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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bursor & Fisher Wins \$89M In Fees For Robocall Class Win

By Jack Queen

Law360 (April 20, 2020, 6:47 PM EDT) -- A California federal court has awarded \$89 million in attorney fees to consumers in a robocalling class action against a debt collector, finding that Bursor & Fisher PA deserved a sizable cut of the \$267 million judgment for taking on the risky and hard-fought case.

U.S. District Judge Yvonne Gonzales Rogers said Friday that debt collector Rash Curtis & Associates' alleged "sandbagging" throughout the litigation and the costs of the company's expected appeal justified awarding Bursor & Fisher a third of the total judgment, well above the typical 25% benchmark in Telephone Consumer Protection Act cases.

"Having reviewed the record in this matter, the court agrees that class counsel faced significant litigation risk during several stages," Judge Rogers said. "The record reveals that the magistrate judge overseeing discovery disputes in this matter referenced that it was one of the most contentious during her judicial tenure."

Class certification against debt collectors is also difficult in the TCPA context, Judge Rogers said, requiring thorough investigation into whether consumers gave "express consent" to be robocalled when originally taking out their loans.

"Class counsel also highlights that there was also substantial risk due to Rash Curtis sandbagging, discovery abuse, and false testimony and that there was substantial risk at trial," Judge Rogers said, noting she had previously warned Rash Curtis that its "blatant delaying tactics" would not be tolerated.

Judge Rogers said the more than \$6,600 awarded to each consumer is an "extraordinarily good" result for a robocalling case. Lead plaintiff Ignacio Perez's attorneys said the judgment was the largest per-class member award in any TCPA case, she noted.

Attorney Scott Bursor touted the size of the judgment in a statement provided to Law360 on Monday.

"The court recognized the result we achieved was 'extraordinarily good,' more than triple the largest TCPA settlement to date, and more than 2,000 times better on a per class member basis," Bursor said, referring to a **\$75.5 million settlement** in another case against Capital One.

Counsel for Rash Curtis did not immediately respond to requests for comment Monday.

The case dates to 2016, when Perez and two others who voluntarily exited the suit before trial accused California-based Rash Curtis of using "repeated robocalls, prerecorded voice messages and autodialed calls to threaten and harass consumers in an attempt to collect" consumer debts.

In May 2018, jurors found Rash Curtis had made more than 500,000 calls to class members with several types of automatic dialer systems, including 14 calls to Perez. Judge Rogers **awarded**

consumers \$500 for each TCPA violation last September.

Rash Curtis sought to slash the \$267 million judgment down to \$530,000, arguing consumers should only get \$1 per violation. The sheer size of the verdict was disproportionate to Rash Curtis' offenses and unconstitutionally excessive, the company said.

Rash Curtis also argued the case was tainted by the alleged misconduct of Perez's attorneys. The company claimed class counsel misled the court about pretrial settlement negotiations, obtained confidential business records by underhanded means and made false statements during closing arguments, among other alleged misdeeds.

Judge Rogers found none of those claims met the high bar for attorney misconduct, noting she had ruled against Rash Curtis on several of those points throughout the case. Rash Curtis also missed opportunities to raise those issues at trial, Judge Rogers said.

Bursor said Rash Curtis' claims were meritless.

"When you win big like we did, the other side always makes extreme arguments and attacks," he said. "We are grateful that Judge Rogers and her staff put in the hard work to issue a 40-page order carefully analyzing and rejecting every one of those attacks."

Judge Rogers acknowledged that the size of the award was "significant." But she said this merely reflected the fervor with which Congress sought to stamp out robocalling harassment through the TCPA. It was not the court's role to draw the line, she said.

"Rash Curtis' request that the award be reduced from \$267 million to \$534,698 begs the question: why is that amount fair or constitutional? Why is \$1.5 million not more fair? Or \$15 million? Or \$150 million? At a certain point it becomes too big to collect," she said. "We still know not where that threshold is, nor is it the court's province to speculate."

Perez and the class are represented by Scott Bursor, L. Timothy Fisher and Yeremey O. Krivoshey of Bursor & Fisher PA.

Rash Curtis is represented by Mark E. Ellis, Anthony P.J. Valenti and Lawrence K. Iglesias of Ellis Law Group LLP.

The case is McMillion et al. v. Rash Curtis & Associates, case number 4:16-cv-03396, in the U.S. District Court for the Northern District of California.

--Additional reporting by Allison Grande. Editing by Jack Karp.