

California Superior Court Holds TCPA Auto-Dialer Requirements Apply Only To Systems With A Number Generator

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A California Superior Court judge recently granted a debt collection company's motion for summary judgment, finding that in order to be liable under the Telephone Consumer Protection Act ("TCPA"), the defendant's calling technology must have a number generator. Plaintiff claimed defendant Credit Management LP violated the TCPA by repeatedly calling her cell phone without her permission using an automatic telephone dialing system. Specifically, an automatic telephone dialing system (or ATDS) is defined as equipment that "has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator," and then dial such numbers. Credit Management moved for summary judgment, in part on the basis that the company used equipment that did not have a random or sequential number generator. The court agreed, finding that "the use of a number generator is required in order for [defendant]'s calling technology to be considered an ATDS." Since Credit Management provided uncontroverted testimony that its calling technology lacked such a number generator, the court determined the technology did not meet the statutory requirements for an automatic telephone dialing system as defined under the TCPA and granted the motion.

Tip: Under the TCPA, calls made using automatic dialing technology must comply with detailed requirements, which may include prior express or written consent from consumers depending on the call's content and the type of number dialed. Historically, most courts have held that even technology "capable" of acting as an automatic telephone dialing system are covered by the statute. While not determinative of the issue, this case indicates that courts may be receptive to evidence clearly demonstrating that the calling technology used lacks a random or sequential number generator.

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