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Everything You Need to Know About the TCPA in 2022

Presented by TCPAWorld & Contact Center Compliance

2022 California TCPA Compliance Summit

- LIVE & IN-PERSON
- Join us at **Hyatt Regency Huntington Beach, July 18 & 19**, for two days of content with our diverse panel of legal minds and industry experts. Network with our speakers and with fellow compliance and privacy professionals.
- Want an Invite? https://bit.ly/2022-CA-Summit

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TCPA remains the LARGEST Litigation CASHCOW In American History

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The World of the Telephone Consumer Protection Act

- More multi-million dollar class action settlements under TCPA than any other statute (*40* in 2019 alone!)
- $500-$1,500 per call violation.
- BUT ONE CALL CAN VIOLATE MORE THAN ONE SECTION!
- Uncapped statutory damages—can be BILLIONS in exposure.
- Four-year statute of limitations.
- Difficult to decipher terms—creates perfect litigation storm requiring a powerful defense.
- **Capital One just got hammered in a wrong number certification**

Huge Verdicts and Settlements

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- $660BB (reduced to $280MM), $1.6BB (reduced to $32MM), $975MM, $265MM judgments
- Dish Network faced *trillions* in penalties
- Courts are split on whether this is constitutional
- $76MM max TCPA settlement—just this year
- $38.5MM settlement granted preliminary approval in the last 60 days
- Dozens of settlements between $10-$50MM

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Frequently Asked TCPA Questions

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- What are the biggest TCPA litigation trends out there?
- I heard the Czar's team just won a huge standing issue involving ringless voicemail—what's up with that?
- More broadly what is the status of TCPA suits over ringless voicemail, text messages, IVR, soundboard, etc.?
- What is the FCC up to on a regulatory front?
- How are the bad guys still manufacturing lawsuits all these years later?
- Can minors consent to calls?
- I heard Citibank was just destroyed by a wrong number TCPA class action—is that true?
- What is lead fraud? Dark patterns?
- Should I use the reassigned number database?
- Should I invest in one of those new human selection dialers?
- What's with the ESIGN act requirements for online consent disclosures?
- Is the TCPA constitutional?

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TOP 5 THINGS YOU NEED TO KNOW (CRITICAL TAKE AWAYS)

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1. TCPA lives on post-*Facebook* with a ton of DNC and pre-recorded call claims now dominating litigation along with more sophisticated ATDS claims
2. FIVE BIG RISKS TO ONLINE LEAD GENERATORS:
   1. Mantha vs QW
   2. Webpage format insufficient to obtain consent
   3. Dark patterns
   4. Lead Fraud
   5. Minors giving consent
3. In light of these risks, consider moving away from prerecorded calls and toward ***human selection systems*** (e.g. Safe Select) to call purchased leads—especially in Florida
4. Wrong number TCPA class actions remain the single biggest litigation risk to your business. Be cautious with aged leads and use FCC FREE reassigned number database
5. The prospect for personal liability under the TCPA remains a constant risk--ALWAYS rely on outside counsel before launching any new outreach campaign so you can blame us and you can't be personally sued!

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The TEN COMMANDMENTS of Federal Telecom Law

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THOU SHALT NOT:

1. Use Regulated Technology to call a cell phone without express consent of called party (includes B2B);
2. Make prerecorded calls to landlines exceeding FCC exemptions without express written consent;
3. Make telephone solicitations to numbers on the DNC list;*
4. Make prerecorded calls (including texts) lacking certain required content;*
5. Violate CFR call abandonment rules;*
6. Make marketing calls without an internal DNC procedure;*
7. Knowingly transmit inaccurate caller ID information for fraud;
8. Violate the CFR's ring time requirements;
9. Tie up multiple telephone lines of a business simultaneously;
10. Use any technology for the purpose of determining whether the line is a facsimile or voice line.

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And if Thou Shalts…

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- MINIMUM exposure of $500.00 per violation
- Up to $1,500 if violation is willful
- EACH attempted telecommunication can violate multiple commandments meaning penalties may be multiples of this in civil litigation
- FCC can seek penalties exceeding $20k a call.

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THOU SHALT NOT:

1. Use Regulated Technology to call a cell phone without express consent of called party (includes B2B);

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FIRST COMMANDMENT (CONT.): SUPREME COURT VIEW

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- ATDS requires use of random or sequential number generator

***Facebook* TCPA ATDS Interpretation**

(1) The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store telephone numbers using a random or sequential number generator; or

(B) to produce telephone numbers to be called, using a random or sequential number generator; and

(C) to dial such numbers.

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FIRST COMMANDMENT (CONT.): FACEBOOK—Footnote 7

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- *Facebook* was great for callers, except for the enigmatic Footnote 7 that appears to leave the door open to ATDS claims
- "For instance an autodialer might use a random number generator to **determine the order** in which to pick phone numbers from a preproduced list."

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FIRST COMMANDMENT (CONT.): FACEBOOK—Footnote 6

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- Maybe the biggest shift caused by *Facebook.*
- *Complete* paradigm change for manual dialing.
- Previously "human intervention" at the time of dial was sufficient to take a dialer out of ATDS coverage. But those days are gone.
- Per *Facebook, FN6:*
- "[A]ll devices require some human intervention, whether it takes the form of programming a cell phone to respond automatically to texts received while in "do not disturb" mode or commanding a computer program to produce and dial phone numbers at random. We decline to interpret the TCPA as requiring such a difficult line-drawing exercise around how much automation is too much."

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31 CASES POST-*FACEBOOK* So Far
Find them on TCPAWorld.com

