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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SARAH MENDEZ, On Behalf Of Herself  
12 And All Others Similarly Situated,

13 Plaintiff,

14 v.

15 OPTIO SOLUTIONS, LLC, dba  
16 QUALIA COLLECTION SERVICES,

17 Defendant.

Case No.: 3:16-cv-01882 AJB (KSC)

**ORDER DENYING DEFENDANT'S  
MOTION TO STAY CASE**

18 Presently before the Court is Defendant Optio Solutions, LLC's, doing business as  
19 Qualia Collection Services, ("Defendant") motion to stay the case pending the United  
20 States Court of Appeals for the District Court of Columbia Circuit's decision in *ACA*  
21 *International v. Federal Communications Commission*, No. 15-1211, which is currently  
22 reviewing the Federal Communication Commission's July 10, 2015, declaratory ruling and  
23 order (the "2015 FCC Order"). (Doc. No. 21.) Defendant contends that the disputed issue  
24 for review in *ACA International*, whether the FCC correctly interpreted the definition of  
25 an "automated telephone dialing system," ("ATDS"), bears directly on the viability of  
26 Plaintiff Sarah Mendez's ("Plaintiff") claims under the Telephone Consumer Protection  
27 Act, 47 U.S.C. § 227 ("TCPA"). (*Id.*) Upon consideration of the parties' moving papers,  
28 the Court finds this motion suitable for determination on the papers without oral argument

1 pursuant to Local Rule 7.1.d.1. Accordingly, the motion hearing presently set for March  
2 30, 2017, is **VACATED**. Finding the relevant considerations, including the interests of  
3 justice, do not support a stay of this matter, Defendant's motion to stay is **DENIED**.

#### 4 BACKGROUND

5 On July 25, 2016, Plaintiff filed a class action complaint alleging negligent and  
6 willful violations of the TCPA. (Doc. No. 1.) The complaint alleges that as early as October  
7 2015 and without Plaintiff's prior consent, Defendant called Plaintiff on her cellular phone  
8 approximately 120 times, attempting to collect a debt. (*Id.* ¶¶ 17, 18.) Plaintiff claims that  
9 Defendant placed the unsolicited phone calls with the use of an ATDS and an artificial or  
10 prerecorded voice system, which had the capacity to produce or store numbers randomly  
11 or sequentially, and to dial such numbers. (*Id.* ¶ 20.) Plaintiff further alleges that Defendant  
12 left generic, pre-recorded voice messages on Plaintiff's voicemail, which began mid-  
13 message. (*Id.* ¶ 22.) According to Plaintiff, she never consented to receiving the unsolicited  
14 phone calls and/or revoked any alleged prior express consent. (*Id.* ¶ 25.) Plaintiff seeks to  
15 represent a nationwide class of similarly situated persons who have received unsolicited  
16 calls from Defendant via either an ATDS or an artificial or prerecorded voice system. (*Id.*  
17 ¶ 29.)

18 On September 2, 2016, Defendant filed a motion to dismiss for failure to state a  
19 claim, (Doc. No. 10), which the Court granted with leave to amend on the basis that  
20 Plaintiff's failure to include a redacted version of her cell phone number did not provide  
21 Defendant fair notice of her claims. (Doc. No. 17 at 6.) On December 1, 2016, Plaintiff  
22 filed her first amended complaint, (Doc. No. 18), and on December 15, 2016, Defendant  
23 answered, (Doc. No. 20). On December 16, 2016, Defendant moved to stay the matter  
24 pending a decision in *ACA International*. (Doc. No. 21.) Plaintiff opposes a stay. (Doc. No.  
25 23.)

