

TCPA Tracker: May-June 2026

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I. The Eastern District of Tennessee Denies Plaintiff's Request to Deny or Defer Defendant's Motion for Summary Judgment

The United States District Court for the Eastern District of Tennessee denied Plaintiff's request to deny or defer Defendant's Motion for Summary Judgment, finding that Plaintiffs failed to identify how additional discovery would substantiate Plaintiff's theory of the case.

Named Plaintiff Sheri Butler Brockington filed a class action against Defendant Hume Health, LLC alleging that Defendant sent unsolicited telemarketing calls without prior consent. Defendant responded to Plaintiff's discovery requests with a verified interrogatory response, explaining that when Plaintiff visited defendant's website, a popup window appeared on Plaintiff's screen with a blank space for an individual to provide an email or phone number. Then, Plaintiff's phone number and email were entered. Defendant produced documents corroborating their response. Defendant filed a motion for summary judgment. Plaintiff requested the Court deny or defer Defendant's summary judgment motion because Plaintiff needed additional discovery to "confirm how her phone number was obtained as a product of lead fraud."

The Eastern District of Tennessee denied Plaintiff's request to deny or defer Defendant's summary judgment motion. The court reasoned that Defendant provided interrogatory responses, documents, and sworn declarations, which explain how Defendant received Plaintiff's phone number. Plaintiff, however, did not identify what depositions or documents she needed, explain her lead-fraud theory, nor identify any material facts she hoped to discover.

Accordingly, the Court held it would promptly adjudicate Defendant's Motion for Summary Judgment.

Brockington v. Hume Health, LLC, 2026 WL 1284850, 2026 U.S. Dist. LEXIS 103579 (E.D. Tenn. May 11, 2026).

II. The Seventh Circuit Expressed Doubt During Oral Argument That the Word "Call" Incorporates "Text Messages"

The Seventh Circuit expressed doubt that the word "call" includes "text messages" under 47 U.S.C. § 227(c).

Plaintiff-Appellant Seth Steidinger filed a class action against Defendant-Appellee Blackstone Medical Services alleging that Defendant repeatedly sent text messages despite repeated “STOP” requests. The District Court granted Defendant’s Motion to Dismiss, finding that text messages do not apply to Section 227(c)(5). The issue on appeal is whether the district court erred when it held text messages are not calls under Section 227(c)(5).

On May 21, 2026, the Seventh Circuit heard oral argument regarding this issue. During oral argument, a Seventh Circuit panel expressed that a phone call is different from a text message. The Seventh Circuit panel explained that a person can ignore a text message or silence their phone, whereas telephone calls are more invasive. The Seventh Circuit explained that this is purely a statutory question, which requires understanding what the 1991 Congress understood the word “telephone call” to mean.

Although the Seventh Circuit has not yet determined this issue, the panel expressed skepticism that text messages are telephone calls.

Seth Steidinger, et al. v. Blackstone Medical Services, 25-2398 (7th Cir. May 21, 2026).

III. The Ninth Circuit Vacated District Court’s Order Dismissing Lawsuit

The Ninth Circuit vacated the district court’s order dismissing TCPA lawsuit, finding that Defendants’ purpose in communicating with Plaintiff is relevant to whether the communication is a telephone solicitation.

Plaintiff Vicki Coffey alleged Defendant Fast Easy Offer, LLC and others violated the Telephone Consumer Protection Act when Defendants contacted her through six calls and two text messages. The district court dismissed Plaintiff’s complaint, finding that the calls and text messages were not telephone solicitations because they did not expressly encourage the purchase of services. The issue on appeal concerned the definition of “telephone solicitation.”

The Ninth Circuit reasoned that Defendants’ purpose in initiating the communication was relevant to whether the texts and calls were telephone solicitations. The content and context of the messages helped identify Defendants’ purpose, thus illuminating whether the communications were telephone solicitations. Furthermore, the Ninth Circuit reasoned that even though the messages did not expressly encourage the purchase of services, it was enough that Defendants initiated the communications with the intention of encouraging the purchase of services.

The Ninth Circuit reversed the district court’s dismissal and remanded for further proceedings.

Vicki Coffey et al. v. Fast Easy Offer LLC, et al., No. 25-4066 (9th Cir. May 18, 2026).