Circuit Court for Harford County
Case No. 12-C-17-000645

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 661

September Term, 2020

MICHAEL C. WORSHAM

v.

LIFESTATION, INC., ET AL.

Fader, C.J.,
Wells,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: November 17, 2021

Michael C. Worsham, the appellant, filed suit against appellee LifeStation, Inc. and appellee MLA International, Inc., in the Circuit Court for Harford County. LifeStation is a New York corporation that sells medical alert monitoring services and MLA is a Florida corporation that contracted with LifeStation to provide telemarketing services for LifeStation's products. In the operative first amended complaint, Mr. Worsham brought claims against LifeStation and MLA under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, and its implementing regulations, and the Maryland Telephone Consumer Protection Act ("MDTCPA"), Md. Code Ann., Comm. Law §§ 14-3201 – 14-3202 (2013 Repl.), arising from nine telemarketing calls he received, eight of which were initiated as prerecorded calls and one of which was live. Mr. Worsham filed second and third amended complaints in which he sought to add two individual defendants—Jose Ayala, MLA's CEO and principal, and Grace Sabako, a LifeStation employee—and additional claims based on the same nine telemarketing calls.

The circuit court ultimately: (1) granted LifeStation's motion to strike the second and third amended complaints; (2) granted summary judgment in favor of LifeStation on all counts in the first amended complaint; (3) denied a motion for partial summary judgment filed by Mr. Worsham; (4) entered a default judgment for $20,000 against MLA;[1] and (5) entered an order of default against Mr. Ayala, which the court later struck.

[1] While this appeal was pending, Mr. Worsham filed a notice that MLA had been "administratively dissolved" by the State of Florida on September 25, 2020.

On appeal, Mr. Worsham argues that the circuit court erred in: (1) striking his second and third amended complaints and vacating the order of default as to Mr. Ayala; (2) granting summary judgment in favor of LifeStation; (3) denying Mr. Worsham's motion for partial summary judgment; (4) denying his motions to compel written discovery and a motion for immediate sanctions against LifeStation for failure to appear for a deposition; and (5) rescinding an earlier decision to recuse and by not disqualifying herself.

We hold, first, that the second and third amended complaints were properly filed under the Maryland Rules, that the record does not reveal a basis for striking them, and that the circuit court therefore abused its discretion in doing so. Second, it appears that the court's award of summary judgment in favor of LifeStation was grounded at least in part in some confusion concerning the nature of Mr. Worsham's claims and the facts in the summary judgment record. Based on our review of the record, LifeStation was entitled to judgment as a matter of law on the bases articulated by the circuit court only on Counts 9 and 11 of the first amended complaint. Accordingly, we will affirm the award of summary judgment in favor of LifeStation on those counts and reverse as to Counts 1, 2, 3, 4, 5, 6, 7, 10, 12, and 13.[2] Third, we discern no error in the circuit court's denial of Mr. Worsham's motion for partial summary judgment and so will affirm that decision. Fourth, although we discern no error or abuse of discretion in the discovery rulings Mr. Worsham challenges based on the procedural status of the case at the time those decisions were made, we will affirm some of those rulings and will vacate others so that they can be revisited on remand

[2] Mr. Worsham voluntarily withdrew Count 8 of the first amended complaint.

in light of the other rulings in this decision. Finally, we discern no abuse of discretion in the court's denial of Mr. Worsham's motion to disqualify and so will affirm that decision. Accordingly, we will affirm in part, reverse in part, and vacate in part the judgment of the circuit court and remand for further proceedings consistent with this opinion.

BACKGROUND

Statutory and Regulatory Background

The TCPA, codified at 47 U.S.C. § 227, was enacted in 1991 in "response to Americans 'outraged over the proliferation of intrusive nuisance calls to their homes from telemarketers[.]'" *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 649 (4th Cir. 2019) (quoting Pub. L. No. 102-243 § 2(6) (1991)). "Among its provisions, the TCPA makes it unlawful for any person within the United States to 'initiate any telephone call to any residential telephone line using an artificial or prerecorded voice without the prior express consent of the called party.'" *In re Dish Network, LLC*, 28 FCC Rcd. 6574, 6575 (2013) ("*Dish Network*") (quoting 47 U.S.C. § 227(b)(1)(B)). The TCPA also authorizes the Federal Communications Commission to promulgate regulations "to establish a national 'do-not-call' registry that consumers can use to notify telemarketers that they object to receiving telephone solicitations." *Dish Network*, 28 FCC Rcd. at 6575 (citing 47 U.S.C. § 227(c)(1)-(4)). Under those regulations, "no person or entity is permitted to 'initiate any telephone solicitation . . . to any residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry.'" *Dish Network*, 28 FCC Rcd. at 6575 (alteration in *Dish Network*) (quoting 47 C.F.R. § 64.1200(c)(2)). In addition to

the prerecorded calls and do-not-call provisions, the TCPA authorizes the FCC to promulgate "technical and procedural standards for systems that are used to transmit any artificial and prerecorded voice messages via telephone." 47 U.S.C. § 227(d)(3).

The TCPA may be enforced by the FCC, by state Attorneys General, and, as most relevant here, by means of statutory private rights of actions to enforce the prerecorded or artificial calling restrictions established in § 227(b), the do-not-call restrictions established in § 227(c), and FCC regulations implementing those sections. *See Dish Network*, 28 FCC Rcd. at 6575; 47 U.S.C. §§ 227(b)(3) & (c)(5). A plaintiff bringing suit in state court under those provisions may recover the greater of actual monetary damages or $500 "for each . . . violation." 47 U.S.C. § 227(b)(3)(B) & (c)(5)(B). The TCPA does not create a private right of action to enforce the provisions of § 227(d)(3) (or the FCC's regulations implementing it), related to "technical and procedural standards for systems that are used to transmit any artificial and prerecorded voice messages via telephone."

Telemarketing practices are also regulated by the Federal Trade Commission under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 – 6108. In that statute, Congress directed the FTC to "prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices." 15 U.S.C. § 6102(a)(1). The implementing regulations, known as the Telemarketing Sales Rule, appear at 16 C.F.R. Part 310. Like the FCC regulations, the Telemarketing Sales Rule prohibits any outbound call to a person whose number is listed on the national Do Not Call list registry ("Do Not Call List") and otherwise regulates telemarketing sales. *See*

generally 16 C.F.R. §§ 310.1 – 310.9. A person may file a civil action in federal court to enforce the Telemarketing Sales Rule if the person was "affected by any pattern or practice of telemarketing" causing $50,000 or more in actual damages. 15 U.S.C. § 6104(a).

