

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID DOERKEN,)	CV 16-08824-RSWL-MRW
)	
Plaintiff,)	
)	
v.)	ORDER re: DEFENDANT'S
)	MOTION TO STAY
USAA SAVINGS BANK,)	PROCEEDINGS [20]
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Currently before the Court is Defendant USAA Savings Bank's ("Defendant") Motion to Stay Proceedings ("Motion") pending the United States Court of Appeals for the D.C. Circuit's decision in ACA Int'l v. Fed. Commc'ns Comm'n, Appeal No. 15-1211 (D.C. Circuit) (filed on Oct. 13, 2015) [20]. The Court, having reviewed all papers and arguments submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:**

1 Defendant's Motion to Stay Proceedings is **GRANTED**.

2 **II. BACKGROUND**

3 **A. Factual Background**

4 This action arises from Plaintiff David Doerken's
5 ("Plaintiff") claims that Defendant violated the
6 Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §
7 227 and the Rosenthal Fair Debt Collection Practices Act
8 ("RFDCPA"), Cal. Civ. Code. § 1788. See Compl., ECF No.
9 1.

10 Plaintiff is an individual who resides in Los
11 Angeles County, California. Id. at ¶ 5. Defendant is a
12 bank with its principal place of business in Texas. Id.
13 at ¶ 9.

14 Defendant attempted to collect a debt that
15 Plaintiff allegedly owed. Id. at ¶ 11. Plaintiff
16 alleges between May 2016 and June 2016, Defendant called
17 Plaintiff more than forty-four times in its attempt to
18 collect the debt. Id. at ¶ 13. On June 27, 2016,
19 Plaintiff told a representative of Defendant that he
20 unequivocally revoked Defendant's consent to contact him
21 on his cellular phone; however, between June 28, 2016,
22 and August 4, 2016, Defendant allegedly contacted
23 Plaintiff at least seventy-five additional times. Id.
24 at ¶¶ 14-15.

25 Plaintiff further alleges that Defendant called him
26 using an automatic telephone dialing system ("ATDS"),
27 which violates the TCPA. Id. at ¶¶ 21-22. Plaintiff
28 also alleges these calls violated the RFDCPA.

1 Defendant denies its dialing system meets the definition
2 of an ATDS and therefore it lacks liability under the
3 TCPA. Def.'s Mot. to Stay Proceedings ("Mot.") 1:20-21,
4 ECF No. 20.

5 **B. Procedural Background**

6 On November 29, 2016, Plaintiff filed its Complaint
7 against Defendant [1]. On January 4, 2017, Defendant
8 filed its Answer [18]. On February 10, 2017, Defendant
9 filed an Amended Answer with Plaintiff's stipulation
10 correcting Defendant's name from USAA Federal Savings
11 Bank to USAA Savings Bank [19]. On February 21, 2017,
12 Defendant filed the instant Motion [20]. On March 1,
13 2017, Plaintiff filed its Opposition [23] and
14 Plaintiff's Reply followed on March 13, 2017 [24].

15 **III. DISCUSSION**

16 **A. Legal Standard**

17 A district court has "broad discretion to stay
18 proceedings as an incident to its power to control its
19 own docket." Clinton v. Jones, 520 U.S. 681, 706
20 (1997)(citing Landis v. N. Am. Co., 299 U.S. 248, 254
21 (1936)). A court may "find it . . . efficient for its
22 own docket and the fairest course for the parties to
23 enter a stay of an action before it, pending resolution
24 of independent proceedings which bear upon the case."
25 Leyva v. Certified Grocers of Cal., Ltd., 593 F.2d 857,
26 863 (9th Cir. 1979). The rule applies to judicial
27 proceedings and does not require the issues of such
28 proceedings be necessarily controlling of the action

1 before the court. Id. at 863-64. A stay should not be
2 granted unless it appears likely that the other
3 proceedings will be concluded within a reasonable time
4 in relation to the urgency of the claims. Id.; see
5 Landis, 299 U.S. at 256-57 (holding the lower court
6 abused its discretion because the stay "continue[d] in
7 effect" without "reasonable limits").

8 In exercising its discretion in determining whether
9 to grant a stay, a court must weigh the competing
10 interests of the various parties that may be affected by
11 the decision to grant or refuse to grant a stay.

