

Perks, et al. v. Activehours, Inc. d/b/a Earnin
United States District Court, Northern District of California
Case No. 5:19-cv-05543-BLF

**If you received an overdraft fee that your bank attributed to a payment to Earnin,
you may be entitled to benefits under a class action settlement.**

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

- A proposed settlement will provide a total of three million dollars (\$3,000,000.00), including legal fees, costs, and expenses (the “Settlement Fund”) to fully settle and release claims of all persons in the United States to whom this Notice is directed and as defined by the Settlement Class described below.
- Plaintiffs allege that some customers of Activehours, doing business through the Earnin application, (“Earnin” or “Defendant”) experienced third-party overdraft fees or insufficient funds event fees following a withdrawal by Earnin, and that Earnin’s marketing failed to adequately represent the risk of incurring such third-party fees while using the service (the “Overdraft Claims”). Defendant denies Plaintiffs’ allegations, denies any violation of California’s consumer protection laws or any other laws, and denies any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses. By entering into the settlement, the Defendant has not conceded the truth or validity of any of the claims against them, and denies these claims.
- The Settlement Fund shall be used to pay all amounts related to the settlement, including awards to Settlement Class Members who do not timely request to be excluded from the settlement, attorneys’ fees and costs to attorneys representing Plaintiffs and the Settlement Class (“Class Counsel”), any service award for Named Plaintiffs and the costs of notice and administration of the settlement. Monies remaining in the Settlement Fund after these payments are made will be redistributed on a *pro rata* basis to those Settlement Class Members who received an electronic fund transfer or cashed his or her initial Settlement Award check and/or to a *cy pres* recipient described below.
- Through the Settlement, the Defendant has also agreed to certain injunctive relief and changes to its business practices for the benefit of Settlement Class Members. These benefits are more fully described in the Settlement Agreement, which can be found at www.PerksEarninSettlement.com.
- Should the Settlement Agreement be granted final approval by the Court, Defendant has also agreed to invite those Settlement Class Members whose accounts have been temporarily suspended due to nonpayment of cash outs to use Earnin Express (subject to account onboarding requirements, including federal law), and until an aggregate amount of \$9.5 million is forgiven across such suspended Settlement Class Members, these Settlement Class Members shall not be required to repay previously unpaid cash outs as a part of the application to Earnin Express, with such forgiveness occurring automatically upon completion of the onboarding process to Earnin Express.
- Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do nothing, you will have the ability to receive a payment and will give up your rights to sue the Defendant and/or any other released parties on a released claim.
EXCLUDE YOURSELF OR “OPT OUT” OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own claims against the Defendant and/or other released parties in the future. The deadline for excluding yourself is January 29, 2021.
OBJECT TO THE SETTLEMENT	Write to the Court about why you believe the settlement is unfair in any respect. The deadline for objecting is January 29, 2021.
GO TO THE FINAL APPROVAL HEARING	Ask to speak in Court about the fairness of the settlement. To speak at the Final Approval Hearing, you must file a document including your name, address, telephone number and your signature with the Court stating your intention to appear, no later than January 29, 2021.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved.

BASIC INFORMATION

The purpose of this Notice is to inform you that a proposed settlement has been reached in the putative class action lawsuit entitled *Perks, et al. v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-05543-BLF (N.D. Cal.). Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

If you received an email describing this settlement, it is because Earnin’s records indicate that you may be a member of the Settlement Class. You are a member of the Settlement Class if you are one of the persons who experienced a third-party overdraft fee or insufficient funds event fee that a bank attributed to making a payment to Earnin beginning on September 3, 2015 through May 28, 2020. Excluded from the Settlement Class are the Judge to whom the Action is assigned and any member of the Court’s staff and immediate family, and all persons who have been identified in the call data produced in this litigation who are validly excluded from the Settlement Class.

In a class action, one or more people called Class Representatives (here, Mary Perks and Stanley Alexander) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, the Named Plaintiffs allege that some customers of Earnin experienced third-party overdraft fees or insufficient funds event fees following a withdrawal by Earnin, and that Earnin’s marketing failed to adequately represent the risk of incurring such third-party fees while using the service (the “Overdraft Claims”). Defendant denies Plaintiffs’ allegations, denies any violation of California’s consumer protection laws or any other laws, and denies any wrongdoing whatsoever. By entering into the settlement, the Defendant has not conceded the truth or validity of any of the claims against them, and denies these claims. The Court has conditionally certified a class action for settlement purposes only. The Honorable Beth Labson Freeman is in charge of this action.

