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## BLOGS

Class Actions

# Class Certification Denied in Customer's Federal Lawsuit Regarding Unsolicited Text Messages

A federal court in California denied class certification to a customer who received an unwanted text message from a promotional campaign by a franchisee. *Ryan v. Jersey Mike's Franchise Sys.*, 2014 U.S. Dist. LEXIS 42677 (S.D. Cal. Mar. 28, 2014). The plaintiff, Ryan, was one of 7,659 of the franchisee's customers who received a promotional text message relating to a loyalty card each obtained from the store. Ryan claimed that he had not given consent for such a text message, and he brought suit against both the franchisor and franchisee under the Telephone Consumer Protection Act and the California Business & Professions Code. The defendants argued that the customers who provided their telephone numbers when receiving the loyalty card consented to receiving the promotional text messages. In a sworn deposition, however, Ryan repeatedly testified that he had not provided his phone number, although he also testified that he did not remember other details of the conversation with the cashier.

The defendants filed a motion to deny class certification, arguing that because Ryan testified he had not volunteered his phone number, he could not represent a class of customers who had provided them. Ryan then filed a new affidavit attesting that he did not actually deny providing his phone number, but he simply was unable to remember either way. He argued that his inability to remember details of his encounter with the cashier made him more typical of the average customer, not less so. The court rejected Ryan's arguments and concluded that his inconsistent and uncertain testimony was insufficient to meet the "typicality" requirement for class certification. One could not conclude that his interest aligned with the interests of either class of customer, and no amount of discovery would change that. Based on this finding and the credibility concerns raised by the named plaintiff's inconsistent testimony, the court granted the defendants' motion.

## Related People

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