

# Telephone Consumer Protection Act

## Overview

The federal Telephone Consumer Protection Act (TCPA) restricts telemarketing and the use of automated telephone equipment, and limits the use of automatic dialing systems and prerecorded voice messages, text messages, and faxes. The statute touches on virtually every industry and poses a growing threat to any company that uses cell phone texts and calls, as well as faxed messages, to communicate with consumers. Enacted in 1991, the TCPA has recently been reinvigorated by the prevalence and rapid evolution of digital communications.

Lawsuits, including high-exposure class actions, arising from alleged TCPA violations are complex and increasingly attractive to plaintiffs' attorneys. Unlike many consumer protection statutes, the TCPA places virtually no limit on recoverable damages. It imposes strict statutory penalties of \$500 per negligent violation and up to \$1,500 per willful or knowing violation, even absent actual injury. Additionally, the four-year statute of limitations can translate to large nationwide class sizes.

Companies struggle to keep up with technological and legal developments in this rapidly evolving and unsettled area of the law. The TCPA has been inconsistently applied by courts across the country, and subject to changing regulations and interpretations by the Federal Communications Commission, including, most recently, new rules regarding the meaning of prior consent to receive communications, and agency liability.

### **Our Services**

We defend corporate clients, including financial services and telecommunications firms, against individual and class action lawsuits arising from alleged violations of the TCPA. Our extensive national experience encompasses TCPA cases stemming from calls to cellphones, text messages, and faxes.

Our TCPA team also regularly handles cutting-edge appellate issues in TCPA litigation. We also advise on compliance with the federal statute, its evolving implementing regulations, and related rules and regulations including the Telemarketing Sales Rule, federal and state do-not-call registries,

the Fair Debt Collection Practices Act, and state statutes, such as the Florida Consumer Collection Practices Act regarding call center recordings.

Ultimately, our efforts help our clients achieve their marketing, advertising, and promotional goals while complying with the highly complex laws that are increasingly being used against them in the digital age.

## Experience

Litigation involving the federal TCPA has increased dramatically over the last several years. While many firms across the country have only recently fielded teams in this area, our team has been involved in TCPA cases filed as early as 2009. Many of the cases we have litigated have involved issues of first impression. Some of our notable TCPA cases include:

- Obtained first-in-the-nation appellate ruling holding that a plaintiff who claims to have received a single text message has not sufficiently alleged a concrete injury sufficient to confer Article III standing. *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019).
- Obtained order dismissing entities sued for violating the TCPA on a vicarious liability theory. *Shcherb v. Angi Homeservices Inc.*, No. 1:19-cv-00367, 2020 WL 2571041 (S.D.N.Y. May 21, 2020).
- Obtained precedent-setting order addressing intersection between requirements to disclose contact information for TCPA class notice and consumer privacy considerations. *Ezold v. TracFone Wireless, Inc.*, No. 1:20-cv-21346, 2020 WL 6144632 (S.D. Fla. Oct. 16, 2020).
- Secured order providing that our client was entitled to reimbursement in connection with responding to a subpoena in a TCPA class action. The order was entered against significant opposition from the party that served the subpoena. The court awarded six times the amount the party that served the subpoena offered to provide. *Cook v. Palmer, Reifler & Assocs.*, No. 3:16-cv-00673, 2019 WL 5697230 (M.D. Fla. Nov. 4, 2019).
- Represented life insurer in a TCPA class action involving alleged unlawful fax advertisements. The case was dismissed after extensive briefing on statute of limitations and tolling issues under the U.S. Supreme Court's decision in *China Agritech*. *Gunther Well & Pump Serv., LLC v. Transamerica Life Ins. Co.*, No. 3:17-cv-08475 (D.N.J).
- Obtained dismissal of TCPA claim based on argument that allegations relating to autodialing were implausible. This was the first reported decision from a court in the Eleventh Circuit applying the plausibility standard to a TCPA pleading. *McGinity v. TracFone Wireless, Inc.*, 5 F. Supp. 3d 1337 (M.D. Fla. 2014).

