

Terry Fabricant v. Top Flite Financial, Inc. Case No. 20STCV13837
California Superior Court – Los Angeles County

IMPORTANT LEGAL NOTICE:

YOU MAY BE ENTITLED TO BENEFITS FROM A CLASS ACTION SETTLEMENT

A proposed settlement has been reached in a class action alleging that Top Flite Financial, Inc. (“Defendant”) recorded phone calls without consent between itself and third parties, through means of telephone or other device, in violation of the Invasion Of Privacy Act, California Penal Code. §§ 630, et seq. (“IPA”). Defendant strongly denies any claims of wrongdoing, but has agreed to settle the lawsuit (defined below) to avoid the burden and cost of further litigation. You are a Settlement Class member if you were involved in a recorded conversation by means of telephone or other device, without consent, during the period commencing April 8, 2019 to June 7, 2019. Capitalized terms used in this Notice, other than those defined in this Notice, shall have the same meaning as set forth in the Settlement Agreement.

Your Legal Rights Are Affected Even If You Do Not Act. Please Read This Notice Carefully.

A SUMMARY OF YOUR RIGHTS AND CHOICES		
You May:	Summary:	Due Date:
Submit a Claim Form to Opt In to Join the Settlement Class	If you are a valid Settlement Class Member and wish to receive your portion of the Settlement Fund, you need to complete and submit the enclosed Claim Form, either by mailing it to PO Box 4386, Baton Rouge, LA 70821 or submitting it online at www.TFCIPAsettlement.com . After the Court’s final approval of the Settlement, you will then receive a payment for an amount that shall be calculated <i>pro rata</i> based on the number of Valid Claim Forms that are submitted by the Settlement Class. Any uncashed checks or unclaimed funds will be delivered to the State Controller’s Office for Unclaimed Property in the name of the Settlement Class Members. If 100% of Settlement Class Members submitted claims, it is estimated that the <i>pro rata</i> share would be approximately \$12.74, but it may be more or less.	July 3, 2023
Do Nothing	If you do nothing, you will become a Class Member bound by the terms of the Settlement Agreement and Final Judgment, thus forfeiting your right to sue on your own regarding any claims that are part of the settlement. However, your failure to timely submit a Valid Claim Form will forfeit your right to receive your portion of the Settlement Fund.	July 3, 2023
Ask to Be Excluded	You can opt out of the settlement by submitting a Valid Exclusion Request to the Claims Administrator. If you do so, you will not be eligible to receive a settlement payment. But you will retain the right to sue Defendant on your own regarding any claims that are part of the settlement.	July 3, 2023
Submit an Objection	You may remain a part of the Settlement Class and object to the settlement. You may appear and speak at the Final Approval Hearing on your own or through a lawyer hired by you at your own expense. If the settlement is approved over your objection, however you will be bound by the settlement and give up your right to sue on your own regarding any claims that are part of the settlement.	July 3, 2023

Extensions for Remailed Notices	If your notice was initially returned as undeliverable and are re-mailed by the Claims Administrator to an updated address, you have fifteen (15) additional days to submit a claim, ask to be excluded, or submit an objection.	July 18, 2023
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**THESE RIGHTS AND OPTIONS
– AND THE DEADLINES TO EXERCISE THEM –
ARE EXPLAINED IN THIS NOTICE.**

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1. Why is there a Notice?

The purpose of this Notice is to inform potential class members about the proposed settlement of a class action lawsuit. This Notice explains:

- What the lawsuit and the settlement are about;
- Who is a member of the Settlement Class;
- Who represents the Settlement Class Members in the lawsuit;
- What your legal rights and choices are; and,
- How and by when you need to act.

2. What is a class action and who is involved?

In a class action lawsuit, one or more people, called “Named Plaintiffs” or “Class Representatives,” sue on behalf of people who the Plaintiff believes have similar claims. The people together are called the “Class” or “Class Members.” In this case, the Plaintiff and the company being sued, the Defendant, have reached a proposed settlement. A Court has certified the Settlement Class and is considering whether to approve the settlement. All decisions that the Court makes concerning the settlement will affect everyone in the Settlement Class.