The MDTCPA makes it a violation of state law to violate the Telemarketing and Consumer Fraud and Abuse Prevention Act, as implemented by the FTC, and the TCPA, as implemented by the FCC, and creates a private cause of action for violations of the MDTCPA. Comm. Law §§ 14-3201 – 14-3202. A plaintiff who files suit under the MDTCPA may recover the greater of the plaintiff's actual damages or $500 "for each violation." *Id.* § 14-3202(b)(2). "[E]ach prohibited telephone solicitation and each prohibited practice during a telephone solicitation is a separate violation." *Id.* § 14-3202(c).

Mr. Worsham's Factual Allegations

Mr. Worsham, who is self-represented in this case, maintains two phone numbers—a residential landline and a cell phone—both of which have been continuously listed on the national Do Not Call List since July 15, 2006. He alleged in his first amended complaint that, between September 2016 and April 2017, LifeStation or MLA on LifeStation's behalf placed eight prerecorded "robocalls" and one live phone call to either his landline or his cell phone. We will refer to the prerecorded calls sequentially as the "first call," the "second call," and so forth through the "eighth call." We will refer to the live call as the "live call."

The first call was made to Mr. Worsham's cell phone on September 7, 2016. A prerecorded female voice offered a "free medical device worth $475[.]" Mr. Worsham pressed "1" to speak to a customer service agent and was connected with an agent named "Dennis," who said he was with "Medical Alert[.]" The call disconnected when Mr. Worsham asked for more information about the advertised product. Mr. Worsham attempted to call the phone number that had appeared on his Caller ID, which included a local 410 area code, but the number was not in service.

The second, third, and fourth calls all were made to Mr. Worsham's landline on September 28, 2016, October 6, 2016, and February 24, 2017, respectively. Each began exactly like the first call, with a prerecorded female voice offering a free medical alert device worth $475. On each occasion, Mr. Worsham pressed "1" to connect to a live customer service agent. The second and fourth calls were disconnected after Mr. Worsham began speaking to a live agent. He never successfully connected to an agent during the third call.

The fifth call was made to Mr. Worsham's landline on March 1, 2017. It began like the other calls, with the "[s]ame" prerecorded female voice. Mr. Worsham pressed "1" and was connected with a customer service agent who gave the name "Samuel." Samuel explained that the medical alert device was free, but that the monthly charge for monitoring the device was between $29.95 and $39.95, depending on the type of device selected. Samuel advised Mr. Worsham that he would not need to sign a contract and could opt out of the monitoring service at any time. Mr. Worsham agreed to sign up to receive a medical

alert device and provided his credit card number to Samuel. The call then disconnected. When Mr. Worsham tried to call back, he heard a busy signal. A few minutes later, Mr. Worsham received a phone call from an unknown number that did not connect. He called that number and heard an interactive recorded message for a product called "911 Alert." He navigated the interactive menu and connected to a customer service agent who transferred him to a second agent. That agent, who identified herself as "Nicole," advised Mr. Worsham that she had been monitoring his conversation with Samuel. Nicole provided Mr. Worsham with a customer service number, identified the name of the company as "Medical First Alert," and told him the device would arrive in 3-5 days.

That same day, Mr. Worsham's credit card was charged $29.95 by a company identified on his statement as "& LifeAid 800-466-3300 NY." The medical alert device arrived two days later along with a "LifeAid Service Agreement" that Mr. Worsham was directed to sign and return. The agreement was between LifeStation, d/b/a LifeAid and Mr. Worsham.

On March 6, 2017, Mr. Worsham received the sixth call on his cell phone. It began like the first five calls. Mr. Worsham connected to a customer service agent who said he was with "Medical Alert." The call then disconnected.

On March 12, 2017, Mr. Worsham received the live call on his landline. A woman who identified herself as "Eve" called Mr. Worsham to "start [his] medical alert service." Mr. Worsham told her that he wished to cancel his service. He was then transferred to a second customer service agent, "Jasmine." Mr. Worsham told Jasmine that he was

cancelling because the company had misrepresented its name to him during telemarketing calls. After a back-and-forth concerning the company's name and whether it had been misrepresented, Jasmine told Mr. Worsham that he could mail his device back. When he asked how he would be reimbursed for the return of the device, the call disconnected.

Four days later, on March 16, 2017, Mr. Worsham received the seventh call on his cell phone, which began like the first six prerecorded calls with the same voice and message. After connecting with an agent who identified herself as "Sara" from "Med Alert," Mr. Worsham asked if she was from "LifeStation" and said he already had purchased a device. The call disconnected.

The eighth and final call was made to Mr. Worsham's landline on April 3, 2017. The eighth call began with the same prerecorded message as the first seven. Mr. Worsham connected to a customer service agent named Samuel, who sounded like the same agent (of the same name) from the fifth call. Samuel provided Mr. Worsham the same prices for the monitoring service as in that earlier call. Mr. Worsham informed Samuel that he already had received a device from LifeStation. Samuel laughed and said, "Let me get your number out of here" and hung up.

The Lawsuit

On the same day as the seventh call, March 16, 2017, Mr. Worsham filed a complaint in the circuit court asserting that LifeStation's conduct violated the TCPA and the MDTCPA. The 13-count first amended complaint, filed a few months later, added MLA as a defendant. In addition to the allegations set forth in the first complaint,

Mr. Worsham alleged that LifeStation and MLA willfully and knowingly made calls and contracted with others to make calls on their behalf in violation of state and federal law. He also alleged that LifeStation and MLA were aware of TCPA violations through consumer complaints that predated the calls to him; were aware of the telemarketing practices being used and profited from them; and ratified the acts and conduct of the persons involved in the calls.

Mr. Worsham asserted that the eight prerecorded calls each separately violated the do-not-call and prerecorded calling provisions of the TCPA and the FCC's implementing regulations, as well as the Telemarketing Sales Rule, and, by doing so, also violated the MDTCPA. Mr. Worsham sought $48,000 in statutory TCPA damages, $36,000 in statutory MDTCPA damages, an order enjoining LifeStation and MLA from calling any persons in Maryland in violation of the TCPA or FCC regulations, and reasonable costs and attorneys' fees.

In July 2017, LifeStation moved for summary judgment. LifeStation attached to its motion a supporting affidavit made by Mark Pezold, its corporate counsel, and a copy of its "Marketing Services Agreement" with MLA. The agreement with MLA, which we will discuss in more detail below, stated that MLA was an independent contractor, not an agent of LifeStation, and included provisions requiring MLA to ensure that its employees were trained on TCPA compliance and would follow all applicable state and federal laws when marketing LifeStation services. The circuit court denied LifeStation's motion without a hearing.

Mr. Worsham made extensive demands for written discovery, serving on LifeStation seven sets of requests for production of documents, two sets of interrogatories, and three sets of requests for admission. He also sought to depose a corporate designee. He filed six motions to compel responses to written discovery and a motion for immediate sanctions after LifeStation did not appear for a scheduled deposition. LifeStation twice moved for protective orders. The court granted LifeStation's first request, which sought an order of protection prohibiting Mr. Worsham's discovery of the identity of LifeStation's vendors and denied the second motion, which we will discuss later, as moot, after granting summary judgment in favor of LifeStation.

