UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JASON GAZA,

Plaintiff,

v. **Case No: 8:18-cv-1049-MSS-SPF**

NAVIENT SOLUTIONS, LLC,

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Defendant Navient Solutions, LLC's Motion for Summary Judgment, (Dkt. 20), Plaintiff's response in opposition thereto, (Dkt. 26), Defendant's reply in support of the Motion, (Dkt. 33), and Defendant's Notice of Supplemental Authority in Support of the Motion. (Dkt. 35) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **GRANTS** Defendant's Motion for Summary Judgment.

I. BACKGROUND

By way of background, this is a civil action filed by Plaintiff Jason Gaza ("Gaza") against Defendant Navient Solutions, LLC ("Navient"). (Dkt. 1) The Complaint alleges that Navient violated Section 227(b)(1)(A)(iii) of the Telephone Consumer Protection Act (the "TCPA") by making repeated calls using an automatic telephone dialing system to Gaza's cellular telephone without consent. (Dkt. 1 at ¶¶15–18)

The undisputed facts for purposes of this motion are as follows: Gaza obtained two federal student loans to attend Embry-Riddle Aeronautical University. (Dkt. 20-1 at ¶4; Dkt. 20-1 at 1) The promissory note concerning the loans makes clear that the loan debt is owed to the U.S. Department of Education ("ED"). (Dkt. 20-2 at §D.16. ("I promise to pay to ED all loan amounts disbursed under the terms of this [Master Promissory Note], plus interest and other charges and fees that may become due as provided in this [Master Promissory Note] . . . .")) The promissory note also expressly permitted Gaza's "schools, ED, and their respective agents and contractors" to make calls using automatic dialing equipment to Gaza's cellular telephone to collect the debt if Gaza became delinquent. (Id. at § C.13.H.) Navient services Gaza's federal loans and made calls to Gaza's cell phone after he failed to make required monthly payments. (Dkt. 20-1 at ¶5) These calls were made in an attempt to collect the student loan debt. (Id.; Dkt. 33-1 at ¶2) Though Gaza suggests in a conclusory manner that the calls may not have been made to collect a student loan debt, the record is undisputed that the only debt Navient was servicing involving Gaza was Gaza's student loan debt and Navient has provided an affidavit to that effect, which is unchallenged on this record. (Dkt. 33-1 at ¶2)

In this action, Gaza alleges that Navient's calls to him using an automatic telephone dialing system ("ATDS") or an artificial or prerecorded voice after he sent a written revocation of consent to receive such calls violated the TCPA. (Dkt. 1) Navient seeks summary judgment in its favor arguing, inter alia, that its communications with Gaza are exempt from the requirements of the TCPA because the subject loan about which the alleged communications were made is owed to or guaranteed by the United States. (Dkt. 20 at 4−9)

II. STANDARD OF REVIEW

Summary judgment is appropriate when the movant can show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Fennell v. Gilstrap, 559 F.3d 1212, 1216 (11th Cir. 2009) (citing Welding Servs., Inc. v. Forman, 509 F.3d 1351, 1356 (11th Cir. 2007)). Which facts are material depends on the substantive law applicable to the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party bears the burden of showing that no genuine issue of material fact exists. Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991).

Evidence is reviewed in the light most favorable to the non-moving party. Fennell, 559 F.3d at 1216 (citing Welding Servs., Inc., 509 F.3d at 1356). A moving party discharges its burden on a motion for summary judgment by showing or pointing out to the Court that there is an absence of evidence to support the non-moving party's case. Denney v. City of Albany, 247 F.3d 1172, 1181 (11th Cir. 2001) (citation omitted).

When a moving party has discharged its burden, the non-moving party must then designate specific facts (by its own affidavits, depositions, answers to interrogatories, or admissions on file) that demonstrate there is a genuine issue for trial. Porter v. Ray, 461 F.3d 1315, 1320-1321 (11th Cir. 2006) (citation omitted). The party opposing a motion for summary judgment must rely on more than conclusory statements or allegations unsupported by facts. Evers v. Gen. Motors Corp., 770 F.2d 984, 986 (11th Cir. 1985) ("conclusory allegations without specific supporting facts have no probative value."). "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . . the court may grant summary judgment if the motion and supporting materials . . . show that the movant is entitled to it." Fed. R. Civ. P. 56(e).

