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California District Court Reserves "Multiple-Account" Revocation Issues for the Jury and Suggests that a Spouse Can Revoke Consent

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One of the biggest challenges collectors face when trying to honor consumer consent preferences is how to treat a stop call request received from a customer who has multiple accounts in collections with the caller.

While it is black letter law that a caller must stop calling using automated technology when a customer "clearly expresses" a specific set of calls to stop, it is far from decided what constitutes a "clear expression" in the context of a caller who makes calls to the same person on multiple accounts.

Last year, for instance, a Court found that revocation on one account being worked by a collector was not revocation on a wholly separate account for which separate express consent had been obtained. See *Michel v. Credit Prot. Ass'n L.P*., Case No. 14-cv-8452, 2017 U.S. Dist. LEXIS 134767 (N.D Ill. Aug. 23, 2017). The Court reasoned that each creditor had obtained separate consent from the consumer authorizing calls regarding different debts. Hence, revocation as to one of the two accounts could not, and did not, operate to revoke consent on the other.

The limits of *Michel* were on display this week, however, as Judge Otis Wright II of the Central District of California found a question of fact in a multiple-account scenario in which the Plaintiff asked for calls to stop on her "accounts" and about her "debts." See *Jara v. Gc Servs.,* Case No 2:17-cv-04598-ODW-RAO, 2018 U.S. Dist. LEXIS 83522 (C.D. Cal. May 17, 2018.) There the Court found that the use of the plural form of debt and account might lead a reasonable juror to conclude that the caller knew the Plaintiff intended to revoke consent on all accounts, not just the account about which the debtor was calling. (Note the nuance there BTW—the Court is applying a subjective standard for revocation that turns on the *caller's* state of mind and concludes that a jury might find the *caller* knew Plaintiff wanted calls to stop respecting all accounts.) Importantly, however, the Court also denied Plaintiff's cross-motion on the same facts; so a jury might also find that the caller *did not* know that Plaintiff was intending for calls to stop on all accounts. Interesting stuff.

Jara is also fascinating because Mr. Jara claimed that his wife had revoked consent on his behalf. While the Court did not seem particularly impressed with this argument, it did note that it would be "illogical" to conclude that a spouse could provide consent to call a number—which is fairly

established case law— but could not also revoke consent to call that number. Nonetheless, the Court denied summary judgment to the Plaintiff—despite Mrs. Jara's rather clear requests for calls to stop on Mr. Jara's number—because whether or not Mrs. Jara was Mr. Jara's authorized agent for the purpose was a question of fact for the jury. This was true despite the unchallenged testimony of Mr. Jara to the effect that Mrs. Jara was fully authorized to make that request. Presumably, the Court's ruling is based upon its inability to assess Mr. Jara's credibility at the summary judgment stage, although that point is not expressly made.

Tying it altogether, we see yet again how hard operationalizing TCPA compliance remains for our friends in the collection industry.

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