In May 2018, Mr. Worsham filed a second amended complaint in which he added two defendants: Jose Ayala, MLA's CEO and principal; and Grace Sabako, a LifeStation employee who he alleged had recorded the live call without his consent. He also added new counts against LifeStation, MLA, and Mr. Ayala under the TCPA, regulations implementing the TCPA, and the MDTCPA, as well as claims against LifeStation and Ms. Sabako under the Maryland Wiretap Law, Md. Code Ann., Cts. & Jud. Proc. § 10-402 (2020 Repl.).

LifeStation moved to strike the second amended complaint, which the court granted without explanation. One week later, Mr. Worsham filed a third amended complaint that was nearly identical to the second. LifeStation again moved to strike and, this time, for sanctions. Meanwhile, the court entered an order of default against Mr. Ayala, who had never responded to either complaint filed against him.

While the second motion to strike remained pending, Mr. Worsham separately moved for partial summary judgment on his wiretap law claims and the TCPA claims in the third amended complaint. With respect to the TCPA claims, Mr. Worsham initially moved for partial summary judgment only on the fifth call, which, as we will discuss, is the only prerecorded call that LifeStation admits was made on its behalf. Mr. Worsham later filed a separate motion for partial summary judgment on his TCPA and MDTCPA claims that encompassed all eight prerecorded calls. Accompanying that motion, Mr. Worsham filed an affidavit containing a description under oath of the eight prerecorded calls, the delivery of the solicited device, and his reasons for believing that the calls originated from or on behalf of LifeStation.

In December 2018, LifeStation renewed its motion for summary judgment, to which it attached a slightly modified supporting affidavit made by Mr. Pezold and a copy of the same Marketing Services Agreement with MLA.

In October 2019, the court held a hearing on the pending motions,[3] which it resolved in a series of memorandum opinions and orders issued in February 2020. First, the court granted LifeStation's motion to strike the third amended complaint and awarded LifeStation $1,137.50 in fees and costs as a sanction pursuant to Rule 1-341(a). Second, based on the order striking the third amended complaint and having previously struck the second amended complaint, the court vacated the order of default entered against

[3] At the outset of the hearing, Mr. Worsham made an oral motion to disqualify the hearing judge, which the court denied. A written motion to disqualify the judge had been denied prior to the hearing.

Mr. Ayala. Third, the court denied Mr. Worsham's motion for partial summary judgment on the wiretap law claims, which were contained only in complaints that had already been struck. Fourth, the court denied Mr. Worsham's motion for partial summary judgment on his TCPA claims concerning the fifth call. Fifth, the court granted LifeStation's motion for summary judgment on all counts in the first amended complaint. The court also denied as moot Mr. Worsham's motions to compel discovery and for immediate sanctions and LifeStation's motion for a protective order. The court later denied Mr. Worsham's motion to alter or amend the judgments.

Mr. Worsham then moved for a default judgment against the only remaining defendant, MLA. On August 4, 2020, the court entered a default judgment against MLA and in favor of Mr. Worsham for $20,000. This timely appeal followed.

DISCUSSION

I. THE CIRCUIT COURT ABUSED ITS DISCRETION IN STRIKING MR. WORSHAM'S SECOND AND THIRD AMENDED COMPLAINTS AND IN VACATING THE ORDER OF DEFAULT ENTERED AGAINST MR. AYALA.

A decision whether to grant a motion to strike is committed to the discretion of the court. *Bacon v. Arey*, 203 Md. App. 606, 667 (2012). Mr. Worsham contends that the circuit court abused its discretion in striking his second and third amended complaints because its orders were inconsistent with Maryland's policy to allow amendments freely

and liberally absent prejudice to another party.[4] Mr. Worsham maintains that because his amendments adding TCPA and MDTCPA claims were based upon the same fact pattern and were substantively like counts asserted in the prior two iterations of the complaint, LifeStation was not prejudiced. Mr. Worsham also argues that he did not become aware of the basis for his wiretap law claims until LifeStation disclosed in discovery that it had recorded the live call without his knowledge or consent. Mr. Worsham likewise argues that the third amended complaint, filed more than seven months before the then-scheduled trial date, was proper, should not have been stricken, and that the award of sanctions for the filing of the third amended complaint should be reversed, as should the order striking the order of default against Mr. Ayala.

LifeStation responds that the second amended complaint was properly stricken because it was filed ten months after the first amended complaint and was not "within the spirit of Rule 2-341(a)." Because a trial date had been scheduled but later vacated due to the recusal of the assigned trial judge, LifeStation maintains that Mr. Worsham was obligated to seek leave of court to file his second amended complaint. For the same reasons, LifeStation contends that the circuit court did not err or abuse its discretion in

[4] As a threshold matter, Mr. Worsham argues that LifeStation filed its motion to strike the second amended complaint outside the 15-day window provided under Rule 2-341(a), and that this procedural defect necessitates reversal. Because Mr. Worsham did not raise the timeliness of LifeStation's motion to strike in his opposition to that motion, we decline to consider it on appeal. *See* Md. Rule 8-131(a) (providing that ordinarily an appellate court will not decide any non-jurisdictional issue unless it has been raised in or decided by the trial court).

striking the substantively identical third amended complaint and finding that Mr. Worsham acted in bad faith by filing it, and in awarding sanctions pursuant to Rule 1-341.

Rule 2-341(a) permits a party to amend a pleading without leave of court "by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date." An amended pleading may seek, among other things, to "change the nature of the action or defense," to "add a party or parties," and to "make any other appropriate change." Md. Rule 2-341(c). As to whether a particular amendment should be granted or denied on a motion to strike, Rule 2-341(c) dictates that "[a]mendments shall be freely allowed when justice so permits." The purpose of Maryland's liberal policy toward amended pleadings is to ensure that "cases will be tried on their merits rather than upon the niceties of pleading." *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *Crowe v. Houseworth*, 272 Md. 481, 485 (1974)).

Before addressing the parties' contentions, it is helpful to lay out the procedural status of the case at the time Mr. Worsham filed his second and third amended complaints. Mr. Worsham filed his original complaint against LifeStation on March 16, 2017 and his amended complaint on July 3 of the same year. Although the court initially set a trial date of September 5, 2017, the court later vacated that date, apparently because the judge assigned to try the case recused himself. A new trial date was not set at that time, no scheduling order was entered, and discovery proceeded.

By July 2017, LifeStation had disclosed to Mr. Worsham in discovery that it had recorded the live call and provided him with a CD containing two digital audio files of that

recording. The names of the audio files included an email address: grace.sakabo@lifestation.com.