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1. Montanez v. Future Vision Brain Bank, 2021 U.S. Dist. LEXIS 67091 (D. Col. April 7, 2021)
2. McEwen v. Nra of Am. & Infocision, No. 2:20-cv-00153-LEN, 2021 U.S. Dist. LEXISUnited (D. Me. April 14, 2021)
3. Camunas v. Nat'l Republican Senatorial Comm.,, 2021 U.S. Dist. LEXIS 100125 (E.D. Pa. May 26, 2021)
4. Barnett v. Bank of Am., N.A., 2021 U.S. Dist. LEXIS 101171 (W.D.N.C. May 28, 2021)(
5. Timms v. Usaa Fed. Sav. Bank, C/A No. 3:18-cv-01495-SAL, 2021 U.S. Dist. LEXIS 108083 (D.S.C. June 9, 2021)
6. Carl v. First Nat'l Bank of Omaha, Docket no. 2:19-cv-00504-GZS, 2021 U.S. Dist. LEXIS 111889 (D Me. June 15, 2021)
7. Atkinson v. Pro Custom Solar Lcc,, 2021 U.S. Dist. LEXIS 112396 (W.D. Tex. June 16, 2021)
8. Watts v. Emergency Twenty Four, No. 20-cv-1820, 2021 U.S. Dist. LEXIS 115053 (N.D. Ill. June 21, 2021)
9. Hufnus v DoNotPay, Case No. 20-cv-08701, Doc. No. __ (N.D. Cal. June 24, 2021)
10. Gross v. Gg Homes, Case No. 3:21-cv-00271-DMS-BGS, 2021 U.S. Dist. LEXIS 127596 (S.D. Cal. July 8, 2021)
11. Callier, EP-20-CV-00304-KC, 2021 U.S. Dist. LEXIS 126769 (W.D. Tex. May 10, 2021)
12. Barry v. Ally Fin., Case No. 20-12378, 2021 U.S. Dist. LEXIS 129573 (E.D. Mich. July 13, 2021)
13. Miles v. Medicredit, Case No. 20-cv-01186, Doc. No. 53 (E.D. Mo. July 14, 2021)
14. Libby v. Nat'l Republican Senatorial Comm., 2021 U.S. Dist. LEXIS 140103 (W.D. Tex. July 27, 2021)
15. Jance v. Homerun Offer LLC, No. CV-20-00482-TUC-JGZ, 2021 U.S. Dist. LEXIS 143145 (D. Ariz. July 29, 2021)
16. Borden v. Efinancial, LLC, No. C19-1430JLR, 2021 U.S. Dist. LEXIS 153086 (W.D. Wash. Aug. 13, 2021)
17. Garner v. Allstate Ins. Co., No. 20 C 4693, 2021 U.S. Dist. LEXIS 163121 (N.D. Ill. August 30, 2021)
18. Grome v. Usaa Sav. Bank, 4:19-CV-3080, 2021 U.S. Dist. LEXIS 164255 (D. Ne. August 31, 2021)
19. Franco v. Alorica Inc., No. 2:20-CV-05035-DOC-(KESx), 2021 U.S. Dist. LEXIS 164438 (C.D. Cal. July 27, 2021)
20. Tehrani v. Joie De Vivre Hospitality, LLC, 2021 U.S. Dist. LEXIS 165392 (N.D. Cal. August 31, 2021)
21. Laguardia v. Designer Brands, Case No. 2:20-cv-2311, 2021 U.S. Dist. LEXIS 170704 (S.D. Oh. September 9, 2021);
22. Brickman v. Facebook, Inc., 2021 U.S. Dist. LEXIS 175700 (N.D. Cal. September 15, 2021);
23. Jovanovic v. Srp Invs. Llc, No. CV-21-00393-PHX-JJT, 2021 U.S. Dist. LEXIS 175631 (D. Az. September 14, 2021)
24. Poonja,, Case No. 20-cv-4388, 2021 U.S. Dist. LEXIS 186809 (N.D. Ill. Sept. 29, 2021)
25. Smith v. Direct Bldg. Supplies, CIVIL ACTION No. 20-3583, 2021 U.S. Dist. LEXIS 193657 (E.D. Pa. Oct. 7, 2021)
26. Delgado v. Pro Custom Sollar Llc, CAUSE NO. 1:21-CV-251-LY, 2021 U.S. Dist. LEXIS 224397 (W.D. Tex. Nov. 22, 2021)
27. Macdonald v. Brian Gubernick Pllc, No. CV-20-00138-PHX-SMB, 2021 U.S. Dist. LEXIS 216788 (D. Az. November 8, 2021)
28. Cole v. Sierra Pac. Mortg. Co., Case No. 18-cv-01692-JCS, 2021 U.S. Dist. LEXIS 239792 (N.D. Cal. December 15, 2021)
29. Pascal v. Concentra, Inc., Case No. 19-cv-02559-JCS, 2021 U.S. Dist. LEXIS 239583 (N.D. Cal. December 14, 2021)(
30. Raphael Aus. V. Alorica, Inc., 2021 U.S. Dist. LEXIS 240677 (C.D. Dec. 16, 2021)(
31. McEwen v. Nra of Am. & Infocision, No. 2:20-cv-00153-LEW, 2021 U.S. Dist. LEXIS 242273 (D. Me. December 20, 2021)

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THE BAD NEWS: Most Cases Allow ATDS Claims Past the Pleadings Stage

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A ton of these cases are finding that *Facebook* changed absolutely nothing—especially where blast calls or texts are at issue

- *Montanez v. Future Vision Brain Bank,* Civil Action No. 20-cv-02959-CMA-MEH, 2021 U.S. Dist. LEXIS 67091 (D. Col. April 7, 2021)(allowing ATDS allegations to survive the pleadings stage);
- Gross v. Gg Homes, Case No. 3:21-cv-00271-DMS-BGS, 2021 U.S. Dist. LEXIS 127596 (S.D. Cal. July 8, 2021)(Court holds *Facebook* irrelevant at pleadings stage; holds allegations of automatic template texts sufficient to state a claim);
- Miles v. Medicredit, Case No. 20-cv-01186, Doc. No. 53 (E.D. Mo. July 14, 2021)(Following *Gross* and holding that *Facebook* not pertinent at pleadings stage);
- Poonja,, Case No. 20-cv-4388, 2021 U.S. Dist. LEXIS 186809 (N.D. Ill. Sept. 29, 2021)(Presence of "stop" instruction in generic text from shortcode sufficient to survive pleadings stage post Facebook.)
- Garner v. Allstate Ins. Co., No. 20 C 4693, 2021 U.S. Dist. LEXIS 163121 (N.D. Ill. August 30, 2021)(allegations of predictive dialer usage consistent with ATDS pleading where marketing calls were made using spoofed numbers)
- Jance v. Homerun Offer LLC, No. CV-20-00482-TUC-JGZ, 2021 U.S. Dist. LEXIS 143145 (D. Ariz. July 29, 2021)(pause allegations coupled with lack of consent and general marketing content sufficient to allege ATDS usage at the pleadings stage);
- Libby v. Nat'l Republican Senatorial Comm., No. 5:21-CV-197-DAE, 2021 U.S. Dist. LEXIS 140103 (W.D. Tex. July 27, 2021)(Allegations of generic campaign texts sufficient to plead ATDS usage);
- Callier, EP-20-CV-00304-KC, 2021 U.S. Dist. LEXIS 126769 (W.D. Tex. May 10, 2021)(allegations of a pause upon receipt of unsolicited calls sufficient to state ATDS claim post-Facebook).

FIRST COMMANDMENT (CONT.): Some Excellent Summary Judgment Cases

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- *Grome v. Usaa Sav. Bank* 4:19-CV-3080, 2021 U.S. Dist. LEXIS 164255 (D. Ne. August 31, 2021)(Aspect not an ATDS as no present capacity to use an R&SNG to store or produce numbers. Capacity limited to present capacity. Court rejects "feed random numbers argument." But accepts FN7 argument in theory—just no evidence); **Best***

Timms v. Usaa Fed. Sav. Bank C/A No. 3:18-cv-01495-SAL, 2021 U.S. Dist. LEXIS 108083 (D.S.C. June 9, 2021)(Aspect predictive dialer not an ATDS. No evidence of R&SNG usage. fn7 limited to circumstances where R&SNG used to determine number sequence); **Better**

Barry v. Ally Fin. Case No. 20-12378, 2021 U.S. Dist. LEXIS 129573 (E.D. Mich. July 13, 2021)(Motion to dismiss granted as to targeted collection calls. Facebook requires usage of R&SNG, not just capacity. FN7 only applies to lists of random numbers) **Good**

Barnett v. Bank of Am N.A., 2021 U.S. Dist. LEXIS 101171 (W.D.N.C. May 28, 2021)(Predictive dialer not an ATDS due to lack of evidence of r&sng); **Good**

But Watch Out! ->

- *Garner v. Allstate Ins. Co* No. 20 C 4693, 2021 U.S. Dist. LEXIS 163121 (N.D. Ill. August 30, 2021)(allegations of predictive dialer usage consistent with ATDS pleading where marketing calls were made using spoofed numbers);

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FIRST COMMANDMENT (CONT.): Directionally—Triggered Texts/ Alert Messages Are in Good Shape

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- *Watts v. Emergency Twenty Four* No. 20-cv-1820, 2021 U.S. Dist. LEXIS 115053 (N.D. Ill. June 21, 2021)(Motion to dismiss granted where allegations demonstrated calls at issue were triggered by alarms and not called as a result of an R&SNG);

- One key take away from *Facebook*, therefore, is to counsel clients away from pre-recorded calls and toward the text channel.

