

CLASS ACTION BLOG

TCPA's Debt Collection Exception Unconstitutional but Severable - TCPA Class Action Case Survives Motion to Dismiss

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Facebook sent Noah Duguid unauthorized text messages to alert him, as a “security precaution,” when his “account” was being accessed by an unrecognized device or browser. He got those messages even though he was not a Facebook customer. Fed up with the alerts despite his attempts to stop them, he sued Facebook seeking to represent putative classes. The district court dismissed his amended complaint with prejudice resulting in Duguid’s appeal.

The Ninth Circuit found that Duguid’s “nonconclusory allegations plausibly suggest that Facebook’s equipment” satisfied the requirements for pursuing a TCPA class action. In addition, the court held that a 2015 amendment to the TCPA which added a debt collection exception to the TCPA was a content based statute which was “presumptively unconstitutional” because it failed to pass strict scrutiny. However, because that recently added exception was severable, the TCPA was not unconstitutional as a whole. For that reason, the court rejected “Facebook’s challenge that the TCPA as a whole is facially unconstitutional.” The court instead decided to sever “the debt-collection exception as violative of the First Amendment.” The court then reversed “the dismissal of Duguid’s amended complaint” and remanded the case for further proceedings. Accordingly, Duguid was able to pursue his TCPA claims, possibly as a class representative in a class action case against Facebook.

Case citation: Duguid v. Facebook, Inc., 2019 WL 2454853 (9th Cir. 2019)