

When holding debt collectors accountable for their TCPA violations, be very careful about what they say. They will twist words, cherry pick terms, and manipulate definitions to escape liability. Here's an example of an actual email I received from a debt collector when responding to my Notice of Intent to Sue (debt collector response in black, my comments to you are in red).

Good Morning [*informed consumer*],

I received your notice of intent to sue and reviewed your allegations.

Please note that the TCPA only applies to automated telephone calls to a wireless number. In this instance, the phone number you provided is a landline. Attached is a printout indicating same.

(They used [www.phonevalidator.com](http://www.phonevalidator.com) to check if the called phone is a landline or cell phone, and attached a pdf of the search results. Smart of them to do this).

Note, their comment that TCPA only applies to a wireless number is wrong.

Please also note that the TCPA defines an Automatic Telephone Dialing System (ATDS) as equipment "to store or produce telephone number to be called, using a random or sequential number generator" and to dial such numbers.

Notice anything? The definition of ATDS under the TCPA is missing some language. More specifically, it's missing the beginning part:

"The term "automatic telephone dialing system" means **equipment which has the capacity—** (A) to store or produce telephone numbers..." This is part of their deceptive tactics. Don't fall for it!

Our equipment specifically does not fall under this category. Presently we do not retain the ability to store or produce number using a random or sequential number generator, thus, even if your phone number was a wireless number, we would nonetheless be exempt from this statute.

See how they try to escape liability?

Further, the California Public Utilities Code uses virtually the same definition as the TCPA. Please see attached decision granting summary judgment on this very issue in California.

I've attached a copy of the provided Summary Judgment\*. Be sure to (1) read it, (2) make note of the emphasized verbiage, (3) note why it was granted, and more importantly (4) note who originally wrote the Order granting the Summary Judgment.

HINT: The Defendant's wrote the Order (you can tell because it's a Proposed Order, which the judge simply accepted and granted. Pay very close attention to how the TCPA definition has been misused and the misdirection.

The Proposed Order put emphasis on "... using a *random* or *sequential number generator*; and (B) to dial such numbers. Thus, the issue of a number generator is required in order for CMI's calling technology to be considered an ATDS." This is incorrect, and there is case law and the TCPA definition to contradict this statement.

Additionally, the TCPA defines meaningful disclosure as stating the identity of the business, which we always do in any voicemail whether prerecorded or not.

This is also incorrect, as the TCPA is clear as to what meaningful disclosures require (see 47 U.S.C. § 227(d)(3)).

At this time I find that [*debt collector*] conformed its practices with all applicable laws, regulations, and industry standards and accordingly I find no violations or liability.

Now that we are informed that the number we were dialing is a wrong number, we have placed your number on our "Do Not Call" list and all collection activity will cease. Please feel free to contact me with any further questions or concerns.

[Attorney]

\*(If for some reason you come across this and don't have a copy of the Summary Judgment, it's from Superior Court of California, County of Orange. *CYNTHIA STOCKWELL VS. CREDIT MANAGEMENT, L.P.* Case number 0-2012-00596110-CU-NP-CXC, document number 145 – Order Granting Summary Judgment. You can access this case by visiting <http://www.occourts.org/online-services/case-access/> and clicking through "Civil Case Access". In looking through the Register of Actions (Docket) for this case, there appears to be quite a lot of activity in this case. I'm not sure what else has been said in the case, but this is not a pro se case, and state court can be rather unfair and unjust.

Here is my response email to this debt collector.

Hi [Attorney],

Thank you for responding to my letter. It is typical for the debt collection industry to attempt to escape liability for violations of the TCPA, so I understand your attempts.

I disagree about your interpretation of the TCPA, it applies to landlines as well see TCPA 47 U.S.C. § 227(b)(1)(B).

The definition of an Automatic Telephone Dialing System (ATDS) is incomplete and possibly so to attempt to mislead and deceive me (which I don't appreciate). The complete definition is such (with emphasis added, which I believe you are aware of but intentionally left out):

"The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers."

Not only is this in the definition, but courts in my district have made similar distinctions:

"The focus must be on whether the equipment has the capacity to store or produce telephone numbers to be called using random or sequential number generator." "A system need not actually

store, produce, or call randomly or sequentially generated numbers, and need only have the capacity to do it.” *Lozano v. Twentieth Century Fox Film Corp.*

Regarding your evidence of summary judgment, the proposed order (drafted by the Defendant and later granted by the Judge as improperly opposed) was additionally manipulated to put emphasis on “... using a *random* or sequential *number generator*; and (B) to dial such numbers. Thus, the issue of a number generator is required in order for CMI’s calling technology to be considered an ATDS.” This is grossly incorrect and a bastardization of the TCPA, and the 9th Circuit *Lozano* and *Satterfield* cases.

