

*Picchi v. World Financial Network Bank, et al.*

Case No.: 11 CV 61797- Altonaga / O'Sullivan

United States District Court for the Southern District of Florida

[www.picchiclasssettlement.com](http://www.picchiclasssettlement.com)

Frequently Asked Questions

1. *What is this lawsuit about?*
2. *Why did I get a postcard?*
3. *What if I did not get a postcard?*
4. *Are you included in the Settlement class?*
5. *What are the terms of Settlement?*
6. *How can I make a claim for monetary payment?*
7. *What is the deadline to submit a claim?*
8. *When would I get my payment?*
9. *In return for Settlement benefits, what am I giving up?*
10. *How do I get out of the Settlement?*
11. *If I do not exclude myself, am I bound by the Settlement?*
12. *Do I have a lawyer in this case?*
13. *How will the lawyers be paid?*
14. *How do I tell the Court that I do not like the Settlement?*
15. *What is the difference between “objecting” and “excluding” yourself?*
16. *When and where is the fairness hearing?*
17. *Do I have to attend the hearing?*
18. *What if I do nothing at all?*
19. *Are there more details about the Settlement?*

**1.     *What is this lawsuit about?***

Blaise Picchi and Blaise Picchi, P.A., the Plaintiffs in this lawsuit (collectively referred to as the “Class Representatives”), allege that the Defendants in this lawsuit, Comenity Bank, formerly known as “World Financial Network Bank,” and ADS Alliance Data Systems, Inc. (collectively referred to as “Comenity”), violated the Telephone Consumer Protection Act (“TCPA”) by calling persons on their cell phones who were not an identified account holder of Comenity with either an automatic telephone dialing system or by an artificial or prerecorded voice message to cellular phone numbers that were coded as “wrong numbers” in the records of Comenity. The lawsuit is entitled “*Blaise Picchi, et al. v. World Financial Network Bank, et al., in the United States District Court, Southern District of Florida; Case No. 11-CV-61797*” (“the Lawsuit”). The TCPA provides that a plaintiff may seek statutory damages of up to \$500 for each call placed, or up to \$1,500 for each call placed willfully. Comenity denies that it violated the TCPA in any regard. This settlement provides class members less than what they might have received if they took an individual case to judgment and prevailed on the merits of their claim. Also, the TCPA does not provide for the recovery of attorneys’ fees.

**2.     *Why did I get a postcard?***

The records obtained in the Lawsuit indicate that you may have been called on a cell phone, either with an automatic telephone dialing system (“ATDS”) or by a prerecorded voice message, by Comenity after March 1, 2010 through July 30, 2014 (the “Class Period”). Comenity Bank’s records list the cell phone numbers that were called during the Class Period, but do not necessarily include the names of the persons associated with the cell phone numbers that were called. Therefore, the postcard notice has been sent to all persons associated with accounts with cell phone numbers that were called during the “Class Period” where the telephone number was marked as a “wrong number” in the records of Comenity and whose name was not associated with an identified account holder of Comenity. If you believe you may have been called on your cell phone number by Comenity during the Class Period, you may contact the Claims Administrator to confirm whether your cell phone number was called. If your cell phone number matches one of the cell phone numbers called, you may be entitled to make a claim. If, however, your cell number was not called during the Class Period, you are not eligible to make a claim.

**3.     *What if I did not get a postcard?***

If you do not receive a postcard regarding the class action settlement in this case, it is likely because address information was not available for you or the address information is incomplete or inaccurate. However, if your cell phone number was called by Comenity during the Class Period and you were not a named account holder of Comenity, you may still contact the Claims Administrator to confirm whether your cell phone number was called. If your cell phone number matches one of the cell phone numbers called, you may be entitled to receive a payment. If your cell number was not called during the Class Period, you are not eligible to make a claim.

**4. *Are you included in the Settlement Class?***

Those persons in the Settlement Class are defined in the Settlement Agreement as:

(i) all persons to whom Defendants placed phone call through an automatic telephone dialing system equipment (ii) where those calls occurred after March 1, 2010 and up through July 30, 2014, as reflected in Defendants' records of call activity (iii) whose phone number was associated with a cellular phone at the time of the call; and (iv) whose phone number appears in the records of Defendants in association with an account issued through Defendants and serviced by ADS Alliance Data Systems, Inc. ("ADSI") or another Released Party; and (v) whose phone number appears in the records of Defendants in association with a "wrong number" code, (vi) and who is not the named account holder whose address as established by reverse phone lookup was a person ADSI or another Released Party was attempting to communicate with.

