

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MILDRED BALDWIN and RONALD
STRUCKHOFF, on behalf of themselves and
others similarly situated,

Plaintiffs,

vs.

HEARINGPRO, INC.,

Defendant/Crossclaim-Defendant,
and

MIRACLE-EAR, INC.,

Defendant/Crossclaimant/Third-Party
Plaintiff,

vs.

TIFFANY DAVIS
Third-Party Defendant.

Case No. 0-20-cv-1502 (JRT/HB)

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All persons in the United States that HearingPro called from July 1, 2016, through March 25, 2022, using the Five9 or Ytel dialing system.

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

- A settlement (“Settlement”) has been proposed in the class action lawsuit referenced above pending in the United States District Court for the District of Minnesota (“Action”). You may be a class member in the proposed Settlement and may be entitled to participate in the proposed Settlement.
- The United States District Court for the District of Minnesota has ordered the issuance of this notice in this Action. Miracle-Ear, Inc. (“Miracle-Ear”) and HearingPro, Inc. (“HearingPro”) (collectively, the “Defendants”) deny they did anything wrong and have defended themselves throughout the lawsuit. The Court has not decided who is right. Both sides have agreed to settle the dispute to avoid burdensome and costly litigation.
- If the Court gives final approval to the Settlement, the Defendants will create a fund of \$8,000,000. If you submit a valid Claim Form, you may be eligible to obtain a share from this fund in the amount of approximately \$25 depending on the number of other Settlement Class Members who submit claims. The value of a Settlement Class Member’s individual award will depend upon the number of Settlement Class Members who file valid Claim Forms.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
SUBMIT A CLAIM FORM	This is the only way to get a cash award under the Settlement. Visit the Settlement Website located at www.HearingAidTCPASettlement.com to obtain a Claim Form.	Deadline: August 1, 2022
EXCLUDE YOURSELF	If you exclude yourself from the Settlement, you will not receive an award under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit regarding the allegations in the Action ever again.	Deadline: August 1, 2022
OBJECT	You may write to the Court about why you object to (<i>i.e.</i> , don’t like) the Settlement and think it shouldn’t be approved. Submitting an objection does not exclude you from obtaining a cash award from the Settlement.	Deadline: August 1, 2022
GO TO THE “FAIRNESS HEARING”	<p>The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and costs of the lawyers who brought the Action, and the Plaintiffs’ request for service awards for bringing the Action.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any objection you submitted to the Settlement. If you intend to speak at the Fairness Hearing, you must also submit a “Notice of Intention to Appear” to the Court and the parties’ attorneys, indicating your intent to do so.</p>	<p>Hearing Date: September 6, 2022</p> <p>Time: 2:00 p.m. CDT</p> <p>Location: Minneapolis, MN</p>

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	You will not receive a Settlement award under the Settlement. You will also give up your right to object to the Settlement, and you will not be able to be part of any other lawsuit about the calling alleged in this case.	N/A
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- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Settlement Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. *Please be patient.*

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BACKGROUND INFORMATION

1. Why did I get this notice?

You received this notice because a Settlement has been reached in this Action and you may be a class member. If you are a member of the Settlement Class, you may be eligible for the relief detailed below.

This notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this notice), see Section 20 below.

2. What is this lawsuit about?

Individuals (the “Plaintiffs”) filed a lawsuit against Miracle-Ear and HearingPro on behalf of themselves and all others similarly situated. The lawsuit alleges that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”) by, *inter alia*, placing unsolicited telemarketing calls to Plaintiffs and members of the putative class.

Defendants deny each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Defendants further deny that any Class Member is entitled to any relief and, other than for Settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Plaintiffs’ claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. Why is this a class action?

In a class action lawsuit, one or more people sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Settlement Class Members. The companies sued in this case, Miracle-Ear and HearingPro, are called the Defendants.

4. Why is there a Settlement?

Plaintiffs have made claims against Defendants. The Defendants deny that they have done anything wrong or illegal and admit no liability. The Court has **not** decided that the Plaintiffs or Defendants should win this Action. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Settlement Class Members will receive relief now rather than years from now, if at all.

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

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All persons in the United States that HearingPro called from July 1, 2016 through March 25, 2022, using the Five9 or Ytel dialing system.

