

# TCPA Tracker: September-October 2025

December 3, 2025

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### **I. Central District of California Denies Class Certification Over Clickwrap Consent**

The United States District Court for the Central District of California denied class certification for Plaintiff's proposed Do-Not-Call class, finding that Plaintiff's circumstantial evidence regarding lack of consent failed to satisfy Rule 23(a)'s typicality requirement.

Plaintiff Paul Sapan alleged that he received seven unsolicited telephone calls on his residential phone from five individuals soliciting him to refinance his mortgage on behalf of Defendant, The Federal Savings Bank, in violation of 47 U.S.C. § 227 et seq. and 47 C.F.R. § 64.1200(c)(2). He sought certification of a nationwide class of residential subscribers on the National Do-Not-Call Registry who allegedly received two or more telemarketing calls from Defendant or its agents without prior express written consent.

Defendant opposed certification, arguing that Plaintiff had "invited the initial solicitation" and effectively consented to additional calls by engaging with the caller. Defendant worked with numerous lead vendors, including one that collected consumer information through its website using a clickwrap agreement which required users to provide personal information and agree to terms before being contacted.

The court held that the clickwrap process constituted circumstantial evidence of consent and that the vendor's policy of obtaining consumer authorization was sufficient to serve as an affirmative defense under the TCPA. Furthermore, because the evidence suggested that Plaintiff may have consented to the calls, he was not typical of the proposed class.

The court also emphasized that "feigning interest to gather evidence" does not create liability under the TCPA "unless the plaintiff affirmatively revokes consent after feigning interest and the caller calls again." A caller likewise avoids liability where an established business relationship or express invitation exists.

Because Plaintiff failed to establish all the elements under Rule 23, Plaintiff's motion for class certification was denied.

*Sapan v. Fed. Savs. Bank, 2025 WL 3050064, 2025 U.S. Dist. LEXIS 194113 (C.D. Cal. Sept. 30, 2025).*

## **II. District of Oregon Dismisses Prerecorded Calls TCPA Claim**

The United States District Court for the District of Oregon granted Defendant Pacificorp's motion to dismiss for lack of subject matter jurisdiction.

Plaintiff Chet Michael Wilson, an Oregon resident, alleged he received three prerecorded calls on his cellphone from Defendant, even though he did not have an account with them and the calls were intended for someone else. Plaintiff asserted a claim under 47 U.S.C. § 227(b) and sought an injunction barring Defendant from using artificial or prerecorded voice. Defendant moved to dismiss on the grounds that Plaintiff failed to establish Article III standing, and the court therefore lacked subject matter jurisdiction over the asserted claim.

Defendant argued that Plaintiff lacked standing to pursue injunctive relief because Plaintiff's allegation of a past violation was insufficient to establish a likelihood of future harm, and Plaintiff provided no facts suggesting that Defendant would call him again. Defendant also argued that Plaintiff could not rely on hypothetical injuries to unidentified putative class members to create standing.

Agreeing with Defendant, the court found Plaintiff failed to show a concrete and particularized injury that was ongoing or likely to recur. Nearly ten months had passed since the last call, and Plaintiff alleged no threat of future calls. Without "continuing, present adverse effects" or a sufficient likelihood of repeated harm, Plaintiff lacked standing to bring his claim.

Accordingly, the court dismissed the complaint with leave to amend and did not address Plaintiff's claim for damages at this time.

*Wilson v. PacifiCorp, 2025 WL 2802987, 2025 U.S. Dist. LEXIS 193363 (D. Or. Sept. 30, 2025)*

## **III. Middle District of Florida Finds Text Messages Are Not Covered Under the TCPA**

The United States District Court for the Middle District of Florida granted a motion to dismiss brought by Defendants Naturopathica Holistic Health, Inc. and its CEO, Catherine M. O'Brien, holding that text messages are not covered by the Do-Not-Call provisions of the TCPA.

Plaintiff Aliana El Sayed alleged that she received a promotional text message from Defendants and replied "STOP." Plaintiff alleged that she received additional promotional text messages even though she had sent an opt-out request, and despite being registered on the National Do-Not-Call Registry. Defendants moved to dismiss, arguing that the TCPA's Do-Not-Call rules apply only to telephone calls.

The court agreed with Defendants and declined to follow the Federal Communications Commission's interpretation extending TCPA voice-call rules to text messages. Instead, the court applied the statute's plain meaning and found that "telephone calls" and "text messages" are "separate and distinct forms of communication." The court further noted that Congress expressly referenced "text

messages” elsewhere in the TCPA, reinforcing that the terms were intentionally differentiated.

The court also dismissed Plaintiff’s claims against the Naturopathica’s CEO, holding that Plaintiff failed to plausibly allege personal involvement as to Defendant O’Brien. The court emphasized that officer liability under the TCPA is an exception rather than the rule, and therefore, Plaintiff’s conclusory assertions were insufficient to survive a motion to dismiss.

Accordingly, Plaintiff’s complaint was dismissed.

*El Sayed v. Naturopathica Holistic Health, Inc.*, 2025 WL 2997759, 2025 U.S. Dist. LEXIS 209469 (M.D. Fla Oct. 24, 2025).

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