

Manopla v. Home Depot USA, Inc., et al.

United States District Court for the District of New Jersey,
Case No. 3:15-cv-01120-PGS-TJB

If you received an automated telephone call between the dates of October 16, 2013 and June 1, 2015, you may be entitled to benefits under a class action settlement.

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

- This notice concerns the Settlement that resolves claims in the lawsuit *Aaron and Evelyn Manopla, on behalf of themselves and all others similarly situated, v. Home Depot USA, Inc., Atlantic Water Products Inc. and John Does 1-25*, Case No. 3:15-cv-01120-PGS-TJB (D.N.J).
- In the lawsuit, Plaintiffs Aaron Manopla and Evelyn Manopla (“Plaintiffs”) allege that Defendants Home Depot U.S.A., Inc. (“Home Depot”) and Atlantic Water Products, Inc. d/b/a Atlantic Water and Air (“AWP”) (collectively “Defendants”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”) by calling Plaintiffs’ telephones using an artificial or prerecorded voice utilizing an automatic telephone dialing system without obtaining prior express consent to do so.
- Depending upon how many class members submit valid claim forms, claimants may receive up to \$5,000 in cash.
- The Settlement will provide a total of \$4,350,000 (the “Settlement Fund”) to settle and release claims of persons who received the above-described telephone calls between October 16, 2013 and June 1, 2015 (the “Settlement Class”).
- Defendants deny Plaintiffs’ allegations and deny any wrongdoing whatsoever. By entering into the Settlement, Defendants have not conceded the truth or validity of any of the claims against them.
- The Settlement Fund shall be used to pay all amounts related to the settlement, including awards to Settlement Class Members who submit a valid and timely claim form to receive payment (“Claim Form”), attorneys’ fees and costs to attorneys representing Plaintiffs and the Settlement Class (“Class Counsel”), any service awards to Plaintiffs and the costs of notice and administration of this Settlement. Monies remaining in the Settlement Fund, including if checks are uncashed, will be distributed to a charitable non-profit organization approved by the Court. No amount of the Settlement Fund will revert to Defendants.
- Your rights and options relating to the Settlement, and the deadlines by which to exercise them, are explained in this Notice. 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	If you are eligible to submit a Claim and submit a valid Claim Form by September 20, 2019 you will receive a payment and will give up your rights to sue Home Depot and AWP and/or any other Released Parties on a Released Claim. Claim Forms may be submitted by mail to Manopla v. Home Depot USA, Inc. et al. Claims Administrator, c/o KCC Class Action Services, P.O. Box 404000, Louisville, KY 40233-4000, email to info@AWP-HomeDepotTCPA.com , or through the settlement website by clicking www.AWP-HomeDepotTCPA.com .
EXCLUDE YOURSELF OR “OPT-OUT” OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own claims against Home Depot and AWP and/or other Released Parties in the future. The deadline for excluding yourself is September 3, 2019.
OBJECT TO THE SETTLEMENT	Write to the Court about why you believe the Settlement is unfair in any respect. The deadline for objecting is September 3, 2019. To obtain a benefit from this Settlement, you must still submit a Claim Form. If you submit only an objection, you will not receive any benefit from the Settlement and you will give up your rights to sue Home Depot and AWP and/or any other Released Parties on a Released Claim.
DO NOTHING	If you received an email or postcard notice and do nothing, you will not be eligible for a payment, and you will waive your rights to sue Home Depot and AWP and/or any other Released Parties on a Released Claim.
GO TO THE FINAL APPROVAL HEARING	Ask to speak in Court about the fairness of the Settlement. To speak at the Final Approval Hearing, you must file a document which complies with the requirements set forth on the Settlement Website.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the lawsuit entitled *Aaron and Evelyn Manopla, on behalf of themselves and all others similarly situated, v. Home Depot USA, Inc., Atlantic Water Products Inc. and John Does 1-25*, U.S.D.C. District of New Jersey, Case No. 3:15-cv-01120-PGS-TJB. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully.

2. What does it mean if I received an email or postcard about this settlement?

If you received a postcard or email describing this Settlement, that is because records indicate that you may be a member of the Settlement Class.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiffs) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called Class Members. One court resolves the issues for all of the Class Members, except for those who exclude themselves from the class.