Triggered Text Alert = Good

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FIRST COMMANDMENT (CONT.): SCARIEST NEWS: Live Vox HCI Suffers First MSJ Defeat…Ever

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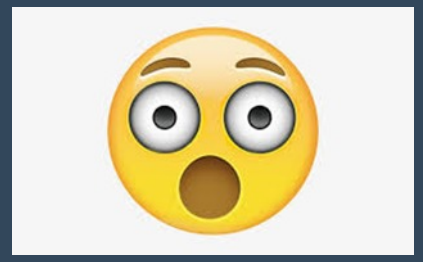
- Many of you know that Live Vox HCI was a leading click-to-dial solution that many courts had held to be TCPA compliance—even under *Marks.*
- *Post-Facebook,* however it is unclear whether click to dial matters at all. The focus now is on R&SNG usage—either with regard to *phone number* creation *or* with respect to determining dialing sequence.
- Perhaps unsurprisingly, a court recently found a jury question as to whether or not Live Vox HCI is an ATDS and denied summary judgement to a Defendant on that ground. See *Kuch v. Phh Mortg. Corp*., 2021 U.S. Dist. LEXIS 165456 (W.D.N.Y. August 31, 2021).

Click to Dial=



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Connection with Florida Bill—
Rise of “Human Selection” Dialers

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- Like Footnote 7 arguments, the Florida autodialer definition looks at the use of technology to determine the **sequence of dialing**.
- In theory, therefore, the use of a workflow tool to guide a human user in making calls on a physical handset is “autodialing” in Florida.
- This has lead to a new focus on “Human Selection” dialers—especially in connection with marketing calls.

Human Selection Systems=

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FIRST COMMANDMENT (CONT.): State of Dialing Technology Post *Facebook*

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Pre-recorded/Artificial Voice
IVR
Ringless VM
VM
DNC calls

Predictive dialers
Preview dialers
Blast text platforms
Human Intervention Systems

AI/Interactive text
Triggered texts
Human selection systems

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FIRST COMMANDMENT (CONT.): MUST THE RoSNG Generate *Phone Numbers?*