Nearly a year later, in May 2018, the court set a scheduling conference for June 26, 2018. Later in May 2018, Mr. Worsham filed his second amended complaint, in which he added nine new counts and Mr. Ayala and Ms. Sabako as defendants.[5] Six of the new counts alleged TCPA and MDTCPA violations against LifeStation, MLA, and Mr. Ayala based upon the same eight prerecorded phone calls.[6] The other three new counts alleged that LifeStation and Ms. Sabako had violated the Maryland Wiretap Law by recording the live call without Mr. Worsham's knowledge or consent.

In June 2018, before the scheduling conference, LifeStation moved to strike the second amended complaint. Following the scheduling conference, the court entered a pretrial order directing that discovery be completed by November 30, 2018, dispositive motions be filed by December 14, 2018, and setting trial for two days beginning on March 21, 2019.[7]

In August 2018, the circuit court granted LifeStation's motion to strike the second amended complaint. One week later, Mr. Worsham filed his third amended complaint,

[5] The spelling of Ms. Sabako's name in the second amended complaint differs from the spelling in the email address associated with the audio recording of the live call.

[6] Mr. Worsham added Counts 10-12, Count 14, Count 16, and Count 19. He renumbered Counts 10-13 from the first amended complaint as Counts 15, 18, 17, and 13, respectively.

[7] Those deadlines later were amended, with discovery extended through August 23, 2019 and trial set to begin on December 5, 2019.

which did not differ substantively from the second. LifeStation moved to strike and for attorneys' fees and expenses. With LifeStation's motion pending, the court entered an order of default against Mr. Ayala. The court later granted LifeStation's motion to strike the third amended complaint, awarded fees and costs to LifeStation, and vacated the default order against Mr. Ayala.

As grounds for its motion to strike the second amended complaint, LifeStation argued that the new complaint invoked new legal theories and would prejudice LifeStation because it was filed late in the discovery period and added claims against a new defendant, Ms. Sabako, that were "futile and irreparably flawed." Mr. Worsham responded that, based on the procedural posture of the case, Rule 2-341 permitted him to amend his complaint without seeking leave of court; that Maryland courts favor permitting amendments to pleadings absent prejudice; that the factual basis for the complaint remained the same; and that there was no prejudice to LifeStation from the timing of the amendment or the addition of claims against Ms. Sabako. The circuit court's order striking the second amended complaint did not provide an explanation for the ruling.

We are unable to discern from the record a valid basis for striking Mr. Worsham's second amended complaint. When he filed that complaint, no scheduling order was in place and no trial date was scheduled. Consequently, he was not obligated to seek leave of court, nor did LifeStation argue, at that point, that he was. Moreover, even if leave had been required, "it is a rare situation in which the granting of leave to amend is not warranted." *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 269 (2015)

(internal quotation marks omitted), *aff'd*, 447 Md. 31 (2016). An amended pleading should be stricken only upon a showing of "prejudice to the opposing party or undue delay, such as where an amendment would be futile because the claim is flawed irreparably." *RRC Northeast, LLC v. BAA Md., Inc*., 413 Md. 638, 673-74 (2010).

As the proponent of the motion to strike, LifeStation bore the burden of "showing [that] prejudice or undue delay" would result if the amendments were permitted. *Mattvidi Assocs. Ltd. P'ship v. NationsBank of Va., N.A.*, 100 Md. App. 71, 83 (1994). LifeStation did not do so. At the time the second amended complaint was filed, no trial date had been set, no scheduling order was in place, and a scheduling conference had been set for the following month. While the motion to strike was pending, trial was set for March 2019—ten months after the amended pleading was filed—and discovery was set to close at the end of November 2018—more than four months after the amended pleading was filed. LifeStation does not explain why any delay in this schedule would have occurred based on the allegations or counts added in the second amended complaint.

The amendments also did not alter the core operative facts, which concerned the same eight prerecorded phone calls and one live call that Mr. Worsham claimed he received from LifeStation and its alleged agent, MLA. LifeStation does not explain why adding MLA's principal, Mr. Ayala, as a defendant or asserting new counts alleging more ways in which those same calls violated the TCPA and the MDTCPA, were prejudicial. And although the three new Maryland Wiretap Law claims were new, they arose from the same operative facts, were added at a time when trial was not scheduled, and would be unlikely

to necessitate significant additional discovery or cause undue delay given that the existence and substance of the call was undisputed and the recording had been provided to Mr. Worsham by LifeStation.[8]

Considering Maryland's liberal policy in favor of allowing amended pleadings and the absence of any showing that the timing or substance of the second amended complaint would have been prejudicial or caused undue delay, the circuit court abused its discretion in striking it. It follows that the court also should not have struck the third amended complaint, which was filed more than six months before trial and made only non-substantive amendments to the second. Accordingly, we will reverse the court's orders striking the second and third amended complaints, reverse the award of sanctions in favor of LifeStation, and direct the court to reinstate the order of default against Mr. Ayala.

II. THE CIRCUIT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF LIFESTATION ON COUNTS 9 AND 11 OF THE FIRST AMENDED COMPLAINT BUT ERRED IN GRANTING SUMMARY JUDGMENT ON THE OTHER COUNTS. THE COURT DID NOT ERR IN DENYING MR. WORSHAM'S MOTION FOR PARTIAL SUMMARY JUDGMENT.

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). This Court reviews the grant of a motion for summary judgment without deference, "examining the record independently to determine whether any factual

[8] We decline to address LifeStation's argument that the claims against Ms. Sabako, who was not served, are futile and irreparably flawed because that argument is more appropriate for resolution by the circuit court on a motion to dismiss. And even if it is true that those claims would have been futile as to Ms. Sabako, that would not justify striking the entire second amended complaint.

disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law." *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020) (citing *Rowhouses, Inc. v. Smith*, 446 Md. 611, 630 (2016)). "Evidentiary matters, credibility issues, and material facts which are in dispute cannot properly be disposed of by summary judgment." *Taylor v. NationsBank, N.A.*, 365 Md. 166, 174 (2001). In determining whether a grant of summary judgment is legally correct, we ask "whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial[.]" *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 330 (2014) (quoting *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 153 (2008)).

