

Financial Services Update: Week Ending September 6, 2019

September 07, 2019

Financial Services Update

- **TCPA / ATDS:** lender's dialer equipment not an ATDS because it is not capable of generating and dialing random or sequential numbers - [Brown v. Ocwen Loan Serv. LLC](#), No. 8:18-cv-136-T-60AEP (M.D. Fla. Sept. 5, 2019) (granting lender's motion for summary judgment based on alleged use of ATDS)
- **TCPA / Artificial or Prerecorded Voice / Consent:** disputed issues of fact regarding how many calls lender made using artificial or prerecorded voice and regarding the existence, scope, and revocation of whatever consent lender had obtained to call plaintiff - [Brown v. Ocwen Loan Serv. LLC](#), No. 8:18-cv-136-T-60AEP (M.D. Fla. Sept. 5, 2019) (denying summary judgment motions on remaining TCPA claims)
- **FCCPA / Section 559.72(7) / Harassing Calls:** jury question regarding whether lender's calls were harassing under section 559.72(7), where lender placed 192 calls to borrower over approximate three-month span, calling nearly every day during that period, typically three times each day unless a prior call was answered on that same day, including after lender received requests to quit calling - [Brown v. Ocwen Loan Serv. LLC](#), No. 8:18-cv-136-T-60AEP (M.D. Fla. Sept. 5, 2019) (denying summary judgment motions)
- **FCRA / Section 1681s-2(b) / Furnisher of Information:** district court properly dismissed FCRA claim against bank where bank had not furnished the disputed information to the credit reporting agencies and thus was not a "furnisher of information" under the FCRA - [Williams v. Capital One Bank \(USA\) N.A.](#), No. 18-14143 (11th Cir. Sept. 4, 2019) (affirming dismissal)
- **FCRA / Section 1681e(b) / Section 1681i(a):** district court properly entered summary judgment in Equifax's favor where Equifax's reporting of a judgment against debtor was neither inaccurate nor misleading - [Williams v. Capital One Bank \(USA\) N.A.](#), No. 18-14143 (11th Cir. Sept. 4, 2019) (affirming entry of summary judgment)

- **FCRA / Standing / Concrete Injury:** plaintiff lacked Article III standing for federal question jurisdiction because he did not suffer any actual damages related to his claim for failure to make disclosures in violation of the FCRA - [Loeb v. ZipRecruiter, Inc.](#), No. LA CV 19-04288 JAK (MRWx) (C.D. Cal. Sept. 5, 2019) (granting motion to remand)
- **TCPA / Class Action / Numerosity & Commonality:** class certification under the TCPA for purportedly unlawful robocalls denied where plaintiff failed to present evidence establishing (i) numerosity for two of the three proposed nationwide classes, or (ii) that the proposed classwide proceeding had the capacity to generate common answers for all three classes - [Chinitz v. NRT West, Inc.](#), No. 18-cv-06100-NC (N.D. Cal. Aug. 30, 2019) (denying motion for class certification)

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