6. I'm still not sure if I am included.

If you are still not sure whether you are included in the Settlement Class, you can write or call the Settlement Administrator for free help. The Settlement Administrator's contact information is below.

Hearing Aid TCPA Settlement
c/o A.B. Data, Ltd.
P.O. Box 173010
Milwaukee, WI 53217
1-877-331-0411
Email: info@HearingAidTCPASettlement.com

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

The Defendants will create a Settlement Fund of \$8,000,000 which exclusively will be used to pay the Claims of Settlement Class Members, Settlement Class Counsel's Fees, Costs, and Expenses Award (see Section 11 below), Plaintiffs' Service Payment (see Section 12 below), and compensation for the Settlement Administrator for providing notice to the Settlement Class and administering the Settlement.

If you are a Settlement Class Member, you are eligible to receive a *pro rata* share—estimated to be approximately \$25—of the Settlement Fund by timely and validly submitting a Claim Form.

HOW TO REQUEST AN AWARD UNDER THE SETTLEMENT – SUBMITTING A CLAIM FORM

8. How can I get a Settlement Award?

To qualify for a Settlement award, you must send in a Claim Form. A Claim Form is available by clicking [HERE](#) or on the Internet at the website www.HearingAidTCPASettlement.com. The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the form, and postmark it by August 1, 2022, or submit it online on or before 11:59 p.m. (Pacific) on August 1, 2022.

9. When will I get a Settlement award?

As described in Sections 17 and 18, the Court will hold a hearing on September 6, 2022, at 2:00 p.m. (Central Time) 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. You can check on the progress of the case on the website dedicated to the Settlement www.HearingAidTCPASettlement.com. *Please be patient.*

THE LAWYERS IN THIS CASE AND THE PLAINTIFFS

10. Do I have a lawyer in this case?

The Court has ordered that the law firms of Paronich Law, P.C., Gustafson Gluek PLLC, and Turke & Strauss LLP (“Settlement Class Counsel”) will represent the interests of all Settlement Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Settlement Class Counsel will petition the Court to receive a Fees, Costs, and Expenses Award up to \$2,731,666.67. The Court will make the final decision as to the amount to be paid to the attorneys for their fees and costs. You will not be required to separately pay any attorneys’ fees or costs.

12. Will the Plaintiffs receive any compensation for their efforts in bringing this Action?

The Plaintiffs will request a Service Payment of \$5,000 for each Ms. Baldwin and Mr. Struckhoff and \$2,500 for Messrs. Blatt and Serati for their services as class representatives and their efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Plaintiffs.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

13. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, you will be releasing your claims against the Defendants and other individuals and entities allegedly related to the calls at issue unless you have excluded yourself from the Settlement. This generally means that you will not be able to file or

pursue a lawsuit against the Defendants or be part of any other lawsuit against the Defendants asserting claims that were or could have been asserted in the Action. The Settlement Agreement, available on the Internet at the website www.HearingAidTCPASettlement.com, contains the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

14. How do I exclude myself from the Settlement?

If you do not want to be a part of this Settlement, you may exclude yourself from the Class and the Settlement. To exclude yourself, you must submit a request for exclusion to the Settlement Administrator electronically (through the Settlement Website) or by postal mail. If you want to be excluded, you must write the Settlement Administrator stating: (a) the name and case number of the action – “*Baldwin, et al. v. Miracle-Ear, Inc., et al.*, D. Mn. Case No. 20-cv-1502”; (b) the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) the address, telephone number, and email address (optional) of the Settlement Class Member seeking exclusion; (d) that the requestor does not wish to participate in the Settlement; and (e) be signed personally by you. The request for exclusion must be sent to the Settlement Administrator at:

Hearing Aid TCPA Settlement
ATTN: EXCLUSIONS
c/o A.B. Data, Ltd.
P.O. Box 173001
Milwaukee, WI 53217

Your request for exclusion must be submitted electronically or be postmarked no later than August 1, 2022, at 11:59 pm (Pacific). If you submit your request for exclusion by postal mail, you are responsible for your postage.