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```
730     if (!this.recordList.isEmpty()) {
731         this.recordNumber++;
732         final String comment = sb == null ? null : sb.toString();
733                                 result = new CSVRecord(this,
this.recordList.toArray(Constants.EMPTY_STRING_ARRAY),
comment,
734                 this.recordNumber, startCharPosition);
735     }
736     return result;
737 }5
```


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A Bit More on Florida

- Private right of action added to 501.059 for:
  - Autodialer or precorded marketing calsl (including texts) usage without express written consent—includes landlines!
    - EBR/Inquiry NOT a defense
  - Failure to transmit outpulse number
  - Disguising your voice
- TONS of cases already filed under this 059 already—including one against Prospect Home Finance.
- Florida 501.616 **regulatory risk**:
  - No solicitation calls after 8 pm local time
  - No more than 3 calls (or texts) within 24 hours
  - May not "deliberately display[] a different caller identification number than the number the call is originating from to conceal the true identity of the caller."
- "Solicitation" calls may include calls with consent—statute's definitions are a complete mess

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FIRST COMMANDMENT (CONT.): PRECORDED CALLS

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- Remember under either enactment prerecorded calls AUTOMATICALLY trigger the need for express written consent
- FCC has held that avatar/soundboard is prerecorded call
- Voicemails are prerecorded calls
- Ringless voicemail are prerecorded calls
- Wait queue messages are prerecorded calls
- BEWARE ABANDONED CALLS!
  - Big trap for the unwary

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When is Written Consent Needed?

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- 1. FIRST COMMANDMENT: Any call made to a cell phone (including business cell phones) using automated or prerecorded voice technology and contains marketing content;
- 2. SECOND COMMANDMENT: Any call made to a residential landline using a prerecorded or artificial voice and contains marketing content;
- 3. THIRD COMMANDMENT: Any call made to a residential landline on the DNC list for marketing purposes unless caller has an established business relationship or is responding to an inquiry;
- 4. SECOND COMMANDMENT: Any prerecorded call to a residential landline in excess of the TRACED Act exemption limits (includes *informational calls.*)
  - TRACED Act limits are 3 calls per month for "commercial calls," surveys and charitable calls, and up to 3 calls per week for healthcare related calls
  - TRACED Act implementation is currently stalled due to the paperwork reduction act so…it will be a while before this takes effect

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The "Troutman Nine"

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9 Part Test: Anatomy of a Valid TCPA Express Written Consent Disclosure

5. Should mention texts or SMS if texts will be sent

4. The word "marketing" or "promotion" MUST appear

1. Clear articulation of how consent agreement is to be "signed" by consumer

2. "Seller" must be specifically identified

3. If calls are made by third-parties disclosure must so state

By clicking "accept," below I expressly consent to Company, directly or by third-parties acting on its behalf, to send marketing/promotional messages— including texts and calls made using an automatic telephone dialing system or pre-recorded or artificial voice messages— related to the product or service I am inquiring about to the number I provide above. Accepting this consent is not required to obtain any good or service.

8. Should limit scope to specific subject matter

6. Use of an ATDS MUST be mentioned.

7. Use of pre-recorded/artificial voices must be mentioned if used.

9. Must state that consent is not required as a condition of good or service.

47 CFR 64.1200(f)(8)

