

## **FTSA Class Action Moves Forward: Court Confirms Rule 23 Does Not Modify Substantive Rights**

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Sharing a recent decision from the Middle District of Florida focusing on procedural rules, specifically Fed. R. Civ. P. 23, which governs class actions, and the FTSA. *Janet Morris v. Lincare, Inc.*, No., 8:22-CV-2048-CEH-AAS, 2024 WL 2702101 (MDFL).

By way of background, Plaintiff Morris initiated this class action for violations of the TCPA and FTSA. Defendant Lincare, Inc. moved to dismiss Plaintiff's Second Amended Complaint (SAC) for a couple of reasons including that Plaintiff provided prior express written consent to be contacted, that the voicemails were exempt, that Plaintiff failed to allege any facts to support an award of injunctive relief and failed to adequately allege actual damages precluding her FTSA claim as a class action.

In deciding Defendant's motion, the Court denied the motion to dismiss regarding the prior express written consent and exemption arguments. However, the Court granted the Defendant's motion concerning the request for injunctive relief finding that Plaintiff's SAC did not demonstrate a real threat of future injury which is necessary for injunctive relief and noted that Plaintiff did not respond or argue in opposition to Defendant's argument. Nice win.

But the Court was not persuaded by Defendant's argument that the FTSA claim fails because Plaintiff does not allege actual damages under Florida Statute § 768.334, which states that "in order to maintain a class action seeking statutory penalties...the class action claimants must allege and prove actual damages."

The Court noted that the Supreme Court has recognized Rule 23 is a procedural rule. Rule 23 merely enables a federal court to adjudicate claims of multiple parties at once. Where a federal rule is one of procedure, it is authorized and valid in all jurisdictions with respect to all claims regardless of its incidental effect upon state-created rights. *Shady Grove v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). The *Shady Grove* Court held that where the question is whether a suit may proceed in federal court as a class action under the requirements of Rule 23, then Rule 23 governs notwithstanding the state law, provided it does not exceed statutory authority or Congress's rulemaking power. Further, this Court noted that the Eleventh Circuit has concluded that Rule 23 does not 'abridge, enlarge or modify any substantive right.'" *Lisk v. Lumber One Wood Preserving LLC*, 792, F.3d 1331 (11<sup>th</sup> Cir. 2015).

Since the FTSA is not substantively modified by Rule 23, then Rule 23 is valid and applies in this action. Considering the allegations of the SAC which include Plaintiff's request for an award of damages for Plaintiff and each member of the Class under the TCPA and/or FTSA, Plaintiff has adequately pleaded the requirements of Rule 23.

So, there you have it. Plaintiff's TCPA and FTSA claims move forward.

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