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Defendant Debunks Plaintiffs' Reliance On FCC Order That Never Became Effective

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A pair of new cases, one from Alabama and the other from Florida, has [doubled down](#) on the conclusion that plaintiffs cannot rely on the [Report and Order](#) adopted by the FCC on August 11, 2016 (the "August 2016 Order") in asserting their TCPA claims, especially when the subject of the calls is debt owed to or guaranteed by the United States government.

In *Green v. Navient Solutions, LLC*, No. 1:17-CV-1453-VEH, 2018 WL 6303775, at *4 (N.D. Ala. Nov. 29, 2018), the plaintiff alleged the defendant continually autodialed her cell phone using an audibly artificial or prerecorded voice, even after her repeated requests to stop. The defendant sought summary judgment, arguing its calls did not violate and were exempt from the TCPA under 47 U.S.C. § 227(b)(1)(A)(iii) because they were made solely to collect a student loan debt that was guaranteed against default by the United States Department of Education ("ED"). *Id.* at *2, *4, *5 (citations omitted). The plaintiff pointed to the August 2016 Order, and two cases relying on it, to assert that callers seeking to collect a debt guaranteed by the United States only have consent to call under the TCPA until such consent is revoked. *Id.* at *6 (citations omitted). This Court sided with the defendant, finding the calls were exempt from the TCPA's prior consent requirement based on the plain language of the statute and the August 2016 Order did not alter this conclusion because it "never became effective." *Id.* at *5. Concluding the August 2016 Order was the plaintiff's sole basis for her argument, the Court granted the defendant's motion and dismissed the case with prejudice. *Id.* at *7 (citation omitted) (footnote omitted).

In *Gaza v. Navient Solutions, LLC*, No. 8:18-cv-1049-MSS-SPF, 2019 WL 645390, at *1 (M.D. Fla. Jan. 23, 2019), the plaintiff had obtained two federal student loans, where the promissory note specifically provided that the debt was owed to the ED and that the educational institution, the ED, and their respective agents and contractors were permitted to call the plaintiff's cell phone using autodialing equipment to collect overdue debt. (Citations omitted). Upon receiving multiple autodialed calls, the plaintiff claimed that even if the calls were permitted under the parties' agreement, this aspect was voided once the plaintiff gave written notice expressly withdrawing his prior consent to receive such automated debt collection calls. *Id.* at *1, *2 ((citations omitted). Similar to *Green*, the defendant moved for summary judgment on the plaintiff's TCPA claim and argued its calls were exempt from TCPA requirements per 47 U.S.C. § 227(b)(1)(A)(iii). *Id.* at *2 (citations omitted). The *Gaza* Court relied heavily on the decision and reasoning in *Green*, finding the defendant was entitled to summary judgment for the same reasons. *Id.* at *2-3.

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