

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10199

SUSAN DRAZEN,
on behalf of herself and other persons similarly situated,

Plaintiff-Appellee,

Godaddy.com, LLC,
a Delaware Limited Liability Company,

Defendant-Appellee,

versus

MR. JUAN ENRIQUE PINTO,

Movant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:19-cv-00563-KD-B

Before WILSON, BRANCH, and TJOFLAT, Circuit Judges.

TJOFLAT, Circuit Judge:

We have in this case an argument over the meaning of coupon settlements. But, because there is an Article III standing problem with the class, we must vacate the District Court’s approval of class certification and settlement in this case and remand for the opportunity to revise the class definition.

I.

In August 2019, Susan Drazen filed a complaint against GoDaddy.com, LLC (“GoDaddy”) in the Southern District of Alabama alleging that GoDaddy had violated the Telephone Consumer Protection Act of 1991 (“TCPA”) when it allegedly called and texted Drazen solely to market its services and products through a prohibited automatic telephone dialing system. *See* 47 U.S.C. § 227(a)(1), (b)(1)(A). Her case was consolidated with another case that had been litigated by Jason Bennett in the District

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of Arizona,¹ Case No. 2:16-cv-03908 (D. Ariz. 2016), and a third related action filed by John Herrick was “incorporated into and resolved” by the resolution of this case, Case No. 2:16-cv-00254 (D. Ariz. 2016).²

Drazen and the plaintiffs in the two other related cases, Bennett and Herrick, purported to bring a class action on behalf of similarly situated individuals. After negotiating with GoDaddy, the three plaintiffs submitted a proposed class settlement agreement to the District Court. The class was defined as follows:

- (a) All persons within the United States who received a call or text message to his or her cellular telephone from Defendant from November 4, 2014 through December 31, 2016.
- (b) Excluded from the term “Settlement Class” are:
 - (1) the trial judges presiding over the Actions;
 - (2) Defendant, as well as any parent, subsidiary, affiliate or control person of Defendant, and the officers, directors, agents, servants or employees of Defendant;
 - (3) the immediate family of any such person(s);
 - (4) any Settlement Class Member who

¹ Bennett and Drazen filed a joint motion to transfer venue for Bennett’s case to the Southern District of Alabama and to consolidate their cases. The District Court granted that motion.

² Bennett alleged that he received unsolicited calls from GoDaddy on his cellphone. Herrick alleged that he received promotional text messaging from GoDaddy on his cellphone.

timely and properly opts out of the settlement;
and (5) Class Counsel, their employees, and their
immediate family.

The proposed settlement was structured so that GoDaddy would make available \$35 million in settlement funds for claims that were approved and for settlement costs. There were two compensation options for class members, both subject to pro rata reduction in the event that too many class members opted into the class. Class members could either receive \$35 in cash or a \$150 voucher to be used exclusively at GoDaddy. Based on the proposed settlement, class counsel agreed to ask for no more than 30% in attorneys' fees in addition to reimbursement of reasonable litigation costs and expenses. Class counsel also agreed to ask the District Court to award each named plaintiff \$5,000, which GoDaddy did not oppose.

In response to this motion, the District Court ordered briefing on the application of *Salcedo v. Hanna*, 936 F.3d 1162, 1168 (11th Cir. 2019), to the class as proposed in the settlement agreement. We held in *Salcedo* that receipt of a single unwanted text message was not a sufficiently concrete injury to give rise to Article III standing, *Salcedo*, 936 F.3d at 1168, and the proposed class definition included individuals who received only one text message from GoDaddy. In their briefing, the parties put forth a new class definition:

- (a) All persons within the United States to whom, from November 4, 2014 through December 31, 2016, Defendant placed a voice or text message call to their

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cellular telephone pursuant to an outbound campaign facilitated by the web-based software application used by 3Seventy, Inc., or the software programs and platforms that comprise the Cisco Unified Communications Manager.

- (b) Excluded from the term “Settlement Class” are (1) the trial judges presiding over the Actions; (2) Defendant, as well as any parent, subsidiary, affiliate or control person of Defendant, and the officers, directors, agents, servants or employees of Defendant; (3) the immediate family of any such person(s); (4) any Settlement Class Member who timely and properly opts out of the settlement; and (5) Class Counsel, their employees, and their immediate family.

After considering the briefing of the parties, the District Court, citing our decision in *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1273 (11th Cir. 2019), determined that only the named plaintiffs must have standing. So, according to the District Court, the standing problem could be resolved by removing Herrick, the text-message only recipient, from being a named plaintiff. As to “absent class members,” who may have only received a single text message, the District Court noted that these individuals would only make up

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