



## THE STATE BAR OF CALIFORNIA Business Law Section

### Cyberspace Law e-Bulletin

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#### **Court Dismisses TCPA Claims Based on Good Faith Consent to Call Defense**

In *Danehy v. Time Warner Cable Enterprises*, Case No. 14-cv-133 (E.D.N.C.), the U.S. District Court for the Eastern District of North Carolina recently adopted a magistrate judge's recommendation that summary judgment be entered in favor of Time Warner Cable based upon defendant's good faith belief that it had consent to call the plaintiff's wireless number, despite plaintiff's number being registered on the national Do-Not-Call registry.

#### Relevant facts:

- The subject telephone number previously belonged to a Time Warner customer who had provided consent to receive calls and text messages;
- Unbeknownst to Time Warner, the subject telephone number was reassigned to plaintiff;
- Following reassignment, the Time Warner customer requested service but failed to update his contact information;
- Time Warner erroneously made numerous calls to the reassigned number in an attempt to fulfill a service request; and
- Plaintiff brought TCPA claims, including DNC registry related claims.

Plaintiff's argument was consistent with the recent FCC Declaratory Ruling which set forth, in part, that a "called party" is the current subscriber or non-subscriber customary user of the telephone, and not the "intended recipient." Nevertheless, the magistrate judge held that equitable considerations dictate Time Warner's good faith reliance on the fact that it had consent to call the number barred plaintiff's claims.

Richard B. Newman is an advertising law attorney at Hinch Newman LLP focusing on Internet law, online marketing compliance, regulatory defense and digital media matters.

**Cyberspace Law Committee**