

Federal Court Reverses Course and Decertifies the Settlement Class

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After preliminarily approving a TCPA settlement arising out of allegedly unsolicited faxes, the Middle District of Florida recently reversed course and rejected the settlement in light of the Eleventh Circuit's finding that the district court had erred in denying a new party's request to intervene. See *Tech. Training Assocs., Inc. v. Buccaneers Ltd. P'ship*, No. 16-1622, 2019 WL 4751799 (M.D. Fla. Sept. 30, 2019).

The plaintiffs (Technology Training Associates, Inc. and Back to Basics Family Chiropractic) sued the defendant (Buccaneers Limited Partnership) after they received allegedly unsolicited faxes offering Tampa Bay Buccaneers tickets. The plaintiffs further alleged that the faxes did not comply with the TCPA because they did not include the required opt-out notice.

In a separate but substantially similar lawsuit, however, a different plaintiff (Cin-Q Automobiles, Inc.) had already sued the same defendant over the same faxes. After the other plaintiffs filed a motion for preliminary approval of a settlement, Cin-Q moved to intervene in the other case and to strike the other plaintiffs' class allegations. In doing so, it argued that, unlike its own earlier-filed claims, the other plaintiffs' claims were time-barred. In order to protect the settlement it had negotiated, the defendant opposed the motion to strike the class allegations and argued that the other plaintiffs' claims were not time-barred because it had waived the statute of limitations defense.

Although the Middle District of Florida originally denied Cin-Q's motion to intervene, the Eleventh Circuit reversed the Middle District's holding after concluding that Cin-Q had a right to intervene because there was a risk that Cin-Q would be bound by an unsatisfactory settlement if it was not permitted to intervene. The Eleventh Circuit also noted that it appeared that the settling plaintiffs' counsel had "deliberately underbid the movant in an effort to collect attorney's fees while doing a fraction of the work that the movants' counsel did." It therefore remanded the case back to the district court with instructions to grant the motion to intervene.

On remand, the district court not only granted Cin-Q's motion to intervene but also decertified the settlement class, vacated the preliminary approval order, and struck the class allegations. The court held that the defendant's waiver of the statute of limitations defense "provide[d] the downfall of the

class claims in this instance.” Even though the parties “fiercely contest[ed] whether the plaintiffs’ claims were actually time barred,” the court concluded that the risk that the settling plaintiffs’ claims would be deemed time-barred was reason enough that they could not adequately represent the interests of the putative class, as it provided an increased incentive for them to settle at the expense of other class members. Accordingly, the Court decertified the settlement class and vacated the preliminary approval order.

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