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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. 8:16-cv-01469-JLS-JCGx

Date: December 6, 2016

Title: Jeremy Klein v. Hyundai Capital America

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Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Ivette Gomez  
Deputy Clerk

N/A  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:      ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS OR STAY PROCEEDINGS (Doc. 22)**

Before the Court is Defendant Hyundai Capital America’s Motion to Dismiss or Stay Proceedings. (Mot., Doc. 22; Mem., Doc. 22-1.) Plaintiff Jeremy Klein opposed (Opp’n, Doc. 30), and Plaintiff replied (Reply, Doc. 32). The Court finds the matter appropriate for disposition without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing on Defendant’s Motion set for December 9, 2016 at 2:30 p.m. is VACATED. For the following reasons, the Court DENIES Defendant’s Motion.

**I.      BACKGROUND**

On August 9, 2016, Plaintiff filed this putative class action against Hyundai Capital America (“Hyundai”) under the Telephone Consumer Protection Act (TCPA). (Compl., Doc. 1.) Klein alleges that “for the last several years” he has received unsolicited calls from Hyundai even though he does not own a Hyundai vehicle and has never inquired about purchasing one. (FAC ¶¶ 4, 13, Doc. 17.) Plaintiff alleges that “[o]n at least one occasion” he picked up the phone and waited through a long pause before a Hyundai representative answered asking for a person named “Christine.” (*Id.* ¶ 14.) He told the Hyundai representative to stop calling him, but the calls continued. (*Id.* ¶¶ 14-15.) As a result of these calls, Plaintiff has allegedly lost focus, been awoken while sleeping, and suffered headaches. (*Id.* ¶¶ 16-19.) In his First Amended Complaint, Plaintiff has alleges causes of action for (1) Violations of the TCPA (47 U.S.C. §

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227(b)(1)(A)) and (2) Willful Violations of the TCPA. (47 U.S.C. § 227(b)(3)). (*Id.* ¶¶ 35-50.)

**II. LEGAL STANDARD**

A defendant may move to dismiss an action for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). “Dismissal for lack of subject matter jurisdiction is appropriate if the complaint, considered in its entirety, on its face fails to allege facts sufficient to establish subject matter jurisdiction.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984-85 (9th Cir. 2008). When considering a Rule 12(b)(1) motion, the Court “is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). “The party asserting [ ] subject matter jurisdiction bears the burden of proving its existence.” *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

**III. DISCUSSION**

In this Motion, Hyundai seeks to dismiss Plaintiff’s Complaint, positing that Plaintiff has not suffered a concrete injury sufficient to satisfy Article III standing. (Mem. at 8-20.) Defendant alternatively moves to stay this case pending the D.C. Circuit’s decision in *ACA International v. FCC, et al.*, No. 15-1211. (*Id.* at 20-24.) The Court finds neither argument convincing.

**A. Article III Standing**

“For a plaintiff to have Article III standing, [he] must (1) have suffered an ‘injury in fact’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical,’ (2) the harm must be ‘fairly trace[able]’ to the defendant[’s] conduct, and (3) the Court must be able to redress the claimed injury.” *Rodriguez v. El Toro Med. Inv’rs Ltd. P’ship*, No. SACV 16-00059 (JLS) (KES), 2016 WL 6804394, at \*3 (C.D.

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Cal. Nov. 16, 2016) (Staton, J.) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). “For an injury to be ‘concrete,’ it must be ‘real, and not abstract.’” *Rodriguez*, 2016 WL 6804394, at \*3 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016)). “In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.” *Spokeo, Inc.*, 136 S. Ct. at 1549.<sup>1</sup>

Here, both history and Congress’ judgment confirm that unsolicited robocalls cause sufficiently concrete harm to establish Article III standing. “The TCPA codifies [one] application of [the] long-recognized common law tort of invasion of privacy” as well as “the tort of nuisance.” *LaVigne v. First Cmty. Bancshares, Inc.*, No. 1:15-CV-00934-WJ-LF, 2016 WL 6305992, at \*7 (D.N.M. Oct. 19, 2016) (citation omitted); see also *Hewlett v. Consol. World Travel, Inc.*, No. CV 2:16-713 WBS AC, 2016 WL 4466536, at \*2 (E.D. Cal. Aug. 23, 2016). Further, Congress enacted the TCPA “in response to an increasing number of consumer complaints arising from the increased number of telemarketing calls.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) (citing S. Rep. No. 102–178, at 2 (1991), reprinted in 1991 U.S.C.C.A.N. 1968). Through the Act, Congress sought “to prohibit the use of [automatic telephone dialing systems] to communicate with others by telephone in a manner that would be an invasion of privacy.” *Id.*; see also *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012) (noting that in passing the TCPA Congress concluded that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy” (citation omitted)). Congress’s judgment that unsolicited robocalls inflict a concrete injury is “instructive and important.” *Spokeo*, 136 S. Ct. at 1549.

