

Offer of Judgment Served Hours Before Motion for Class Certification Filed Moots Telephone Consumer Protection Act (TCPA) Claim

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In ***Barr v. The Harvard Drug Grp., LLC***, 13-62019, 2014 U.S. Dist. LEXIS 79422 (S.D. Fla. June 11, 2014), the court found that an **offer of judgment served via email** mooted the plaintiff's claim despite the filing of a motion for **class certification** later that same day.

The **class action complaint** alleged that the defendant sent faxes in violation of the TCPA. The defendant served an offer of judgment on the plaintiff's attorneys via email on November 27, 2013, at 11:12 am and also via UPS. The defendant offered to pay \$1,500 for each alleged violation of the TCPA, to pay any costs and reasonable attorneys' fees, and to stipulate to an injunction and the entry of a judgment against it. At 3:25 pm that same day, the plaintiff moved for class certification.

Moving to dismiss the case, the defendant argued that the court lacked jurisdiction because the defendant offered the plaintiff full and complete relief and that no controversy exists. The court pointed out that the Eleventh Circuit has not yet ruled whether an offer of full relief eliminates an actual controversy between the parties. Trial courts in the Southern District of Florida, however, have followed the Seventh Circuit on this issue, which held that an offer of full requested relief moots the case.

Under that line of cases, filing a motion for class certification before the offer of full relief is tendered will save the plaintiff's class action complaint from mootness. On the other hand, "a motion for class certification filed after an offer of judgment under the Federal Rule of Civil Procedure 68 had been made does not restore the controversy and the court's jurisdiction." *Id.* at *4 (citations omitted).

In opposing the motion to dismiss, the plaintiff did not argue that the defendant failed to offer the full requested relief, but argued that because the email service was invalid, the motion for class certification was filed first. The court rejected the argument because the plaintiff's attorneys consented to receive papers via electronic means when they submitted the CM/ECF registration form and this consent extends to notices attorneys send between themselves and do not file with the court. *Id.* at *8. The court further noted that Rule 68 only requires the party making an offer of judgment to serve the offer on the opposing party.

In the end, the plaintiff's contrived attempt to get his motion for class certification filed before receiving the offer of judgment in the mail was soundly rejected.

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