In contrast, we review the denial of a motion for summary judgment under the deferential abuse of discretion standard. *Comptroller of Maryland v. Myers*, 251 Md. App. 213, __(2021). That is because a circuit court "has discretionary authority to *deny* a motion for summary judgment in favor of a full hearing on the merits, even when the moving party 'has met the technical requirements of summary judgment.'" *Fischbach v. Fischbach*, 187 Md. App. 61, 75 (2009) (quoting *Dashiell v. Meeks*, 396 Md. 149, 164-65 (2006) (emphasis in *Fischbach*)). Although we have determined that the circuit court erred in striking the second and third amended complaints, we can review the court's grant of the motion for summary judgment in favor of LifeStation on the first amended complaint because—except for Count 8 of the first amended complaint, which Mr. Worsham later voluntarily withdrew

in his third amended complaint—the same counts appear in all three complaints. We express no opinion about the viability of the new counts added by the second and third amended complaints, which were not before the circuit court on summary judgment. For ease of reference, we provide a summary of the comparable counts:

First Amended Complaint	**Third Amended Complaint**	**Cause of Action**
Count 1	Count 1	47 C.F.R. § 64.1200(c)(2) – Telephone solicitation to phone number on the Do Not Call List
Count 2	Count 2	47 U.S.C. §§ 227(b)(1)(A)(iii) & (b)(1)(B); 47 C.F.R. §§ 64.1200(a)(1)(iii) & (a)(3) – Prerecorded call without prior express written consent
Count 3	Count 4	47 C.F.R. § 64.1200(d)(4) – Failure to provide certain information during telemarketing call
Count 4	Count 3	47 C.F.R. § 64.1601(e)(1) – Failure to transmit Caller ID information
Count 5	Count 5	MDTCPA counterpart to Count 1
Count 6	Count 6	MDTCPA counterpart to Count 2
Count 7	Count 8	MDTCPA counterpart to Count 3 in first amended complaint and Count 4 in third amended complaint
~~Count 8~~	~~Count 7~~	MDTCPA counterpart to Count 4 in first amended complaint and Count 3 in third amended complaint. **Voluntarily withdrawn by Mr. Worsham.**
Count 9	Count 9	47 C.F.R. § 64.1200(b)(3) – Failure to provide an automated interactive opt-out mechanism
Count 10	Count 15	MDTCPA and 16 C.F.R. § 310.4(b)(1)(iii)(B) – Outbound call to a number on the Do Not Call List
Count 11	Count 18	MDTCPA and 16 C.F.R. § 310.8(a) – Failure to pay annual fee for Do Not Call List registry access in the area code in which calls were made

Count 12	Count 17	MDTCPA and 16 C.F.R. § 310.4(d)(1)[9] – Failure to disclose truthfully the identity of the seller
Count 13	Count 13	MDTCPA and 16 C.F.R. § 310.4(a)(8) – Failure to transmit Caller ID information

A. LifeStation's Motion for Summary Judgment

LifeStation supported its renewed motion for summary judgment with Mr. Pezold's revised affidavit and the Marketing Services Agreement between it and MLA.[10] Mr. Pezold averred that LifeStation marketed its services through "independent contractors" who "sell [its] products and services over the telephone." LifeStation had searched its internal records and directed all its independent contractors to do the same and determined that the only calls made to Mr. Worsham by LifeStation or its contractors were the fifth call, made by MLA on March 1, 2017, and the live call, made by a LifeStation employee on March 12, 2017.

Mr. Pezold further claimed that the Marketing Services Agreement, dated March 3, 2013 and signed by Mr. Ayala on behalf of MLA, was the sole contract between LifeStation and MLA. He averred that LifeStation "did not control MLA," that MLA was responsible for "monitoring its employees [and] selecting and using its own dialing equipment," and

[9] The first amended complaint includes a typographical error, designating the applicable regulation as 16 C.F.R § 310.5(d)(1). Mr. Worsham corrected this error in the second and third amended complaints.

[10] LifeStation also attached a copy of the homepage for the website advertising Mr. Worsham's business performing as a magician at private events, which listed Mr. Worsham's cell phone number. LifeStation argued that because Mr. Worsham used his cell phone number for his business, it was not a residential phone number that could be listed on the Do Not Call List. That was not a basis upon which the court ruled on summary judgment so we do not consider it here.

that LifeStation had no knowledge that MLA ever used "an automated telephone dialing system or an artificial or prerecorded voice."

The Marketing Services Agreement:

- provided that MLA would "market and promote" LifeStation's service to potential customers in its service area under the trade name "911 Alarm Alert." Mktg. Servs. Agreement ¶ 1. Other LifeStation "dealers" also would be permitted to market its services in the same service area. *Id.*;
- stated that MLA agreed that its agents were "thoroughly trained" in telemarketing, were trained and certified under the TCPA and its implementing regulations, and would comply with "all applicable laws, rules, and regulations." *Id.* ¶ 3;
- established "Do Not Call Procedures," which required MLA to create a "LifeStation Do Not Call File" and keep an internal record of any customer requests not to receive calls. *Id.* ¶ 4;
- provided that MLA agreed that it "ha[d] and will continue to purchase all 'Do Not Call' . . . or 'Do Not Solicit' . . . lists maintained by state entities or government entities" and to "scrub[]" its customer list of those names. *Id.* ¶ 5;
- provided that LifeStation retained the right to approve "[a]ll calling scripts" before use by MLA and MLA agreed to communicate any changes to the scripts "as soon as practicable." *Id.* ¶ 6;
- authorized LifeStation to reject any changes proposed by MLA. *Id.*
- obligated MLA to record and archive all its calls for LifeStation and post all recordings of "closed sales" to a site maintained by LifeStation. *Id.* ¶ 7. LifeStation could request that the recording of any other call be uploaded to the site. *Id.*;
- granted MLA a non-exclusive license to market its services under the brand name 911 Alarm Alert, conditioned upon MLA using it only for the benefit of, and on behalf of, LifeStation. *Id.* ¶ 8;
- provided that LifeStation retained the right to "monitor [MLA]'s use of the [brand name]," *id.,* and had the exclusive right to set the price for its services, which were included on an attached "Fee Schedule," though the exhibit was entirely redacted, *id.* ¶ 10;

- provided that the parties agreed to indemnify, defend, and hold each other harmless for damages arising from any third-party claim resulting from a breach of the agreement. *Id.* ¶ 14; and
- stated that the agreement should not be "construed to constitute either party as a partner or agent of the other" and that "neither party shall have any authority to act for or bind the other in any way[.]" *Id.* ¶ 15.

LifeStation argued that it was entitled to judgment on all counts of the first amended complaint. With respect to the live call, LifeStation argued that the call did not violate the TCPA, the FCC regulations implementing it, the Telemarketing Sales Rule, or the MDTCPA because it was not prerecorded and because LifeStation had an existing business relationship with Mr. Worsham at the time the call was made arising from his receipt of the medical alert device. With respect to the prerecorded calls, LifeStation argued, based on its records, that it only made, or directed to be made, one of those calls—the fifth, which MLA made on its behalf—and that it could not be held vicariously liable for that call under common law principles of agency because the Marketing Services Agreement established as a matter of law that MLA was an independent contractor. In addition, LifeStation argued that the court should enter judgment in its favor on Counts 3, 4, 7, and 8 because those counts asserted violations of regulations implementing the technical provisions at 47 U.S.C. § 227(d), for which no private cause of action existed.

In Mr. Worsham's affidavit opposing LifeStation's motion for summary judgment, he averred that the eight prerecorded calls "all sounded the same, and at least a few were identical to the [fifth call.]" Mr. Worsham argued that LifeStation could be held vicariously liable for the calls made on its behalf under common law principles of agency.