The Court did not decide in favor of Plaintiffs or the Defendant. Instead, Plaintiffs and Defendant agreed to this settlement. That way, they avoid the risk and cost of a trial, and the Settlement Class Members will receive compensation. Plaintiffs and Class Counsel think the settlement is best for all persons in the Settlement Class.

WHO IS IN THE SETTLEMENT CLASS?

The Court has certified a class action for settlement purposes only. The “**Settlement Class**” is defined as:

All consumers who incurred an overdraft fee or insufficient funds event fee that a bank attributed to an Earnin withdrawal, beginning on September 3, 2015 through May 28, 2020.

“Settlement Class Member” is defined as any person in the Settlement Class who is not validly excluded from the Settlement Class. If you are still not sure whether you are included, you can visit other sections of the Settlement Website, www.PerksEarninSettlement.com, you may write to the Settlement Administrator at *Perks v. Activehours* Settlement Administrator, P.O. Box 43434, Providence, RI 02940-3434, or you may call the Toll-Free Settlement Hotline, 1-855-786-0901, for more information.

THE LAWYERS REPRESENTING YOU

The Court has appointed the law firms of Kaliel PLLC, Cohen & Malad LLP, and Keller Rohrback LLP as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers. You also have the right to hire your own attorney at your own expense.

Class Counsel will ask the Court to approve payment of up to 30 percent of the Settlement Fund, which would equal \$900,000.00, for attorneys’ fees plus reasonable expenses. Class Counsel also will ask the Court to approve payment of \$2,500.00 to Named Plaintiffs Mary Perks and Stanley Alexander for their services as Class Representatives. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS—WHAT YOU GET

Settlement Fund. Earnin will pay the total amount of three million dollars (\$3,000,000.00) into a fund (the “Settlement Fund”), which will cover: (1) cash payments to Settlement Class Members who do not request exclusion; (2) an award of attorneys’ fees and costs to Class Counsel, plus expenses, as approved by the Court; (3) a service award to the Plaintiffs as approved by the Court; (4) the costs of notice and administration of the settlement; and (5) under certain circumstances as described below, a charitable contribution.

Cash Payments. All Settlement Class Members who do not request exclusion will receive a portion of the Settlement Fund, subject to an allocation formula. Each Settlement Class Members’ individual *pro rata* payment amount will be determined according to a simple formula:

(Net Settlement Fund/Total Number of Overdraft Transactions)

X

Number of Overdraft Transactions per Settlement Class Member as suggested in Earnin’s business records.

The amount of Settlement Class Members’ share of the Settlement Fund will also depend on how many Settlement Class Members exclude themselves.

No Portion of the Settlement Fund Will Return to Defendant. Any money remaining in the Settlement Fund after paying all Settlement Class Members, attorneys’ fees and costs to Class Counsel, any service award to Plaintiffs and the costs of notice and administration of the settlement will be redistributed on a *pro rata* basis to those Settlement Class Members who received an electronic funds transfer or cashed their initial Settlement Award check. No portion of the Settlement Fund will return to the Defendant. Only after a second distribution or if a second distribution is not feasible, any residual funds will be provided to *cy pres* recipient, Center for Responsible Lending, if approved by the Court.

Your share of the Settlement Fund will depend on the number of Settlement Class Members who request exclusion. Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the release of claims in the settlement, and the Agreement's other terms. This means that if the settlement is approved, you cannot rely on any Released Claim to sue or continue to sue the Defendant and/or any other Released Parties, as explained in the Settlement Agreement. It also means that the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the settlement, you will agree to release the Defendant and any other Released Parties, as defined in the Settlement Agreement, from any and all claims that arise from your use of Earnin.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed above, for free, or you can, at your own expense, talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

Through the settlement, the Defendant has also agreed to certain injunctive relief and changes to its business practices for the benefit of Settlement Class Members. These benefits are more fully described in the Settlement Agreement, which can be found at www.PerksEarninSettlement.com.