To support its argument, Defendant contends that Plaintiff must somehow connect his averred injury to Defendant’s purported use of an automatic dialer. (Mem. at 13-14.) But “it is . . . the call (or calls) that creates the injury sufficient to confer standing.” *LaVigne*, 2016 WL 6305992, at \*7 (citation omitted). Which is to say, Defendant’s argument “conflates the *means* through which it (allegedly) violated the TCPA with the

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<sup>1</sup> For a more thorough examination of *Spokeo* by this Court, see *Rodriguez v. El Toro Med. Inv’rs Ltd. P’ship*, No. SACV 16-00059 (JLS) (KES), 2016 WL 6804394 (C.D. Cal. Nov. 16, 2016) (Staton, J.).

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*harm* resulting from that alleged violation.” *Ung v. Universal Acceptance Corp.*, No. CV 15-127 (RHK/FLN), 2016 WL 4132244, at \*2 (D. Minn. Aug. 3, 2016).

The Court notes that its conclusion is in accord with the vast majority of decisions by other district courts. *See, e.g., Holderread v. Ford Motor Credit Co., LLC*, No. 4:16-CV-00222, 2016 WL 6248707, at \*3 (E.D. Tex. Oct. 26, 2016); *Griffith v. ContextMedia, Inc.*, No. 16 C 2900, 2016 WL 6092634, at \*2 (N.D. Ill. Oct. 19, 2016); *Hewlett v. Consol. World Travel, Inc.*, No. CV 2:16-713 WBS AC, 2016 WL 4466536, at \*3 (E.D. Cal. Aug. 23, 2016); *Krakauer v. Dish Network L.L.C.*, 168 F. Supp. 3d 843, 845 (M.D.N.C. 2016) (“Post-*Spokeo* cases have consistently concluded that calls that violate the TCPA establish concrete injuries.”); *Ung*, 2016 WL 4132244, at \*2 (D. Minn. Aug. 3, 2016) (“Cases . . . have repeatedly recognized that the receipt of unwanted phone calls constitutes a concrete injury sufficient to create standing under the TCPA.”); *Cour v. Life360, Inc.*, No. 16-CV-00805-TEH, 2016 WL 4039279, at \*2 (N.D. Cal. July 28, 2016); *Booth v. Appstack, Inc.*, No. C13-1533 JLR, 2016 WL 3030256, at \*5 (W.D. Wash. May 25, 2016).

Accordingly, the Court finds that Plaintiff has Article III standing to bring this suit. The Court, therefore, DENIES Defendant’s Motion to Dismiss.

**B. Discretionary Stay**

Defendant also requests this Court to issue a discretionary stay pending the outcome of *ACA International v. FCC*. (Mem. at 20-24.) When determining whether to hold a case in abeyance, the Ninth Circuit in *CMAX, Inc. v. Hall* identified three salient considerations:

[1] the possible damage which may result from the granting of a stay, [2] the hardship or inequity which a party may suffer in being required to go forward, and [3] the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.

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300 F.2d 265, 268 (9th Cir. 1962). The party seeking a stay bears the burden of demonstrating the circumstances weigh in favor of holding a case in abeyance. *See Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

Under the first factor, the Court begins with the reasonable assumption that a stay — while not “invariably improper or inappropriate” — “inherently increases the risk that witnesses’ memories will fade and evidence will become stale.” *Blue Cross & Blue Shield of Alabama v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007) (quoting *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002)). Defendant, therefore, bears the burden of demonstrating that the other factors demonstrate a “clear case of hardship or inequity.” *See Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).

Defendant posits that the D.C. Circuit may compel the FCC to either dramatically expand the safe harbor or hold that a “called party” unambiguously means the “call’s intended recipient.” (Reply at 11-12 (citation omitted).) These potential outcomes, Defendant argues, could leave Plaintiff without any valid claims. The Court, however, finds this hypothetical chain of events far too tenuous to warrant imposing a stay.<sup>2</sup>

#### **IV. CONCLUSION**

For the foregoing reasons, Defendants’ Motion to Dismiss or Stay is DENIED.

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<sup>2</sup> In its opening brief, Defendant also argues in passing that the *ACA International* challenge to the FCC’s 2015 interpretation of an “automatic telephone dialing system” somehow implicates this case. (Mem. at 22.) But here Plaintiff alleges that Defendant has *actually* used a predictive dialer, not merely a system that has the *capacity* to autodial, so this part of the *ACA International* rulemaking challenge is inapposite. (FAC ¶¶ 14, 37, 45.)