

MISCELLANEOUS

PLAINTIFF THAT RECEIVES COMPENSATION BEFORE FILING COMPLAINT CANNOT REPRESENT A CLASS

Lepkowski v. CamelBak Products, LLC, ___ F.Supp.3d ___ (N.D. Cal. 2019).

<https://law.justia.com/cases/federal/district-courts/california/candce/4:2019cv04598/345976/31/>

FACTS: Plaintiff Rachel Lepkowski purchased a “spill-proof” water bottle manufactured by Defendant CamelBak Products, LLC. In response to a letter sent by Lepkowski regarding complaints about her water bottle, CamelBak sent her a replacement water bottle along with an unconditional refund check in the amount of \$20.00. However, Lepkowski returned both the check and replacement water bottle and filed a class action complaint against CamelBak alleging violations of various consumer protection laws regarding CamelBak’s “spill-proof” claims.

CamelBak moved to dismiss Lepkowski’s class action alleging lack of standing and failure to allege a concrete injury.

HOLDING: Granted.

REASONING: Lepkowski argued that she was a valid class representative because she returned the replacement water bottle and refund check to CamelBak before filing suit.

The court rejected Lepkowski’s argument, explaining that plaintiffs lack standing to pursue monetary claims when they have already been adequately compensated. Because CamelBak already sent Lepkowski a check and replacement water bottle, she had been compensated and therefore lacked standing.

Plaintiffs lack standing to pursue monetary claims when they have already been adequately compensated.

Additionally, the court was not persuaded by Lepkowski’s argument that she had not been compensated because she rejected CamelBak’s offer. The court noted that courts routinely reject similar arguments because allowing them would render hollow the injury-in-fact requirement of standing. Thus, the court held the fact that Lepkowski did not accept the remediation was immaterial and did not extend the life of the dispute.

COURT AFFIRMS \$5.7M JUDGMENT IN JUNK FAX SUIT

Physicians Healthsource, Inc. v. A-S Medication Sols., LLC, ___ F.3d ___ (7th Cir. 2020)

<https://www.courtlistener.com/opinion/4729638/physicians-healthsource-inc-v-a-s-medication-solutions-llc/>

FACTS: Defendant-Appellant, A-S Medication Solutions, LLC (“AMS”), purchased Allscripts, Inc., acquiring a customer database containing fax numbers of the company’s customers, including Plaintiff-Appellee Physicians Healthsource, Inc. (“PHI”). After

the transaction, AMS sent a fax to Allscripts’s former customers, advertising a new service from AMS and providing contact information. However, AMS never obtained permission from any of the recipients prior to sending the faxes. Additionally, the faxes lacked a disclaimer explaining the recipients’ ability to opt out of future faxes. PHI filed a putative class action suit against AMS under the Telephone Consumer Protection Act (“TCPA”).

The trial court granted PHI summary judgment on liability, denied an evidentiary hearing on damages, and granted PHI statutory damages of \$5,709,000. AMS filed a motion to amend or, in the alternative, reconsider. The trial court denied the motion and entered a distribution plan. AMS appealed.

HOLDING: Affirmed.

REASONING: AMS argued that the trial court erred by never disposing of the purported dispute about who may recover for each of the 11,418 faxes at issue, thus rendering the statutory damages inaccurate.

The court rejected AMS’s argument, explaining that once liability is established and the class informs the court that it seeks only statutory damages, there is no need for an adjudication as to the specific nature of each class member’s damages. The court reasoned that each class member only needed to show that they received the fax and had some connection to the fax machine in order to recover. The court held that this was shown because AMS’s fax log was admitted as evidence and AMS never challenged its validity. Additionally, the parties in the case never disputed how many faxes were sent, or to how many recipients. Accordingly, the court held that once the trial court found that AMS violated the TCPA when it sent each fax, PHI had sufficiently established all that was needed for the trial court to enter the \$5,709,000 judgment against AMS.

BUSINESS CARD WITH FAX NUMBER MAY CONSTITUTE CONSENT TO RECEIVE FAXES

Physicians Healthsource, Inc. v. Cephalon, Inc., ___ F.3d ___ (3d Cir. 2020).

<https://images.law.com/contrib/content/uploads/documents/402/60851/PHI-v.-Cephalon.pdf>

FACTS: Plaintiff-Appellant Physicians Healthsource, Inc. (“PHI”), began receiving faxes from Defendant-Appellee Cephalon, Inc., after Cephalon drug representatives met with a PHI doctor to discuss pharmaceutical drugs. Two faxes were invitations to a dinner meeting program and a lunch product promotion on pain medications that were discussed between the PHI doctor and Cephalon representatives previously. Neither fax had opt-out language. However, it was undisputed that PHI provided its fax number to Cephalon via business cards. PHI filed a putative class action, asserting it was entitled to either its actual monetary losses or statutory damages because Cephalon sent unsolicited faxes that failed to contain opt-out notices.

Cephalon moved for summary judgment, claiming the two faxes were not subject to the Telephone Consumer Protection Act’s (“TCPA”) requirements because they were

RECENT DEVELOPMENTS

PHI argued that express consent related only to telephone calls, whereas express invitation or permission related to faxes.

sent with prior express permission. The trial court granted both of Cephalon's motions. PHI appealed.

HOLDING: Affirmed.

REASONING: PHI argued that express consent related only to telephone calls, whereas express invitation or permission related to faxes. Thus, PHI argued that Cephalon needed to

prove more than the voluntary providing of the fax number to properly meet the burden for summary judgment.

The court rejected PHI's argument, holding that the plain language of the TCPA showed that "express consent" and "express invitation or permission" were interchangeable and both applicable to phone calls and faxes alike. The court further held that prior consent can be deduced from a message-recipient's voluntary provision or knowing release of his number to a message-sender, such that a message is solicited and therefore not prohibited by the TCPA, if the message relates to the reason the number was provided.

Because it was undisputed that PHI voluntarily provided a business card including a fax number to Cephalon and that the two faxes related to prior conversations between Cephalon's drug representatives and PHI's doctor as part of an ongoing business relationship, the court held that PHI gave express consent, invitation, and permission to receive faxes of the related information from Cephalon.