



## Alerts

### Breaking News: U.S. Supreme Court Decides Whether Claims are Moot in Gomez

January 20, 2016

*Consumer Financial Services Alert*

The Supreme Court affirmed the Ninth Circuit's ruling and held that Defendant's unaccepted settlement offer or offer of judgment did not moot Plaintiff's case. *Campbell-Ewald Co. v. Gomez*, — U.S.— (Jan. 20, 2016).

Plaintiff filed a class action, alleging a violation of the Telephone Consumer Protection Act (TCPA) based on one text message sent using an automatic telephone dialing system without Plaintiff's prior express consent. Plaintiff sought \$1,500 in damages for willfully violating the TCPA plus costs and Plaintiff requested an injunction.

Prior to the agreed-upon deadline for Plaintiff to file a motion for class certification, Defendant made Plaintiff an offer to settle individually. Defendant also served an offer of judgment pursuant to Rule 68. Defendant offered to pay Plaintiff \$1,503 plus costs and proposed to stipulate to an injunction wherein Defendant would be barred from sending text messages in violation of the TCPA. Defendant, however, denied liability and the allegations in the complaint. Defendant also disclaimed the existence of grounds for the imposition of an injunction. Plaintiff did not accept the offer and allowed the 14 day period under Rule 68 to lapse.

Defendant then filed a motion to dismiss, arguing that there was no case or controversy under Article III because its offer mooted Plaintiff's claim. The District Court denied Defendant's motion. The court held that Plaintiff was not dilatory in filing a motion for class certification. Following limited discovery, Defendant filed a motion for summary judgment based upon an unrelated immunity argument; Defendant believed that it was entitled to immunity because it was a contractor acting on behalf of the Navy. The District Court granted Defendant's motion and Plaintiff appealed. The Ninth Circuit reversed the District Court's ruling on the immunity issue. The Supreme Court granted certiorari.

The Supreme Court held that "an unaccepted offer or offer of judgment does not moot a plaintiff's case, so the District Court retained jurisdiction to adjudicate [Plaintiff's] claim." However, the Court limited its holding by stating that "[w]e need not, and do not, now decide whether the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount."

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#### Service Areas

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The dissenting opinions from Chief Justice Roberts and Justice Alito both highlight the aforementioned limitation on the Court's holding. Chief Justice Roberts states that "[t]he good news is that this case is limited to its facts. The majority holds that an *offer* of complete relief is insufficient to moot a case. The majority does not say that *payment* of complete relief leads to the same result." Justice Scalia and Justice Alito joined in Chief Justice Roberts' dissent, but Justice Alito also drafted his own dissent to further emphasize his point. Justice Alito says "[w]hile I disagree with [the majority decision] on these facts, I am heartened that the Court appears to endorse the proposition that a plaintiff's claim *is* moot once he has 'received full redress' from the defendant for the injuries he has asserted . . . Today's decision thus does not prevent a defendant who actually pays complete relief—either directly to the plaintiff or to a trusted intermediary—from seeking dismissal on mootness grounds." Further, Justice Thomas concurred in the majority, but he asserted that if there was a tender of the settlement amount, then the law of tenders from the common law could apply to moot a claim.

Thus, the Supreme Court has saved for another day whether tendering payment with an offer of complete relief will moot a Plaintiff's claim.

For more information, please contact [John P. Ryan](#) or your regular [Hinshaw attorney](#).