

How Many Texts Equal a “Concrete Injury in Fact?” – Two is Not Enough

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Last year, in *Salcedo v Hanna*, the United States Court of Appeals for the 11th Circuit ruled that receipt of a single unsolicited text message did not establish a “concrete injury in fact” – a [fundamental requirement for standing](#) to bring a Telephone Consumer Protection Act (TCPA) class action. But what about two such texts in a four day period?

That was the question in *Manuel Perez v. Golden Trust Insurance, Inc.*, 2020 U.S. Dist. LEXIS 120819, Case No. 19-24157-Civ-COOKE/GOODMAN, United States District Court for the Southern District of Florida, July 6, 2020. Three weeks after receiving the second text, Mr. Perez brought a TCPA class action arguing that the telemarketing texts were delivered to his cellphone using an automatic telephone dialing system (ATDS). Golden Trust moved to dismiss, arguing that the plaintiff had “not properly alleged that it used an ATDS.”

Wait a minute said U.S. Magistrate Judge Jonathan Goodman. The Court first had to determine whether it had subject matter jurisdiction, and without the plaintiff properly alleging standing to sue, there was no such jurisdiction.

Acknowledging that *Salcedo* was based on a single text message, the Court ruled that the “rationale for finding a lack of injury from one [such] message applies equally [to]... two text messages” received over four days. Judge Goodman noted qualitative differences between the Perez allegations of intangible injuries (e.g., time wasted, aggravation, intrusion, interrupted business calls) and cases where the Eleventh Circuit had found standing. For example, “a cell phone user can continue to use all of the device’s functions, including receiving other messages, while it is receiving a text message.”

Bottom line: the two text messages, which contained “fifty words for the Plaintiff to read,” did not meet the “concrete injury in fact” requirement. Rather, as in *Salcedo*, the alleged injury was “isolated, momentary and ephemeral.” Not enough.

Case dismissed (without prejudice) for lack of subject matter jurisdiction.

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