III. DISCUSSION

Viewing the facts of this case against this standard, the Court finds that summary judgment must be granted in favor of the Navient. The Court finds persuasive the reasoned analysis set forth in the decision of Green v. Navient Sols., LLC, No. 1:17-CV-1453-VEH, 2018 WL 6303775, at *1 (N.D. Ala. Nov. 29, 2018). As the Green court explained, "The Motion requires the Court to determine whether, based on the undisputed facts, Navient is entitled to judgment as a matter of law because it did not violate the TCPA in making the subject calls to [Gaza]'s cellular telephone." Id. at *4 (citations omitted). Section 227(b)(1)(A)(iii) of the TCPA provides as follows:

> **(b) Restrictions on use of automated telephone equipment**
>
> **(1) Prohibitions**
> It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States–
>
> **(A)** to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice–
>
> **(iii)** to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States[.]

47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added), as amended by Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(1)(A), 129 Stat. 584, 588. As in Green, Navient here "argues that it did not violate the TCPA because its calls were made to collect the Student Loan, which is and was [owed to] the United States Department of Education." Green, 2018 WL 6303775, at *5; (Dkt. 20 at 4−9). Thus, it contends, "based on the text of the

statute, its calls were exempt . . . from the TCPA's prior express consent requirement." (Id.)

As the plaintiff did in Green, Gaza here argues "that the FCC has promulgated rules that unambiguously conclude[] that federal debt collectors may not make [automated] calls after the debtor requests that they stop." Green, 2018 WL 6303775, at *5; (Dkt. 26 at ¶5 (citing In the Matter of Rule and Regulations Implementing the Telephone Consumer Protection Act of 1991 at 9074, 9088–92 noting, "Our rules, therefore, require that zero federal debt collection calls are permitted once a debtor asks the owner of the debt or its contractor to cease federal debt collection calls.")). Thus, Gaza claims that even if the calls were permitted under the loan agreement, that aspect of the agreement was voided when Gaza expressly withdrew the consent previously given to receive automated debt collection calls. (Dkt. 26 at ¶¶5–13)

As the Green court found, Navient is entitled to judgment in its favor. First, its actions were exempt from the provisions of the TCPA by the plain language of the statute. See Green, 2018 WL 6303775, at *5–6 (discussion at Section III.A. describing how the subject communications fell within express language of exemption). Additionally, the regulation that Gaza cites to support the notion that the statutory exemption of the United States may be nullified by the debtor's revoking consent was never fully effectuated. Again, as the Green court explained:

> More specifically, the FCC clearly indicated in the August 2016 FCC Report and Order that all its proposed regulations "[would] not become effective until 60 days after the [FCC] publishes a Notice in the Federal Register indicating approval of the information collection by the Office of Management and Budget (OMB)." 31 F.C.C. Rcd. at 9097-98, ¶¶ 59-60. "[H]owever, [the] OMB never gave such approval and the FCC eventually withdrew its request to [the] OMB, thereby effectively preventing any of the proposed regulations from taking effect." *Schneider v. Navient Sols., LLC*,

> No. 16-6760, 2018 WL 2739437, at *3 n.4 (W.D.N.Y. June 7, 2018) (citing source); *see also Sanford v. Navient Sols., LLC*, No. 17-4356, 2018 WL 4699890, at *2 (S.D. Ind. Oct. 1, 2018) (finding that the August 2016 FCC Report and Order never went into effect and then granting Navient's motion for judgment on the pleadings based on "the plain language of the [TCPA]"). Accordingly, the August 2016 FCC Report and Order —and its proposed regulations allowing consumers to revoke consent—never went into effect.

See Green, 2018 WL 6303775, at *6. As such, for the same reasons articulated in Green, Gaza's claim fails as a matter of law.

IV. CONCLUSION

Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

1. Defendant Navient Solutions, LLC's Motion for Summary Judgment, (Dkt. 20), is **GRANTED**.
2. The **CLERK** is directed to **ENTER JUDGMENT** in favor of Defendant Navient Solutions, LLC and against Plaintiff Jason Gaza.
3. Thereafter, the **CLERK** is directed to **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida, this 23rd day of January, 2019.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person