



## News Release

For Immediate Release

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### **DRI Files Amicus Brief with Supreme Court in *Campbell-Ewald v. Gomez***

*Class Action Case Involves Naval Recruitment Contractor*

**CHICAGO – (July 22, 2015)**— DRI – The Voice of the Defense Bar has filed an amicus brief with the U.S. Supreme Court on behalf of the petitioner in *Campbell-Ewald v. Gomez*. DRI’s brief was submitted through DRI’s Center for Law and Public Policy.

The U.S. Navy awarded a contract to Campbell-Ewald Company to develop and conduct a mobile marketing campaign that included sending out a recruitment-related text message to about 150,000 individuals between the ages of 18-24. The plaintiff alleges that at the age of 40, he received the text message without his consent. He filed suit against Campbell-Ewald on behalf of himself and a putative class of 100,000 individuals seeking damages for violation of the federal Telephone Consumer Protection Act (“TCPA”).

The TCPA enables an individual claimant to obtain up to \$500 in “damages” for an unintentional violation of the act without having to prove that the violation caused any actual harm. This can result in substantial monetary liability (and lucrative attorney fees for plaintiff class counsel) when an alleged violation involves tens of thousands of individuals.

Before the plaintiff sought class certification, Campbell-Ewald offered the sole named plaintiff complete monetary relief, but the plaintiff declined. Campbell-Ewald contends that its offers of complete relief mooted both the plaintiff’s individual and class claims, but the Ninth Circuit disagreed. The Ninth Circuit also rejected Campbell-Ewald’s argument that it is entitled to derivative sovereign immunity since if the Navy had sent out the text message itself, sovereign immunity would bar a TCPA suit against the United States.

DRI argues in its amicus brief that the Supreme Court should hold that a putative class action is moot, and must be dismissed, where the sole named plaintiff’s claim is mooted prior to class certification. Allowing such litigation to proceed would violate the Article III case-or-controversy requirement since the plaintiff no longer has a “personal stake” in his own suit. It also would conflict with Rule 23 class-certification requirements, including the requirement that the named plaintiff be able to fairly and adequately represent the interests of the class.

In addition, DRI argues that Campbell-Ewald is entitled to derivative sovereign immunity under a line of cases going back to *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940). The brief urges the Court, insofar as it addresses derivative sovereign immunity, to hold that derivative sovereign immunity would apply if a similar claim, filed against the United States, would be barred by sovereign immunity, and the contractor was acting within the scope of its contractual relationship with the federal government when the claim arose.

DRI was joined on the amicus brief by the Professional Services Council, a national association of companies that perform professional and technology services for the Department of Defense and other federal departments and agencies.

Brief co-authors Lawrence S. Ebner, Lisa Norrett Himes, Jessica Abrahams, Tami Lyn Azorsky, and Robin S. Conrad of the firm Dentons US LLP in Washington, DC are available for interview or expert comment through DRI's Communications Office.

For the full text of the amicus brief, [click here](#).

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### **About DRI – The Voice of the Defense Bar**

*For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to [www.dri.org](http://www.dri.org).*