

Grindr Can't Shake Suit Over Lack Of Contract Opt-Out

By **Natalie Olivo**

Law360, New York (April 28, 2016, 6:22 PM ET) -- Grindr can't shake most claims in a proposed class action accusing the online dating service for gay men of violating state laws by not giving users of a premium service a contract opt-out, a California federal judge ruled Wednesday, saying the consumers have sufficiently alleged economic injury. U.S. District Judge Gonzalo P. Curiel denied the dating app company's motion to dismiss claims under California's Dating Services Contracts Act and Unfair Competition Law, finding named plaintiff Mark Howell properly alleged Grindr LLC's \$11.99-per-month contract for its premium service violates state laws because it fails to include a three-day period to rethink joining the service or provide contact information for cancellation. Howell claimed he suffered monetary injuries because he had not been given a refund for the unused portion of his canceled contract.

"The court concludes that plaintiff has sufficiently alleged that his economic injury was a result of a violation of the statute and sufficient for the court to draw a reasonable inference that defendant is liable for the purported misconduct," Judge Curiel said in his Wednesday order.

Judge Curiel dismissed Howell's claim alleging fraudulent conduct in violation of the California Business and Professions Code, since Howell had not opposed Grindr's dismissal arguments that the claim did not identify a misleading advertisement. However, Judge Curiel rejected Grindr's contention that the complaint's allegations are based on "fraud or a unified course of fraudulent conduct."

Howell sued the company in June, saying its failure to include a specific three-day opt-out provision and cancellation contacts required by the DSCA in users' payment contracts contravenes the law and makes those contracts void. Howell said he signed up for Grindr Xtra in 2013 for an \$11.99 monthly charge and seeks to recover those fees for himself and the potentially hundreds of thousands of other Californians who signed up for paid accounts in the past four years.

Howell began having problems with his account in October 2014 and attempted to cancel it by email because Grindr did not designate an address for cancellation, court filings said.

The dating service "eventually canceled [Howell's] account after numerous email exchanges," but Howell was required to pay his subscription fee for that month despite his contention that the contract was noncompliant with state laws and could be canceled at any time, court filings said.

Grindr urged Judge Curiel to toss the suit **in August**, saying the DSCA, which was enacted in 1989, was intended to protect matchmaking service customers from high-pressure tactics in face-to-face presentations and never anticipated the existence of online dating.

Judge Curiel dismissed Howell's first amended complaint **in December** but gave him another shot to allege injuries, noting that although Howell sufficiently asserts Grindr violated the DSCA, his complaint did not allege a resulting injury, and therefore he lacks standing.



- [Add to Briefcase](#)
- [Printable Version](#)
- [Rights/Reprints](#)
- [Editorial Contacts](#)

Documents

[Order](#)

Related

Sections

- [California](#)
- [Class Action](#)
- [Consumer Protection](#)
- [Media & Entertainment](#)

Case Information

Case Title

[Howell v. Grindr LLC](#)

Case Number

3:15-cv-01337

Court

California Southern

Nature of Suit

Other Statutory Actions

Judge

[Gonzalo P. Curiel](#)

Date Filed

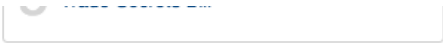
June 18, 2015

Law Firms

- [Cooley](#)
- [Hyde & Swigart](#)
- [Kazerouni Law Group](#)

Most Popular

- 1 [22 Firms Win Top Marks From GCs On AFAs](#)
- 2 [5 Ways BigLaw Is Changing How Attorneys Work](#)
- 3 [5 Things To Know About The Defend Trade Secrets Act](#)
- 4 [5 Ways Firms Can Add Value Without Increasing Costs](#)
- 5 [House Overwhelmingly Passes Federal Trade Secrets Bill](#)



Addressing Grindr's arguments about the DSCA, Judge Curiel said the California Legislature's lack of anticipation of smartphone apps when it passed the DSCA in 1989 doesn't mean the law isn't applicable.

Howell filed his second amended complaint later that month, alleging that more than 10 days had passed since his contract was canceled and he had not been refunded any portion of his subscription fee.

Grindr shot back at Howell's amended complaint in February, saying Howell failed to allege an injury and "again refers opaquely to the 'cancellation' of his subscription after a year of using the app, while refusing to provide any facts about that 'cancellation' — even facts that should be plainly within plaintiff's control."

Judge Curiel on Wednesday disagreed with Grindr, saying that this time around, Howell sufficiently pled an injury resulting from the dating service's alleged violations of the DSCA.

"We are happy with the order and think that Judge Curiel was spot on," Abbas Kazerounian, an attorney representing Howell, told Law360 on Thursday.

A representative for Grindr did not respond to a request for comment Thursday.

Howell is represented by Abbas Kazerounian and Matthew M. Loker of [Kazerouni Law Group APC](#), Todd M. Friedman of the Law Offices of Todd M. Friedman PC, and Joshua B. Swigart of [Hyde & Swigart](#).

Grindr is represented by Mazda K. Antia, Darcie A. Tilly and Craig E. Tenbroeck of [Cooley LLP](#).

The case is Howell v. Grindr LLC, case number [3:15-cv-01337](#) in the U.S. District Court for the Southern District of California.

--Additional reporting by Steven Trader and Jody Godoy. Editing by Richard McVay and Aaron Pelc.

Related Articles

[Grindr Contract Opt-Out Suit Short On Facts, Judge Says](#)

[Grindr Urges Court To Nix Class Action Over Contract Opt-Out](#)