If you validly and timely request exclusion from the Settlement Class, you will be excluded from the Settlement Class, you will not be bound by the Settlement Agreement or the judgment entered in the Action, you will not be eligible to make a Claim for any benefit under the terms of the Settlement Agreement, you will not be entitled to submit an objection to the Settlement, and you will not be precluded from prosecuting any timely individual claim against Defendants based on the conduct complained of in the Action.

HOW TO OBJECT TO THE SETTLEMENT

15. How do I tell the Court that I disagree with the Settlement?

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Settlement Class Counsel’s request for a Fees, Costs, and Expenses Award, and a Service Payment to the Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must write to the Court and must: (a) clearly identify the case name and number – “*Baldwin, et al. v. Miracle-Ear, Inc., et al.*, D. Mn. Case No. 20-cv-1502”; (b) include the full name and the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (c) include the address, telephone number called, current telephone number, and email address (optional) of the objecting Settlement Class Member;

(d) include the full name, address, telephone number, and email address of the objector’s counsel, and the state bar(s) to which counsel is admitted (if the objector is represented by counsel); (e) provide a detailed explanation stating the specific reasons for the objection, including any legal and factual support and any evidence in support of the objection; and (f) be signed personally by the Settlement Class Member or such Member’s counsel. The objection will not be valid if it only objects to the lawsuit’s appropriateness or merits. Objections must be filed directly with the Court. If an objection is filed with the Court by postal mail, the Settlement Class Member must pay for postage.

The Settlement Administrator’s contact information is below.

Hearing Aid TCPA Settlement
ATTN: OBJECTIONS
c/o A.B. Data, Ltd.
P.O. Box 173001
Milwaukee, WI 53217
info@HearingAidTCPASettlement.com

The mailing address to the Court is:

Civil Clerk of the Court
United States District Court District of Minnesota
300 South Fourth Street - Suite 202
Minneapolis, MN 55415

The objection must be submitted electronically or be postmarked no later than August 1, 2022, at 11:59 p.m. (Pacific).

You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney’s fees and costs.

IF YOU DO NOT TIMELY MAKE AN OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.

If you submit a written objection, you have the option to appear and request to be heard at the Fairness Hearing, either in person or through personal counsel. You are not required, however, to appear. However, if you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid objection a statement substantially similar to “Notice of Intention to Appear.” Only those who submit timely objections including Notices of Intention to Appear may speak at the Fairness Hearing. If you make an objection through an attorney, you will be responsible for your attorney’s fees and costs.

16. What is the difference between excluding myself and objecting to the Settlement?

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself 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 Settlement no longer affects you.

FAIRNESS HEARING

17. What is the Fairness Hearing?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Fees, Costs, and Expenses Award to the attorneys who initiated the Action; and to consider the request for a Service Payment to the Plaintiffs.

18. When and where is the Fairness Hearing?

On September 6, 2022, at 2:00 p.m. (Central Daylight Time), a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Judge John R. Tunheim, United States District Court District of Minnesota, 300 South Fourth St., Minneapolis, MN 55415. The hearing may be postponed to a different date or time or location without notice. Please check www.HearingAidTCPASettlement.com for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement Website will be the only way you will be informed of the change.

19. May I speak at the hearing?

At that hearing, the Court will be available to hear any timely and valid objections and arguments concerning the fairness of the Settlement.

ADDITIONAL INFORMATION

20. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, the application for a Fees, Costs, and Expenses Award, and the operative Complaint filed in the Action, please visit the Settlement Website located at: www.HearingAidTCPASettlement.com. Alternatively, you may contact the Settlement Administrator at the email address info@HearingAidTCPASettlement.com or the U.S. postal (mailing) address: *Hearing Aid TCPA Settlement*, c/o A.B. Data, Ltd., P.O. Box 173010, Milwaukee, WI 53217. You may also obtain information by calling 1-877-331-0411.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit www.pacer.gov or the Clerk's office at the United States District Court District of Minnesota, 300 South Fourth Street - Suite 202, Minneapolis, MN 55415. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. What if my address or other information has changed or changes after I submit a Claim Form?

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

Hearing Aid TCPA Settlement
c/o A.B. Data, Ltd.
P.O. Box 173010
Milwaukee, WI 53217
1-877-331-0411
Email: info@HearingAidTCPASettlement.com

* * * *

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.