When considering Defendant’s motion, the court must construe the factual allegations in the complaint in the light most favorable to the plaintiff.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996).

If you are claiming that Accounts Receivable Management, Inc. picks up each phone and has collectors manually push buttons all day, I would most certainly demand evidence of this in Discovery, as this would be . In light of the attached evidence I have, it seems in direct contradiction to your claims of not using ATDS equipment.

Additionally, the TCPA defines meaningful disclosure differently than you do (as the TCPA’s definition of “ATDS” is also different from yours). I quote below from the TCPA 47 U.S.C. § 227(d)(3) (with added emphasis):

**“Artificial or prerecorded voice systems**

The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

**(A) all artificial or prerecorded telephone messages**

(i) **shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and**

(ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual;”

I appreciate your efforts to remove my number from your system, but there has clearly been damage done. I would much prefer to come to a reasonable and amicable settlement without litigation, but I am prepared to move forward if necessary. Please let me know how Accounts Receivable Management, Inc. would like to handle this.

Thank you,

[informed consumer]

If you ever get this in a case and the attorney tries to mislead the court using similar language in a Motion for Summary Judgment, that is sanctionable under the [Rules of Professional Conduct 5-200](#) (in California. Check your state rules sections).

**Rule 5-200 Trial Conduct**

In presenting a matter to a tribunal, a member:

(A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;

**(B) Shall not seek to mislead the judge,** judicial officer, or jury by an artifice or false statement of fact or law;

**(C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;**

(D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and

Stay on top of these shameless entities and hold them accountable for their actions!

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

OCT 03 2013

*AP*

ALAN CARLSON, Clerk of the Court

*Alan Carlson*  
BY: A. PAGUNSAN, DEPUTY

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**ELECTRONICALLY RECEIVED**  
Superior Court of California,  
County of Orange  
10/02/2013 at 02:48:29 PM  
Clerk of the Superior Court  
By Margaret M Demaria, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE**

11 CYNTHIA STOCKWELL, an Individual

12 Plaintiff,

13 vs.

14 CREDIT MANAGEMENT, L.P., a Texas  
corporation,

15 Defendant.

Case No: 30-2012-00596110-CU-NP-CXC  
[Assigned to the Hon. Ronald Bauer; Dept. CX103]

**~~PROPOSED~~ ORDER GRANTING IN PART  
AND DENYING IN PART DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT OR  
ADJUDICATION**

16 Complaint Filed: September 6, 2012  
17 Trial Date: September 23, 2013

18 Defendant Credit Management, L.P.'s Motion for Summary Judgment, or in the alternative  
19 Summary Adjudication, came on regularly for hearing on August 26, 2013. Appearing for Plaintiff was  
20 Suren Weerasuriya, Esq., and on behalf of Defendant, Sean P. Flynn, Esq.

21 Plaintiff Cynthia Stockwell's First Amended Complaint is premised on allegations that  
22 Defendant Credit Management, L.P. (hereinafter "CMI") violated the Fair Debt Collection Practices Act  
23 ("FDCPA"), the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), and the Telephone  
24 Consumer Protection Act ("TCPA"). Specifically, Plaintiff alleges that CMI violated these statutes by  
25 calling her cell phone with an automatic telephone dialing system ("ATDS") "repeatedly or  
26 continuously", without her permission, with the intent to harass or annoy her in an attempt to collect a  
27 debt.

28 Defendant sought Summary Judgment as to the entire First Amended Complaint, and presented

1 four issues for Summary Adjudication consideration:

2 Issue 1—CMI did not call Plaintiff at times or places which were known or should have been  
3 known to be inconvenient to Plaintiff;

4 Issue 2—there is no evidence showing that CMI called Plaintiff “repeatedly or continuously”  
5 with an intent to annoy, harass, or abuse her;

6 Issue 3—Plaintiff consented to the calls made by CMI because she provided her cellular phone  
7 and Texas address to TWC in association with services she obtained from TWC;

8 Issue 4—Plaintiff has no basis for alleging that CMI called her using pre-recorded or artificial  
9 voices, or with an automatic telephone dialing system (“ATDS”), which is defined by the TCPA as  
10 equipment “to store or produce telephone numbers to be called, using a random or sequential number  
11 generator” and to dial such numbers.