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ONLINE CONSENT—FOUR BIG RISKS

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- Mantha vs QuoteWizard
- Page layout that defeats consumer consent
- Dark patterns (“Lead Fraud Light”)
- Outright Lead Fraud
- Minors giving consent

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Mantha v QuoteWizard– ESIGN Act Compliance Necessary?

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- **Mantha v. Quotewizard.com, LLC, CIVIL ACTION NO. 19-12235-LTS (Dec. 13, 2021 D. Mass.) is a HUGE case**
- Holds that ESIGN Act provisions designed to allow electronic delivery of documents must be complied with in order to obtain an online consent!
- **This means a disclosure must:**
  - affirmatively to agree to accept records (the consent form?) via electronic means;
  - be provided with (another) clear and conspicuous statement—
    - of any option of the consumer to have the record provided or made available on paper or in nonelectronic form,
    - (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;
    - informing the consumer of whether the consent applies (I) only to the particular transaction, or (II) to identified categories of records;
    - describing the procedures the consumer must use to withdraw consent;
    - the consumer (prior to consenting) is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and
    - consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form

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Mantha v QuoteWizard– What in the World Happened?

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- Plaintiff denied visiting the website;
- IP Addresses linked to two individuals with no relationship
- Jornaya leadID data was "mistakenly" associated with Plaintiff by aggregator although Jornaya had no record linking the lead to the Plaintiff
- Website was being pirated by a Bosnian company without the prior publisher's knowledge
- **Defendant still argued that the consent was valid….**

- **BAD FACTS AND BAD ARGUMENTS MAKE BAD LAW.**
- **BE STRATEGIC!**

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Huge 2020 Case Law Trend: Courts Refusing to Enforce Online Disclosures

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- Numerous cases refused to enforce online disclosures in 2020.
- Courts are applying a holistic approach with an emphasis on whether a consumer is truly likely to understand they are accepting terms and conditions when submitting a web form.
- General things to keep in mind:
  - **Disclosure must be close to the acceptance button—while "above the button" is not necessarily required it is preferred;**
  - **Hyperlinks must be obvious and underlined or capitalized;**
  - **Disclosure must be in readable font—both in terms of size and color against background;**
  - **Website should not be cluttered or otherwise full of impertinent language in different font sizes and colors that might distract from the disclosure;**
  - **Disclosure should actually and clearly explain that by clicking the button the customer will actually be accepting the disclosure;**
  - **Disclosure must be apparent at the time the user clicks the submit button and cannot pop up only before or after the button is presented.**

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PROXIMITY OF DISCLOSURE TO BUTTON

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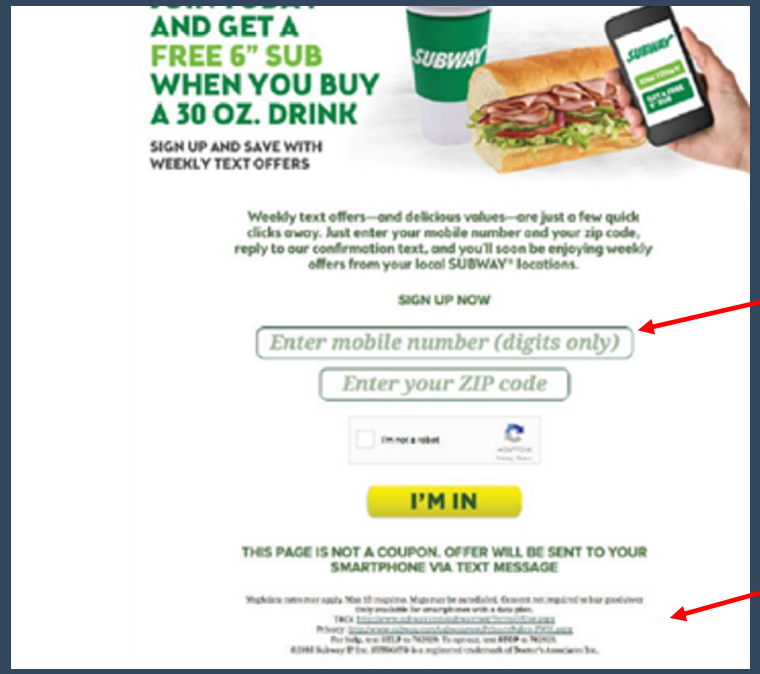
Arnaud v. Doctor's Assocs., 19-3057-cv, 2020 U.S. App. LEXIS 29504 (2nd Cir. Sept. 15, 2020)("reasonable user would not find the terms and conditions link contained on the page to be conspicuous, since the link was at the bottom of the page, in relatively small font, and was introduced by no language other than the shorthand "T & Cs")

UNENFORCABLE!



Phone number entered here

Disclosure way down here

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Consumer Must Plainly Understand Clicking Button is Acceptance of Terms

