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Ninth Circuit: Lost interest of under $4 sufficient to confer standing in consumer class action

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Takeaway: When a company discovers it has been imposing improper charges, it might proactively seek to remedy the situation by refunding the charges. To avoid litigation, however, the company must consider including interest in those payments. A recent decision of first impression by the Ninth Circuit shows that lost interest in an amount of under $4 is sufficient to confer standing to support a putative class action.

In *Van v. LLR, Inc*., --- F.3d ---, No. 19-35242, 2020 WL 3443930 (9th Cir. June 24, 2020), Katie Van, seeking to represent herself and a putative class of Alaska residents, brought suit against Defendants LLR, Inc. and LuLaRoe, LLC (collectively, "LuLaRoe"), alleging that LuLaRoe illegally charged customers sales taxes even though they lived in jurisdictions that did not require sales taxes to be paid. She alleged that LaLaRoe failed to reimburse Ms. Van and the putative class "for the full amount of their damages," asserting claims for conversion, misappropriation, and for violations of the Alaska Unfair Trade Practices and Consumer Protection Act.

As the result of another lawsuit against LuLaRoe alleging similar claims, LuLaRoe had refunded the amount of charges to affected customers (including Ms. Van). Accordingly, LaLaRoe moved to dismiss, arguing that Ms. Van lacked standing, on the ground that she did not suffer an injury in fact. The district court dismissed the lawsuit, but the Ninth Circuit reversed.

The amount of her refund was not insubstantial – she was refunded a total of $531.25 for improper sales tax charges. But her refund did not include the interest on those improper charges, which amounted to less than four dollars ($3.76).

The Ninth Circuit stated: "This case requires us to address whether the temporary deprivation of money gives rise to an injury in fact for purposes of Article III standing. We agree with other circuits that '[t]he inability to have and use money to which a party is entitled is a concrete injury.'" *Id*. at *1 (quoting *MSPA Claims 1, LLC v. Tenet Fla., Inc*., 918 F.3d 1312, 1318 (11th Cir. 2019)). "This is so because '[e]very day that a sum of money is wrongfully withheld, its rightful owner loses the time value of the money.'" *Id*. (quoting *Habitat Educ. Ctr. v. U.S. Forest Serv*., 607 F.3d 453, 457 (7th Cir. 2010)).