3. What lawsuit is involved in this settlement?

A class action was filed in the Superior Court of California, County of Los Angeles, entitled *Terry Fabricant v. Top Flite Financial, Inc.* Case No. 20STCV13837. This lawsuit is referred to as the “Action.”

4. What is this Action about?

This Action alleges that Defendant violated a California law by recording telephone calls to individuals’ phones without their consent. Defendant strongly denies any wrongdoing but has agreed to settle the lawsuit in order to avoid the burden and cost of further litigation.

5. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or Defendant. The Class Representative and Class Counsel (listed below) believe that the claims asserted in the Class Action have merit, but believe that the settlement is in the best interests of the Settlement Class. Class Counsel has evaluated information made available in the course of the lawsuit and settlement negotiations and have taken into account the risks and uncertainties of proceeding with the Class Action. Those risks include the uncertainty of maintaining class certification, prevailing on the merits, proving substantial damages at trial, and prevailing on post-trial motions and likely appeals. Based upon the consideration of these and other factors, including the substantial time and expense of further litigation, Class Counsel believe that it is in the best interests of the Settlement Class to settle the Class Action on the terms described below.

Defendant strongly denies any wrongdoing and does not believe it has any liability to the Class Representative or the Settlement Class. However, Defendant believes that it is in its best interest to settle the Action under

the terms of the Settlement Agreement and obtain closure on these matters to avoid the uncertainty, expense, and diversion of business resources resulting from further litigation.

The Parties engaged in settlement negotiations, participated in mediation before a retired judge, and shared information pertaining to the claims asserted in the Action before reaching the settlement.

This Notice does not imply that any court has found or would have found that Defendant violated the law or that any member of the class would have recovered any amount of damages if the Action were not settled.

WHO IS IN THE SETTLEMENT?

6. Am I a Member of the Settlement Class?

You are a member of the Settlement Class if:

- Defendant recorded a telephone conversation with you during the period commencing April 8, 2019 to June 7, 2019, without your consent.
- You are not a current or former employee, officer, director, agent, or legal representative of Defendant, or its affiliated entities.

THE TERMS OF THE PROPOSED SETTLEMENT

This Notice provides a summary of some, but not all, of the terms of the Settlement Agreement. Visit www.TFCIPAsettlement.com to see a copy of the entire Settlement Agreement. The Settlement Agreement must be approved by the Court and become “Final” before any benefits are paid.

The settlement will create a fund of \$275,000.00. Plaintiff will request payment from the Settlement Fund of attorneys’ fees not to exceed \$91,666.66, administration costs estimated at \$60,000.00, Court costs not to exceed \$10,000.00, and an incentive award to the named Plaintiff, not to exceed \$5,000.00. After these deductions, it is estimated that there will be approximately \$108,334.34 for the Settlement Class to be distributed *pro rata*.

7. What benefits will I receive as a member of the Settlement Class?

After the Court grants final approval of the Settlement, each Settlement Class Member who submitted a Valid Claim Form as described above will receive a payment for an amount that shall be calculated *pro rata* based on the number of Valid Claim Forms that are submitted by the Settlement Class. All unclaimed Settlement Funds will be delivered to the State Controller’s Office for Unclaimed Property in the name of the Settlement Class Members. **Be sure to advise the Claims Administrator of any change in address.**

The deadline to submit a claim form is **July 3, 2023**, with an extension to **July 18, 2023**, for those class members whose initial notice was returned by the USPS. Please review your settlement notice to confirm your specific deadline or contact the Claims Administrator at info@TFCIPAsettlement.com or 1-844-524-1520 to confirm.

8. Is there any money available now?

No. No money or benefits are available now because the Court has not yet decided whether to approve the settlement and because it is not yet final. There is no guarantee that money or benefits will ever be distributed.

YOUR RIGHTS AND OPTIONS

This Notice is being sent to you so that you can decide whether to participate in the settlement.