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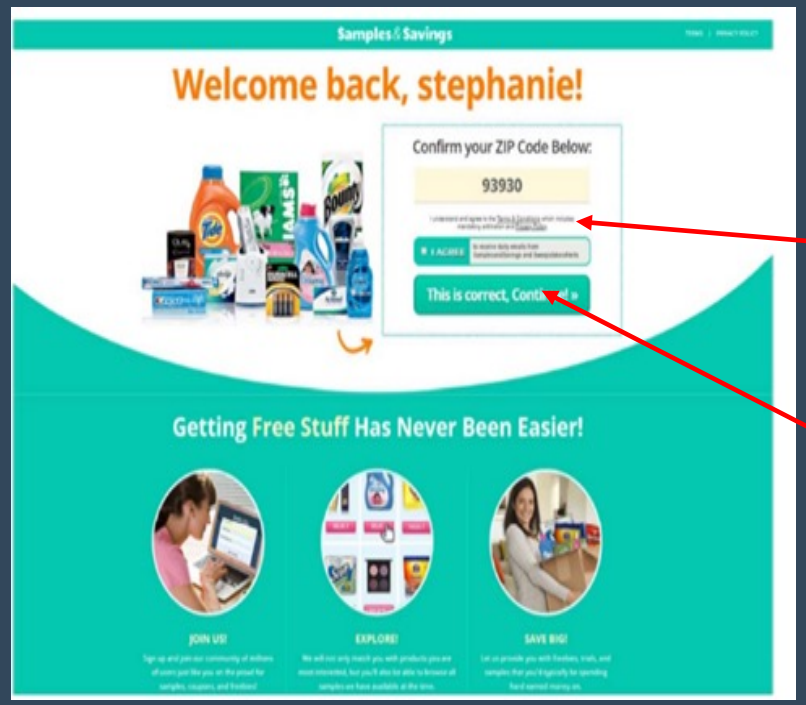
Berman v. Freedom Fin. Network, CASE NO. 18-cv-01060-YGR, 2020 U.S. Dist. LEXIS 160406 (N.D. Cal. Sept. 1, 2020)(Website lay out did not afford sufficient notice to the consumer because there was no above-the-button language notifying the consumer that they were accepting disclosures by clicking the button);



UNENFORCABLE!

Tiny little terms and condition notice

Button says nothing about accepting terms just “This is correct, Continue”

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SITE MUST CLEARLY INFORM THAT TERMS ARE BEING ACCEPTED

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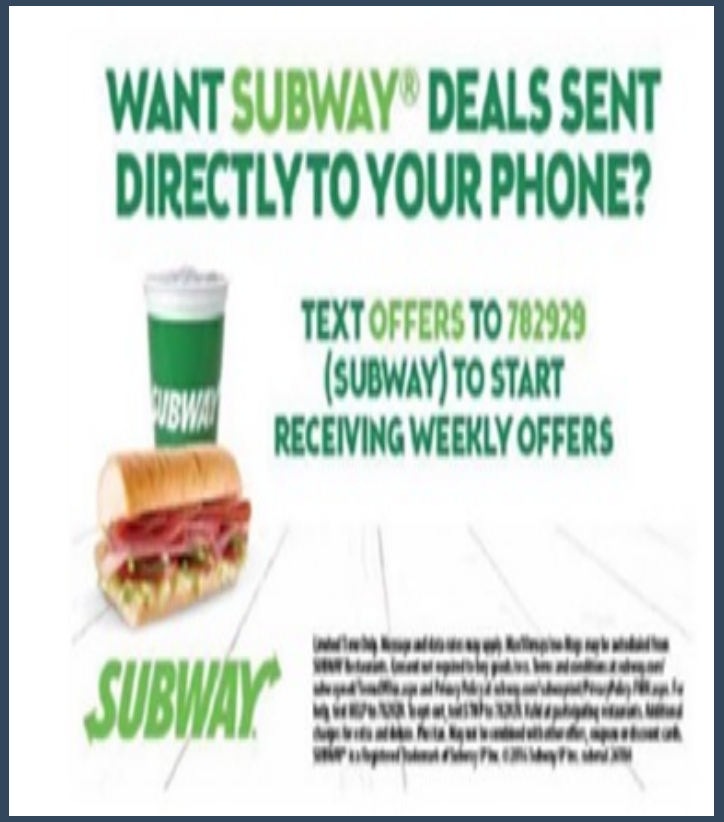
- Soliman, 2020 U.S. Dist. LEXIS 38183 (D. Conn. March 5, 2020)(page "actively" took attention away from terms and conditions, which were at the bottom of the page. The page did not specify that the consumer was accepting the hyperlinked terms and conditions)



UNENFORCABLE!

Loud colorful call to action

Small, unreadable fine print that does not actually specify that terms will be accepted

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CLUTTERED PAGES ARE A BAD IDEA

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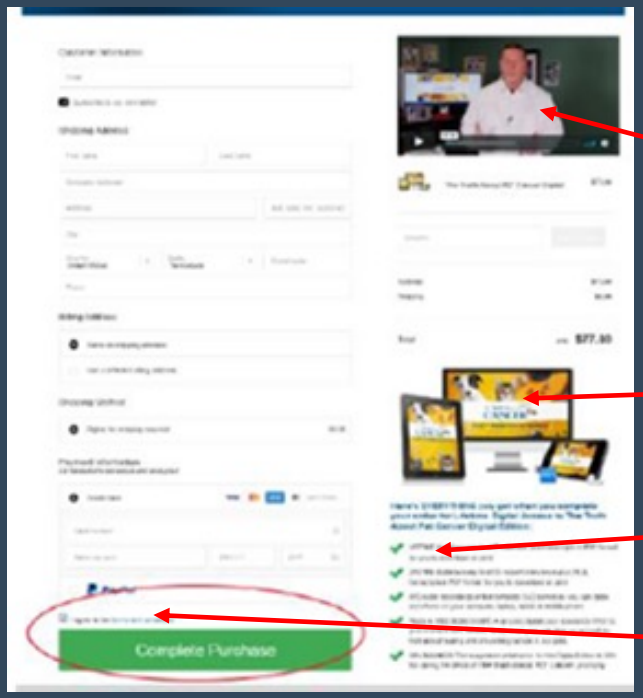
- Shultz v. Ttac Publ, Case No. 20-cv-04375-HSG, 2020 U.S. Dist. LEXIS 198834 (N.D. Cal. October 26, 2020)(i) hyperlink not visible; ii) distracting video playing; iii) promotional material; iv) big green checkmarks on page obscure the import of the hyperlink);



UNENFORCABLE!

Distracting video

More distracting content

Weird green check marks that can confuse folks

Tiniest little "accept terms and conditions" box ever

DARK PATTERNS (LEAD FRAUD LIGHT IMO)

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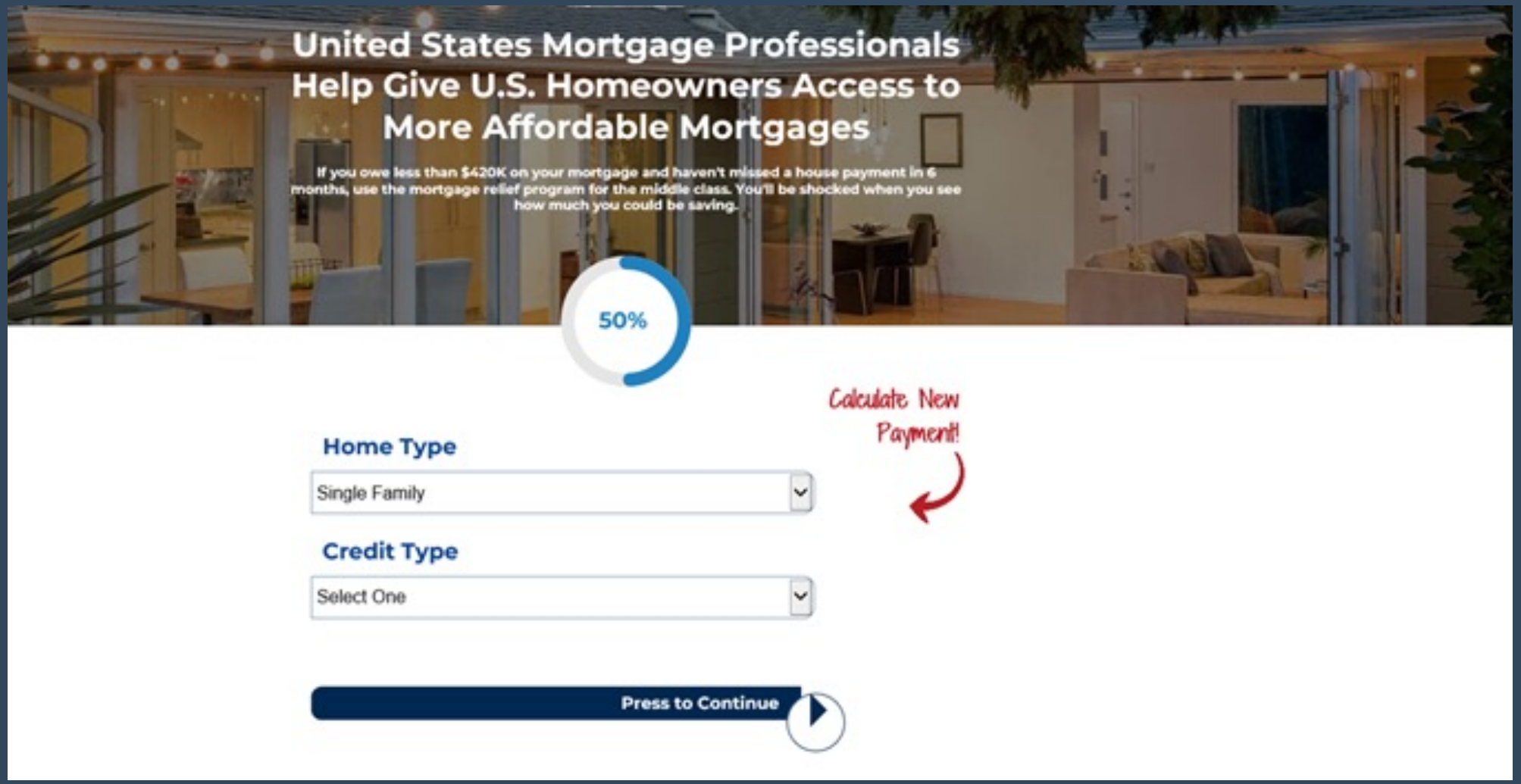

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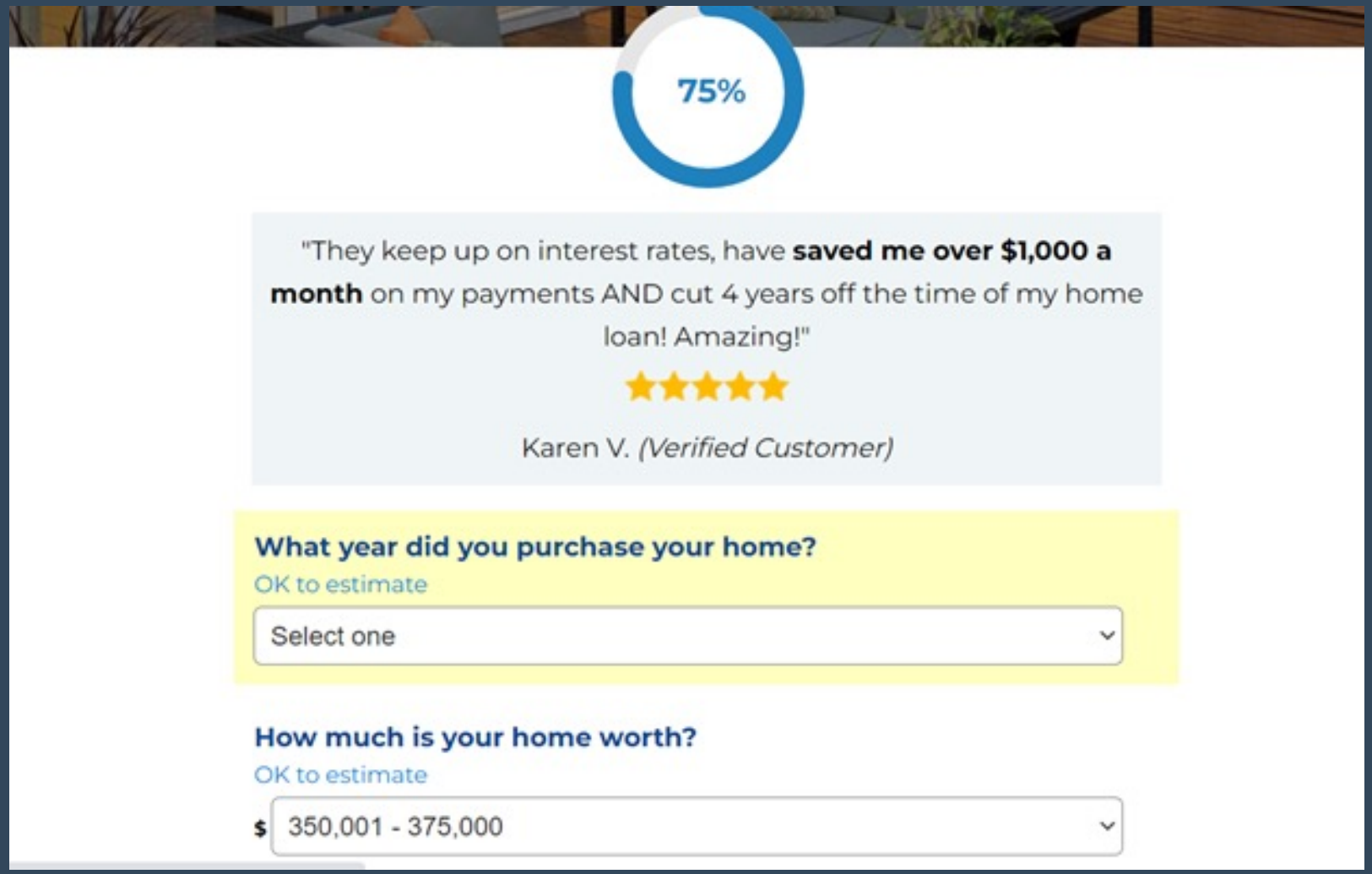

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Who is your mortgage with?

Who do you make mortgage payments to?

Bank of America

Existing Type of Rate

◉ Fixed ○ Adjustable

Do you have credit card debt?

47% of Americans have credit card debt. Homeowners who take cash out of their home to reduce credit card debt, could save thousands.

◉ Yes ○ No

Additional cash you wish to borrow?

Popular Option
The average homeowner has $173,000 in tappable equity. Get money out of your home and use it for anything you want.

$ 20,001 - 25,000

Calculate

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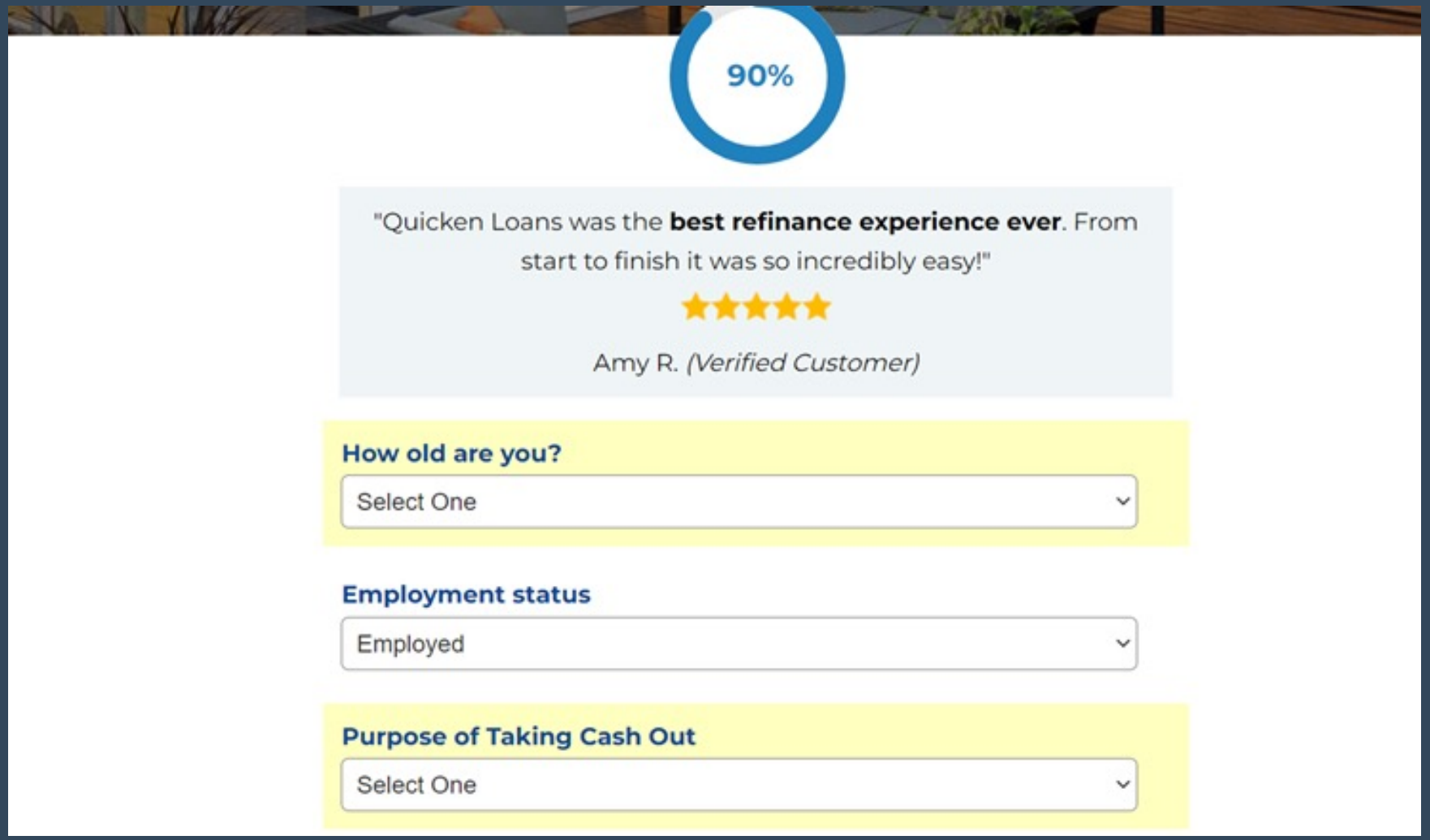

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Number of late mortgage payments in the past 12 months?

None

Property Address

We respect your privacy

Street

124 main street

State / City

CA - Villa Park

Email Address

We respect your privacy. We'll be emailing you with your results.

no@no.com

Calculate

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99%

"They keep up on interest rates, have **saved me over $1,000 a month** on my payments AND cut 4 years off the time of my home loan! Amazing!"

★★★★★

Karen V. *(Verified Customer)*

My Current Occupation

Select One

Active or previous U.S. military service?

○ Yes ◉ No

Are you or your spouse currently in a VA loan?

○ Yes ◉ No

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Phone Number

(999) 999 - 9999

Secondary Phone Number

Optional

( ) -

Enter your phone number above to receive automated and/or pre-recorded calls only from us and/or the providers that are matched to you.

Calculate your FREE results >

By clicking the button above, you express your understanding and consent, electronically via E-sign, to the following:

