



## News

### David Schultz Analyzes in ARM Compliance Digest: Judge Denies MTD in TCPA Class Action Even Though Plaintiff Pressed 'Two'

May 24, 2023

In the May 22, 2023 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discussed a Missouri district court judge's decision to deny a defendant's motion to dismiss in a Telephone Consumer Protection Act (TCPA) class action that alleged a debt collector used a prerecorded message instructing the plaintiff to "press two if you are not this person." The plaintiff pressed two, the call ended, and the plaintiff subsequently filed a class action. Schultz analyzed the decision as follows:

[Plaintiff's] putative class action TCPA claims appear weak. Consequently, the defense came out with an aggressive challenge, arguing: (1) plaintiff lacked Article III standing, (2) plaintiff failed to plead necessary elements of his claim, (3) plaintiff and the class could not seek injunctive relief, and (4) the court should strike the class action claims. It thus went for a knockout punch. The court, though, rejected all of the arguments – at least for now.

There is a lot of strategy that goes into motion practice, and I don't question the motions here. Each argument had merit and is preserved, and the rulings may give insight on how to later approach the case. However, if nothing else, the *Saggio v Medicredit* opinion highlights the difficulties with early motions on the pleadings. The standards, as the court repeatedly stated, favor the plaintiff.

"Judge Denies MTD in TCPA Class Action Even Though Plaintiff Pressed '2'" was published by *ARM Compliance Digest* on May 22, 2023

[Read the full May 22, 2023 edition of the AccountsRecovery.net Compliance Digest.](#)

#### Attorneys

David M. Schultz

#### Service Areas

Consumer Financial Services

#### Offices

Chicago