9. What happens if I do nothing?

If you do nothing, you will be bound by the terms of the Settlement Agreement and Final Judgment, thus forfeiting your right to sue on your own regarding any claims that are part of the settlement. **However, your failure to timely submit a Valid Claim Form will forfeit your right to receive your portion of the Settlement Fund.**

10. If I remain in the Settlement Class, what claims do I give up?

If you remain in the Settlement Class, you give up your right to sue in court or arbitration or be part of any other lawsuit or arbitration against Defendant and all of its respective former, present and future direct and indirect parents, affiliates, subsidiaries, successors and predecessors and all of their respective former, present and future officers, directors, shareholders, indemnitees, employees, servants, attorneys, representatives, independent contractors, vendors, (including, but not limited to, LowerMyBills.com, Velocify), successors, trusts, trustees, partners, associates, principals, divisions, insurers, members, representatives, brokers, consultants, heirs, and assigns regarding any issues related to the Released Claims (please see the Settlement Agreement for the claims that will be released). Additionally, all of the Court's orders will apply to you and legally bind you. Released Claims all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands from April 8, 2019 to June 7, 2019 arising out of facts asserted in, or claims alleged in the operative First Amended Complaint, including any claims for violation of Sections 632 and Section 632.7 of the IPA and any other federal, state or local statute, regulation, or common law relating to the recording of telephone calls. This release will become effective on the date the Defendant has rendered full payment in this matter to the Claims Administrator.

In other words, this release applies to any claim any class member may have arising out of the recording of the Calls described in the Action, whether that claim arises under the IPA or any other legal theory or cause of action. For example, if a Settlement Class Member believes that the recording of a call as described in the Action violates some other law than the IPA or breached a contract, such a claim would be barred by this release. However, if the Class Member believes that she suffered some injury unrelated to the calls alleged in the Action, those claims would not be barred by the release. This release will become effective on the date the Defendant has rendered full payment in this matter to the Claims Administrator.

11. Why would I ask to be excluded?

You should exclude yourself if you do not wish to participate in the settlement or be bound by any order or judgment entered in the action. You may want to exclude yourself from the Settlement Class if you already have filed (or intend to file) a lawsuit or arbitration against Defendant for the Released Claims and want to continue that lawsuit or arbitration individually, on your own behalf. If you do not exclude yourself, you will be legally bound by all orders of the Court regarding the Settlement Class, the Settlement Agreement, and the Released Claims. All Settlement Class Members who do not ask to be excluded will be forever barred from asserting against Defendant and its affiliates any and all actions, claims, causes of action, proceedings, or

rights of any nature and description whatsoever regarding the Released Claims, as more fully described in the Settlement Agreement.

12. How do I exclude myself from the Settlement Class?

You may exclude yourself from the Settlement Class by submitting an exclusion request available at the Settlement Website, www.TFCIPAsettlement.com. You may print out the form and mail it to the Claims Administrator to the following address:

Fabricant v. Top Flite Claims Administrator
PO Box 4386
Baton Rouge, LA 70821

The deadline to exclude yourself from the settlement is **July 3, 2023**, with an extension to **July 18, 2023**, for those class members whose initial notice was returned by the USPS. Please review your settlement notice to confirm your specific deadline, or contact the Claims Administrator at info@TFCIPAsettlement.com or 1-844-524-1520 to confirm..

If you exclude yourself from the settlement, you cannot object to the settlement and you will **not** receive any money or other benefits from the Settlement.

13. Can I object to the settlement?

Yes, but **not** if you exclude yourself from the Settlement Class. Objecting is simply telling the Court that you do not like something about the settlement but that you elect to remain in the Settlement Class. All objections that are timely mailed to the Claims Administrator will be considered at the Final Approval Hearing on August 24, 2023. You may also appear the Final Approval Hearing and request to speak to make an objection without filing any other documents. If you do not mail or appear and state an objection, you waive your right to appeal any Court order or judgment related to the settlement. If the settlement is ultimately approved over your objection, you will be bound by the settlement and give up your right to sue on your own regarding any claims that are part of the settlement.

