

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Kovach v. Compass Bank*, Case No. 01-CV-2018-902504 (Ala. Cir. Ct. Jefferson Cnty.)

For more information, visit [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com).

Para una notificación en Español, visitar [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com).

**PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT OF UP TO \$339 FROM A CLASS ACTION SETTLEMENT IF YOU RECEIVED AN AUTOMATED TELEPHONE COLLECTION CALL ON YOUR CELLULAR TELEPHONE FROM COMPASS BANK AND IF YOU DID NOT HAVE AN ACCOUNT WITH COMPASS BANK AND DID NOT CONSENT TO RECEIVE THE CALL. THIS NOTICE EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.**

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

### **WHY DID I GET THIS NOTICE?**

This is a court-authorized notice of a proposed settlement in a class action lawsuit, *Kovach v. Compass Bank d/b/a BBVA Compass*, Case No. 01-CV-2018-902504, pending in the Circuit Court of Jefferson County, Alabama, Birmingham Division before the Honorable Brendette Brown Green. The settlement would resolve a lawsuit brought on behalf of persons who allege that Compass Bank d/b/a BBVA Compass (“Compass Bank”) unlawfully made automated telephone collection calls to the cellphones of persons who did not have a Compass Bank account and did not consent to receive the automated phone calls. If you received this notice directly, you have been identified as someone who may have received one of these automated phone calls on your cellphone. The Court has granted preliminary approval of the settlement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights.

### **WHAT IS THIS LAWSUIT ABOUT?**

The federal Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), prohibits automated and prerecorded or artificial voice calls to the cellular telephones of individuals who did not provide prior express consent to receive such calls. This lawsuit alleges that Compass Bank violated the TCPA by making automated and prerecorded or artificial voice collection calls to the cellphones of persons who did not have an account with Compass Bank and did not consent to receive the phone calls. Compass Bank contests these claims and denies that it violated the TCPA.

### **WHY IS THIS A CLASS ACTION?**

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” Once a Class is certified, a class action Settlement 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 Compass Bank and any affiliated entities on whose behalf the calls were placed. The Settlement requires Compass Bank to pay money to the Settlement Class, as well as pay settlement administration expenses, attorneys’ fees and costs to class counsel, and incentive payments to the Class Representatives, if approved by the Court. The Settlement is not an admission of wrongdoing by Compass Bank and does not imply that there has been, or would be, any finding that Compass Bank violated the law.

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

By order of: Hon. Brendette Brown Green, Jefferson County Courthouse, 716 N. Richard Arrington Blvd., Courtroom 550, Birmingham, Alabama 35203

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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 by the Parties, the Settlement will be void, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

## WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if, at any time between June 21, 2014 and August 24, 2018, Compass Bank made an automated telephone call or a telephone call featuring a prerecorded or artificial voice to your cellphone regarding the collection of a consumer debt and you did not have an account with Compass Bank and did not consent to receive such calls. If you received one or more such unauthorized calls, then you may visit the settlement website [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com) for further instructions on making a claim for cash benefits.

## WHAT ARE MY OPTIONS?

### (1) Accept the Settlement.

To accept the Settlement, you must submit a Claim Form by **January 21, 2019**. You may obtain a Claim Form at [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com), and you may submit your Claim Form by **January 21, 2019** by email at [claims@BankTCPAsettlement.com](mailto:claims@BankTCPAsettlement.com), or by U.S. Mail to the Kovach Settlement Administrator at PO Box 12985, Birmingham, AL 35202. If the Settlement is approved and your claim is deemed valid, a check will be mailed to you. *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.*

### (2) Exclude yourself.

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Compass Bank and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against the Released Parties at your own risk and expense. To exclude yourself from the Settlement, you must mail a signed letter to the Kovach Settlement Administrator at PO Box 12985, Birmingham, AL 35202, postmarked by **October 23, 2018**. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this litigation, as well as your full name, address, the cellphone number on which you received the calls at issue, the carrier of that cellphone number, a statement that you wish to be excluded, and your signature.

