

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CHRISTOPHER DISTASIO, Individually  
and on behalf of all others similarly situated,  
Plaintiff,

v.

No. 3:16cv538 (DJS)

EDIBLE ARRANGEMENTS, LLC,  
Defendant.

RULING ON MOTION FOR CLARIFICATION

The defendant, Edible Arrangements, LLC (“Edible”), has filed a motion seeking clarification of the Court’s ruling (doc. # 43) denying the defendant’s motion to dismiss for lack of standing. The Court hereby grants the motion to the extent of clarifying its May 10, 2017 ruling, but denies the motion to the extent it seeks the dismissal of this action.

Edible suggests that the Court’s ruling did not address its argument “that the Plaintiff lacks standing because the injury claimed by the Plaintiff is self-inflicted, and therefore is not fairly traceable to the conduct of the Defendant.” (Doc. # 44, at 1). According to Edible, this is “an entirely separate and distinct ground for dismissal for a failure of subject matter jurisdiction under Article III of the United States Constitution.” (*Id.*).

In his Complaint, the plaintiff, Christopher DiStasio (“DisStasio”), alleges tangible and intangible injuries resulting from the receipt of unwanted text messages from Edible. In arguing that any injury sustained by the plaintiff was self-inflicted, Edible contended in its motion to dismiss that “the Plaintiff was solely responsible for his receipt of the text messages because he affirmatively subscribed to them.” (Doc. # 39, at 21). In denying Edible’s motion to dismiss, the Court recognized that DiStasio had produced evidence supporting his contention that he had not

consented to the receipt of text messages from Edible. Consequently, the Court found “that this particular issue, i.e., whether or not DiStasio consented to the receipt of text messages from Edible, involves disputed facts that are intertwined with the merits of the case.” (Doc. # 43, at 7).

The Court’s finding that there is a genuine factual dispute as to whether or not DiStasio consented to the receipt of the text messages at issue is sufficient to defeat Edible’s claim that DiStasio lacks standing on the basis of self-inflicted injury. As noted by Edible in its memorandum in support of its motion to dismiss, the Second Circuit has advised that “[s]o long as the defendants have engaged in conduct that may have contributed to causing the injury, it would be better to recognize standing.” *Backer v. Shah*, 788 F.3d 341, 344 (2d Cir. 2015) (internal quotation marks omitted).

For the reasons stated above, the Court grants the defendant’s motion (doc. # 44) to the extent of clarifying its previous ruling on Edible’s motion to dismiss, but denies that motion to the extent it seeks dismissal of this action.

SO ORDERED this 5th day of June, 2017.

/s/ DJS

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Dominic J. Squatrito  
United States District Judge