

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

Abante Rooter and Plumbing Inc. v. Birch Communications, Inc.

Case No. 1:15-CV-03562-AT

If automated telemarketing calls from Birch Communications were directed to your cellular telephone OR to your residential telephone line on the National Do Not Call list, you could get a payment from a class action settlement.

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

- Birch Communications, Inc. (“Birch Communications”) has agreed to pay \$12,000,000 into a fund from which eligible persons or entities who file claims will receive cash awards, estimated to be approximately \$100 to \$200 total per claim. Payment of valid claims will be divided into two payments, which are estimated to be made in December of 2018 and June of 2020, among Settlement Class Members who file timely, valid claims after deducting settlement expenses, the service awards, and attorneys’ fees and costs.
- The settlement resolves a lawsuit involving allegations that third parties hired by Birch Communications called people on or after October 27, 2011 using automated technology or an artificial or prerecorded voice and calling (1) cellular telephone numbers and/or (2) numbers previously registered on the National Do-Not-Call Registry.
- Court-appointed lawyers for the class (“Class Counsel”) will ask the Court for up to \$4,000,000 of the fund as attorneys’ fees plus reimbursement of their out-of-pocket expenses they paid to investigate the facts, litigate the case, and negotiate the settlement.
- Birch Communications denies all allegations of wrongdoing in the lawsuit. As part of the proposed settlement, Birch Communications 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.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM BY AUGUST 22, 2017	This is the only way to receive a payment.
EXCLUDE YOURSELF BY AUGUST 22, 2017	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Birch Communications about the legal claims in this case.
OBJECT BY AUGUST 22, 2017	Write to the Court explaining why you don’t like the settlement.
ATTEND A HEARING ON OCTOBER 13, 2017	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

QUESTIONS? CALL 1-866-778-9469 TOLL FREE OR VISIT www.BirchTCPA.com

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 *Abante Rooter and Plumbing Inc. v. Birch Communications Inc.*, No. 1:15-CV-03562-AT. 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 claims that, on or after October 27, 2011, Birch Communications violated the Telephone Consumer Protection Act (“TCPA”) by making calls to cellular telephones through the use of an automatic telephone dialing system or an artificial or prerecorded voice and to telephone numbers that were listed on the National Do-Not-Call Registry. The class representative claims that Birch Communications 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 Amy Totenberg (the “Court”) is in charge of this class action.

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

THE SETTLEMENT

3. Why is there a settlement?

The Court did not decide in favor of the Plaintiff or Birch Communications. 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 representatives and their attorneys think the settlement is best for the Settlement Class.

WHO IS IN THE SETTLEMENT?

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

You are in the “Settlement Class” if, on or after October 27, 2011, one of three third parties, Meehan Marketing, Proficient Marketing Group or Wellfleet Communications, called you while promoting Birch Communication services:

- (1) On a cellular telephone using an automatic telephone dialing system or prerecorded voice;
or
- (2) Two or more times within a twelve-month period on a residential telephone number that was on the National Do-Not-Call Registry.

The Settlement Class does not include any persons who validly request exclusion from the Settlement Class, as described under Question 10. A person who does not exclude him or herself is a “Settlement Class Member.”

If you have questions about whether you are part of the Settlement Class, you may call 1-866-778-9469 or visit www.BirchTCPA.com for more information.

THE SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the settlement provide?

Birch Communications has agreed to pay \$12,000,000 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.

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. Class Counsel estimates you will receive approximately \$100 to \$200 total per claim, but this is only an estimate. Furthermore, the payments will be divided into two different checks.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

7. How do I make a claim?

To qualify for payment, you must submit a Claim Form by August 22, 2017. There are multiple ways to submit a Claim Form. A Claim Form was mailed to potential Class Members in the form of a postcard notice. Read the instructions on the postcard carefully, fill out the form, sign it, and mail it **postmarked no later than August 22, 2017**. You may also submit a Claim Form online by going to the Settlement Website at www.BirchTCPA.com and following directions. You also may download a paper Claim Form on the Settlement Website or call the Settlement Administrator at 1-866-778-9469. Claim Forms sent by mail must be postmarked by August 22, 2017 and mailed to:

Birch Communications Settlement
Settlement Administrator
P.O. Box 173039
Milwaukee, WI 53217

8. When will I get my payment?

The Court will hold a hearing on October 13, 2017 to decide whether to approve the settlement. If the settlement is approved, appeals may still follow. It is always uncertain whether these appeals can be resolved, and resolving them can take more than a year. Please be patient.

