

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

**CHRISTOPHER MORGAN,**

**Plaintiff,**

vs.

**Civil Action No.: 3:17-cv-00045  
Judge Norman K. Moon**

**ON DECK CAPITAL, INC.,**

**Defendant.**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**If you received calls from On Deck Capital, Inc. between July 10, 2013 and April 20, 2020, and you meet other requirements, you could receive a payment from this class action settlement.**

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

- Plaintiff Christopher Morgan brought a lawsuit alleging that On Deck Capital, Inc. (“OnDeck”) violated the Telephone Consumer Protection Act (“TCPA”) by using an automatic telephone dialing system to place calls to cellular telephones, and that these calls were made without the prior express consent of the call recipients. OnDeck denies the allegations in the lawsuit.
- Plaintiff and OnDeck have agreed to a proposed Settlement, which affects all individuals who, according to OnDeck’s records, were users of or subscribers to a telephone number within the United States, that OnDeck obtained through a purchased lead, to which OnDeck made one or more calls using a telephone manufactured by Five9, from July 10, 2013 to April 30, 2020 (the “Calls”).
- On Deck has agreed to pay \$3,090,000 into a fund from which persons who file timely and valid claims will receive cash payments. In exchange for their work on behalf of the class, court-appointed lawyers for the class (“Class Counsel”) will ask the Court for up to one-third of the fund as fees and will also ask to be reimbursed for out-of-pocket litigation expenses. As part of the Settlement, Settlement Class Members release OnDeck from liability. **Class counsel estimates that, after Court approved deductions for costs and fees, each person who files a timely and valid claim will receive \$325.51.**
- Your legal rights are affected whether you act or do not act. Read this notice carefully. *En el sitio web, [www.morgantcpasettlement.com](http://www.morgantcpasettlement.com), hay una notificación completa del acuerdo en Español. Para un operador telefónico de habla español, llame al 1-800-687-0138.*

# YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Option	Explanation
<b>Submit a Claim Form</b>	This is the only way to get a payment. You can submit a valid and timely claim form online at <a href="http://www.morgantcpasettlement.com">www.morgantcpasettlement.com</a> or by mail to Morgan OnDeck TCPA Settlement Administrator, PO Box 23369, Jacksonville, FL 32241. If you fail to do so, you will not receive a settlement payment.
<b>Do Nothing</b>	Get no payment. You will remain a member of the Settlement Class, which includes a release of claims.
<b>Exclude Yourself OR “Opt Out” of the Settlement</b>	Get no payment. You will also not waive any rights you may have with respect to the legal claims in this case.
<b>Object</b>	Write to the Court to explain why you believe the Settlement is unfair.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement.

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 on valid and timely claims if the Court approves the Settlement and after any appeals are resolved. Please be patient.

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## **BASIC INFORMATION**

### **1. Why is there a notice?**

The Court authorized this Notice because you have a right to know about a proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement - and after any objections or appeals are resolved - an administrator appointed by the Court will make the payments that the Settlement allows. Because your rights will be affected by this Settlement, it is important that you read this Notice carefully.

If you received a Notice in the mail or by email, it is because, according to OnDeck's records, you may have received one or more Calls from OnDeck between July 10, 2013 and April 30, 2020.

The Court in charge of the case is the United District Court for the Western District of Virginia, and the case is known as *Morgan v. On Deck Capital, Inc.*, Case No. 3:17-cv-00045 (W.D. Va.) (the "Action"). The proposed Settlement would resolve all claims in the Action. The individual who sued is called Plaintiff, and the company he sued, On Deck Capital, Inc., is called the Defendant and is referred to in this Notice as "OnDeck."

### **2. What is this class action lawsuit about?**

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. The Plaintiff, Christopher Morgan, also known as the "Class Representative," asserts claims on behalf of the entire class.

Plaintiff filed this case alleging that OnDeck violated the TCPA by using an automatic telephone dialing system to call cellular telephone numbers, obtained through purchased leads, without the prior consent of the recipients. OnDeck denies that it did anything wrong or that this case is appropriate for treatment as a class action.

### **3. Why is there a Settlement?**

The Court has not yet decided in favor of the Plaintiff or OnDeck. Both sides agreed to the Settlement instead of going to trial. That way, they avoid the cost of a trial, and individuals who received Calls can receive a payment. The Plaintiff and his attorneys think the Settlement is best for all members of the Settlement Class.

