

Can You Consent to Calls/Texts by Giving out Your Number?

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Two recent federal decisions held that consumers who provided their cell phone numbers consented, in those cases, to receiving calls and texts from the defendant companies. The Sixth Circuit upheld an Ohio federal jury decision, finding that the plaintiff provided his cell phone number to mortgage lender Homeward Residential Inc. on multiple occasions and that Homeward Residential did not violate the Telephone Consumer Protection Act (TCPA) when the company later called the plaintiff's cell phone nearly 500 times. The Sixth Circuit found that a debtor "consents to calls about 'an existing debt' when he gives his number 'in connection with' that debt," relying on the Federal Communication Commission's 2008 order clarifying the definition of "prior express consent" in the debtor-creditor context.

Similarly, the Eleventh Circuit ruled that a blood donor consented to receiving text messages from a plasma collection company when he voluntarily gave the company his cell phone number on his donor information form. The court found plaintiff's "provision of his cell phone number constituted his express consent to be contacted by [defendant DCI Biologicals Inc.] at that number," and thus the company did not violate the TCPA when it sent the plaintiff two texts years after his last donation. The ruling affirmed a Florida district court's dismissal, which we previously reported on here.

TIP: While noteworthy, these cases serve primarily as a reminder of the significant class action activity surrounding the TCPA and communicating with consumers via their cell phone numbers, where issues of consent will be decided on a fact-specific basis. And while the Eleventh Circuit dismissed plaintiff's claims in this case, it is important to note that prior express *written* consent is now required to send marketing text messages under the amended TCPA regulations.

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