B. Mr. Worsham's Motions for Partial Summary Judgment

Mr. Worsham filed two motions for partial summary judgment concerning the TCPA claims, one on October 30, 2018 and a second on December 14, 2018. The first motion sought summary judgment only on the claims as they related to the fifth call. The second motion "incorporate[d]" his prior motion in a "single comprehensive [m]otion" and addressed all eight prerecorded calls.

Mr. Worsham argued that the numerous similarities between the "undisputed [fifth] call" on March 1, 2017 and the other seven prerecorded calls established that all were made by or on behalf of LifeStation. Because those calls were made to Mr. Worsham's landline and cell phone, both of which were on the Do Not Call List, and were made using a prerecorded voice, he argued that the calls violated the TCPA and the MDTCPA as a matter of law. Mr. Worsham also reasoned that the FCC regulations underpinning Count 3, 47 C.F.R. § 64.1200(d)(4), and Count 4, 47 C.F.R. § 64.1601(e)(1), were promulgated under § 227(c) of the TCPA, which provides a private cause of action, contrary to LifeStation's argument that they were promulgated under § 227(d), which does not.

In an affidavit submitted with his motion, Mr. Worsham averred that the customer service agent he spoke to on the fifth call and the eighth call, who gave the name "Samuel," sounded the same, and that the agent in the fifth call identified the company name as "Medical First Alert," which was similar to the name "Medical Alert" given by different agents in the first, sixth and seventh calls.

In support of its opposition to Mr. Worsham's motions, LifeStation attached Mr. Pezold's affidavit and the Marketing Services Agreement.

C. Analysis

1. Counts 1, 2, 5, and 6 of the First Amended Complaint.

Counts 1 and 2 of the first amended complaint allege the flagship violations of the TCPA: making an outbound call to a number on the Do Not Call List and initiating a prerecorded call to a residential number without the prior express consent of the called party. Counts 5 and 6 are the MDTCPA counterparts to Counts 1 and 2.

In granting summary judgment to LifeStation on those four counts, the circuit court appears to have misapprehended Mr. Worsham's claims and evidence in two important respects. First, in analyzing together Mr. Worsham's first motion for partial summary judgment and LifeStation's motion for summary judgment, the court focused its analysis on a single call. Although that focus was correct with respect to Mr. Worsham's first motion, which addressed only the fifth call, it was not correct with respect to his defense to LifeStation's motion, which addressed all eight prerecorded calls.[11]

[11] The confusion may have arisen from the two separate motions Mr. Worsham filed on the TCPA/MDTCPA claims, the second of which the court did not discuss during the hearing and may not have been aware was pending. Regardless, in its opinion—referring to the live call from LifeStation that the court identified as having been made on March 1, but which was actually made on March 12—the court stated its "understanding that Worsham agrees that no other call alleged in the complaint was made by Lifestation for which Lifestation could be found liable under the TCPA and the MDTCPA." To the contrary, although it is correct that Mr. Worsham did not allege that LifeStation itself (as opposed to other entities acting on its behalf) necessarily had made any of the prerecorded calls, he consistently argued that LifeStation was liable under the TCPA and MDTCPA for all eight prerecorded calls.

Second, in focusing on that single call, the court seems to have conflated the fifth call and the live call. In its opinion, the court stated that although Mr. Worsham had alleged in his complaint "that the March 1st call was a prerecorded call from LifeStation, at the hearing before this Court, he acknowledged that was not the case." We see no such concession in the transcript of that hearing. To the contrary, both Mr. Worsham and LifeStation treated it as undisputed at the hearing that (1) the call Mr. Worsham received on March 1, 2017 was initiated as a prerecorded call from MLA soliciting business on behalf of LifeStation;[12] and (2) the live call was made by LifeStation on March 12.

The court's award of summary judgment in favor of LifeStation as to counts 1, 2, 5, and 6 was premised on its understanding that the only call at issue with respect to those counts was the single, live call made to Mr. Worsham by LifeStation after Mr. Worsham had agreed to accept delivery of LifeStation's product. As the court observed, the relevant provision of the TCPA prohibits the initiation of telephone calls "using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party." (Quoting 47 C.F.R. § 64.1200(a)(3)). Because the live call was neither unsolicited—Mr. Worsham had previously agreed to accept the LifeStation device during the fifth call—nor "artificial or prerecorded," the court concluded that it could not support liability. But, as LifeStation's counsel noted during the argument, Mr. Worsham's TCPA

[12] Indeed, referring to the March 1 prerecorded call (the fifth call)—and acknowledging that it had occurred and was a subject of the TCPA/MDTCPA counts—LifeStation even offered at the hearing "to confess judgment as to liability to the one call under the TCPA just for purposes of bringing the matter to a conclusion."

and MDTCPA claims were focused on the eight prerecorded calls and not on the live call. Because the court's analysis of the four flagship counts was premised on the incorrect belief that they concerned only a single, live call, we must reverse the grant of summary judgment on those counts.

For guidance on remand, we analyze the two defenses asserted by LifeStation with respect to the eight prerecorded calls: (1) that LifeStation's records (and the records of its contractors) reflect that only the fifth call was made by or on behalf of LifeStation, and (2) that LifeStation is not vicariously liable for *any* prerecorded calls made by MLA or another dealer on its behalf because they are independent contractors. On the first issue, Mr. Worsham generated a dispute of material fact with respect to the genesis of the seven prerecorded calls other than the fifth. His affidavits in opposition to LifeStation's first motion for summary judgment and in support of his motions for partial summary judgment supply evidence that the calls used the same prerecorded voice, advertised the same product, that agents provided the same or similar names for the company, and provided identical prices for the monitoring service. Viewing the facts in the light most favorable to Mr. Worsham, this evidence would support a reasonable inference that all the calls were made on behalf of LifeStation by the same dealer or by multiple dealers using the same authorized script.

On the second issue, the circuit court reasoned: "Even if Worsham could assert that the call from MLA makes LifeStation vicariously liable, no material fact exists to support this claim. *See Kern v. VIP Travel Servs.*, 2017 WL 1905868 (W.D. Mich. May 10, 2017).

In fact, Lifestation's agreement with MLA that required MLA to comply with the TCPA has not been refuted by Worsham." We conclude that the Marketing Services Agreement did not support the grant of judgment in favor of LifeStation as a matter of law and that the terms of that agreement, coupled with other evidence, generate a dispute of fact on the issue of agency.