Here, Plaintiffs claim Defendants violated the TCPA by calling Plaintiffs' cellular or landline telephone using an artificial or prerecorded voice utilizing an automatic telephone dialing system without obtaining prior express consent to do so. Defendants deny these allegations and deny any claim of wrongdoing. The Court has

conditionally certified the Settlement Class for settlement purposes only. The Honorable Peter G. Sheridan is in charge of this action.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to the Settlement, thereby avoiding the risk and cost of further litigation and ensuring Settlement Class Members will receive some compensation for their claims. Plaintiffs and Class Counsel think the Settlement is best for all persons in the Settlement Class.

WHO IS IN THE SETTLEMENT CLASS?

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

The Court has certified the Settlement Class for settlement purposes only. The Settlement Class is defined as:

All persons or entities within the United States who received any telephone calls from or on behalf of Defendants or their agents and/or employees made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice between October 16, 2013 and June 1, 2015.

If you are still not sure whether you are included, you can visit other sections of the Settlement Website, www.AWP-HomeDepotTCPA.com, you may write to the Claims Administrator at Manopla v. Home Depot USA, Inc. et al. Claims Administrator, c/o KCC Class Action Services, P.O. Box 404000, Louisville, KY 40233-4000, or you may call the Toll-Free Settlement Hotline, 1-866-683-9604, for more information.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed the law firms of Marcus & Zelman, LLC, DeNittis Osefchen Prince, P.C., and Todd M. Friedman, P.C., as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Class Counsel be paid?

Class Counsel will ask the Court to approve payment of up to thirty-five percent of the Settlement Fund, which is \$1,522,500, to them for attorneys' fees, plus actual litigation expenses up to \$50,000. Class Counsel also will ask the Court to approve payment of up to \$7,500 for each Plaintiff for their services as Class Representatives. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. Defendants will pay the total amount of \$4,350,000 into the Settlement Fund, which will cover: (1) cash payments to the Settlement Class who submit timely and valid Claim Forms on a pro rata basis, up to \$5,000 each; (2) an award of attorneys' fees and costs to Class Counsel, in an amount not to exceed \$1,522,500 (35%) of the Settlement Fund plus actual litigation expenses up to \$50,000, as approved by the Court; (3) a service award to both Plaintiffs, in a total amount not to exceed \$15,000, as approved by the Court; (4) the costs of notice and administration of the Settlement and; (5) if there are any uncashed checks after redistribution of the amount of uncashed checks becomes impracticable, a charitable contribution, which must also be approved by the Court.

Payments. The Settlement provides eligible Settlement Class Members who timely submit a valid Claim Form to receive a one-time estimated minimum payment in the amount of \$110. To receive this payment, you must timely complete and submit a Claim Form. To submit a Claim Form, follow the procedures described under Question 11 below.

9. How much will my payment be?

Your share of the Settlement Fund will depend on the number of valid Claim Forms that the Settlement Class submit. **Class Counsel estimates that valid claimants will receive at least \$110, up to a maximum of \$5,000.**

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you will be part of the Settlement Class and will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot rely on any Released Claim to sue or continue to sue, on your own or as part of any other lawsuit, Home Depot and AWP and/or any other Released Parties, as explained in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the Settlement, you will agree to release Home Depot and AWP and any other Released Parties, as defined in the Settlement Agreement, from any and all claims that arise from the calls to your telephone at issue in this action.

In summary, the Release includes, without limitation, all claims that arise out of the alleged automated calling by Home Depot or AWP or any of their agents or affiliates, acting for or on their behalf, that are the subject of the Action, including, but not limited to, claims under or for violation of the TCPA, and the regulations promulgated thereunder and relevant case law, and all claims for violation of any other state or federal statutory or common law that regulates, governs, prohibits or restricts the use of automated calling without prior express consent.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free, or you can, at your own expense, talk to your own lawyer. The Release does not apply to persons potentially in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

You can receive payment by timely submitting a Claim Form. You may get a Claim Form on the Settlement Website, www.AWP-HomeDepotTCPA.com, or by calling the Toll-Free Settlement Hotline, 1-866-683-9604. **Read the instructions carefully, fill out the form completely and accurately, and submit it.** To be valid, the Claim Form must be completed fully and accurately and submitted timely. A Claim Form may be submitted by mail to the Claims Administrator at: Manopla v. Home Depot USA, Inc. et al. Claims Administrator, c/o KCC Class Action Services, P.O. Box 404000, Louisville, KY 40233-4000, by email to info@AWP-HomeDepotTCPA.com, or via the Settlement Website.

