

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Sutton v. TED Foundation Inc., Case No. 1:23-cv-09219-DEH

Our Records Indicate You Have a TED Account and May Be Entitled to a Payment From a Class Action Settlement.

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against TED Foundation Inc. (“TED” or “Defendant”). The class action lawsuit claims that TED allegedly disclosed users’ personally identifiable information to third-party service providers, without users’ informed, written consent, in violation of the Video Privacy Protection Act (“VPPA”), 18 U.S.C. § 2710. The VPPA defines PII to include information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider. Defendant denies that it engaged in any wrongful conduct or violated any law, and the Court has not decided who is right. The parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with continuing the case.
- You are included in the Settlement if you are a person in the United States who, between October 19, 2021 and [insert date of preliminary approval of the Settlement], was a TED account holder and watched a pre-recorded video on the website TED.com or on TED’s iOS or Android mobile applications (“Settlement Class Member(s)”).
- Persons included in the Settlement will be eligible to automatically receive two free months of TED Membership (the “TED Membership Benefit,” estimated to have at least a \$10.00 value), subject to their agreement to activate the TED Membership Benefit. However, each Settlement Class Member may instead file a Claim Form that will, if approved by the Settlement Administrator, entitle him or her the option to select in lieu of the TED Membership Benefit either (i) a cash payment for \$5.00, subject to a *pro rata* reduction as explained below, or (ii) a donation option, whereby a Settlement Class Member agrees that their cash payment from the Settlement will be remitted as a donation to TED Foundation Inc. See Question 6 for details. For those Settlement Class Members who select the cash payment option, if approved by the Court, Defendant will make available up to \$350,000.00 under the Settlement to pay all valid claims submitted by the Settlement Class (the “Settlement Fund”). In no event shall the amount Defendant pays in cash to said Settlement Class Members exceed \$350,000.00.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will automatically receive the TED Membership Benefit (subject to your activation of the benefit). Selecting this option will give up your rights to sue Defendant about the claims in this case.
SUBMIT A CLAIM FORM BY [DATE]	By submitting a claim form, you will have the option to receive a cash payment or donate your cash payment to TED. Selecting this option will give up your rights to sue Defendant about the claims in this case.

EXCLUDE YOURSELF BY LETTER BY [DATE]	If you opt out of the settlement class, you will receive no benefits from the Settlement, but you will retain any rights you currently have to sue Defendant about the claims in this case.
OBJECT BY [DATE]	If you remain in the settlement class but don't like the Settlement, you can write to the Court explaining why you don't like the Settlement.
GO TO THE HEARING ON [DATE]	If you remain in the settlement class and have objected to the Settlement, you can ask to speak in Court about your opinion of the Settlement.

Your rights and options—**and the deadlines to exercise them**—are explained in this Notice.

BASIC INFORMATION

1. Why was this Notice issued?

A 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 give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Dale E. Ho, of the United States District Court for the Southern District of New York, is overseeing this case. The case is *Sutton v. TED Foundation Inc.*, Case No. 1:23-cv-09219-DEH. The people who have sued are called the Plaintiffs. The Defendant is TED Foundation Inc.

2. What is a class action?

In a class action, one or more people called the class representative(s) (in this case, Kimberly Sutton, David Ramirez, and Tyler Baker) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the class.

3. What is this lawsuit about?

This lawsuit claims that Defendant violated the Video Privacy Protection Act (the “VPPA”), 18 U.S.C. § 2710, by disclosing users’ personally identifiable information (to third-party service providers, without users’ informed, written consent, in violation of the Video Privacy Protection Act (“VPPA”), 18 U.S.C. § 2710. The VPPA defines PII to include information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider. Defendant denies that it engaged in any wrongdoing or violated any law. Specifically, Defendant alleges that it never discloses account holders’ names or email addresses together with their video views, and that all data stored with the Third Parties is encrypted and encoded prior to transmission, thus preventing it from being legible to the ordinary person as required under the VPPA. Defendant also argues that it employs the third-

party software only for internal use and to operate its website and mobile applications, and that such usage is permitted under the VPPA's exception for transmissions that occur in the ordinary course of business. The Court has not determined who is right. Rather, the parties have agreed to settle the lawsuit as described in this Notice.

4. Why is there a Settlement?

The Court has not decided whether Plaintiffs or Defendant should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation. Moreover, Settlement Class Members are guaranteed relief that would otherwise be unassured by trial.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The **Settlement Class** is defined as:

all TED account holders, in the United States, who watched a pre-recorded video on the website ted.com or on TED's iOS and Android mobile applications between October 19, 2021 and [insert date of preliminary approval].

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Defendant has agreed all Settlement Class Members shall automatically receive two free months of TED Membership (the "TED Membership Benefit," estimated to have at least a \$10.00 value), subject to their agreement to activate the TED Membership Benefit. More information about what the TED Membership Benefit entails is available [here](#). However, any Settlement Class Member shall have the option to instead select in lieu of the TED Membership Benefit either:

- (i) a cash payment for \$5.00, subject to a *pro rata* reduction as explained below; or
- (ii) a "donation" option, whereby a Settlement Class Member agrees that their cash payment from the Settlement will not be required and such amount will be remitted as a donation to TED Foundation Inc.

The donation option is distinct from opting out, in that any Settlement Class Member who selects this option shall still be bound by the terms of the Settlement, including the release of claims. By selecting the donation option, Settlement Class Members agree to forgo receipt of a cash payment from the Settlement and such funds will be issued back as a donation to TED Foundation Inc. TED Foundation Inc. is a registered

501(c)(3) private foundation. Settlement Class Members are encouraged to consult their tax advisor to determine the deductibility of their donation.

