

Law Offices Win Cert. In Digital Receptionist Billing Suit

By **Hailey Konnath**

Law360 (April 24, 2020, 10:53 PM EDT) -- An Oregon federal judge on Friday certified a class of law offices accusing a virtual receptionist service of misleading billing practices, ruling that the fact that a small number of the service's clients may have known its true billing practices doesn't sink their certification bid.

Portland-based Ruby Receptionists Inc. provides telephone answering and messaging services to small businesses, many of which are small law firms or solo practitioners. The law offices claim in their suit that Ruby Receptionists failed to disclose to its clients that it rounds up when it calculates so-called "receptionist minutes," which are used in billing. Ruby also didn't tell its clients it charges for the time that callers spend on hold, according to named plaintiffs McKenzie Law Firm PA and Oliver Law Offices Inc.

U.S. District Judge Michael H. Simon on Friday certified a nationwide class of 18,000 of Ruby's clients that received receptionist services from November 2012 to May 2018, according to the order.

Ruby had argued that the class cannot be ascertained, because some class members may have understood its actual billing practices and therefore wouldn't have legitimate breach-of-contract claims.

Judge Simon said that while he agrees those who suffered no harm wouldn't have claims, the existence of a few customers who suffered no harm doesn't pose an obstacle to class certification.

"Ruby can present evidence about the knowledge of the individual customers at trial or otherwise," the judge said.

According to the November 2018 complaint, Ruby's clients pay for a set number of receptionist minutes per month for a fixed monthly fee and are charged for any additional minutes. Oliver Law Offices says it contracted with Ruby from 2012 to 2013, and McKenzie Law Firm had a contract with the company from 2016 to 2018.

Specifically, the firms allege that Ruby rounds up the duration of a call to the next 30-second increment. That means a 10-second call is billed for 30 seconds, or half of a receptionist minute, according to the suit.

The firms are alleging breach of contract, as well as breach of good faith and fair dealing and unjust enrichment.

Keith S. Dubanevich, counsel for the class, told Law360 on Saturday, “We are pleased with the court’s well-reasoned opinion and look forward to the trial this fall.”

Ruby didn't immediately respond to a request for comment.

The plaintiffs are represented by Keith S. Dubanevich and Cody Berne of Stoll Berne PC, Laurence D. King, Matthew B. George and Mario M. Choi of Kaplan Fox & Kilsheimer LLP, Robert I. Lax of Lax LLP, Jon M. Herskowitz of Baron & Herskowitz and Gregory J. Brod of Brod Law Firm PC.

Ruby Receptionists is represented by Andrew R. Escobar and Austin Rainwater of DLA Piper.

The case is McKenzie Law Firm PA et al. v. Ruby Receptionists Inc., case number 3:18-cv-01921, in the U.S. District Court for the District of Oregon.

--Editing by Nicole Bleier.