"[T]he TCPA's private right of action contemplates that a company can be held liable for calls made on its behalf, even if not placed by the company directly." *Krakauer*, 925 F.3d at 659. In 2013, the FCC issued a declaratory ruling in response to three petitions arising from two federal lawsuits[13] addressing when and under what circumstances a seller may be held vicariously liable for the actions of its third-party retailers for violations of the prerecorded call prohibitions in § 227(b), the do-not-call prohibitions in § 227(c), and their

[13] The first case, *Charvat v. EchoStar Satellite, LLC*, was filed in the United States District Court for the Southern District of Ohio by Mr. Charvat, who claimed that telemarketers had made 30 calls to him in violation of the TCPA to solicit him to sign up for a satellite television service later acquired by the Dish Network. 676 F. Supp. 2d 668, 670-71 (S.D. Ohio 2009). The district court granted summary judgment in favor of the defendant on the basis that the calls were made by independent contractors. *Id.* at 678-79. On appeal from that ruling, the United States Court of Appeals for the Sixth Circuit referred the matter to the FCC "under the doctrine of primary jurisdiction[.]" *Charvat v. EchoStar Satellite, LLC*, 630 F.3d 459, 461 (6th Cir. 2010).

The second case was brought by the United States on behalf of the FTC and the Attorneys General of California, Illinois, North Carolina, and Ohio against Dish Network in the United States District Court for the Central District of Illinois. *United States v. Dish Network, LLC*, 667 F. Supp. 2d 952 (C.D. Ill. 2009). The district court denied a motion to dismiss the TCPA claims premised upon Dish's argument that it could not be held vicariously liable for the actions of its independent dealers. *Id.* at 963. After the referral to the FCC in the *Charvat* case, the Illinois district court stayed the case and ordered both parties to jointly file an administrative complaint with the FCC seeking declaratory relief. *United States v. Dish Network, L.L.C.*, 2011 WL 475067, at *4 (C.D. Ill. Feb. 4, 2011).

implementing regulations. *Dish Network*, 28 F.C.C. Rcd. at 6578. The FCC construed both provisions to impose vicarious liability on sellers under common law principles of agency, including apparent authority and ratification, though it left open the possibility that vicarious liability under § 227(c) might "extend[] beyond agency principles." *Id.* at 6574, 6585; *see also Campbell-Ewald, Co. v. Gomez*, 577 U.S. 153, 168 (2016) (citing *Dish Network* with approval).

"[T]he determination of the existence of a principal-agent relationship depends on three considerations: '(1) the agent's power to alter the legal relations of the principal; (2) the agent's duty to act primarily for the benefit of the principal; and (3) the principal's right to control the agent.'" *Andrews & Lawrence Prof'l Servs., LLC v. Mills*, 467 Md. 126, 166 (2020) (quoting *Green v. H & R Block*, 355 Md. 488, 503 (1999)). "A principal need not exercise physical control over the actions of its agent in order for an agency relationship to exist; rather, the agent must be subject to the principal's control over the result or ultimate objectives of the agency relationship." *Andrews & Lawrence Prof'l Servs.*, 467 Md. at 166 (quoting *Green*, 355 Md. at 507-08). "In the absence of actual authority, a principal can be bound by the acts of a purported agent when that person has apparent authority to act on behalf of the principal." *Dickerson v. Longoria*, 414 Md. 419, 442 (2010). In the absence of actual or apparent authority, a principal can be liable under the doctrine of ratification by, among other things, retaining the benefit of an agent's unauthorized action after the principal has knowledge of the facts. *Tower Oaks Blvd., LLC v. Procida*, 219 Md. App. 376, 406 (2014). "The existence of an agency relationship is

ordinarily a question of fact[.]" *Bradford v. Jai Med. Sys. Managed Care Orgs., Inc.*, 439 Md. 2, 16 (2014).

Those cases applying principles of agency in the context of TCPA actions have identified the following factors as relevant to a determination of whether a seller may be held vicariously liable for the actions of a third-party telemarketer: (1) the existence of a written contract between the seller and the third party that affords the seller "broad authority" over the third party's business, including the type of technology used and "what records it retains," *Krakauer*, 925 F.3d. at 660; (2) that the third party has "access to detailed information regarding the nature and pricing of the seller's products and services or to the seller's customer information," *Dish Network*, 28 FCC Rcd. at 6592; (3) the third party's authority to use the seller's trademark or logo in marketing the products, *Id*.; *Krakauer*, 925 F.3d at 660; (4) the seller's authority to write, review, and/or approve the third-party's telemarketing scripts, *Dish Network,* 28 FCC Rcd. at 6592; *Krakauer*, 925 F.3d at 660; *Worsham v. Nationwide Ins. Co*., 138 Md. App. 487, 505 (2001); and (5) that the seller knew or reasonably should have known that the third party was violating the TCPA and failed to take meaningful action to prevent it, *Dish Network*, 28 FCC Rcd. at 6592; *Krakauer*, 925 F.3d at 660. Further, a seller may not avoid liability by designating a third-party marketer as an "independent contractor" in a written contract. *Krakauer*, 925 F.3d at 660-61.

Here, the terms of the Marketing Services Agreement evidence a degree of control by LifeStation over MLA sufficient to generate a dispute of fact on agency. LifeStation

authorized MLA to act as an authorized "dealer" for LifeStation's products and services and to use LifeStation's brand name, "911 Alarm Alert," to market those services. LifeStation retained authority to approve MLA's telemarketing scripts and to reject any proposed changes to the scripts. LifeStation controlled MLA's recordkeeping, requiring it to record all its calls and to upload any "closed sale" calls to a site maintained by LifeStation. LifeStation was further permitted to demand access to any other recording and LifeStation maintained sole authority to determine the prices for the services marketed by MLA on its behalf and shared its confidential pricing information with MLA. Although LifeStation's knowledge of any TCPA violations by its telemarketers has not been shown, Mr. Worsham has not yet deposed LifeStation and, thus, those facts could be developed.

2. Counts 3 and 7 of the First Amended Complaint.

Count 3 alleges that LifeStation violated the TCPA by its failure to comply with 47 C.F.R. § 64.1200(d)(4), which provides:

> (d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:
>
> . . .
>
> > (4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

Count 7 alleges the MDTCPA counterpart violation.

In granting summary judgment in favor of LifeStation on Counts 3 and 7, the circuit court ruled that LifeStation did not violate § 64.1200(d)(4) because the live call was not a telemarketing call *and*, in the alternative, the TCPA does not create a private right of action for violation of the regulation. Although the first ground was based upon the court's mistaken understanding that only a single call—the live call—was at issue, because the court's ruling could be sustained on the alternative ground, we address it.

Mr. Worsham contends that the FCC regulations at 47 C.F.R. § 64.1200(d) were promulgated pursuant to the do-not-call provisions of § 227(c) of the TCPA, which require the FCC to promulgate regulations "to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object" by, among other things, "implement[ing] the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section." 47 U.S.C. § 227(c)(1)-(2). LifeStation counters that the regulations at 47 C.F.R. § 64.1200(d) were promulgated pursuant to § 227(d) of the TCPA, which directed the Commission to "prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone," including standards requiring that the recording provide identifying information and release the telephone line within five seconds after the recipient hangs up. 47 U.S.C. § 227(d)(3). The TCPA provides a private cause of action to enforce violations of regulations promulgated under § 227(c) but there is no corresponding private cause of action under § 227(d).