12 For the following reasons, the Court DENIES Defendant’s Motion for Summary Judgment, and  
13 GRANTS Summary Adjudication as to Issue number 4.

14 Defendant’s Objections to evidence were all overruled.

15 Relative to issue number 1, Plaintiff has presented evidence to create a triable issue of fact as to  
16 whether any calls were placed at an inconvenient time.

17 Relative to issue number 2, Plaintiff has presented evidence sufficient to create a triable issue of  
18 fact as to whether Defendant placed calls to Plaintiff continuously or repeatedly, with the intent to  
19 annoy, harass, or abuse Plaintiff.

20 Relative to issue number 4, pursuant to *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, the  
21 Ninth Circuit conclusively determined relative to the definition of an ATDS that: “[i]n construing the  
22 provisions of a statute, we first look to the language of the statute to determine whether it has a plain  
23 meaning. . . . Thus, our inquiry begins with the statutory text, and ends there as well if the text is  
24 unambiguous [citation omitted]. Reviewing this statute, we conclude that the statutory text is clear and  
25 unambiguous.” *Id.* at 951.

26 Here, the TCPA defines an ATDS as: “equipment which has the capacity--(A) to store or  
27 produce telephone numbers to be called, *using a random or sequential number generator*; and (B) to  
28 dial such numbers.” 42 U.S.C. § 227(a)(1). Thus, the use of a number generator is required in order for


1 CMI's calling technology to be considered an ATDS.

2 Defendant submitted the Declaration of Nelson Wilson to support its contention that CMI's  
3 calling Technology does not have a number generator. Plaintiff failed to offer any evidence in rebuttal.  
4 Thus, the uncontroverted evidence presented is that CMI's calling technology does not have a number  
5 generator. Therefore, CMI's calling technology does not meet the requirements of an ATDS as defined  
6 by the TCPA. As such, Defendant's Motion for Summary Adjudication is GRANTED as to Issue  
7 number 4.

8 Having GRANTED Summary Adjudication as to Issue number 4, the Court need not rule on  
9 Issue number 3.

10 **IT IS SO ORDERED.**

11 DATED: October 3, 2013

12  
13 By:   
14 HON. RONALD BAUER  
JUDGE OF THE SUPERIOR COURT

15 Submitted By:

16 Sean P. Flynn (SBN 220184)  
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20 Attorneys for  
21 **CREDIT MANAGEMENT, LP**  
22  
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1 **PROOF OF SERVICE**

2 [CCP, 1010.6, 1011, 1013, 1013a, 2015.5; CRC rule 2.260, 2.306 - Revised 07/01/2011]

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
5 not a party to the within action; my business address is 300 South Grand Ave., Suite 2800, Los Angeles,  
6 California 90071

7 On **October 2, 2013**, I served the foregoing document described as: [PROPOSED] ORDER  
8 GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY  
9 JUDGMENT OR ADJUDICATION on the interested parties in this action as follows:

10 Law Offices of Todd Friedman, P.C.  
11 Todd Friedman, Esquire  
12 Nicholas J. Bontrager, Esq.  
13 369 S. Doheny Drive, #415  
14 Beverly Hills, CA 90211  
15 (877) 206-4741  
16 F: (866) 633-0228  
17 **Attorneys for Plaintiff**

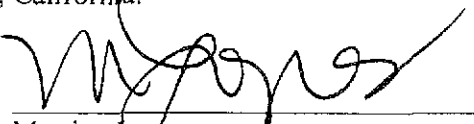
18  **(BY MAIL)** I enclosed the documents in a sealed envelope or package addressed to the persons  
19 at the addresses above and placed the envelope for collection and mailing, following our  
20 ordinary business practices. I am ready familiar with this business's practice for collecting and  
21 processing correspondence for mailing. On the same day that correspondence is placed for  
22 collection and mailing, it is deposited in the ordinary course of business with the United States  
23 Postal Service, in a sealed envelope with postage fully prepaid.

24  **(BY FACSIMILE TRANSMISSION)** I faxed a copy of the document(s) to the persons at the fax  
25 numbers listed in the Service List. The telephone number of the sending facsimile machine was  
26 (213) 283-2101. No error was reported by the fax machine that I used.

27  **(BY ELECTRONIC SERVICE):** As per the agreement of counsel, the document was served via  
28 electronic service to SWeerasuriya@attorneysforconsumers.com;  
tfriedman@attorneysforconsumers.com; and NBontrager@attorneysforconsumers.com.

**[STATE]** I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

Executed on **October 2, 2013**, Los Angeles, California.

  
Martina Lopez