## **WHO IS IN THE SETTLEMENT?**

### **4. How do I know if I am part of the Settlement?**

The Settlement provides relief for all Settlement Class Members, who are described as all individuals who used or subscribed to a telephone number, that OnDeck obtained through a purchased lead, to which OnDeck made or initiated one or more calls using a telephone manufactured by Five9, according to OnDeck's available records, from July 10, 2013 to April 30, 2020 (the "Settlement Class"). The Settlement Class is described in more detail in the Parties' Settlement Agreement.

Excluded from the Settlement Class are OnDeck, its parent companies, affiliates or subsidiaries, or any employees thereof, and any entities in which any of such companies has a controlling interest; the judge or magistrate judge to whom the Action is assigned; and, any member of those judges' staffs and immediate families.

If you have questions about whether you are a member of the Settlement Class, or are still not sure whether you are included, you can call 1-800-687-0138 or visit [www.morgantcpasettlement.com](http://www.morgantcpasettlement.com) for more information.

## THE SETTLEMENT BENEFITS - WHAT YOU GET

### 5. What does the Settlement provide?

OnDeck has agreed to pay a total settlement amount of \$3,090,000, which will be used to create a Settlement Fund to make payments to Settlement Class Members who submit a valid and timely claim, pay Class Counsel's attorneys' fees and costs, pay a service award to the Plaintiff, and pay costs and expenses of settlement administration.

Your share of the settlement will depend on the number of Claims that Settlement Class Members make. At this time, Class Counsel estimates that, after Court approved deductions for costs and fees, each person who files a timely and valid claim will receive \$325.51—but this is only an estimate.

## HOW YOU GET A PAYMENT

### 6. How and when can I get a payment?

To qualify for a payment, you must submit a valid Claim Form by August 28, 2020. Each Settlement Class Member who submits a valid and timely Claim Form will receive a payment from the Settlement Fund. This is a cash payment (distributed by check). The final cash payment amount will depend on the total number of valid and timely claims filed by all Settlement Class Members.

Claims may be submitted electronically at [www.morgantcpasettlement.com](http://www.morgantcpasettlement.com) or by mail to:

Morgan OnDeck TCPA Settlement Administrator, PO Box 23369, Jacksonville, FL 32241

The Court will hold a hearing on October 16, 2020 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 time, perhaps more than a year. Please be patient.

### 7. What am I giving up to get a payment or stay in the Class?

If you are a member of the Settlement Class, unless you exclude yourself, you will release your claims against OnDeck, meaning you cannot sue, continue to sue, or be part of any other lawsuit against OnDeck about the legal issues in this case. All of the decisions and judgments by the Court will bind you.

For non-emergency calls made using an automatic telephone dialing system and/or an artificial or prerecorded voice without the prior express consent of the called party, the TCPA provides for damages of \$500 per violation, or up to \$1,500 for willful violations, plus an injunction limiting future conduct. However, OnDeck has denied that it made any illegal calls. In any future lawsuit, OnDeck will have a full range of potential defenses, including that it did not use an automatic telephone dialing system and had prior consent to make the calls. In addition, please note that the TCPA does not provide for attorneys' fees to prevailing individual plaintiffs. This settlement gives the members of the Settlement Class the opportunity to obtain money, risk-free.

If you file a Claim Form for benefits or do nothing at all, you will be unable to file your own lawsuit regarding the claims described in this Notice, and you will release OnDeck from any liability for the Released Claims defined below and in the Settlement Agreement.

Remaining in the Settlement Class means that you, as well as any related Releasing Parties, will release, resolve, relinquish and discharge each and all of the Released Parties from each of the Released Claims (as defined below). You further agree that you and they will not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which you may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from the Released Claims.

"Released Claims" means all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature

whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law, or equity, whether known or unknown, suspected, or unsuspected, asserted or unasserted, foreseen or unforeseen actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order and Judgment, that were alleged or could have been alleged in the Action, that arose out of or relate in any way to the Calls. The Released Claims include, but are not limited to, all claims under the TCPA and its associated regulations, analogous state law claims, and claims arising under Federal law related to phone calls.

The Settlement Agreement (available at the settlement website) provides more detail regarding the release and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firm representing the Settlement Class listed in Question 9 for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the Released Parties or the Released Claims.

The release does not apply to Class Members who timely opt-out of the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue on your own about the legal issues in this case, then you must take steps to exclude yourself from the Settlement.

### 8. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Morgan v. On Deck Capital, Inc.*, Case No. 3:17-cv-00045-NKM (W.D. Va.). Be sure to include: (1) your full name, address, and telephone number where you may be contacted; (2) the telephone number(s) on which you maintain OnDeck called you; and (3) a statement that you wish to be excluded from the Settlement. You must personally sign the request. **Your exclusion request must be postmarked no later than August 28, 2020** to:

Morgan OnDeck TCPA Settlement Administrator, PO Box 23369, Jacksonville, FL 32241

You cannot exclude yourself over the phone or by fax or email. If you ask to be excluded, you will not get any payment from the Settlement and you cannot object to the Settlement. You will also not be legally bound by anything that happens in this lawsuit.

