

## **CRAIG CUNNINGHAM TCPA SUIT CUT DOWN: Court Grants Defense Motion to Dismiss on Vicarious Liability Grounds**

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So many TCPA cases out there. And guys like [Craig Cunningham](#) have certainly brought more than their fair share.

But his latest suit didn't make it out of the starting blocks after he failed to allege facts demonstrating a brand was responsible for calls made by a marketer "on its behalf."

In *Cunningham v. Daybreak*, 2023 WL 3985245 (N.D. Tex. June 13, 2023) the Defendant moved to dismiss arguing that the plaintiff failed to allege facts showing the Defendant made the calls at issue or was responsible for those calls under the law.

The Court applied the correct analysis here and dismissed the case.

First the court concluded that the absence of allegations that Daybreak actually made the calls itself ended any analysis of "direct" liability—the mere fact that the Plaintiff eventually was transferred to a Daybreak operative does NOT mean that Daybreak made the call in the first instance.

Handy.

Next the court determined vicarious liability allegations were absent. Again the mere acceptance of a transfer is not sufficient to establish agency. Importantly, Daybreak must have "both the right: (1) to assign the agent's task; and (2) to control the means and details of the process by which the agent will accomplish that task." The complaint lacked allegations establishing that right of control.

Case dismissed.

Really fantastic stuff here. I like to see it.

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