#### 26 LEGAL STANDARD

27 A court's power to stay proceedings is incidental to the inherent power to control the  
28 disposition of its cases in the interests of efficiency and fairness to the court, counsel, and

1 litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *Single Chip Sys. Corp. v.*  
2 *Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1057 (S.D. Cal. 2007). A stay may be granted  
3 pending the outcome of other legal proceedings related to the case in the interests of judicial  
4 economy. *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979).  
5 Discretion to stay a case is appropriately exercised when the resolution of another matter  
6 will have a direct impact on the issues before the court, thereby substantially simplifying  
7 the issues presented. *See Mediterranean Enters. v. Ssangyong Corp.*, 708 F.2d 1458 (9th  
8 Cir. 1983); *San Diego Padres Baseball P’ship v. U.S.*, Case No. 99CV0828, 2001 WL  
9 710601, at \* 1 (S.D. Cal. May 10, 2001).

10 In determining whether a stay is appropriate, a district court “must weigh competing  
11 interests and maintain an even balance.” *Landis*, 299 U.S. at 254–55. These competing  
12 interests include the possible damage resulting from granting a stay, the hardship or  
13 inequity a party may suffer if required to go forward, and the simplifying or complicating  
14 of issues, proof, and questions of law that could result from a stay. *CMAX, Inc. v. Hall*, 300  
15 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254–55). “If there is even a fair  
16 possibility that the stay will work damage to someone else, the stay may be inappropriate  
17 absent a showing by the moving party of hardship or inequity.” *Dependable Highway*  
18 *Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quotation  
19 omitted). “A stay should not be granted unless it appears likely the other proceedings will  
20 be conducted within a reasonable time in relation to the urgency of the claims presented to  
21 the court.” *Levy*, 593 F.2d at 864.

## 22 DISCUSSION

23 The crux of Defendant’s motion is based upon two key inquiries: (1) whether the  
24 FCC was authorized to interpret or modify the ATDS definition set forth by Congress, and  
25 if so, (2) whether the FCC correctly interpreted that definition. (Doc. No. 21 at 2-3.)  
26 Specifically, Defendant believes that resolution of *ACA International* will greatly impact  
27 the merits of Plaintiff’s ATDS claim because the 2015 FCC Order expanded its prior ATDS  
28 definition by concluding that every predictive dialer is an ATDS, and that the term

1 “capacity” was not limited to the “present capacity” of the telephone equipment at issue.  
2 (*Id.* at 1.) Defendant contends a stay is warranted to conserve judicial resources and to  
3 avoid the hardship of conducting expensive and time-consuming discovery and motion  
4 practice. (*Id.* at 5.)

5       Alternatively, Plaintiff argues that a stay is inappropriate because the outcome of the  
6 *ACA International* has no bearing on Plaintiff’s ATDS claim. (Doc. No. 23.) First, Plaintiff  
7 contends the 2015 FCC Order merely reiterated and reaffirmed the FCC’s previous  
8 determinations regarding automatic dialing equipment. Thus, the Court is bound to uphold  
9 the FCC’s prior regulatory determinations, which are consistent with the ATDS definition  
10 set forth in the 2015 FCC Order, stating that dialing equipment need not generate random  
11 or sequential numbers to constitute an ATDS. (*Id.* at 2-4.) Second, because Plaintiff alleges  
12 Defendant violated the TCPA through ***both*** the use of an ATDS and an artificial or  
13 prerecorded voice, Plaintiff’s TCPA claim will stand despite the ATDS allegations. (*Id.* at  
14 5.) Lastly, Defendant failed to establish genuine hardship because fact discovery is still  
15 necessary and postponing such process will be prejudicial to Plaintiff where “delay could  
16 result in loss of testimonial and documentary evidence.” (*Id.* at 9-10.)

17       The TCPA defines an ATDS as “equipment which has the capacity – (A) to store or  
18 produce telephone numbers to be called, using a random or sequential number generator;  
19 and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). In July 2015, the FCC clarified that  
20 the “TCPA’s use of ‘capacity’ does not exempt equipment that lacks the ‘present ability’  
21 to dial randomly or sequentially,” and that “the capacity of an autodialer . . . also includes  
22 its potential functionalities.” See *In the Matter of Rules & Regulations Implementing the*  
23 *Telephone Consumer Protection Act of 1991*, 30 F.C.C. Rcd. 7961, 7974 (July 10, 2015).  
24 *ACA International* represents a consolidation of various petitions that request the D.C.  
25 Circuit to vacate the 2015 FCC Order regarding the definition of ATDS. Defendant seeks  
26 a stay pending the resolution of *ACA International*. Through resolution of the pending  
27 appeal, the D.C. Circuit will address, among other things, what type of equipment  
28 constitutes an ATDS.