## THE LAWYERS REPRESENTING YOU

### 9. Do I have a lawyer in this case?

The Court has appointed Michael B. Hissam, Ryan McCune Donovan and Andrew C. Robey of the law firm HISSAM FORMAN DONOVAN RITCHIE, PLLC, to represent you and other members of the Settlement Class.

These lawyers are called Class Counsel. You will not be charged separately for these lawyers' services. If you want to be represented by your own lawyer, you may hire one at your own expense.

Additionally, you may enter an appearance through your own attorney if you so desire, but you do not need to do so.

### 10. How will the lawyers and class representatives be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Settlement Fund to compensate them for investigating the facts, litigating the case, and negotiating the Settlement on behalf of the Class. Class Counsel will also seek reimbursement for out-of-pocket costs advanced on behalf of the class. The Class Representative, Christopher Morgan, will request a service payment of \$15,000 to compensate him for his time and effort on behalf of the Class. The Court may award less than these amounts. These payments, along with

the costs of administering the Settlement, will be made out of the Settlement Fund.

Any objection to Class Counsel's application for attorneys' fees and costs may be filed, and must be postmarked, no later than August 28, 2020 which is 30 days following the filing of Class Counsel's motion for an award of attorneys' fees and costs.

## OBJECTING TO THE SETTLEMENT

### 11. How do I tell the Court that I do not think the Settlement is fair?

If you are a member of the Settlement Class and you do not exclude yourself, you can object to the Settlement if you do not think the Settlement is fair. You can state 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 the proposed Settlement in *Morgan v. On Deck Capital, Inc.*, Case No. 3:17-cv-00045-NKM (W.D. Va.). Be sure to include (1) your full name; (2) your address; (3) the telephone number where you may be contacted; (4) the telephone number(s) that you maintain OnDeck called you on; (5) all grounds for the objection, with specificity and with factual and legal support for each stated ground; (6) the identity of any witnesses you may call to testify; (7) copies of any exhibits that you intend to introduce into evidence at the Final Approval Hearing; (8) a statement of the identity (including name, address, law firm, phone number and email) of any lawyer who will be representing you with respect to any objection; (9) a statement of whether you intend to appear at the Final Approval Hearing with or without counsel; and (10) a statement as to whether the objection applies only to you, a specific subset of the Settlement Class, or the entire Settlement Class. **Your objection to the Settlement must be postmarked no later than August 28, 2020, filed with the Court, and mailed to the following address:**

Morgan OnDeck TCPA Settlement Administrator, PO Box 23369, Jacksonville, FL 32241

## THE FAIRNESS HEARING

### 12. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement. This Final Approval Hearing will be held at 11 a.m. on October 16, 2020 at the United States District Court for the Western District of Virginia, 255 W. Main Street, Charlottesville, VA. The 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. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and whether to award attorneys' fees, expenses, and an incentive award as described above, and in what amounts. If there are objections, the Court will consider them. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long it will take the Court to issue its decision. It is not necessary for you to appear at this hearing, but you may attend at your own expense.

### 13. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that you intend to appear at the Final Approval Hearing in *Morgan v. On Deck Capital, Inc.*, Case No. 3:17-cv-00045 (W.D. Va.). Be sure to include your full name, address, and telephone number. Your letter stating your notice of intention to appear must be postmarked no later than August 28, 2020 and be sent to the Clerk of the Court. You cannot speak at the hearing if you exclude yourself.

## IF YOU DO NOTHING

### 14. What happens if I do nothing at all?

If you do nothing, and are a member of the Settlement Class, you will not receive a payment after the Court approves the Settlement and any appeals are resolved. **In order to receive a payment, you must submit a claim form.** Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against OnDeck about the legal issues in this case ever again.

## GETTING MORE INFORMATION

### 15. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by calling the Claims Administrator toll-free at 1-800-687-0138, writing to: Morgan OnDeck TCPA Settlement Administrator, PO Box 23369, Jacksonville, FL 32241; or visiting the website at [www.morgantcpasettlement.com](http://www.morgantcpasettlement.com), where you will also 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 and whether you are eligible for a payment.

On the website, [www.morgantcpasettlement.com](http://www.morgantcpasettlement.com), there is a complete notice of the settlement in Spanish. En el sitio web, [www.morgantcpasettlement.com](http://www.morgantcpasettlement.com), hay una notificación completa del acuerdo en Español.