlement is approved, each Settlement Class Member who submits a valid, timely Claim Form will be entitled to an equal payment of up to \$140 paid out of the Settlement Fund. The exact amount of each Class Member's payment is unknown at this time; it may be as much as \$140, but it may be less depending on how many Settlement Class Members return valid Claim Forms and the costs of the other expenses to be paid from the Settlement Fund. The Settlement Administrator will issue a check to each Class Member who submits a valid Claim Form following the final approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 180 days after they are issued. If you do not cash your settlement check within 180 days you agree your claim is withdrawn. Additionally, Plaintiffs' attorneys (listed below) will ask the court to award them attorneys' fees and costs of up to one-third of the Settlement Fund plus reimbursement of their costs for the substantial time, expense and effort expended in investigating the facts, litigating the case and negotiating the Settlement. The Class Representatives also will apply to the court for a payment of up to \$10,000 each for their time, effort, and service in this matter.

WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against RCN and its related agents and entities relating to the making of automated calls from April 1, 2011 through November 1, 2016. Giving up your legal claims is called a release. The precise terms of the release are set forth in the Settlement Agreement, which is available on the settlement website listed below. Unless you formally exclude yourself from this Settlement, you will release your claims whether or not you submit a Claim Form and receive payment. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

WHEN WILL I BE PAID?

The parties cannot accurately predict when (or whether) the court will give final approval to the Settlement. However, if the court finally approves the Settlement, you will be paid as soon as possible after the court order becomes final, which should occur within approximately 120 days after the Settlement has been finally approved. If

there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available www.RCNTCPASettlement.com, or you can call the Settlement Administrator at (844) 418-6625, or you may contact Class Counsel toll-free at (888) 317-3843.

WHEN WILL THE COURT RULE ON THE SETTLEMENT?

The court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a final approval or fairness hearing, will be held to determine the fairness of the Settlement. At the fairness hearing, the court will also consider whether to make final the certification of the Class, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees and expenses and class representative incentive awards that may be sought by class counsel. **The court will hold the fairness hearing on February 22, 2017 at 2:00 p.m. at the Richard J. Daley Center, 50 West Washington Street, Courtroom 2102, Chicago, Illinois 60602.**

If the Settlement is given final approval, the court will not make any determination as to the merits of the claims against RCN or its defenses to those claims. Instead, the Settlement's terms will take effect and the lawsuit will be dismissed on the merits with prejudice. Both sides have agreed to the Settlement in order to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

If the Court does not approve the Settlement, if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, you will not be paid at this time and Class Members will receive no benefits from the Settlement. Plaintiffs, RCN, and all of the Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, no class will remain certified (conditionally or otherwise), and the Plaintiffs and RCN will continue to litigate the lawsuits. There can be no assurance that if the Settlement is not approved, the Settlement Class will recover more than is provided in the Settlement, or indeed, anything at all.

WHO REPRESENTS THE CLASS?

The Court has approved the following attorneys to represent the Settlement Class. They 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.

Michael J. McMorrow
MCMORROW LAW, P.C.
1 N. LaSalle St., 44th Fl.
Chicago, IL 60602

Alexander H. Burke
BURKE LAW OFFICE LLC
155 N. Michigan Ave., Ste. 9020
Chicago, IL 60601

Evan M. Meyers
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Floor
Chicago, IL 60601

WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement of these lawsuits. More details are in the Settlement Agreement which, along with other documents, can be obtained at www.RCNTCPASettlement.com. If you have any questions, you can also call the Settlement Administrator at (844) 418-6625 or Class Counsel at (888) 317-3843. In addition to the documents available on the case website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk, Richard J. Daley Center, 50 West Washington Street, Room 802, Chicago, Illinois 60602. Please do not call the Judge, the Clerk of the Court or counsel for Defendant about this case, as they will not be able to give you advice on your options.

By order of: Hon. David B. Atkins, Illinois Circuit Court of Cook County, County Department, Chancery Division