**5. *What are the terms of the settlement?***

The Court did not decide in favor of either side. Instead, both sides have voluntarily agreed to a settlement before any trial, which provides for a settlement fund of Seven Million Nine Hundred Thousand Dollars (\$7,900,000.00) ("Settlement Fund"). The Settlement Fund shall pay for: (1) first, attorneys' fees and costs to Class counsel, as approved by the Court, (2) second, an incentive award, if any, to each named Class Representative, and (3) third, a Class recovery on a *pro rata* basis to Class Members who submit a valid claim form as described in Section 6 below ("Participating Class Members"). The Settlement Administration Expense will be paid separately from the Settlement by Defendant. The maximum payment to any Participating Class Member who timely submits a Valid Claim Form is Five Hundred Dollars (\$500). An exact estimated *pro rata* distribution amount paid per Participating Class Member is determined based on the number of claims filed. The estimated class size is 1,000,000.

**6. *How can I make a claim for monetary payment?***

You may make a claim for monetary payment in a number of ways:

(1) Submitting a claim online at the website:

[www.picchiclasssettlement.com](http://www.picchiclasssettlement.com); or

(2) Submitting a claim in writing under oath by completing the claim form received by mail or downloaded from the settlement website and mailing the completed claim form to the Claims Administrator by the Claims Deadline.

You must include your:

- a. name;
- b. claim number, if you received a postcard sent to you about the Settlement;
- c. cell phone number on which you may have been called;
- d. current address for receipt of the Settlement payment, if different from the postcard notice address; and

- e. the last four digits of your social security number.

After your claim is submitted, if the Claims Administrator determines that your cell phone number is on the list, your claim will be processed. Only one claim may be submitted per cellular telephone number called by Comenity. If the Claims Administrator determines that your cell phone number is not on the list, or if your claim is incomplete, you will receive a deficiency notice from the Claim Administrator.

Written requests must be submitted to the following address:

Picchi Settlement  
ILYM Group, Inc.  
P.O. Box 57086  
Irvine, California 92619

**7. *What is the deadline to submit a claim?***

All online claims must be made on or before midnight Pacific Time on October 6, 2015. If you submit your claim by mail, your claim must be **postmarked** on or before this date.

**8. *When would I get my payment?***

The Court will hold a Final Approval of Fairness Hearing on December 18, 2015 at 9:00 am Eastern Time at the US District Courthouse, Miami, Florida, to decide whether to grant final approval of the Settlement. The hearing may be rescheduled by the Court. If the Court grants final approval, and there is no appeal of the approval ruling, the ruling will become final by law in thirty days from the date of the ruling, or it will become final on the date of entry of the ruling if there is not person with standing to appeal. The Claims Administrator will attempt to pay all claims within 60 days of the date the ruling becomes final, by check payable to the Participating Class Member mailed to the current address of the Participating Class Member ("Settlement Check"). Also, there may be appeals. If so, the approval order does not take effect until those appeals are resolved. It is always uncertain whether and when appeals would be resolved, and payment under this Settlement cannot be made until the approval order is final.

**9. *What happens to Settlement Checks that are not cashed?***

The Settlement Checks that are not cashed within one hundred (180) days shall expire and shall not be re-issued. All funds from such uncashed Settlement Checks will be paid over as a *cy pres* award to The Electronic Privacy Information Center ("EPIC"), a public interest research center in Washington, DC. EPIC was established in 1994 as a non-profit to focus public attention on emerging privacy rights issues and to safeguard privacy.

**10. *In return for Settlement benefits, what am I giving up?***

Unless you exclude yourself, you will be bound by the terms of this Settlement Agreement, including but not limited to, its release. The full terms of this Release are contained in the Settlement Agreement available, on the settlement website, or at the public court records on file in this lawsuit. You will release (give up) any claim against Comenity arising out of or related in any

way to the facts alleged in this case, including the allegation that Comenity called your cellular telephone number with an automatic telephone dialing system or prerecorded voice message during the Class Period, or otherwise may have violated the TCPA or state law equivalent. Individual calls that violate the TCPA could be worth up to \$500 for a negligent violation and \$1,500 for willful violations. It also means that all of the Court's orders will apply to you and legally bind you. By staying in the Class, you agree to release any claims, known or unknown, arising from the facts alleged in this lawsuit. The full text of the Release of Claims section of the Settlement Agreement are set forth in the Appendix at the end of this Notice on pages 10 and 11.

