



U.S. Supreme Court holds that defendant cannot moot class action by merely offering complete relief sought by named class representative

January 21, 2016

Campbell-Ewald Co. v. Gomez
(No. 14-857, January 20, 2016)

The United States Supreme Court has held that a defendant's unaccepted offer of judgment providing complete relief does not moot a named plaintiff's claim in a putative class action. The Court left open the possibility that a defendant's payment of the complete relief sought by the class representative would moot the case.

The named plaintiff brought a class action under the Telephone Consumer Protection Act against a marketing consultant that had arranged to send text messages recruiting for the United States Navy. The defendant made an offer of judgment under Federal Rule of Civil Procedure 68 (the federal court equivalent of an offer of judgment under California Code of Civil Procedure section 998), providing all of the relief which the plaintiff sought individually. The plaintiff did not accept the offer, and the defendant moved to dismiss the suit as moot, for lack of subject-matter jurisdiction. The district court denied the motion, and the Ninth Circuit held that neither the named plaintiff's individual claims nor the class claims were moot.

The Supreme Court affirmed, holding that the unaccepted offer of judgment was a legal nullity and that an unaccepted settlement offer, even an offer of complete relief, cannot moot the named plaintiff's claim. However, the Court did not decide whether a defendant's payment of complete relief to the named plaintiff would moot the named plaintiff's claim. Chief Justice Roberts' and Justice Alito's dissents advised defendants in this position to do exactly that to moot class actions.

For defendants, the practical lesson of *Campbell-Ewald* is straightforward. Class action defendants should continue making Rule 68 offers of judgment, but deposit the offered funds with the court as well. If the plaintiff rejects the offer, the defendant should move for entry of judgment and ask the court either to enter judgment for the plaintiff or enter a judgment of dismissal for the defendant because the case is moot. The *Campbell-Ewald* majority opinion leaves open both options.

More Information

For further information about this case, please contact Horvitz & Levy partners John Querio or Peder Batalden (818.995.0800).