

Troutman Sanders LLP
One North Wacker Drive
Suite 2905
Chicago, IL 60606



Misha Tseytlin
D 608.999.1240
F 312.759.1939
misha.tseytlin@troutman.com

February 20, 2020

VIA ELECTRONIC FILING

Molly Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939
(415) 355-8000

Re: Lamkin v. Portfolio Recovery Associates, LLC; Case No. 19-16947

Dear Ms. Dwyer:

Portfolio Recovery Associates, LLC ("PRA") submits this citation of supplemental authority under Federal Rule of Appellate Procedure 28(j). PRA filed its Opening Brief and Petition for Initial Hearing En Banc on February 10, 2020.

Yesterday, the Seventh Circuit issued *Gadelhak v. AT&T Services, Inc.*, ___ F.3d ___, 2020 WL 808270 (7th Cir. Feb. 19, 2020), adopting the same reading of "automatic telephone dialing system" ("ATDS") that PRA urges. In an opinion by Judge Barrett—joined by Chief Judge Wood and Judge Kanne—the court held that "using a random or sequential number generator" modifies both 'store' and 'produce.'" *Id.* at *1 (quoting 47 U.S.C. § 227(a)(1)). Thus, a device must be able to "store" numbers "using a random or sequential number generator" or "produce" numbers "using a random or sequential number generator." *Id.* Beyond making many of the same textual points that PRA raises, Judge Barrett highlighted "the far-reaching consequences" of the contrary reading adopted in *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018): it "create[s] liability for every text message sent from an iPhone," imposing "a sweeping restriction on private consumer conduct," which "makes little sense." 2020 WL 808270, at *6.

Gadelhak confirms that *Marks* makes this Court an increasingly isolated outlier—and thus a sure magnet for TCPA plaintiffs—a situation that should not be permitted to stand. The Seventh Circuit rejected *Marks*, following the interpretation of ATDS adopted by the Third and Eleventh Circuits in *Glasser v. Hilton Grand Vacations Co.*, ___ F.3d ___, 2020 WL 415811 (11th Cir. Jan. 27, 2020), and *Dominguez ex rel. Dominguez v. Yahoo, Inc.*, 894 F.3d 116 (3d Cir. 2018). See *Gadelhak*, 2020 WL 808270, at *4–6. PRA

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respectfully submits that this Court should resolve this one-sided circuit split by adopting the Third, Seventh and Eleventh Circuit's interpretation, as well as the reasoning of the D.C. Circuit. That would bring nationwide uniformity to this heavily litigated area of law, rendering unnecessary Supreme Court review to resolve this one-sided split. See Petition for Writ of Certiorari, *Facebook Inc. v. Duguid*, No. 19-511 (U.S. Oct. 17, 2019).

Sincerely,

/s/ Misha Tseytlin

Misha Tseytlin

cc: All counsel via ECF