For those Settlement Class Members that select the cash payment option, Defendant will pay up to a maximum of \$350,000.00 through the Settlement Fund. If Settlement Class Members select either the cash payment or the donation option, they shall *not* receive the TED Membership Benefit.

Defendant also commits to the following injunctive relief: (1) it will present U.S. account holders whose event data will be transmitted to Open Web with an affirmative consent option; and (2) it will cease the transmission of U.S. account holders' first and last names or e-mail addresses to Mixpanel and use reasonable efforts to discontinue the storage of existing such data within Mixpanel. Defendant has confirmed that it no longer employs the services of third-party Leanplum.

7. How much will my payment be?

If you are member of the Settlement Class you shall automatically receive two free months of the TED Membership Benefit, estimated to have a \$10.00 value. Alternatively, you may submit a Claim Form to receive (i) a \$5.00 cash payment, subject to a *pro rata* (meaning equal) reduction as described below; or (ii) a donation option, whereby you agree to remit the cash payment as a donation to TED Foundation Inc. For those Settlement Class Members who select the cash payment option, in no event shall the amount Defendant pays in cash to said Settlement Class Members exceed \$350,000.00. The amount of payment will depend on how many Settlement Class Members file valid claims. Each Settlement Class Member who files a valid claim will receive a proportionate share of the Settlement Fund. You can contact Class Counsel to inquire as to the number of claims filed. If Settlement Class Members select either the cash payment or the donation option, they shall *not* receive the TED Membership Benefit.

8. When will I get my payment?

The hearing to consider the fairness of the settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the settlement, 60 days after the Settlement has been finally approved and/or any appeals process is complete, eligible Settlement Class Members will automatically receive a link to activate the TED Membership Benefit or a cash payment, subject to approval of their filed claim by the Settlement Administrator. The cash payment will be made in the form of a check, unless you elect to receive payment by PayPal or Venmo, and all checks will expire and become void 180 days after they are issued. If you elect to remit your cash payment in the form of a donation to TED, the donation will also be executed 60 days after the Settlement has been finally approved and/or any appeals process is complete.

HOW TO GET BENEFITS

9. How do I get a payment?

If you are a Settlement Class Member and you want to get a cash payment or remit your cash payment in the form of a donation to TED, you **must** complete and submit a Claim Form by **[Claims Deadline]**. Claim Forms can be found and submitted by clicking [here](#) **[hyperlink]**, or by printing and mailing a paper Claim Form, copies of which are available for download [here](#) **[hyperlink]**.

REMAINING IN THE SETTLEMENT

10. What am I giving up if I stay in the Settlement Class?

If the Settlement becomes final, you will give up your right to sue Defendant for the claims this Settlement resolves. The Settlement Agreement describes the specific claims you are giving up against the Defendant. You will be “releasing” the Defendant and certain of its affiliates described in **Sections 1 and 3** of the Settlement Agreement. Unless you exclude yourself (see Question 14), you are “releasing” the claims, regardless of whether you submit a claim or not, and regardless of whether you register an objection (see Question 17). The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 12 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

11. What happens if I do nothing at all?

If you do nothing, you will automatically receive two free months of the TED Membership Benefit, subject to your activation of that benefit. But, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being released by this Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

The Court has appointed Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

13. How will the lawyers be paid?

Class Counsel shall be permitted to request an award of settlement administration costs, attorneys' fees, and expenses of no more than \$700,000.00. Class Counsel shall also be permitted to request for the three Class Representatives an incentive award of no more than \$2,500 each to be paid by Defendant. The Court may award less than these amounts.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail or otherwise deliver a letter (or request for exclusion) stating that you want to be excluded from the *Sutton v. TED Foundation Inc.*, Case No. 1:23-cv-09219-DEH settlement. Your letter or request for exclusion must also include your name, your address, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request no later than **[objection/exclusion deadline]** to:

TED Settlement
0000 Street
City, ST 00000

15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this Settlement (see Question 10).

16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for benefits. You also will not be eligible for the TED Membership Benefit.

OBJECTING TO THE SETTLEMENT

17. How do I object to the Settlement?

If you're a Settlement Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Sutton v. TED Foundation Inc.*, Case No. 1:23-cv-09219-DEH and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, an explanation of the basis upon which you claim to be a Settlement Class Member, the name and contact information of any and all attorneys representing, advising, or in any way assisting you

in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 21), you must say so in your letter or brief. File the objection with the Court and mail a copy to these two different places postmarked no later than **[objection deadline]**.

Class Counsel will file with the Court and post on this website its request for attorneys' fees by **[two weeks prior to objection deadline]**.

Court	Class Counsel	Defendant's Counsel
The Honorable Dale E. Ho Courtroom 905 Thurgood Marshall United States Courthouse 40 Foley Square, New York, NY 10007	Yitzchak Kopel Bursor & Fisher, P.A. 1330 Ave. of the Americas, Floor 32 New York, NY 10019	Carter C. Simpson Paul Hastings LLP 2050 M Street, N.W. Washington, DC 20036

18. What's the difference between objecting and excluding myself from the Settlement?

Objecting means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class 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 case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold the Final Approval Hearing at **[time]** on **Month 00, 2026** in **Courtroom 905 at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007**. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [www.tedvppasettlement.com] or call [[xxx-xxx-xxxx](tel:xxx-xxx-xxxx)]. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

21. May I speak at the hearing?

Yes. If you have elected to remain in the Settlement Class but object to the settlement, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Sutton v. TED Foundation, Inc.*, Case No. 1:23-cv-09219-DEH." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [**objection deadline**], and be sent to the addresses listed in Question 17.

GETTING MORE INFORMATION

22. Where do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.tedvppasettlement.com. You may also write with questions to TED Settlement, P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at [1-800-000-0000](tel:1-800-000-0000) or contact Class Counsel at info@bursor.com, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.