



ORLOFF
LOWENBACH
STIFELMAN &
SIEGEL P.A.

OLSS Obtains Rare Summary Judgment for Defendant in TCPA Class Action in Ninth Circuit

OLSS recently obtained a summary judgment ruling dismissing a nationwide Telephone Consumer Protection Act (TCPA) class action against its client, DialAmerica Marketing, Inc., brought in a federal court in California. DialAmerica was accused of dialing the named plaintiff's phone number one solitary time (based on a contact list provided by its client), but the plaintiff did not answer any such call, and, as OLSS demonstrated, produced no evidence that any call "manifested itself" on her phone, let alone that she was aware of it. In a rare victory for a TCPA defendant in a typically pro-Plaintiff Ninth Circuit, the court held that a plaintiff lacks standing to maintain suit against a telemarketer when the latter dials the plaintiff's number without consent but the plaintiff is unaware of any call because "an unnoticed call may ... not cause any concrete injury." The ruling is not only a vindication for the OLSS client but also a potentially important legal development, demonstrating that the constitutional injury-in-fact requirement for standing is alive and well, even in TCPA cases filed in the Ninth Circuit.

OLSS partners Jeffrey Garrod, Craig Ollenschleger, and David Gorvitz and associate Xiao Sun represented DialAmerica.