### (3) Object to the Settlement.

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Court of the Jefferson County Courthouse, 716 N. Richard Arrington Blvd., Birmingham, Alabama 35203. The objection must be received by the Court no later than **October 23, 2018**. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including the attorneys representing the Class Representatives and the Settlement Class (Myles McGuire, Evan M. Meyers, and Eugene Y. Turin, MCGUIRE LAW, P.C., 55 West Wacker Drive, 9th Floor, Chicago, Illinois 60601), as well as the attorneys representing Compass Bank (Gregory C. Cook, BALCH & BINGHAM LLP, 1901 Sixth Ave. N., Suite 1500, Birmingham, AL 35223), postmarked no later than **October 23, 2018**. Any objection to the proposed Settlement must include your full name; address; the telephone number(s) at which you received an automated call from Compass Bank; the telephone carrier associated with each such identified telephone number; whether each identified telephone number is a cellular phone or a residential landline; the identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last four years; 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 the objection deadline of **October 23, 2018**. 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, which to be held on **December 6, 2018 at 2:30 p.m.**, in the Jefferson County Courthouse, 716 N. Richard Arrington Blvd., Courtroom 550, Birmingham, Alabama 35203, 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, the request for attorneys' fees and expenses, and/or the request for Incentive 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

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and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing.

**(4) Do Nothing.**

If you do nothing, you will receive no money from the Settlement Fund, but you will still be bound by all orders and judgments of the Court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against the Released Parties regarding any of the Released Claims. *Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement.*

*For information on how to request exclusion from the class or file an objection, or for more information on submitting a claim, please visit the settlement website, [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com), or call (800) 754-9649.*

**WHAT DOES THE SETTLEMENT PROVIDE?**

**A. Cash Payments.** Compass Bank has agreed to create a \$5,860,000 Settlement Fund for the Class Members. 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 timely Claim Form that is deemed valid will be entitled to an equal payment of up to \$339 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 \$339, but it may be less depending on several factors, including 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. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees and costs of up to 30 percent of the Settlement Fund for the substantial time, expense and effort expended in investigating the facts, litigating the case and negotiating the Settlement. The Class Representatives will also apply to the Court for a payment of up to \$5,000 for their time, effort, and service in this matter.

**B. Service Improvements & Assurances.** As part of this Settlement, Compass Bank has also agreed to make changes to its calling practices going forward for the next two years, including the following:

- i. Compass Bank will implement a policy that, upon being told that a cellular telephone number is a wrong number, Compass Bank will not intentionally call such cellular telephone number again via an automated telephone dialing system unless contacted from such number in connection with a specific account or unless it is otherwise provided consent for calling such number;
- ii. Compass Bank will implement real-time reporting for management to monitor any dials to numbers previously coded in its records as "wrong number" or "cease and desist";
- iii. Compass Bank will periodically check all phone numbers to be called against a telecom database service to reach sufficient confidence that the phone number is the Compass customer. If not, Compass will use human intervention dialing for such number until the number is verified; and
- iv. Compass Bank will provide training for its customer service representatives doing collections work regarding TCPA compliance, including but not limited to: the need to honor statements regarding wrong numbers, and how to appropriately code phone numbers and remove phone numbers in the Compass Bank software.

**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 Compass Bank and its related entities, agents, and clients relating to the making of automated/prerecorded calls from June 21, 2014 through August 24, 2018, 2018. 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. 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.

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## WHEN WILL I BE PAID?

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement, so please be patient. 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 60-90 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 at [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com), or you can call the Settlement Administrator at 800-754-9649, or contact Class Counsel at the information provided below.

## 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 Final Approval Hearing, the Court will also consider whether to make final the certification of the Class for Settlement purposes, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees and expenses and Incentive Awards for the Class Representatives that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **December 6, 2018 at 2:30 p.m.** at the Jefferson County Courthouse, 716 N. Richard Arrington Blvd., Courtroom 550, Birmingham, Alabama 35203.

If the Settlement is given final approval, the Court will not make any determination as to the merits of the claims against Compass Bank 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. Plaintiff, Compass Bank, 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 Compass Bank will continue to litigate the lawsuit. 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 instead, you may hire one at your own expense.

Myles McGuire  
Evan M. Meyers  
Eugene Y. Turin  
MCGUIRE LAW, P.C.  
55 W. Wacker Drive, 9<sup>th</sup> Floor  
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## WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained at [www.BankTCPAsettlement.com](http://www.BankTCPAsettlement.com). If you have any questions, you can also call the Settlement Administrator at 800-754-9649 or Class Counsel at the numbers or email addresses set forth above. In addition to the documents available on the settlement website, all pleadings and documents filed in Court may be reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case, as they will not be able to give you advice on your options.

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