

## **TCPA Quick-Hitter: Court Finds “Artificial or Prerecorded Voice” Is Not a Legal Conclusion (But “Predictive Dialer” and “ATDS” Are!)**

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In TCPA World, I quickly learned that discovery is an art to the most experienced and skilled litigators. Overbroad requests and objections that lack specificity and detail won’t cut it here in the wild west.

Adobe, Inc. learned this lesson last week when Magistrate Judge Sallie Kim of the NDCA granted Plaintiff’s motion to compel discovery regarding Defendant’s use of an artificial or prerecorded voice because this terminology does not require a legal analysis. *Bonoan v. Adobe, Inc.*, No. 19-cv-01068-RS (SK), 2019 U.S. Dist. LEXIS 192105, at \*4 (N.D. Cal. Oct. 29, 2019).

Magistrate Judge Kim first highlighted the fact that, “[i]t is clear that Defendant created one set of boilerplate objections and applied them to many different requests for production of documents, regardless of the actual terminology used in the request.” *Id.* at \*2. (I could have stopped reading the opinion after this and easily guessed the findings of this order, but I digress.)

As background, the Court previously ruled that Plaintiff’s discovery requests called for a legal conclusion because Plaintiff initially drafted her requests for discovery regarding (1) an artificial or prerecorded voice, (2) an ATDS, and (3) a predictive dialer. The Court found that these requests required legal conclusions and did not compel production.

So, the parties met and conferred and Plaintiff agreed to drop “ATDS” and “predictive dialer” from her discovery requests. However, Adobe objected again using their boilerplate objections.

Here, the Court found that the newly-tailored discovery requests relating solely to an artificial or prerecorded voice pass muster, and granted Plaintiff’s motion to compel production regarding the same. The Court’s rationale was straightforward – “Determining whether a voice is artificial or prerecorded does not require legal analysis.” *Id.* at \*4.

Defendants also objected to a document request to produce permits or licenses obtained from state public utilities commissions for use of an ATDS or other automatic equipment to make telephone calls. Defendant claimed these licenses are irrelevant to the present litigation. However, the Court disagreed in finding that the licenses, “shed light on Defendant’s internal assessment about the

nature of its telephone calls.” *Id.* at \*3. If it walks like a duck, talks like a duck, and you register it as a duck.....

Key takeaway here: “ATDS” and “predictive dialer” are legal conclusions, not proper for discovery requests. So, pay attention, expend the time on your discovery, and object accordingly folks.

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