

# Legal Discussion

## TCPA Lawsuit

### Case Name

Arthur v. Sallie Mae

### Governing Bodies

Federal Communications Commission (FCC)

### Violated Laws

Standards of Consumer Financial Protection Bureau (CFPB)

Telephone Consumer Protection Act (TCPA)

Regulations set forth by the Federal Communications Commission (FCC)

### Penalties Paid

- \$24 million to class
- Each claimant received an estimated amount between \$20 and \$40.
- Some received multiple calls and text messages, making their payout greater.

### Case Summary

The plaintiffs of the case alleged to have received autodialed calls and text messages from the defendant over a period of time. The claim is that the automated calls and text messages were made willfully and without prior express consent, which is a violation of the TCPA.

The plaintiffs and other claimants were borrowers who were either current on their loan, 180 days past due, or were late on their payment and current at the time of the case.

The calls and text messages were made in violation of TCPA law, 47 U.S. Code § 227 (b)(1)(A), which states:

- (1) It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—
  - (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—
    - (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States;

This case was brought to judgement before the FCC issued a 2016 declaratory ruling explaining the meaning of prior express consent. In the 2016 ruling, the FCC declared that giving a phone number to a company with which a business relationship is established can be counted as prior express consent in some circumstances.

### Judgement

The judge approved the motion for the class-action suit, and the class was originally settled with \$19.5 million. Then the settlement was expanded to include additional class members who were affected by the calls, making the settlement a \$24 million suit. The class members were entitled to varying degrees of the sum according to their loan status (paid off, current, or delinquent). Because Sallie Mae decided to settle rather than argue the case further, the company likely avoided a steeper penalty. If the company had decided to pursue further arguments of the case, then the penalties could have racked up much higher, or to the TCPA penalty of \$500-\$1500 per call administered by the autodialing system.

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### Sallie Mae Remedial Process

There are multiple solutions that Sallie Mae could have used to potentially avoid the calling problems and subsequent litigation. First, the loan servicer could have avoided the auto-dialer process altogether by using Human Intervention to place direct calls. Myriad legal judgments have deemed these processes as necessary alternatives to traditional Automated Telephone Dialing Systems.

Additionally, a significant portion of those involved in the class action suit were accounts that had been rigorously worked by Sallie Mae over extended periods of time. Many of these accounts could have shifted into the wage garnishment process, thus avoiding ATDS processes entirely.

Finally, consumer numbers can be verified by reputable skiptracing firms or certain data vendors to confirm express consent. At the point of consumer outreach, Sallie Mae could have utilized these services to confirm that on-file numbers remained connected to the proper consumers and verified express consent. Additionally, if the loan servicer were notified that an on-file phone number did not belong to a correct individual, Sallie Mae could flag the account for further verification with those same vendors or firms.

### How Accutrac's Products Prevent Lawsuits of this Nature

Our most direct solution that can help you avoid lawsuits of this nature is the Phone Consent feature of our skiptracing service. Not only do you gain access to an industry-leading skiptrace waterfall, you are then equipped with explicit consumer consent to dial. By obtaining recorded, prior express consent, you will have proof that the consumers agreed to receive calls and text messages from your company, reducing your risk of TCPA litigation. Additionally, Accutrac's skiptracing services come with the "Phone type" determination, segmenting which phones may be autodialed and which must be called manually.

Our POE and VPOE services help your company avoid lawsuits of this nature. Both our RPC and verification services can assist in fully compliant collections of delinquent accounts. Instead of repeatedly calling aging accounts, you can make sure that you are not at risk of TCPA lawsuits by using our products to successfully garnish wages. We verify the place of employment of consumers and allow you to garnish wages from the correct individual. When you garnish from the wrong person, your company is at risk of a lawsuit and a potentially exorbitant penalty. Our services allow you to find and verify the place of employment for any consumer, increasing incoming loan payments while being fully compliant to the TCPA.

### Company Background

Accutrac is a batch data verification company that offers right party contact, POE, VPOE, consent, point-of-credit, and validation solutions to companies in the credit, collections, and accounts receivables industry.