

Massive Discovery Ordered: Court Finds Data of 11,000 Additional Calls Relevant and This is Why Burden Matters!

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Happy Monday! Just the other day, opposing counsel snickered at our voluminous discovery objections. And then, there are Defendants who just don't object properly and so, this happens.

The Colorado District Court issued Defendants a painful and probably burdensome loss – but they never said that – by granting a massive discovery order.

By way of background, in her Amended Complaint, Plaintiff Klassen alleged that Defendants made more than one solicitation call within a twelve-month period to a phone number on the National Do Not Call Registry in violation of the TCPA. *Klassen v. SolidQuote and DMS, formerly known as Underground Elephant*, 2023 WL 8110668.

In the discovery process, DMS identified 1,670 telephone calls initiated by or on behalf of Insuracall, a DMS' vendor who was in part responsible for dialing at least one call to Plaintiff. DMS provided an "informative and efficient" spreadsheet listing the calls dialed by Insuracall, transferred to DMS and then transferred to SolidQuote. SolidQuote acknowledged in total 13,016 call transfers from DMS to SolidQuote on the same campaign as the call transfer involving Plaintiff.

But Plaintiff argued that she needs the data to the additional 11,000 calls in order to ascertain the size or scope of the relevant class. Given the broad and liberal construction afforded by the federal discovery rules, an objecting party must show specifically how a discovery request is overly broad, burdensome, or oppressive.

On the other side, Defendants refused to provide an "informative and efficient" spreadsheet listing as to the set of 13,016 calls arguing that they have produced information and data in their possession concerning the *one* call transfer involving Plaintiff as well as the putative class set forth in the Amended Complaint.

Defendants argue that the data of the 1,670 calls followed the same path as Plaintiff's – Insuracall to DMS and to SolidQuote. But the additional 11,000 which were transferred from DMS to SolidQuote did **NOT** originate from Insuracall and therefore, are irrelevant and lack any foundation to Plaintiff's claims. This is a good argument but you know what else is true, these requests (see below) are significant and at minimum, will yield over 11,000 additional call data. And so, this is extremely

burdensome to produce, especially since Plaintiff already has some data.

But no, Defendants' primary objection was that Klassen cannot maintain a valid individual claim for discovery because the "undisputed record shows that Plaintiff had a single call transferred to SolidQuote", and the TCPA requires receipt of two or more calls within a twelve-month period.

The Court was unpersuaded.

In response to Defendants primary objection, the Court notes that discovery has not yet been completed, and it would be inappropriate to deny discovery on the purported basis that Plaintiff will not be able to meet her burden of proving all the elements of her claim at trial. "The question before the Court—whether to compel Defendants to produce data about additional phone calls—is a discovery issue, not a decision on the merits of the case."

Second, Defendants have **not** articulated any basis for concluding that producing the data of 11,000 additional calls would be unduly burdensome, or burdensome at all. In fact, DMS was able to produce records of the smaller set at a relatively low cost.

So, the Court found that the information about the cumulative 13,016 call transfers from DMS to SolidQuote during the relevant time period appear relevant to the case and are proportional to the needs of the case, and especially because Defendants have not demonstrated that they will suffer an undue burden if they are required to provide the requested information. Objections are overruled and Defendants shall provide the requested information within 14 business days.

And here are the extensive discovery requests to SolidQuote and DMS which Defendants are now ordered to respond to:

Interrogatory No. 6 to SolidQuote: State the number of "call transfers" from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present.

Interrogatory No. 7 to SolidQuote: State the number of "call transfers" from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present, where the phone number called had been on the national do-not-call registry.

RPD No. 9 to SolidQuote: Produce any and all documents sufficient to identify each "call transfers" from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to present, where the phone number called had been on the national do-not-call registry for 31 days or more at the time of the call.

RPD No. 10 to SolidQuote: Produce any and all documents sufficient to identify each "call transfer" from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present.

Interrogatory No. 5 to DMS: State the number of "call transfers" from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present.

Interrogatory No. 6 to DMS: State the number of "call transfers" from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present, where the phone number called had been on the national do-not-call registry for 31 days or more at the time of the call.

RPD No. 9 to DMS: Produce any and all documents sufficient to identify each "call transfer" from

Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present, where the phone number called had been on the national do not-call registry for 31 days or more at the time of the call.

RPD No. 10 to DMS: Produce any and all documents sufficient to identify each “call transfer” from Underground Elephant and/or DMS to SolidQuote from February 3, 2019 to the present.

And this is one reason why specific discovery objections are important...

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