1. To be matched with, and contacted by, up to 5 participants in the LMB Provider Network about mortgage and financial services products, and consent (not required as a condition to purchase a good/service) for us and them to contact you for marketing purposes (including through the use of an automatic telephone dialing system, artificial or prerecorded means) via telephone or text at the phone number provided above (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. You may revoke your consent at any time. You agree that LMB, Core Digital Media, and Rocket Mortgage can share your personal data and contact information with third parties, such as mortgage partners, partner companies, and other affiliates, and that these parties may use your personal data and contact information for marketing and analytics, and to make your experience easier. As an alternative, you may contact us by email at customercare@coredigital.com

2. To the LMB Lending Terms of Use, Privacy Policy, and Consent to Doing Business Electronically.

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You have completed the first step to finding the lowest rates in Villa Park, CA

1. Click on the loan options below that interest you.
2. Check your credit (optional).
3. Get personalized rate quotes from lenders.
4. Feel free to ask them questions.

Sponsored Content Advertisements provided by third parties

Quicken Loans

Providing Affordable Mortgages and Award-Winning Client Service for More than 30 Years

- Award-winning client service & A+ rating with the BBB
- Highest in customer satisfaction in the U.S.

Get Started

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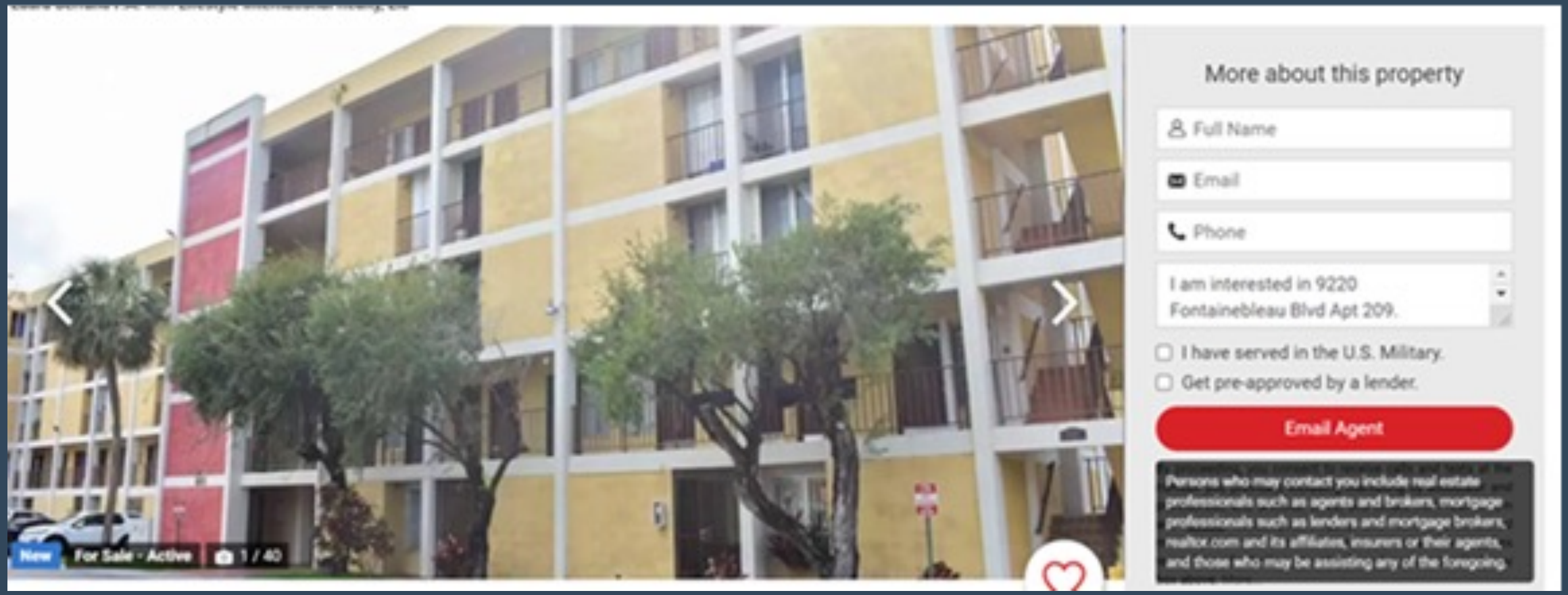

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LEAD FRAUD…Some of the Scariest Stuff of All

- If you're buying leads or traffic listen up…
- Stuff I won't put in writing
- I recommend Human Selection dialing for all companies making outbound dials on purchased leads or leads generated through affiliate traffic.

ONLINE CONSENT RISK: Can Minors Consent?

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- Latest theory from the Plaintiff's bar
- Akin to "statutory rape" of the cell phone
- Under common law age of majority is actually very important—but consent provided by a minor is likely voidable, not void
- Will vary jurisdiction to jurisdiction
- Can be a MAJOR CLASS RISK if you have data demonstrating you rely on consent from those under 16-18 years old (depending on jurisdiction).

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Informational vs. Telemarketing

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- Standard for consent for informational calling is much different
  - Just needs to be provided by the consumer to the caller for a purpose "closely related" to the purpose of the call
  - But merely entering a phone number into a field without clicking submit is not consent. See Caplan v. Budget Van Lines, Case No. 20-CV-130 JCM, 2020 U.S. Dist. Lexis 136865 (D. Nv. July 31, 2020).
- Dual purpose calls are treated as marketing
- Immediate responses to consumer-initiated requests for information are not marketing, but where to draw the line?

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Must the Seller Be Specifically Identified?

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- Many online webforms do not specifically reference the name of an ultimate seller but merely advise the consumer that a "lender" or "service provider" will contact the consumer in response to their inquiry.
- Two recent cases suggest this practice is insufficient:
  - *Williams v. PillPack LLC*, C19-5282 TSZ, 2021 U.S. Dist. LEXIS 27496 (W.D. Wash. February 12, 2021)(Written consent for call center to call. Calls were subsequently warm transferred to seller, with consumer's oral consent. The court expressed doubt that this was lawful and determined the issue was suitable for classwide treatment);
  - *Mattson v. New Penn Fin.*, No. 3:18-cv-00990-YY, 2020 U.S. Dist. LEXIS 197955 (D. Or. October 25, 2020)(district court found that because the lender is not specifically named in a disclosure that said only "up to 4 lenders" may call the consumer, the lender do not have a valid consent defense on Plaintiff's DNC Claim. Plus, the lender may even have a bona fide error defense since the lender did not verify that they were specifically listed on the website.)