You are releasing those "Released Claims" against the "Released Parties," which means Defendants World Financial Network National Bank, succeeded by conversion by World Financial Network Bank on August 1, 2011, and now known as Comenity Bank, and ADS Alliance Data Systems, Inc., Alliance Data Systems Corporation, Comenity Servicing, LLC, Comenity Capital Bank, Comenity, LLC, and each of their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of their respective past, present and future directors, officers, managers, employees, general partners, limited partners, principles, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives, directly or indirectly involved in the Lawsuit. As mentioned above, you may receive less money from this settlement than if you prevailed on the merits in a separate lawsuit on your own.

**11. *How do I get out of the Settlement?***

If you do not want to participate in this Settlement, then you must take steps to get out of the Settlement. This is called "excluding yourself" from or "opting out" of the Class.

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from the Settlement in *Picchi v. Comenity Bank, Case No. 11-cv-61797-Altonaga/O'Sullivan (S.D. Florida)*. Be sure to include your name, address, telephone number and your signature. You must mail your exclusion request postmarked no later than October 6, 2015 to the Claims Administrator at the following address:

Picchi Settlement  
ILYM Group, Inc.  
P.O. Box 57086  
Irvine, California 92619

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

**12. *If I do not exclude myself, am I bound by the Settlement?***

Yes.

**13. *Do I have a lawyer in this case?***

The Court appointed the law firms of the Law Office of Robert W. Murphy, Esquire, and Lyngklip & Associates Consumer Law Center, PLC to represent you and other Settlement Class

Members. Their contact information is below. These lawyers are called Class Counsel. If you want your own lawyer, you may hire one at your own expense and enter an appearance through your own counsel.

**14. How will the lawyers, class representative and administrator be paid?**

At the final approval hearing, Class Counsel will seek attorneys' fees that will not exceed 27.5% of the \$7,900,000 maximum settlement amount together with the actual litigation expense, including court costs, mediation fees and travel expense (collectively "Attorney Fees and Cost Award"). In addition, Class Counsel will seek a service award not to exceed \$12,500 each for Class Representative ("Service Awards"). The Settlement Administration Expense will be paid separately from the Settlement by Defendant ("Settlement Administration Expense"). The expense and fees of the Settlement Administrator is estimated to be \$600,753.64. The Settlement Fund will be paid to Participating Class Members on a *pro rata* basis after deduction of the Attorney Fees and Cost Award, and the Service Awards.

**15. How do I tell the Court that I do not like the Settlement?**

If you are a Settlement Class Member, and you want to object to the settlement, the deadline to object is October 6, 2015. To object, you must send a letter saying that you object to the settlement in *Picchi v. Comenity Bank, Case No. 11-cv-61797-Altonaga/O'Sullivan (S.D. Florida)*. Be sure to include your name, address, telephone number, your signature, the reason/s you object to the Settlement and any supporting documents. Mail the objection to each of the following addresses no later than October 6, 2015.

Clerk of the Court	Class Counsel	Defense Counsel
U.S. District Court	Robert W. Murphy, Esq.	Dale T. Golden, Esq.
Southern District of Florida	Law Office of Robert W. Murphy	Golden Scaz Gagain, PLLC
400 N. Miami Avenue	1212 SE 2 <sup>nd</sup> Avenue	201 North Armenia Avenue
Miami, FL 33128	Fort Lauderdale, FL 33316	Tampa, FL 33609

---

You may also ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in *Picchi v. Comenity Bank, Case No. 11-cv-61797-Altonaga/O'Sullivan (S.D. Florida)*." Be sure to include your name, address, telephone number, and your signature. **Your Notice of Intention to Appear must be postmarked no later than October 6, 2015, and be sent to the Court, Class Counsel and Defense Counsel at the above addresses.**

You cannot object or speak at the hearing if you "excluded yourself" from the Class.

**16. What is the difference between "objecting" and "excluding" yourself?**

Objecting is simply telling the Court that you disagree with a part of the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class, which you must do if you intend to file your own lawsuit against

Comenity Bank. If you exclude yourself, you have no basis to object because the case no longer affects you.

**17. *When and where is the fairness hearing?***

The Court will hold the final fairness hearing at 9:00 a.m on December 18, 2015 at the U.S. District Courthouse, Southern District of Florida, 400 N. Miami Avenue, Miami, Florida 33128, Courtroom # 12-2, before the Honorable Cecilia M. Altonaga. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. If anyone has asked to speak at the hearing, Judge Altonaga will listen to them at that time. The Court will decide after the hearing whether to approve the Settlement as fair and reasonable, to give final approval to the amount of attorneys' fees and costs of notice and claims administration to be paid from the Settlement Fund, and to the incentive payments from the Settlement Fund to be provided to the Class Representatives for bringing and litigating this Lawsuit. We do not know how long these decisions will take.