To object to the settlement, you must submit a written objection to the Claims Administrator, including the following information:

- The name and case number of this lawsuit;
- Your full name, address, and telephone number;
- A written statement of all grounds for your objections accompanied by any legal support for such objections;
- Copies of any papers, briefs or other documents upon which your objection is based;
- A written statement as to whether you intend to appear at the Final Approval Hearing; and
- If you intend to appear at the Final Approval Hearing through counsel at your own expense, you must also identify the attorney(s) representing you who will appear at the Final Approval Hearing.

The deadline to object to the settlement is **July 3, 2023**, with an extension to **July 18, 2023**, for those class members whose initial notice was returned by the USPS. Please review your settlement notice to confirm your specific deadline or contact the Claims Administrator at info@TFCIPAsettlement.com or 1-844-524-1520 to confirm. The address for the Claims Administrator is:

Fabricant v. Top Flite Claims Administrator
PO Box 4386
Baton Rouge, LA 70821

14. When is the Final Approval Hearing?

The Court will hold a Final Approval Hearing on August 24, 2023, at 10:00 a.m. in Department 7 of the Superior Court of Los Angeles County, the Honorable Lawrence Riff presiding, located at 312 N. Spring Street, Los Angeles, California 90012. The date of the Final Approval Hearing may change, so please refer to the settlement website to confirm the date and time of the Final Approval Hearing. At the Final Approval Hearing, the Court will consider if:

- The settlement is fair, reasonable, and adequate;
- The settlement should be approved;
- Any objections to the settlement and, if so, whether those are valid;
- The amount of any Service Award for the Plaintiff; and
- The amount of any attorney's fees and costs award for Class Counsel.

15. Do I have to attend the Final Approval Hearing?

No. Your attendance at the Final Approval Hearing is not required even if you submit a written objection. However, you or your attorney may attend the hearing at your own expense. If you choose to appear in person at the approval hearing, please be sure to follow the Court's social distancing procedures: https://www.lacourt.org/newsmedia/uploads/142021615133918NR_June15_Masks.pdf.

16. May I speak at the Final Approval Hearing?

Yes, you may speak at the Final Approval Hearing to object to the proposed settlement and request to be heard by the Court without filing any other documents. You may also enter an appearance through an attorney hired at your own expense.

THE LAWYERS REPRESENTING YOU

17. Does the Settlement Class have a lawyer?

Yes. The Court appointed the **Law Offices of Todd M. Friedman, P.C.** to represent you and the other Settlement Class Members. They are called "Class Counsel." More information about this law firm, their practices, and their lawyers is available at <http://www.toddflaw.com>.

18. Do I need to hire my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, you may hire an attorney at your own expense to represent you and speak on your behalf.

19. How will Class Counsel be paid?

Defendant has agreed to pay Class Counsel attorneys' fees and costs in an amount to be determined by the Court. The fee petition will seek no more than \$91,666.66, which amounts to thirty-three percent (33%) of the Settlement Fund, plus reimbursement of their costs and expenses in an amount not to exceed \$10,000.

The Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Class Counsel will file their motion for attorney's fees no later than June 23, 2023, and a copy of the motion will be available at www.TFCIPAsettlement.com.

20. Will the Class Representative request any payments in addition to a pro rata share of the Settlement Fund?

Yes. Subject to approval by the Court, Defendant has agreed to pay the Class Representative a reasonable amount to be determined by the Court. The Class Representative in this Class Action is the Plaintiff Terry Fabricant. Class Counsel will request that the Court grant an incentive award of up to \$5,000 for the Class Representative. Any amounts awarded will be paid from the Settlement Fund.

MORE INFORMATION

21. Where can I get more information?

This Notice is only a summary of relevant court documents. Please visit www.TFCIPAsettlement.com to see complete copies of case-related documents. If you have further questions, you may:

- Call the toll free number: 1-(844)-524-1520
- Write to the Claims Administrator:

Fabricant v. Top Flite Claims Administrator
PO Box 4386
Baton Rouge, LA 70821

- If you wish to contact Class Counsel regarding the settlement, you may contact them directly as follows:

Todd M. Friedman, Esq.
Adrian R. Bacon, Esq.
Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364
Tel.: (877) 619-8966

22. May I contact the Court or Defendant directly?

Please do not contact the Court, Defendant or Defense Counsel regarding this settlement. They cannot provide you any advice.