

TCPA Tracker: January-February 2026

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Table of Contents

[I. Ninth Circuit Holds Text Messages Containing Video Are Not Artificial or Prerecorded Voice](#)

[II. Eastern District of Pennsylvania Denies Class Certification Over Lack of Ascertainability](#)

[III. Eastern District of Texas Grants Summary Judgment Regarding Consent to Be Contacted](#)

I. Ninth Circuit Holds Text Messages Containing Video Are Not Artificial or Prerecorded Voice

The Ninth Circuit affirmed the decision by the United States District Court for the District of Arizona to dismiss a claim under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)(iii), finding that a text message containing video files that a recipient must affirmatively play could not sustain a cause of action.

Plaintiff-Appellant Jacob Howard filed a class action against Defendant Republican National Committee alleging that Defendant sent text messages with “an artificial or prerecorded voice in a video” without prior consent. The district court granted Defendant’s motion to dismiss for failure to state a claim, finding that Defendant had not made a call using a prerecorded voice in violation of § 227(b)(1)(A) because the video required the recipient to press it before playing.

The Ninth Circuit agreed, finding that even though Defendant’s text message was a “call” under the TCPA, the call was not made or initiated using an artificial or prerecorded voice. The Ninth Circuit distinguished a video that requires an affirmative act to play from a voicemail that consists of a prerecorded robocall. The Ninth Circuit further established that § 227(b)(1)(A)(iii) and § 227(b)(1)(B) only regulates the “manner in which a call is made or initiated,” rather than a call which is merely accompanied by an artificial or prerecorded voice.

Accordingly, the Ninth Circuit affirmed the Defendant’s motion to dismiss.

Howard v. Republican Nat’l Comm., 164 F.4th 1119 (9th Cir. Jan. 13, 2026).

II. Eastern District of Pennsylvania Denies Class Certification Over Lack of Ascertainability

The United States District Court for the Eastern District of Pennsylvania denied class certification for Plaintiffs’ proposed class under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(C), finding that Plaintiffs failed to show the class was ascertainable.

Named Plaintiff Brian J. Lyngaas, D.D.S., P.L.L.C. filed a class action against Defendant IQVIA, Inc. alleging that Defendant sent unsolicited fax advertisements without prior consent. Plaintiff sought

certification of other similarly situated healthcare provider class members. The Court initially denied class certification, finding that “Plaintiff’s methodology for ascertaining the class members was not administratively feasible or reliable.” The Court explained how Plaintiff’s expert opinion was not persuasive or credible, and that Plaintiff failed to establish the reliability of other evidence.

The Third Circuit denied Plaintiff’s appeal. The court re-examined Plaintiff’s case in light of the Third Circuit’s decision in *Steven A. Conner, DPM, P.C. v. Fox Rehab. Servs., P.C.*, which was alleged to feature similar facts. *Conner* stated that ascertainability was satisfied if a plaintiff could “show that: (1) the class is ‘defined with reference to objective criteria’; and (2) there is ‘a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.’”

The Court held that *Conner* did not impact the denial of class certification. The court stated that Plaintiff’s expert testimony as to ascertainability was “spurious at best,” and created “serious doubts” as to the actual class members’ identities.

Accordingly, the court held that *Conner* did not impact its reasoning for denying Plaintiff’s motion for class certification.

Brian J. Lyngaas, D.D.S., P.L.L.C., v. IQVIA, INC., 2025 WL 3565507, 2025 U.S. Dist. LEXIS 257550 (E.D. Pa. Dec 12, 2025).

III. Eastern District of Texas Grants Summary Judgment Regarding Consent to Be Contacted

The United States District Court for the Eastern District of Texas granted summary judgment, finding that Plaintiff failed to show sufficient evidence to disprove consent to be contacted under 47 U.S.C. § 227 (b).

Plaintiff John M. Anderson filed a pro se complaint against Defendant Monterey Financial Services, LLC, alleging that Defendant continued to call him after he revoked consent to be contacted. Defendant moved for summary judgment, arguing that plaintiff gave prior consent to receive calls and that no prerecorded calls were made after Plaintiff purportedly revoked consent.

Defendant had records to show that Plaintiff revoked consent on January 23, 2025, and only placed four manual calls afterwards. Plaintiff was unable to rebut the evidence, “other than with his own unequivocal testimony, where he stated he could not remember exactly when he asked Defendant to stop calling.” Plaintiff’s allegations were consistent with the records Defendant provided.

The Court recommended granting Defendant’s motion for summary judgment and dismissed Plaintiff’s claims with prejudice.

Anderson v. Monterey Fin. Servs., LLC, 2026 WL 318773, 2026 U.S. Dist. LEXIS 25233 (E.D. Tx. Jan. 16, 2026).

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