- Resolved TCPA case on a class basis in a settlement that represented less than 1% of potential exposure. *Sawyer v. Intermex Wire Transfer, LLC*, No. 1:19-cv-22212, 2019 WL 8641365 (S.D. Fla. Sept. 13, 2019).
- Represented lead broker engaged in marketing financial products in a TCPA class action. Case resolved by voluntary dismissal by named plaintiff. *Albrecht v. Nat'l Bancorp Holdings, Inc.*, No. 8:19-cv-00810, 2019 WL 8138433 (C.D. Cal. Sept. 13, 2019).
- Represented mail order housewares company in a TCPA class action. Case resolved by voluntary dismissal by named plaintiff. *Luster v. Am. Sunshine, LLC*, No. 1:19-cv-03192, 2019 WL 6908049 (N.D. Ga. Oct. 21, 2019).
- Resolved TCPA case on a class basis in a settlement that represented less than 1% of potential exposure. Court approved a reversionary settlement fund. *Tickling Keys, Inc. v. Transamerica Fin. Advisors, Inc.*, 305 F. Supp. 3d 1342 (M.D. Fla. 2018).
- Represented insurance broker in a TCPA class action and obtained dismissal. *Guarisma v. Adcahb Med. Coverages, Inc.*, No. 1:13-cv-21016, 2014 WL 3533483 (S.D. Fla. Apr. 1, 2014).
- Obtained decision finding TCPA claims subject to contractual jury trial waiver. *Newton v. Wells Fargo Bank N.A.*, No. 3:13-cv-01017, 2013 WL 5854520 (M.D. Fla. Oct. 30, 2013).
- Obtained order finding TCPA claims subject to arbitration. *Levingston v. TracFone Wireless, Inc.*, No. 3:13-cv-08265, 2014 WL 12915515 (D. Ariz. Feb. 28, 2014).
- Secured dismissal of TCPA claims where plaintiff sought recovery for prerecorded voice calls while alleging they spoke with a live person from defendant's company. *Duran v. Wells Fargo Bank, N.A.*, 878 F. Supp. 2d 1312 (S.D. Fla. 2012).
- Obtained order clarifying rules governing consent to be called on a cellphone under the TCPA. *Gray v. Morgan Drexen, Inc.*, No. 2:13-cv-00083, 2014 WL 2573227 (M.D. Fla. June 9, 2014).
- Obtained order limiting scope of Rule 30(b)(6) deposition. *Dayhoff v. Wells Fargo Home Mortg., Inc.*, No. 6:13-cv-01132, 2014 WL 12618185 (M.D. Fla. Apr. 9, 2014).
- Secured order of first impression establishing standards for asserting third-party claims in TCPA cases. *Osorio v. State Farm Bank, F.S.B.*, 278 F.R.D. 671 (S.D. Fla. 2011).

Our TCPA team also routinely counsels business clients on TCPA compliance and counsels insurance companies on TCPA-related coverage issues.

## Insights

12.02.2023

FCC Notice Of Inquiry Highlights AI Robocall Concerns

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11.09.2023

Safe-Harbor Period Change Could Hinder TCPA Compliance

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09.28.2023

Robocalling into Florida: A Dicey Gamble in an Evolving Legal Landscape

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06.02.2023

How Fla. Amendment Changes the State's Mini-TCPA

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03.22.2023

Do Choice-of-Law Provisions Curb Fla. Telemarketing Claims?

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02.15.2023

How Courts Are Deciding Standing in Fla. Robocall Cases

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11.08.2022

Applying Article III Rulings to Robocall Standing in Florida

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09.26.2022

The Murky Status of TCPA Standing in the 11th Circ.

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09.15.2022

Classified: The Class Action Blog Podcast - Eleventh Circuit Stands on Principle in TCPA Settlement Case

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04.23.2022

Seeking Clarity on Medical Privacy in Fla. Class Actions

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07.15.2021

What You Need to Know About Major Changes to Florida's Telemarketing Statutes

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08.10.2020

What a Couple of TCPA Vets Are Watching Now That the High Court Has Saved the TCPA

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04.13.2020

Did Your Text Message or Phone Call Campaign Use an Illegal “Autodialer”?

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03.23.2020

FCC Issues Declaratory Ruling Regarding COVID-19-Related Messages

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06.26.2019

Ninth Circuit Dials Back Robocall Exemption for Government Debt

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08.08.2018

Seventh Circuit Approves Cy Pres Settlement

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11.03.2017

Ninth Circuit Confirms Privacy Exclusion Bars TCPA Claims

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12.23.2015

Consumer Bankers Association, Chamber of Commerce Join Challenge to FCC TCPA Ruling

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12.21.2015

Florida State Court Holds Pizzerias Liable Under TCPA for Third-Party Fax Blasts

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11.19.2015

Courts Consider Definition of Autodialer and Standing under the Telephone Consumer Protection Act after FCC Ruling

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09.10.2015

Consumer Bankers Association, Chamber of Commerce Join Legal Challenge to FCC Ruling Tightening TCPA Call Restrictions

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08.28.2015

6th Circuit Rules Prior Express Consent Defeats Mortgagor TCPA Claim Against Lender

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08.26.2015

California Court Dismisses TCPA Claim, Finding Human Intervention in Transmission of Internet Text Messages Removed Them From FCC Autodialer Definition

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08.25.2015

FCC Issues \$2.96 Million Fine for Robocalling Violations

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08.06.2015

The FCC's TCPA Regulatory Ruling Imposes Tighter Call Restrictions

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07.16.2015

Cyberclaim Coverage Denied: The TCPA Protects Privacy, Not Personally Identifiable Information

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04.27.2015

Federal Order Addresses California Restrictions on When Wireless Providers Can Produce Documents Responsive to Subpoenas

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03.25.2015

Eleventh Circuit Says No to Mooting Class Actions with Individual Offers of Judgment

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12.22.2014

Life Insurer Settles Nationwide "Junk Fax" Class Actions

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12.22.2014

Eleventh Circuit Reverses Mais

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09.16.2014

Ninth Circuit Affirms Summary Judgment for Defendant Taco Bell in Putative TCPA Text Message Class Action

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11.08.2013

The Top Three Unsettled Telephone Consumer Protection Act Issues

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01.18.2013

Ninth Circuit Relaxes Standard for "Prior Consent" to Call Cell Phones

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## Our Team

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