

Supreme Court Rules TCPA Class Action Not Mooted by Unaccepted Settlement Offer to Named Plaintiff

Article By:

Robert V. Spake, Jr.

Today the **U.S. Supreme Court** [ruled](#) 6-3 that a company's unaccepted offer of complete relief to a named plaintiff in a putative class action does not moot the plaintiff's case. Before the ruling, authored by Justice Ruth Bader Ginsburg, there was disagreement among the Courts of Appeals over whether an unaccepted offer can moot a plaintiff's claim, thereby depriving federal courts of Article III jurisdiction. While not specific to the **Telephone Consumer Protection Act ("TCPA")**, this issue is common to cases involving statutes like the TCPA because damages are statutorily set and thus easily calculated. Under this ruling, a company facing a TCPA class action lawsuit cannot moot the case by offering complete relief to the named plaintiff before class certification.

Background on the Case

In **Campbell-Ewald Co. v. Gomez**, the U.S. Navy hired a nationwide advertising and marketing communications agency to execute a multimedia recruiting campaign that involved text messages. The marketing agency then hired a vendor to generate a list of cellular telephone numbers geared towards the Navy's target audience who had consented to receive solicitations by text message. Under this campaign, the vendor sent text messages to over 100,000 recipients. One of those recipients was the named plaintiff, who alleged that he had not consented to receive the text message, and that the advertising agency violated the TCPA by sending the message (and perhaps others like it).

Before the deadline to file class certification, the advertising agency filed an offer of judgment under Federal Rule of Civil Procedure 68. The agency offered the named plaintiff complete relief – including his costs and \$1,503 per text message that he could show he received. Note that the maximum the plaintiff could recover under the TCPA is \$1,500 per text message plus the costs of filing suit. The plaintiff did not accept the settlement offer and allowed the Rule 68 submission to lapse after the time, 14 days, specified in the Rule.

The take-away from this important Supreme Court decision is that an unaccepted settlement offer has no force. Like other unaccepted contract offers, it creates no lasting right or obligation. Because plaintiff's individual claim was not made moot by the expired settlement offer, the claim retained its vitality during the time to determine whether the case could proceed on behalf of the class.

National Law Review, Volume VI, Number 20

Source URL: <https://natlawreview.com/article/supreme-court-rules-tcpa-class-action-not-mooted-unaccepted-settlement-offer-to>