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Calling Wrong Numbers

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- Consent must come from the current subscriber
- Causes problems:
  - Caller potentially liable for fat fingered phone numbers
  - Caller potentially liable where consumer provides fake or different number
  - Caller potentially liable where number changes hands without knowledge
- REASSIGNED NUMBER DATABASE IS CRITICAL WHEN CALLING AGED LEADS
- But caller still STRICTLY LIABLE for wrong number calls made using regulated technology when caused by lead fraud or fat fingered numbers

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CITIBANK'S NIGHTMARE

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- *Head v. Citibank,* CV 18-08189, 2022 US Dist. Lexis 16179 (D. Az. Jan 27, 2022)
- Certification of 7 year wrong number class.
- Prerecorded calls used.
- All class members did not provide consent—probably.
- Exposure is likely north of a billion dollars.
- Citibank won twice before. So what happened?
- Class counsel are developing more sophisticated theories and defense counsel is not adjusting.
- Data is no longer the predicate for the class.

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THE THIRD COMMANDMENT: HUGE SPIKE IN DNC CLAIMS

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- More Important Than Ever
- You must SCRUB to survive if calling without Express Written Consent!
- Even manual sales calls are illegal if made to numbers on the DNC
- Private right of action exists if more than 2 calls in a 12 month period

- HUGE issue if seller is not specifically disclosed on forms

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THE THIRD COMMANDMENT:
Courts Find that These Cases Are Easily Certifiable

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- Krakauer v. Dish Network, No. 18-1518, 2019 U.S. App. LEXIS 16111 (4th Cir. May 30, 2019):
- The TCPA's DNC provisions are a "model of clarity" and the TCPA's private right action is a "straightforward provision designed to achieve a straightforward result"
- The Court concludes that the TCPA's DNC provisions offer a near-perfect vehicle for certification: "[a]t bottom, the advantages of class resolution follow directly from the statute… [it] creates a simple scheme for determining if a violation occurred, whether a defense is available, and what the damages ought to be."

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THE THIRD COMMANDMENT:
Big Trouble if Internal DNC Lists Do Not Match

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- Big issue for Dish Network was third-parties not reporting DNC requests to Dish and vice versa.
- Seller has the obligation to make sure a DNC request to one vendor stops calls made by ALL vendors the Seller is working with.
- Allstate recently ordered to produce ***its entire internal DNC list*** to opposing counsel to compare to the lists of marketing vendors its agent's retained.
  - *Hossfeld v. Allstate Ins. Co.,* Case No. 20-CV-7091, 2021 U.S. Dist. LEXIS 199023 (N.D. Ill. October 15, 2021)

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FREE FUN STUFF— INFORMATIONAL CALLING

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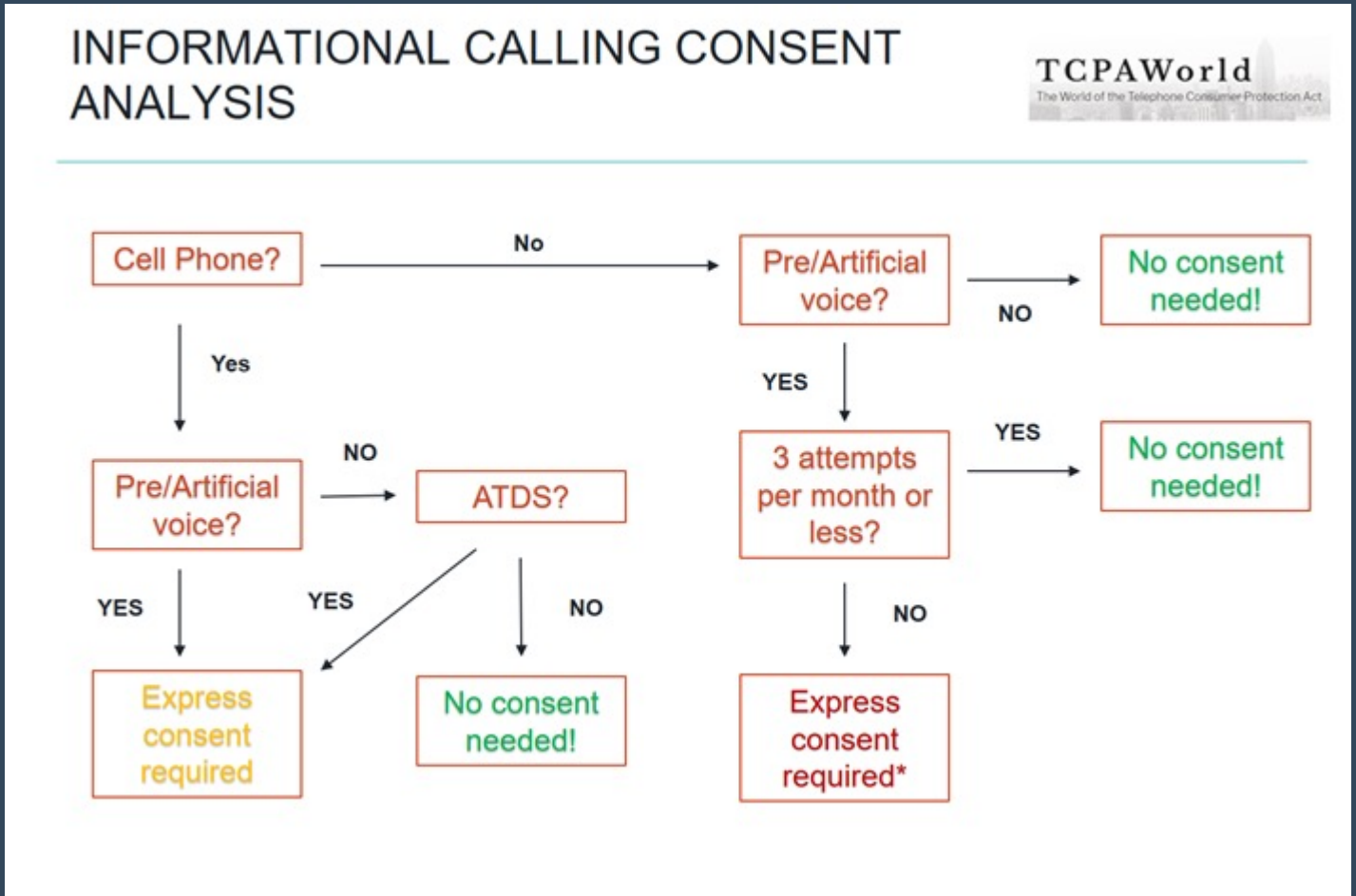

FREE FUN STUFF— MARKETING CALLING

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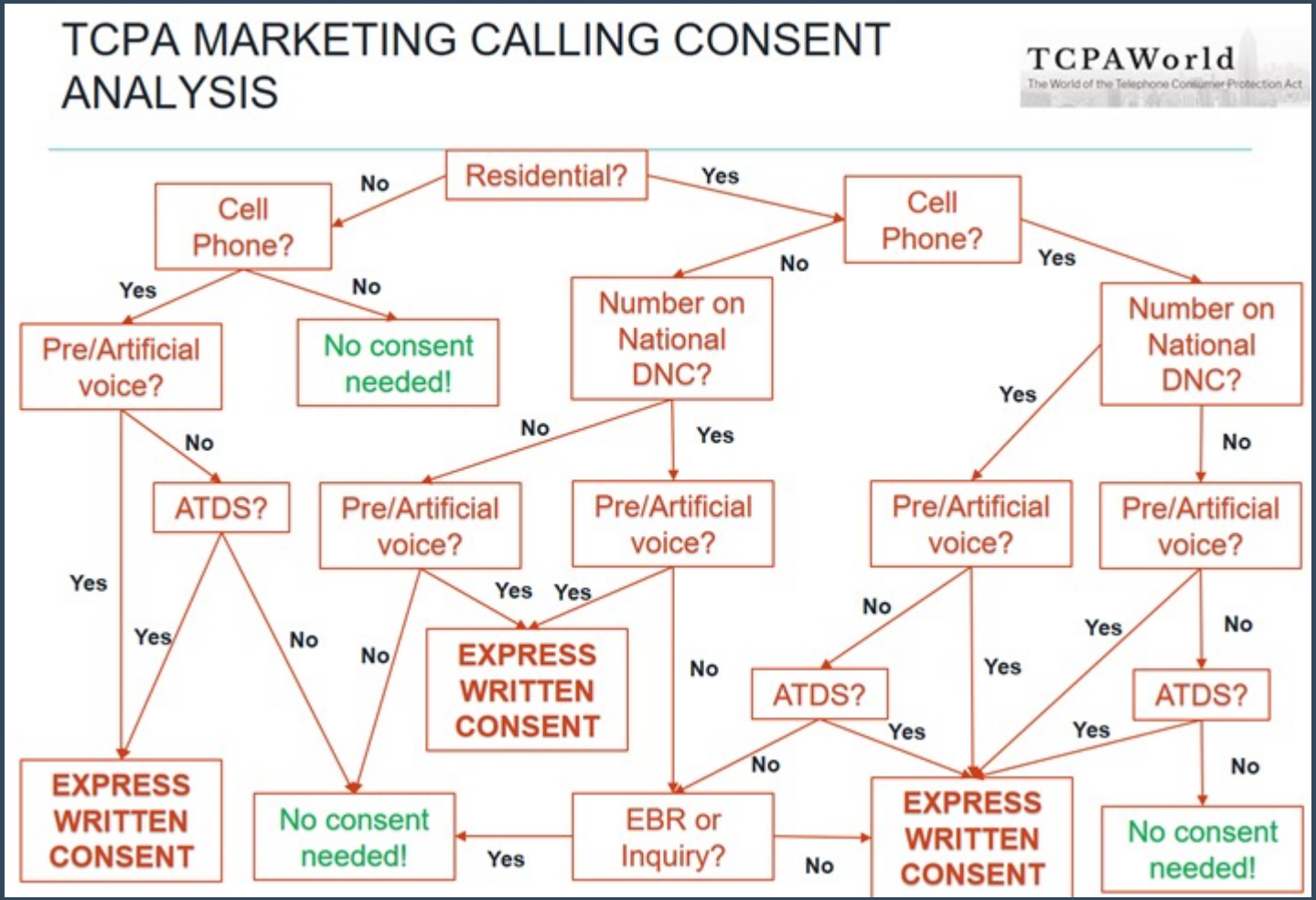

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- LIVE & IN-PERSON
- Join us at **Hyatt Regency Huntington Beach, July 18 & 19**, for two days of content with our diverse panel of legal minds and industry experts. Network with our speakers and with fellow compliance and privacy professionals.
- Want an Invite? https://bit.ly/2022-CA-Summit

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Get a free 15-minute assessment

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