

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

OCT 03 2013

AP

ALAN CARLSON, Clerk of the Court
Alan Carlson
BY: A. PAGUNSAN, DEPUTY

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

1
2
3

7
8
9
10
11
12
13
14
15
16
17

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

CYNTHIA STOCKWELL, an Individual
Plaintiff,
vs.
CREDIT MANAGEMENT, L.P., a Texas
corporation,
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**

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

18
19
20
21
22
23
24
25
26
27
28

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

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

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)
17 sflynn@foleymansfield.com
18 **FOLEY & MANSFIELD, PLLP**
300 South Grand Avenue, Suite 2800
19 Los Angeles, CA 90071
Telephone: (213) 283-2100
Facsimile: (213) 283-2101

20 Attorneys for
21 **CREDIT MANAGEMENT, LP**
22
23
24
25
26
27
28

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**

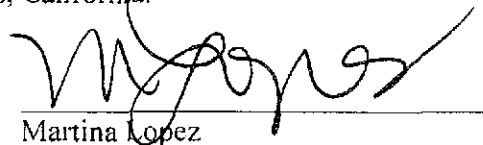
18 **(BY MAIL)** I enclosed the documents in a sealed envelope or package addressed to the persons
19 at the addresses above and placed the envelope for collection and mailing, following our
20 ordinary business practices. I am ready familiar with this business's practice for collecting and
21 processing 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