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User Says Robinhood Is Trying To 'Wipe Out' Class Claims

By **Philip Rosenstein**

Law360 (March 27, 2020, 8:44 PM EDT) -- A Robinhood customer moved for a temporary restraining order in one of several class actions filed against the online trading app after users experienced significant issues with account access across two trading days, saying the company has sought to "wipe out" the class' claims with a \$75 credit contingent on signing a release.

Travis Taaffe, who **filed a complaint** against Robinhood Markets Inc. on March 4 in the U.S. District Court for the Middle District of Florida, filed a motion for a temporary restraining order and preliminary injunction on Thursday. He is asking the court to block Robinhood from sending "misleading communications to prospective class members," require the company to notify its users of the class action lawsuit and void any existing releases that have been entered into by prospective class members.

Robinhood filed a response on Friday, saying that the motion was "unnecessary," asserting that it would not seek to block any customer from joining a class action lawsuit.

"Robinhood is voluntarily providing compensation to affected customers that reached out to us based on a case-by-case review of data," a spokesperson for Robinhood told Law360. "We are doing so as quickly as possible because we believe it is in our customers' best interests to receive compensation now — without the burdens of a litigation process. The plaintiff's assertion that we intend to preclude any customers from participating in any pending class action is inaccurate."

However, Taaffe outlines in his motion that his counsel, led by his father Michael Taaffe, were made aware of communications from Robinhood to its customers that show that "defendants were attempting to undermine the rights of [the] putative class members," which he says could number over 10 million.

"Defendants are attempting to mislead the putative class members into unknowingly waiving their rights to participate in the class action — whether they know it exists or not — in exchange for as little as a \$75 credit," Thursday's motion said. "Defendants' conduct must not be allowed to continue."

In its response, Robinhood said there was no intention to enforce a release barring any customer's involvement in a proposed class action lawsuit, and that the releases were instead meant to address lawsuits brought by individuals.

"Robinhood has no intention of enforcing the release to prohibit any customer from participating in this or any other putative class action and is prepared to enter a stipulation to that effect," Robinhood said in its response. "Plaintiff's motion is therefore unnecessary."

Michael Taaffe told Law360 the claims outlined in the releases Robinhood sent to certain users are very similar, if not identical, to those brought in the class action.

"What's interesting is that all of a sudden now that there is something filed they're willing to stipulate [the release doesn't address] the class action claims," Michael Taaffe told Law360. "Before that they weren't even willing to talk to us, so we had no choice but to file the application for a TRO."

Travis Taaffe's filing explains his counsel was made aware that starting within 36 hours before the motion was filed, Robinhood began communicating with users in an attempt to "obtain a waiver of the claims brought in this case" by offering a "goodwill credit of \$75." The credit would be contingent on the user signing a "DocuSign" document, according to the motion.

"We view this type of activity by Robinhood as a calculated attempt to wipe out users' class action claims without informing the users that they can instead participate in the class action should they so choose," Michael Taaffe said in a statement.

The \$75 payout is a baseline, according to a source knowledgeable about the matter, and for individual cases where ample data is available the payout could be higher.

Travis Taaffe filed his complaint in early March after users and customers were unable to access their accounts from 9:33 a.m. through the end of the trading day at 4 p.m. on March 2. Robinhood's systems continued to experience limited issues on March 3. On March 2, the Dow Jones Industrial Average rose more than 1,294 points, the largest point gain in history at the time. In parallel, the S&P 500 gained 136 points and the Nasdaq was up 384 points.

Travis Taaffe is alleging breach of contract, breach of implied warranty of merchantability and negligence, and seeks to recover damages suffered as a result of the outage and attorney fees, as well as injunctive relief whereby Robinhood would be required to "implement adequate redundancy" to avoid another such crash of their systems.

Michael Taaffe told Law360 shortly after the complaint was filed that more causes of action, including gross negligence, could be added to the case following the discovery process as the class assesses whether Robinhood had any prior warnings that its systems could face these types of issues.

Robinhood admitted the downtime, with its founders saying in a statement shortly after the outages that "multiple factors contributed to the unprecedented load that ultimately led to the outages. The factors included, among others, highly volatile and historic market conditions; record volume; and record account sign-ups."

As of March 18, five **other cases** had been filed against Robinhood over the outages in California state and federal court.

Robinhood is represented by Dennis Waggoner of Hill Ward & Henderson PA, and Maeve O'Connor, Elliot Greenfield and Brandon Fetzer of Debevoise & Plimpton LLP.

Travis Taaffe is represented by Michael S. Taaffe, Michael D. Bressan and Jarrod J. Malone of Shumaker, Loop & Kendrick LLP.

The case is Travis Taaffe v. Robinhood Markets Inc. et al., case number 8:20-cv-00513, in the U.S. District Court for the Middle District of Florida.

--Editing by Amy Rowe.