

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JENNIFER OSSOLA, JOETTA CALLENTINE,
AND SCOTT DOLEMBA, on behalf of themselves
and all others similarly situated,**)

Plaintiffs,)

v.)

**AMERICAN EXPRESS COMPANY, AMERICAN
EXPRESS CENTURION BANK, WEST ASSET
MANAGEMENT, INC., and ALORICA, INC.**)

Defendants.)

13 C 4836

Judge John Z. Lee

ORDER

In this action, Plaintiffs Jennifer Ossola, Joetta Callentine, and Scott Dolemba (collectively “Plaintiffs”) allege that Defendants American Express Company and American Express Centurion Bank (collectively “American Express”) made debt collection and telemarketing calls to Plaintiffs’ cellphones in violation of the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227. In addition, Plaintiffs allege that Defendants West Asset Management, Inc. (“West”) and Alorica, Inc. also made such calls on behalf of American Express. American Express now moves for partial summary judgment, arguing that it may not be held directly liable for any claim made under TCPA, because it was West and Alorica, not American Express, that placed the calls at issue.¹ For the following reasons, the Court denies American Express’ motion for partial summary judgment.

¹ American Express does not contest that it may be held vicariously liable for calls made on its behalf. *See* Def.’s Mem. 2 n.1.

Summary judgment is appropriate if the evidence demonstrates that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The parties continue to dispute a number of facts, although only a few facts are actually pertinent to the disposition of this motion. For the purposes of this motion, the relevant facts are that West placed debt collections calls on behalf of American Express to Ossola and Dolemba,² and Alorica placed telemarketing phone calls on behalf of American Express to Callentine.³ The parties do dispute whether American Express itself placed any of the phone calls to any of the Plaintiffs in this case. Pl.’s LR 56.1(b)(3)(B) Stmt. ¶ 9.

Turning first to Plaintiffs’ claim that American Express should be held liable under the TCPA with respect to the debt collection phone calls, whether American Express itself actually placed the calls at issue is irrelevant; “[c]alls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call.” *Jamison v. First Credit Services, Inc.*, 290 F.R.D. 92, 99 (N.D. Ill. 2013) (quoting *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd. 559 ¶ 10 (Jan. 4, 2008)); *see also Soppet v. Enhanced Recovery Company, LLC*, 679 F.3d 637, 642 (7th Cir. 2012) (“Indemnity may be automatic under ¶ 10 of the 2008 TCPA Order, which states that calls placed by a third-party collector on behalf of a creditor are treated as having been made by the creditor itself.”). As such, American Express, as the primary creditor, may be held directly liable under the TCPA, even if the calls were placed by a third-party collector acting on its behalf. Accordingly, this

² American Express argues as such in previously filed briefs. *See, e.g.*, Dkt. 95 at 1. American Express also does not dispute this fact in its response to Plaintiffs’ statement of additional facts. *See* Def.’s Reply Pl.’s LR 56.1(b)(3)(B) Stmt. ¶ 1. The Court therefore deems it admitted for the purposes of this motion. *See Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 632 (7th Cir. 2009).

³ Alorica admits to making two phone calls to Callentine’s cell phone in April 2012. *See* Def.’s LR 56.1(b)(3)(B) Stmt. ¶ 10.

Court denies American Express' motion for partial summary judgment with respect to the debt collection calls placed to Plaintiffs.

Next, as to whether American Express can be directly liable for telemarketing phone calls made by third parties, the parties currently are conducting discovery regarding the role that American Express played in the placement of these calls, and the scope of its role is disputed. See Pl.'s LR 56.1(b)(3)(B) Stmt. ¶ 9. This is important because "a seller generally does not 'initiate' calls placed by third-party telemarketers." *Smith v. State Farm Mut. Auto. Ins. Co.*, 30 F. Supp. 3d 765, 771 (N.D. Ill. 2014) (citing *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 F.C.C. Rcd. 6574, 6574 (May 9, 2013)). And, under the TCPA, "a person or entity 'initiates' a telephone call when 'it takes the steps necessary to physically place a telephone call.'" *Id.* (quoting *Dish Network, LLC*, 28 F.C.C. Rcd. at 6574); see also *Dish Network, LLC*, 28 F.C.C. Rcd. at 6583 (noting that a seller may be "so involved in the placing of a specific telephone call as to be directly liable for initiating it—by giving the third party specific and comprehensive instructions as to timing and the manner of the call, for example"). Because discovery is likely to reveal information relevant to this inquiry, summary judgment as to this issue is inappropriate at this time.

For these reasons, American Express' motion for partial summary judgment [142] is denied.

SO ORDERED

ENTER:2/20/15



JOHN Z. LEE
U.S. District Judge