12 Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir.
13 2005). Specifically, the court must consider: (1) the
14 possible damage or harm to the non-moving party which
15 may result from granting a stay; (2) the hardship or
16 inequity the moving party may suffer in being required
17 to go forward with the case if the request for a stay is
18 denied; and (3) "the orderly course of justice measured
19 in terms of the simplifying or complicating of issues,
20 proof, and questions of law which could be expected to
21 result from a stay." Id. The proponent of a stay has
22 the burden of proving that a stay is justified.

23 Clinton, 520 U.S. at 708.

24 Regarding the second Lockyer factor, courts have
25 held that there is no likelihood of damage or harm to
26 the non-moving party merely because a stay could cause a
27 delay to the plaintiff in receiving money damages. See
28 Bay Area Surgical Grp., Inc. v. Aetna Life Ins. Co., No.

1 5:13-CV-05430-EJD, 2014 WL 2759571, at *5 (N.D. Cal.
2 June 17, 2014); see also Nussbaum v. Diversified
3 Consultants, Inc., No. 15-CV-600, 2015 WL 5707147, at *2
4 (D. N.J. Sept. 28, 2015) (“Because delay results
5 inherently from the issuance of a stay, courts have
6 found that mere delay does not, without more,
7 necessitate a finding of undue prejudice and clear
8 tactical disadvantage”).

9 **B. Analysis**

10 Defendant argues that the D.C. Circuit’s decision
11 in ACA will decide the exact issue pertinent to this
12 case—whether equipment constitutes an ATDS if it merely
13 has the potential capacity to generate random telephone
14 numbers to be dialed. Mot. 2:1-4. Defendant argues a
15 stay should be granted because: 1) a stay poses no risk
16 of harm to Plaintiff because he is only seeking
17 statutory damages; 2) Defendant will suffer prejudice
18 because it will force Defendant to expend significant
19 and potentially unnecessary costs in discovery and trial
20 preparation depending on the D.C. Circuit’s decision;
21 and 3) granting a stay promotes the interests of the
22 public and judicial economy in simplifying the issues in
23 this case. Id. at 6:23-7:11; 8:5-23; 9:4-5.

24 Plaintiff argues a stay should not be granted
25 because: 1) Defendant has not shown the ruling in ACA
26 will simplify issues in this case; 2) regardless of the
27 decision in ACA, discovery will need to be conducted; 3)
28 Plaintiff will suffer prejudice and undue delay if a

1 stay is granted; and 4) Defendant has failed to submit
2 any evidence it would suffer hardship or inequity if
3 required to move forward. Pl.'s Opposition ("Opp'n")
4 7:16-23, ECF No. 23.

5 All of the factors a court must consider in
6 determining whether a stay should be granted weigh in
7 favor of granting a stay pending the D.C. Circuit's
8 ruling in ACA. In exercising its discretion to
9 determine whether to grant a stay, a court must weigh
10 the competing interests of the various parties that may
11 be affected by the decision to grant or refuse to grant
12 a stay. Lockyer, 398 F.2d at 1110. The factors this
13 Court must consider are: (1) the possible damage or harm
14 to the non-moving party which may result from granting a
15 stay; (2) the hardship or inequity the moving party may
16 suffer in being required to go forward with the case if
17 the request for a stay is denied; and (3) "the orderly
18 course of justice measured in terms of the simplifying
19 or complicating of issues, proof, and questions of law
20 which could be expected to result from a stay." Id.

21 Under the TCPA, an ATDS is equipment "which has the
22 capacity (A) to store or produce telephone numbers to be
23 called, using a random or sequential number generator;
24 and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).
25 On appeal is the Federal Communications Commissions'
26 ("FCC") finding that a piece of equipment has sufficient
27 capacity to qualify as an ATDS if it has the present or
28 "potential" capacity to store or produce numbers to be

1 called using a random generator, but not if it only has
2 the "theoretical" capacity. See In re Rules &
3 Regulations Implementing the Tel. Consumer Prot. Act of
4 1991, 30 F.C.C.R. 7961 (2015) ("July 2015 Ruling"). The
5 July 2015 Ruling does not clarify the difference between
6 "potential" and "theoretical" capacity.