9. What am I giving up to get a payment or stay in the Settlement 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 Birch Communications regarding the TCPA 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.BirchTCPA.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 TCPA claims that arise out of the improper use of an "automatic telephone dialing system" and/or an "artificial or prerecorded voice" to make telephone calls to cellular phones, or calling telephone numbers on the National Do-Not-Call Registry without consent by three parties that Birch Communications hired.

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 Birch Communications, 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 *Abante Rooter and Plumbing Inc. v. Birch Communications, Inc.* settlement. You must sign the letter and include the following statement: "I request to be excluded from the settlement in the Birch Communications action." Please be sure to include your name, address, telephone number, and signature. You must mail your exclusion request **postmarked no later than August 22, 2017** to the following address:

Birch Communications Settlement
Settlement Administrator
P.O. Box 173001
Milwaukee, WI 53217

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) Birch Communications in the future.

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

No. Unless you exclude yourself, you give up any right to sue Birch Communications 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 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 August 22, 2017.

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, and The Koval Firm, LLC 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.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$4,000,000 to them for attorneys' fees, together with \$75,000 to cover out of pocket expenses. This amounts to 33 1/3% of the total \$12,000,000 fund for attorneys' fees. This payment would pay Class Counsel for their time in investigating the facts, litigating the case, and negotiating the settlement. Class Counsel also will request a service award of \$25,000 for the named Plaintiff to compensate it for its time and effort. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

15. How do I object to the settlement?

If you are a Settlement Class member and you do not exclude yourself from the Settlement Class, you can object to the settlement if you don't like any part of it. You may give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Abante Rooter and Plumbing Inc. v. Birch Communications, Inc.* You must make your objection in writing and file it with the Court. The written objection must (a) contain information sufficient to allow the parties to confirm that you are a member of the Settlement Class; and (b) include a statement of your specific objections, as well as any documents that you would like the Court to consider. You must file the objection with the Court no later than August 22, 2017.

Abante Rooter and Plumbing Inc. v. Birch Communications, Inc.

Case No. 1:15-CV-03562-AT

Clerk of the Court

U.S. District Court for the Northern District of Georgia

75 Ted Turner Drive, SW – Atlanta, GA 30303

QUESTIONS? CALL 1-866-778-9469 TOLL FREE OR VISIT www.BirchTCPA.com

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 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 will hold the final fairness hearing at 10:30 a.m. on October 13, 2017, before the Honorable Amy Totenberg at the United States District Court for the Northern District of Georgia, 75 Ted Turner Drive, SW, Atlanta, GA 30303. 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. Any changes will be posted at the Settlement website, www.BirchTCPA.com.

18. Do I have to come to the hearing?

No. 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 (*see* Question 15, above) and intend to appear at the hearing, you must state your intention to do so in your objection. To speak, you must send a letter saying that it is your "Notice of Intention to Appear" in *Abante Rooter and Plumbing Inc. v. Birch Communications, Inc.*, Case No. 1:15-CV-03562-AT. Be sure to include your name, address, telephone number, that you are a Class Member, and your signature. Your Notice of Intention to Appear must be received at the address in Question 15, no later than August 22, 2017. 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 Birch Communications about the legal issues released in this case.

GETTING MORE INFORMATION

21. Are there more details about the settlement?

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.BirchTCPA.com. You can also get a copy of the Settlement Agreement by writing to Anthony Paronich, Broderick & Paronich, P.C., 99 High St., Suite 304, Boston, MA 02110, anthony@broderick-law.com, (508) 221-1510.

22. How do I get more information?

You can call 1-866-778-9469 toll free; write to Birch Communications Settlement Administrator, P.O. Box 173039 Milwaukee, WI 53217; or visit the website at www.BirchTCPA.com, where you will find answers to common questions about the settlement, a Claim Form, plus other information to help you determine whether you are a member of the Settlement Class. You also may write to Anthony Paronich, Broderick & Paronich, 99 High St., Suite 304, Boston, MA 02110, anthony@broderick-law.com, (508) 221-1510.

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