

## KD Alert: Text Messages May Not Be Subject to the Telephone Consumer Protection Act (“TCPA”)

A judge in the Central District of California clarified sending text messages does not constitute the use of an “artificial or pre-recorded voice” as defined in the Telephone Consumer Protection Act (“TCPA”). In *Eggleston v. Reward Zone USA, LLC*, 2:20-cv-01027-SVW-KS (C.D. Cal. Jan. 28, 2022), the Plaintiff alleged that she received text messages from the defendant. The Plaintiff alleged that the text messages violated the TCPA because they used an “artificial or prerecorded voice.”

The District Court first held that the system at issue does not qualify as an automatic telephone dialing system (ATDS), as defined by the statute in light of the Supreme Court’s recent decision in *Facebook v. Duguid*. In interpreting this definition, the District Court held that calling equipment only qualifies as an ATDS “if it uses a number generator to generate the phone numbers themselves — not if the number generator is used merely to index the phone numbers or select phone numbers from that index.”

As to whether text messages constituted the use of an artificial or prerecorded voice:

- The Plaintiff’s interpretation is simply beyond the bounds of common sense. For one, the primary definition of “voice” in Webster’s dictionary is “sound produced by vertebrates by means of lungs, larynx, or syrinx; especially sound so produced by human beings.” *Voice*, Merriam-Webster’s Online Dictionary, accessed Jan. 27, 2022. “An instrument or medium of expression” is only the tertiary definition of “voice.” *Id.* Webster’s tertiary definition includes an example sentence: “the party became the voice of the workers,” illustrating that this usage of “voice” has an almost metaphorical or symbolic connotation. See *id.*

The “most natural understanding” of the term “voice” provides that Congress intended “voice” to mean via the use of the human vocal system. The *Eggleston* decision cuts off another avenue for plaintiffs to circumvent the pivotal *Duguid* decision. Now, there are very few scenarios where a text message will fall under the TCPA.

### KD IS HERE TO HELP

Please contact the Consumer Financial Services team at KD for further guidance on your TCPA questions.

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