If you are submitting your claim via the Settlement Website or by email, it must be submitted no later than September 20, 2019. If you are mailing your Claim Form to the Claims Administrator, it must be postmarked by September 20, 2019.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a settlement payment?

The Court will hold a Final Approval Hearing on September 23, 2019 to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Settlement Class Members will be informed of the progress of the Settlement through information posted on the Settlement Website at www.AWP-HomeDepotTCPA.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?

If you want to keep the right to sue or continue to sue Home Depot or AWP or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the Settlement, you must send an exclusion request to the Claims Administrator. To be valid, an exclusion request must: (i) be personally signed by the person in the Settlement Class who is requesting exclusion (ii) include the full name and address of the person in the Settlement Class requesting exclusion and (iii) include the following statement: "I/we request to be excluded from the Settlement in the AWP-Home Depot action." No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person or any group of persons from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than September 3, 2019 to the Claims Administrator at: Manopla v. Home Depot USA, Inc. et al. Claims Administrator, c/o KCC Class Action Services, P.O. Box 404000, Louisville, KY 40233-4000.

14. If I do not exclude myself, can I sue Home Depot or AWP for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) Home Depot or AWP or any Released Parties for the claims that this Settlement resolves.

15. If I exclude myself, can I get a benefit from this settlement?

No. If you ask to be excluded, you will not be able to submit a Claim Form for a Settlement payment and you cannot object to the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class, you can object to the Settlement or any part of the Settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of any attorneys' fees and costs and/or service awards.

To object, you must make your objection in writing, stating that you object to the Settlement in Manopla v. Home Depot USA, Inc., et al. To be considered by the Court, the written objection must: (a) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member, including providing the telephone number at issue; (b) include a statement of such Settlement Class Member's specific objections; (c) state the grounds for objection, as well as identify any documents which the objector desires the Court to consider and; (d) if the Settlement Class Member is represented by an attorney, list all other cases in which the Class Member has filed an objection.

To be considered, you must file your objections with the Court and mail your objections to the addresses below postmarked no later than September 3, 2019.

For Plaintiff:
Ross H. Schmierer, Esq.
DeNittis Osefchen Prince, P.C.
525 Route 73 North, Suite 410
Marlton, NJ 08053

For Home Depot:
S. Stewart Haskins, Esquire
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, GA 30309

For AWP:
D.S. Berenson, Esquire
Berenson, LLP
1400 N. 14th Street
Arlington, VA 22209

Even if you timely and properly object, to obtain a benefit from this Settlement, you must submit a Claim Form. If you object but fail to submit a Claim Form, you will not receive any monetary award.

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object to the Settlement.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will not receive any monetary award and you will give up your rights to sue Home Depot and AWP and/or any other Released Parties on a Released Claim. For information relating to what rights you are giving up, see Question 10.

THE FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at 11 a.m. on September 23, 2019 at the United States District Court for the District of New Jersey, 402 E. State Street, Trenton, NJ 08608. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiffs.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than September 3, 2019. You cannot speak at the hearing if you exclude yourself from the Settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice is only a summary of the proposed Settlement. You can get a copy of the Settlement Agreement by visiting the Settlement Website, www.AWP-HomeDepotTCPA.com, or you can write to the address above or call the Toll-Free Settlement Hotline, 1-866-683-9604. You can also contact Class Counsel with any questions by phone at 1-732-695-3282 or by email to Ari@MarcusZelman.com.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, HOME DEPOT OR AWP OR HOME DEPOT'S COUNSEL OR AWP'S COUNSEL ABOUT THE SETTLEMENT.