1           Upon review of the parties’ arguments in support and in opposition of a stay, as well  
2 as the reasoning of other courts to address the present issue, the Court finds a stay is  
3 inappropriate. Defendant has not shown this is one of the “rare circumstances” in which a  
4 stay pending the resolution of an appeal in another case is appropriate. *See Landis*, 299  
5 U.S. at 255; *Lathrop v. Uber Tech., Inc.*, No. 14-CV-5678-JST, 2016 WL 97511 at \*5  
6 (N.D. Cal. Jan. 8, 2016). First, while Defendant correctly asserts that briefing and oral  
7 arguments in the appeal are now complete, “it is *far* from guaranteed that a final result in  
8 *ACA International* is imminently forthcoming.” *Glick v. Performant Fin. Corp.*, No. 16-  
9 CV-5461-JST, 2017 WL 786293, at \*2 (N.D. Cal. Feb. 27, 2017) (emphasis added). In  
10 fact, courts in this Circuit have recently rejected this argument on the basis that whatever  
11 the outcome, appeal is likely and will further delay proceedings until a final determination  
12 is made by the U.S. Supreme Court. *See id.*; *Cabiness v. Educ. Fin. Solutions, LLC*, No.  
13 16-CV-1109-JST, 2017 WL 167678, at \*3 (N.D. Cal. Jan 17, 2017); *Lathrop*, 2016 WL  
14 97511, at \*4 (“[T]he D.C. Circuit is unlikely to be the final step in the litigation over the  
15 FCC’s 2015 Omnibus Order. Whichever party is unsuccessful in that court is almost certain  
16 to appeal to the Supreme Court. Thus, even the most optimistic estimate of the time  
17 required for a decision from the D.C. Circuit significantly understates both the delay a stay  
18 might engender and the concomitant prejudice to Plaintiff.”). Thus, as presently  
19 considered, a stay pending *ACA International* would be of indefinite duration, which  
20 weighs against issuance of a stay.

21           Second, it is unclear what impact the D.C. Circuit’s decision would have on the  
22 issues raised in this matter and Defendant similarly fails to articulate the same. Though  
23 *ACA International* has the potential to clarify what constitutes an ATDS, and regardless of  
24 the authoritative weight of such a clarification, Defendant will still be required to produce  
25 discovery to settle the factual disputes regarding its autodialing technology. *See, e.g., Glick*,  
26 2017 WL 786293 at \*2; *Lathrop*, 2016 WL 97511, at \*4 (“Even if the D.C. Circuit were to  
27 modify or vacate the 2015 FCC Order, factual disputes such as whether an ATDS was used  
28 and whether [ ] recipients provided their consent, will remain here.”); *Richardson v. Verde*