**18. *Do I have to come to the hearing?***

No. Class Counsel will answer questions Judge Altonaga may have that are directed to the Class. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

**19. *What if I do nothing at all?***

If you do nothing, you will be part of the Class and you will receive the benefits detailed above including the monetary payment if you make a valid and timely claim.

You will also be precluded from being part of any other lawsuit against Comenity Bank or any other released party relating to the Released Claims in this case. It also means that all of the Court's orders will apply to you and legally bind you.

**20. *Are there more details about the Settlement?***

This Notice summarizes the proposed Settlement, and more details are in a Settlement Agreement, is part of the Court's file, a public record. Many of the court papers, including the Settlement Agreement, are also posted on the Settlement website [www.picchiclass.com](http://www.picchiclass.com). You can get a copy of the Settlement Agreement or review any part of the papers relating to the Lawsuit by examining the records of this case, *Picchi v. Comenity Bank, Case No. 11-cv-61797-Altonaga/O'Sullivan (S.D. Florida)* at the Clerk's office at the U.S. District Court, Southern District of Florida, 400 N. Miami Avenue, Miami, Florida 33128. The clerk's office has the ability to make copies of any such public documents for you. Also, all filed documents in the case, including the Settlement documents, are available for viewing online for a fee through the Court's PACER document review system.

## IMPORTANT DATES

<b>Date:</b>	<b>Deadline:</b>
Deadline to submit claim	<b><u>October 6 2015</u></b>
Deadline to opt-out	<b><u>October 6, 2015</u></b>
Deadline to object	<b><u>October 6, 2015</u></b>
Final Fairness Hearing	<b><u>December 18, 2015 @ 9:00 AM ET</u></b>



**RELEASE OF ALL CLAIMS AND WAIVER AND RELEASE  
/COVENANT NOT TO SUE**

- a. Except as provided above, the named Plaintiffs and each Class Member who submits a claim as a member of either class, releases his or her claims against Defendants and "Released Parties", which include, but are not limited to, Comenity Bank, ADS Alliance Data Systems, Inc., Alliance Data Systems Corporation, Comenity Servicing, LLC, Comenity Capital Bank, Comenity, LLC, and each of their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives (hereinafter, "Released Parties") for any claims arising out of or related to Defendants' alleged failure to comply with the provisions of 47 U.S.C. § 227 et. seq. Class members only release claims which have arisen as of the date of the Settlement and do not release any future claims.
- b. The Named plaintiffs and each member of the Class agree not to start, continue, intervene in, participate in, or receive any benefits from, any lawsuit, arbitration, or administrative, regulatory, or other proceeding against Defendants or "Released Parties" and each of their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venture(s), assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives in any jurisdiction based upon, or relating to, any claims, facts, or circumstances which are covered by the Action, or by this Settlement Agreement except as provided herein.
- c. Nothing in this Agreement prevents members of the Class or Defendants from enforcing the provisions of this Settlement Agreement.
- d. Plaintiffs shall dismiss with prejudice, and release and discharge their claims against Defendants and the Released Parties relating to or arising out of the matters alleged in the Complaint including any claims arising out of or relating to any calls made by Defendants or Released Parties to the Named Plaintiffs' cellular telephones.
- e. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now claim or believe to be true with respect to the claims released herein, and agree that this Settlement Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional, or unknown facts.
- f. In entering into this Settlement Agreement, each party assumes the risk of any negligent misrepresentation, or mistake. If any party should discover, subsequent

to Final Judgment, that any fact relied upon by it/him/her in entering into this Settlement Agreement was untrue, or that any fact was concealed from it/him/her, or that its/his/her understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation, any alleged right or claim to set aside or rescind this Settlement Agreement. This Settlement Agreement is intended to be, and is final and binding between the Parties hereto, regardless of any claims or misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

- g. To the extent Congress, the FCC or any other relevant regulatory authority promulgates different rules, orders, or requirements under the TCPA, or any other law or regulation that would govern any conduct affected by this Settlement, those laws and regulatory provisions shall control this Settlement and the conduct of the Parties. In the event the law under the TCPA, or the interpretation thereof by the FCC changes or any new rule is enacted by Congress or new regulation or declaratory ruling or new rule making is issued or ordered by the FCC such that it would have materially affected whether the Defendants would have entered into the subject Settlement herein up until the FINAL approval of this proposed class action Settlement by the Court, the entire Settlement herein shall be deemed null and void at the discretion of Defendants.
- h. All class members who do not elect to exclude themselves from this settlement will be bound by its terms, irrespective of whether they submit a claim.