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Cellphone Users Win Cert. In GE Capital Spam-Calling Suit

By **Beth Winegarner**

Law360, San Francisco (March 26, 2015, 7:36 PM ET) -- A California federal judge on Thursday certified a nationwide class of cellphone users who allege they received multiple unwanted debt collection calls from GE Capital Retail Bank even though they weren't customers, which they say violated the Telephone Consumer Protection Act.

U.S. District Court Judge John A. Houston certified the class, which includes people who received at least two collections calls using an autodialer or a prerecorded voice between August 22, 2008, and August 22, 2012. However, he declined to certify a class seeking injunctive relief, noting that the plaintiffs are seeking individual monetary damages and that GE claims any wrongful acts on its part were inadvertent.

The class would include those who received multiple calls and whose information in GE Capital's records was marked with any of a number of terms, including "wrong number," "third party" or "wrong party." People who expressly gave GE Capital permission to call them are excluded, according to the ruling.

GE Capital attempted to dodge the certification by arguing that the class definition presented in the motion to certify was different from the one in the most recent amendment of the lawsuit. Judge Houston didn't buy it.

"This court agrees with plaintiff that the new definition is simply a narrower version of the class definition presented in the [third amended complaint], which is allowable," he said in his ruling. "Therefore, this court finds defendant's initial arguments unavailing."

Judge Houston also rejected GE Capital's argument that it would be too difficult to ascertain the class and that the "wrong number" search terms wouldn't help because plenty of people attempt to evade debt calls by claiming the caller dialed the incorrect number. The judge said the class members could likely be determined by going through GE Capital's business records, and class members will be able to report whether they received prerecorded calls from the bank or its agent.

Although it's not clear how many will be included in the class, Judge Houston said the plaintiffs made their case for numerosity, noting that "it is clearly reasonable that at least 40 class members or more can be identified from defendant's 340 million account holders."

Plaintiffs' attorney Abbas Kazerounian of Kazerounian Law Group told Law360 Thursday that "we are delighted and, of course, agree with the ruling."

Representatives for GE Capital didn't respond to requests for comment on the ruling.

Lead plaintiff Muhammed Abdeljalil launched his proposed class action in August 2012. According to the motion for class certification, Richard Springer has taken over as lead plaintiff; he received 25 calls from the defendants. At least 23 of those were placed after GE Capital

became aware that his phone number didn't belong to the customer it was trying to reach, the motion said.

Springer says he never gave his cellphone number to and wasn't a customer of GE Capital, but that he did apply for a Wal-Mart credit card around the time he started receiving the calls, according to the motion.

The plaintiffs are represented by Abbas Kazerounian and Jason A. Ibey of Kazerounian Law Group and by Joshua Swigart of Hyde & Swigart.

GE Capital is represented by Craig Allen Taggart and Karla J. Kraft of Stradling Yocca Carlson & Rauth PC.

The case is Abdeljalil v. General Electric Capital Corporation, case number 3:12-cv-02078, in the U.S. District Court for the Southern District of California.

--Editing by Emily Kokoll.

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