

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: MIDLAND CREDIT
MANAGEMENT, INC.,
TELEPHONE CONSUMER
PROTECTION ACT LITIGATION

Case No.: 11md2286-MMA-MDD
Member Case No.: 15cv1712-MMA-
MDD

**ORDER ON JOINT MOTION FOR
DETERMINATION OF DISPUTE
PRESENTING PLAINTIFF ASHOK
ARORA’S MOTION TO COMPEL
COMPLIANCE WITH COURT
ORDER**

[ECF No. 753]

Before the Court is the Joint Motion of Plaintiff Ashok Arora in member case number 15cv1712-MMA-MDD, and Midland¹ to determine a dispute filed on January 28, 2020. (ECF No. 753). Plaintiff alleges that Midland did not fully comply with this Court’s Order dated September 5, 2018, requiring Midland to produce to qualified plaintiffs information regarding dialing technologies and processes. (See ECF No. 608 at 5).

¹ The Court refers to all Defendants in this case as “Midland.”

1 The September 2018 Order, among other things, required Midland to
2 make available to plaintiffs who completed a required questionnaire:

3 a. Non-privileged documents sufficient to show the dialing
4 technology Defendants used to make debt-collection calls during the time
5 periods in which the plaintiffs in this MDL were called by Midland, as
6 reflected by the Plaintiff Questionnaire responses and the call records
7 produced by Defendants (the “Relevant Time Periods”).

8 b. Non-privileged documents sufficient to show Defendants’
9 internal policies and procedures relating to debt-collection calls during
10 the Relevant Time Periods, including materials used to train employees
11 responsible for placing calls during the Relevant Time Periods.

12 c. A description of the technological systems, including both
13 hardware and software, that Midland used to contact consumers by
14 telephone during the Relevant Time Period, including, to the extent
15 readily available:

16 i. The model and manufacturer of all hardware devices used;

17 ii. The name and developer of each software program used by
18 Midland, whether such programs were purchased from a third-party
19 vendor, customized for Midland in conjunction with a third-party vendor,
20 or developed internally;

21 iii. The purpose or function of each such device or software program;

22 iv. How Midland’s employees or agents operate such devices and
23 software programs; and

24 v. The dates such devices and software programs were in use at
25 Midland.

26 d. A description of how the technological systems described in
27 response to item (c) above are used to place calls to individual consumers.

September 2018 Order, ¶ C.1 (ECF No. 608 at 5-6).

Plaintiff alleges that Midland’s production failed to include call
recording policies. (ECF No. 753 at 8-9). Midland responded that it produced
dialing procedure information but that “call recording policies” are irrelevant
to claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227, as
the TCPA does not regulate call recording. The Court agrees with Midland
that the TCPA does not regulate call recording, but that does not make this
information irrelevant. The Court also finds that call recording policies fall

1 within the scope of information required to be produced by Midland under
2 ¶ C.1.b of the September 2018 Order as it pertains to “internal policies and
3 procedures relating to debt-collection calls” (ECF No. 608 at 5).

4 Accordingly, Midland must supplement its production of information to
5 all Plaintiffs who completed the required questionnaire sufficient to show
6 Midland’s call recording policies and procedures relating to debt collection
7 calls during the relevant time periods. The Court notes that Midland agreed
8 to be deposed on this topic by Plaintiffs, which would include Mr. Arora,
9 alleging calls prior to September 1, 2014. *See Third Amended Notice of Fed.*
10 *R. Civ. P. 30(b)(6) Deposition of Defendants, Topic No. 21*, ECF No. 750 at 5).

11 Plaintiff next claims that Midland’s production regarding technical
12 systems is deficient under ¶ C.1.c of the September 2018 Order. (ECF No.
13 753 at 11). Specifically, Plaintiff asserts that Midland should have produced
14 “an exhaustive list of functions and features” of the software it deployed all
15 documentation regarding the capabilities of dialers. (*Id.* at 12). The Court
16 finds that the information requested by Plaintiff is not required by the
17 September 2018 Order. The Order required Midland to describe the various
18 systems and produce certain information regarding those systems, to the
19 extent readily available, but did not require production of an exhaustive list
20 of features and functions nor “all documents” regarding those systems.
21 Midland’s compliance with the Order in this instance is satisfactory.

22 Plaintiff next asserts that Midland was required to produce information
23 regarding its dialing “campaigns” pursuant to ¶ C.1.d of the September 2018
24 Order. The Court agrees with Midland that nothing in the Order requires
25 information regarding calling “campaigns.”

26 On December 27, 2019, certain plaintiffs alleging TCPA violations
27 against Midland prior to September 1, 2014, filed a notice of deposition of

1 Midland regarding calling practices and policies relevant to that time frame.
2 (ECF No. 738). All parties were provided the opportunity to hear the
3 deposition and communicate questions to the attorneys conducting the
4 deposition. (*Id.*). The deposition was noticed for January 28, 2020. (*Id.*). The
5 deposition notice was amended several times, but the date and conference
6 arrangements did not change. (ECF Nos. 744, 750). Plaintiff had ample
7 notice of the deposition and could have used the opportunity to inquire of
8 Midland regarding the very issues he raises in this motion. Although his
9 decision not to participate does not doom this Motion, it is worth noting that
10 Plaintiff may have learned something of interest to further support this
11 motion or to avoid the necessity of bringing it had he chosen to participate.
12 (*See* ECF No. 750 for the lengthy list of deposition topics).

13 **CONCLUSION**

14 Plaintiff's Motion to Compel, as presented in this Joint Motion, is
15 **GRANTED IN PART AND DENIED IN PART.** To the extent that the
16 Court has ordered Midland to supplement its production pursuant to the
17 September 2018 Order, it must do so no later than 30 days following the
18 entry of this Order on the docket

19 **IT IS SO ORDERED.**

20 Dated: January 31, 2020

21 

22 Hon. Mitchell D. Dembin
23 United States Magistrate Judge
24
25
26
27