7 The competing risks of harm favor granting a stay.
8 Plaintiff's conclusory statement that many of
9 Defendant's employees are entry-level debt collectors
10 and that there is a high probability that they will no
11 longer work for Defendant once the stay is lifted and
12 will be unavailable as witnesses is unfounded. Opp'n
13 9:12-10:4. Moreover, a stay would not cause Plaintiff
14 such great stress and emotional strain to justify denial
15 of a stay given the significant effect the D.C.
16 Circuit's ruling in ACA will have on the instant case.
17 In contrast, potential prejudice to Defendant is
18 significant because denying a stay would force Defendant
19 to conduct discovery and defend the TCPA claim in light
20 of the uncertain difference between "potential" and
21 "theoretical" capacity under the definition of an ATDS.

22 A stay will serve "the orderly course of justice
23 measured in terms of the simplifying or complicating of
24 issues, proof, and questions of law." Lockyer, 398 F.2d
25 at 1110. In ACA, the D.C. Circuit will address, among
26 other things, what type of equipment constitutes an
27 ATDS. Because Plaintiff must prove that Defendant
28 called him using an ATDS to establish a TCPA claim, the

1 definition of an ATDS is indispensable in this
2 litigation.¹ See Meyer v. Portfolio Recovery Assocs.,
3 LLC, 707 F.3d 1036, 1043 (9th Cir. 2012) ("The three
4 elements of a TCPA claim are: (1) the defendant called a
5 cellular telephone number; (2) using an automatic
6 telephone dialing system [ATDS]; (3) without the
7 recipient's prior express consent").

8 One issue on appeal, among others, is whether the
9 FCC's treatment of the term "capacity. . . is arbitrary,
10 capricious, and an abuse of discretion, and results in
11 an approach that [fails to] comport with the caller's
12 constitutional rights of due process and freedom of
13 speech." Chattanond v. Discover Fin. Servs., LLC, No.
14 CV 15-08549-RSWL-JCx, 2016 WL 8202736, at *4 (C.D. Cal.
15 Feb. 26, 2016)(internal quotation marks and citation
16 omitted). Because Defendant denies its dialing system
17 is an ATDS, the issue of what constitutes one is
18 pertinent to this case.

19 Moreover, briefing in ACA was completed on February
20 24, 2016. Therefore, the appeal is not likely to remain
21 pending for an extended period of time, and the possible
22 prejudice to Plaintiff is minimal. Provo v. Rady
23 Children's Hospital-San Diego, No. 15cv0081 JM(BGS),
24 2015 WL 6144029, at *2 (S.D. Cal. July 29, 2015).

25

26 ¹ Plaintiff argues that predictive dialers qualify as an
27 ATDS. Opp'n 5:9-10. However, as Defendant correctly points out,
28 this argument is irrelevant because Plaintiff's Complaint does
not allege that Defendant used a predictive dialer to call
Plaintiff. See Compl.

1 Granting a stay may simplify the issues in this case and
2 conserve resources both for the parties and the Court.
3 Id. Defendant has shown there would be minimal, if any,
4 harm or damage to Plaintiff if a stay is granted,
5 Defendant would suffer hardship if it is required to
6 move forward with discovery pending the D.C. Circuit's
7 decision in ACA, and the ruling in ACA will serve to
8 simplify and answer indispensable questions pertinent to
9 the instant litigation. Thus, all factors weigh in
10 favor of granting a stay.

11 **IV. CONCLUSION**

12 Accordingly, the Court **GRANTS** Defendant's Motion to
13 Stay Proceedings [20]. Defendant shall confer with
14 Plaintiff and file a status report advising the Court of
15 the outcome of the decision from the United States Court
16 of Appeals for the D.C. Circuit in ACA within 14 days
17 from the date of decision. The status report shall
18 include the parties' position as to how this Court
19 should proceed. All dates on the Court's calendar are
20 hereby vacated and will be reset as necessary.

21 **IT IS SO ORDERED.**

22 DATED: April 26, 2017

s/ RONALD S.W. LEW

23 **HONORABLE RONALD S.W. LEW**

24 Senior U.S. District Judge

25

26

27

28