

Court Denies Class Certification in Favor of Fitness Club: Plaintiff Failed to Show Commonality in Her Claim Theory and Applicable Consumer Contracts

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The U.S. District Court for the Southern District of Florida recently issued two opinions in one case—*Powell v. YouFit Health Clubs, LLC*—that highlight the hurdles that plaintiffs can face in demonstrating typicality, ascertainability, and predominance when TCPA claims purportedly arise from consumer contracts.

In *Powell v. YouFit Health Clubs, LLC*, No. 17-62328, 2019 WL 926131 (S.D. Fla. Jan. 14, 2019), Traci Powell alleged that YouFit Health Clubs had violated the TCPA by sending “dual purpose text messages.” Plaintiff claimed that she was a former member of YouFit and that, after she canceled her membership and paid her outstanding balance, she received two text messages that stated, in relevant part, “YOUFIT BALANCE FORGIVENESS: Get 1 year for \$99 . . . to clear your past due balance.” She claimed that the texts had falsely stated that consumers had balances due on their accounts and had been sent without their consent.

On Plaintiff’s motion to certify a class, the court held that the Plaintiff had standing and had demonstrated numerosity under Rule 23. But it also found that the Plaintiff had not established typicality because her claim was “unique.” YouFit had provided uncontroverted evidence that the only individuals who had been sent the texts had accounts that were past due. It argued that that Plaintiff’s claim was atypical because she contended that she had canceled her membership and therefore owed no money. The court agreed, holding that Plaintiff’s claim was inconsistent with those of the class she sought to represent. As such, the court concluded that the Plaintiff had failed to satisfy the typicality requirement, and it denied her motion for class certification.

Plaintiff moved for reconsideration. *Powell v. YouFit Health Clubs, LLC*, No. 17-62328, 2019 WL 926048 (S.D. Fla. Feb. 22, 2019). The court denied that motion as well. It noted that, although Plaintiff alleged that she was no longer a YouFit member and was not bound by a form of its membership agreement, her class claims were premised on the alleged insufficiency of the consent language in agreements used prior to 2016. The court held that this inconsistency in Plaintiff’s theory—that she was not subject to a contract but that the putative class members were subject to contracts that may or may not have been TCPA-compliant—demonstrated that Plaintiff’s claim would

not necessarily prove all of the proposed class members' claims. In sum, her claim was atypical.

The court also found that the class was not ascertainable because there was no reliable or administratively feasible way to determine who was subject to a membership agreement that purportedly failed to meet TCPA requirements and because some potential class members had never signed a membership agreement. As a result, "identification of class members would require significant individual inquiries" that could only be resolved through "a review of individual . . . member records to determine what form of membership agreement each person signed and when." *Id.* at *4.

The court further concluded that Plaintiff could not establish predominance because she failed to support her contention that the text messages were the same or similar. Again, the court found that an examination of each class member's records would be required to determine which form of consent was applicable, and found that Plaintiff could not demonstrate whether the texts were tailored to the language in each potential class member's respective agreement. The court held that, under these facts, individual issues would predominate over common ones. The court denied Plaintiff's motion for reconsideration.

Plaintiff had a heavy lift in demonstrating that her individual facts could translate into a class definition or a viable class claim. The court rejected sweeping generalizations about the texts and their recipients and looked closely at the evidence supporting and opposing the class claim. Ultimately, it found Plaintiff to be an outlier in her own purported class.

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National Law Review, Volume IX, Number 71

Source URL: <https://natlawreview.com/article/court-denies-class-certification-favor-fitness-club-plaintiff-failed-to-show>