

VOL. 16, NO. 104**MAY 31, 2016****Telemarketing****Settlement Denial May Signal Increased Federal Class Action Robocall Scrutiny**

A recent denial of a Telephone Consumer Protection Act settlement between Navy Federal Credit Union and a group of consumers may signal the increased scrutiny placed on class actions by federal judges, a class action attorney told Bloomberg BNA May 27.

"Given the high volume of TCPA class action filings" and "exorbitant eight figure settlements," federal courts are becoming skeptical of every "facets of the deal including the manner of notice," David Almeida, partner at Sheppard, Mullin, Richter & Hampton LLP in Chicago, said.

Judge Josephine L. Staton of the U.S. District Court for the Central District of California denied the motion for preliminary approval of class action settlement May 26 due to "a notable deficiency as to the scope of the proposed release" of claims (*Munday v. Navy Federal Credit Union*, C.D. Cal., No. 15-cv-01629, *order denying proposed settlement* 5/26/16).

Here, the court said that the release language was overly broad and wasn't limited to the plaintiff's claims in the complaint.

"The typical release language in a class action settlement tracks the allegations in the complaint" and "only extends to claims (alleged or which could have been alleged) arising out of the facts at issue," Almeida said.

In this case, the plaintiffs alleged that Navy Federal Credit Union used an automated telephone dialing sys-

tem to place calls to their mobile phones without express consent in violation of the TCPA, 47 U.S.C. § 227. Subsequently, the parties filed a notice of preliminary settlement Mar. 25 for \$2.75 million.

Broad Release Notice. Rather than evaluating the settlement "as a whole," Judge Staton denied the settlement "outright on the basis of the release alone," Almeida said.

In this case, the release included a "without limitation clause" that made the notice "unclear whether there is any real limitation on the release of claims of any and every kind against the defendant," the court said.

Lawyers need to pay attention to detail when drafting settlements in class cases. Almeida said that the release in this case was "simply inartfully drafted."

This decision is "a good example of federal judges taking a more detailed and in depth review of class action settlements," he said.

Lemberg Law LLC represents the named plaintiff. Hunton and Williams LLP represents Navy Federal Credit Union.

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