Should the Settlement Agreement be granted final approval by the Court, Defendant has also agreed to invite those Settlement Class Members whose accounts have been temporarily suspended due to nonpayment of cash outs to use Earnin Express (subject to account onboarding requirements, including federal law), and until an aggregate amount of \$9.5 million is forgiven across such suspended Settlement Class Members, these Settlement Class Members shall not be required to repay previously unpaid cash outs as a part of the application to Earnin Express, with such forgiveness occurring automatically upon completion of the onboarding process to Earnin Express.

HOW TO OBTAIN A PAYMENT

No claim form is required to receive payment. Instead, using its database of user information, Earnin will facilitate the Settlement Administrator's direct payments to Settlement Class Members. For Settlement Class Members who are Earnin customers at the time of the distribution, Earnin will credit the customer's linked checking account in the amount of the Individual Payment they are entitled to receive. For Settlement Class Members who are not Earnin customers at the time of the distribution, the Settlement Administrator will send them an email with a link allowing for the electronic transmission of Individual Payments by electronic money transmission services.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

The Court will hold a hearing on March 25, 2021 at 9:00 a.m. 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. Class Members will be informed of the progress of the settlement through information posted on the Settlement Website at www.PerksEarninSettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue the Defendant or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the settlement, you must send an exclusion request to the Settlement Administrator. To be valid, an exclusion request must: (1) state that you want to be excluded from the settlement in *Perks, et al. v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-05543-BLF (N.D. Cal.); (2) include your name, address,

Earnin username and associated email address; (3) include a statement that you wish to be excluded from the Settlement Class; and (4) contain your signature. No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than January 29, 2021 to the Settlement Administrator at *Perks v. Activehours d/b/a Earnin* Settlement Administrator, P.O. Box 43434, Providence, RI 02940-3434.

If you do not exclude yourself, you give up any right to sue (or continue to sue) the Defendant or any Released Parties for the claims that this settlement resolves.

If you ask to be excluded, you will not be able to receive a settlement payment and you cannot object to the settlement.

OBJECTING TO THE SETTLEMENT

If you are in the Settlement Class and do not opt out, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement or the award of any attorneys' fees and costs and/or service awards.

To object, you must make your objection in writing, stating that you object to the settlement in the *Perks, et al. v. Activehours d/b/a Earnin* Settlement. To be considered by the Court, the written objection must be filed electronically with the Court or mailed to the Class Action Clerk by January 29, 2021 at:

Class Action Clerk
United States District Court, Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

For an objection to be considered by the Court, the objection must also set forth:

- i. the name of the filed action;
- ii. the objector's full name, address, Earnin account username and telephone number;
- iii. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- iv. all grounds for the objection, accompanied by any legal support for the objection;
- v. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the settlement, the fee application, or the application for service awards;

- vi the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- vii. a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;
- viii. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- ix. the objector's signature on the written objection (an attorney's signature is not sufficient).

To be considered, you must file your objection electronically with the Court or mail it to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102.

THE FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing at 9:00 a.m., March 25, 2021, at the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, Courtroom 3, 5th Floor. Depending on the current pandemic, the Court may hold such a hearing virtually. The Court will still consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements above, the Court also will consider them. The Court may also decide how much to pay to Class Counsel and Named Plaintiffs.

The Final Approval Hearing may be moved to a different date or time without additional notice, or canceled altogether given the current pandemic, so it is a good idea to check the Settlement Website or the Court's PACER website to confirm that the date has not been changed.

You do not need to attend this hearing, as Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

If you file a valid, timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than January 29, 2021. You cannot speak at the hearing if you exclude yourself from the settlement.

GETTING MORE INFORMATION

This Notice is only a summary of the proposed settlement. You can get a copy of the Settlement Agreement by visiting the Settlement Website, www.PerksEarninSettlement.com, or you can write to the address on page 5 or call the Toll-Free Settlement Hotline, 1-855-786-0901. You can also email admin@PerksEarninSettlement.com. Additional information is also available by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://www.cand.uscourts.gov/cases-e-filing/cm-ecf/>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, EARNIN, OR EARNIN'S COUNSEL ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.