1 *Energy USA, Inc.*, No. CV 15-6325, 2016 WL 4478839, at \*3 (E.D. Pa. Aug. 25, 2016)  
2 (“This action is not automatically over even if the ACA [International] outcome is  
3 favorable to the defendant. The impact the ACA decision might have on this case is limited  
4 only to the scope of the definition of an automatic telephone dialing system.”); *Sliwa v.*  
5 *Bright House Networks, LLC*, No. 16-CV-235-FTM-29 MRM, 2016 WL 3901378, at \*4-  
6 5 (M.D. Fla. July 19, 2016) (“But, even if the D.C. Circuit’s decision is favorable for [the  
7 defendant] and the conclusions reached therein are binding on this Court, Plaintiff’s TCPA  
8 claim will proceed.”); *see also Reichman v. Poshmark, Inc.*, No. 16-CV-2359-DMS, 2017  
9 WL 436505, at \*5 (S.D. Cal. Jan. 3, 2017) (“It would be unreasonable to require Plaintiff,  
10 without the benefit of discovery, to describe the technical details of Defendant’s alleged  
11 ATDS. Therefore, whether Defendant actually used an ATDS, *i.e.*, equipment with the  
12 capacity to dial numbers without human intervention, is an issue that should be decided  
13 after discovery has been conducted.”). Moreover, the Court finds Defendant’s argument  
14 to this point unpersuasive because Plaintiff’s TCPA claims are not limited to Defendant’s  
15 use of an ATDS, but also concern Defendant’s use of an artificial or prerecorded voice  
16 system. *See Vaccaro v. CVS Pharmacy, Inc.*, No. 13-CV-174-IEG RBB, 2013 WL  
17 3776927, at \*1 n.2 (S.D. Cal. July 16, 2013); *Silwa*, 2016 WL 3901378, at \*4 (“[T]he  
18 appeal will not affect Plaintiff’s contention that Bright House called him using a  
19 prerecorded or automated voice, which is an independent basis for stating a claim under  
20 the TCPA.”). Thus, it is unclear whether the resolution of *ACA International* will have a  
21 direct impact on the issues before the Court, or substantially simplify the issues presented.  
22 *See Leyva*, 593 F.2d at 863-64. Even if the outcome was relevant to these proceedings and  
23 favorable to the Defendant, other issues would remain ripe for consideration, discovery,  
24 and resolution.

25       Lastly, Defendant does not demonstrate a hardship in moving forward with  
26 inevitable discovery and motion practice. *See Edwards v. Oportun, Inc.*, 193 F. Supp. 3d  
27 1096, 1100-1102 (N.D. Cal. 2016); *Konopca v. Comcast Corp.*, No. CV156044, 2016 WL  
28 1645157, at \*4 (D.M.J. Apr. 26, 2016) (denying stay pending the *ACA International*

1 decision where “the only purported ‘hardship’ identified by Defendant is the possibility  
2 that the parties may engage to some extent in unnecessary discovery and/or motion  
3 practice”); *Nussbaum v. Diversified Consultants, Inc.*, No. CIV. 15-600, 2015 WL  
4 5707147, at \*2 (D.N.J. Sept. 28, 2015) (denying stay pending *ACA International* where the  
5 only hardship identified in the absence of a stay was unnecessary discovery and motion  
6 practice”); *Jones v. AD Astra Recovery Servs., Inc.*, No. 16-1013-JTM-GEB, 2016 WL  
7 3145072, at \*6 (D. Kan. June 6, 2016) (denying stay pending *ACA International* and  
8 finding the “potential that Defendant could engage in greater discovery, if the case is not  
9 stayed, does not constitute a ‘rare circumstance’ which justifies an indefinite stay.”).  
10 However, the potential of prejudice to Plaintiff in delaying discovery is likely and severe.  
11 *Glick*, 2017 WL 786293 at \*2; *Cabiness*, 2017 WL 167678, at \*3 (“[P]assage of time will  
12 make it more difficult to reach the class members and will increase the likelihood that  
13 relevant evidence will dissipate.”). Although other district courts to consider this issue have  
14 found a stay pending resolution of *ACA International* appropriate, as the Supreme Court  
15 has noted, “[o]nly in rare circumstances will a litigant in one c[a]se be compelled to stand  
16 aside while a litigant in another settles the rule of law that will define the rights of both.”  
17 *Landis*, 299 U.S. at 255.

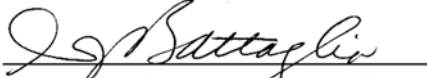
18 For the reasons set forth above, because Defendant has failed to carry its burden of  
19 demonstrating a stay is warranted and there is more than a fair possibility Plaintiff will  
20 suffer prejudice from effecting a stay, the equities considered do not support staying this  
21 matter. Accordingly, Defendant’s motion to stay is **DENIED**.

#### 22 CONCLUSION

23 As set forth above, Defendant’s motion to stay is **DENIED**.

24  
25 **IT IS SO ORDERED.**

26 Dated: March 8, 2017

27   
28 Hon. Anthony J. Battaglia  
United States District Judge

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