There is a split of authority in the federal courts concerning whether § 64.1200(d) was promulgated under § 227(c) or (d). The circuit court was persuaded by the reasoning of the United States District Court for the District of Maryland in its unreported opinion in *Worsham v. Travel Options, Inc*., 2016 WL 4592373, at * 4 (D. Md. Sept. 2, 2016), *aff'd*, 678 Fed. App'x 165 (4th Cir. 2017) (per curiam).[14] That court reasoned that the FCC regulations at § 64.1200(a) carry out the purposes of the prerecorded call prohibitions in § 227(b) of the TCPA; the FCC regulations at § 64.1200(c) carry out the purposes of the do-not-call prohibitions in § 227(c) of the TCPA; and the regulations at § 64.1200(b) carry out the mandate of § 227(d) of the TCPA by prescribing "regulations for technical and procedural standards for telephone calls initiated by an automatic telephone dialing system or calls using an artificial or prerecorded voice system." *Id.* Most relevant here, the court then concluded that "the requirements of § 64.1200(d) set forth the procedural standards for telemarketers to maintain their own, company-specific, do-not-call lists and, consequently, appear to fall under the aegis of subsection *d* of the TCPA." *Id.* On that basis, the district court ruled that no private cause of action exists for violation of the § 64.1200(d) regulations. *Id. Accord Wilson v. PL Phase One Ops. L.P*., 422 F. Supp. 3d 971, 981-82 (D. Md. 2019); *Burdge v. Ass'n Health Care Mgmt., Inc*., 2011 WL 379159, at *3-4 (S.D. Ohio Feb. 2, 2011).

[14] This Court recently announced that it is "no longer [our] policy to prohibit the citation of unreported opinions of federal courts or the courts of other states for persuasive value, provided that the jurisdiction that issued any particular opinion would permit it to be cited for that purpose." *CX Reinsurance Co. Ltd. v. Johnson*, 252 Md. App. 393, ___ n.7 (2021).

Other courts have reached the opposite conclusion, determining that the § 64.1200(d) regulations carry out the do-not-call provisions of § 227(c). *See Charvat v. NMP, LLC*, 656 F.3d 440, 443-44 (6th Cir. 2011) (reasoning that the § 64.1200(d) regulations were promulgated pursuant to the authority in § 227(c)); *Bilek v. Nat'l Cong. of Emp'rs, Inc*., 470 F. Supp. 3d 857, 862-63 (N.D. Ill. 2020) ("Taken as a whole, section 64.1200(d) implements section 227(c)'s command to protect the privacy rights of telephone subscribers to avoid receiving telephone solicitations to which they object by requiring telemarketers to maintain and honor do-not-call lists."); *Cunningham v. Rapid Response Monitoring Servs., Inc*., 251 F. Supp. 3d 1187, 1200 (M.D. Tenn. 2017) (holding that "the internal do-not-call procedures of 47 C.F.R. § 64.1200(d) fit cleanly under the rubric of 47 U.S.C. § 227(c)'s general mandate to adopt adequate do-not-call regulations").

We are persuaded by the reasoning of those courts that hold that the regulations at § 64.1200(d) were promulgated pursuant to § 227(c) of the TCPA. That section directs the FCC to engage in rulemaking "concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object," including by exploring "alternative methods and procedures . . . for their effectiveness in protecting such privacy rights." 47 U.S.C. § 227(c)(1). One method Congress expressly authorized the FCC to consider is "the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations." *Id.* at § 227(c)(3). The FCC in fact adopted such a method in authorizing the creation of a Do Not Call List. *See* Rules and Regulations

Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68 Fed Reg. 44,144, 44,145 (July 25, 2003) (to be codified at 47 C.F.R. pts. 64, 68). But, before the FCC's adoption of the Do Not Call List, it created in § 64.1200(d) an alternative scheme that required companies to create and maintain their own do-not-call lists for the same purpose: protecting the privacy rights of individual telephone subscribers to avoid receiving unwanted telephone solicitations. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd. 8752, 8765 (1992) (determining that "the company-specific do-not-call list alternative is the most effective and efficient means to permit telephone subscribers to avoid unwanted telephone solicitations"). Section 64.1200(d) provides a procedure for the creation of a do-not-call list that offers substantive protections for the privacy rights of subscribers, not a technical standard for the operation of a telemarketing system.

Moreover, whereas the scope of § 227(d) is limited to the creation of "technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone," the scope of § 227(c) is addressed to all "telephone solicitations," regardless of whether they are "artificial or prerecorded" or from a live person. It is thus significant that § 64.1200(d) applies to all telemarketing calls, whether prerecorded or live and whether made individually or through a system. In doing so, that regulation extends beyond the scope of § 227(d), which could not therefore serve as authorization for it. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) (holding that "the exercise of quasi-legislative authority by governmental departments or agencies must

be rooted in a grant of such power by the Congress and subject to limitations which that body imposes").

In sum, we agree with those courts that have concluded that the "minimum standards" identified in § 64.1200(d) carry out the FCC's authority to protect telephone subscribers' privacy rights under § 227(c) and, consequently, that a private cause of action exists for the violation of those regulations. We thus reverse the grant of summary judgment on Counts 3 and 7 of the first amended complaint (Counts 4 and 8 of the third amended complaint).

3. Count 4 of the First Amended Complaint.

Count 4 of the first amended complaint alleges a violation of 47 C.F.R. § 64.1601(e)(1), an FCC regulation requiring that "[a]ny person or entity that engages in telemarketing, as defined in 47 C.F.R. § 64.1200(f)(10),[15] must transmit" certain information via Caller ID. The circuit court ruled that Mr. Worsham could not bring a private cause of action for violation of this regulation, relying again on the unreported decision in *Travel Options*, which rather hesitantly determined that that regulation was promulgated under the authority of § 227(d), rather than § 227(c), of the TCPA. *Travel Options*, 2016 WL 4592373, at *7; *see also Dobronski v. Selectquote Ins. Servs.*, 462 F. Supp. 3d 784, 789-90 (E.D. Mich. 2020).

[15] 47 C.F.R. § 64.1200(f)(10) provides: "The term seller means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."

Section 64.1601(e)(1) prohibits telemarketers from appearing on telephone subscribers' Caller IDs as "unknown" by requiring them to transmit certain Caller ID information, including the Calling Party Number ("CPN") or Automatic Numbering Information ("ANI"), and, if possible, the name of the telemarketer. The regulation further provides that the information provided must be sufficient to "permit any individual to make a do-not-call request during regular business hours." 47 C.F.R. § 64.1601(e)(1). Thus, at an initial glance, § 64.1601(e)(1) contains aspects that seem to further the purposes of both § 227(c) and (d). We must therefore explore each further.

Section 227(c) authorizes the FCC to promulgate rules to protect telephone consumers' privacy rights and create rules that will allow consumers to "avoid receiving telephone solicitations to which they object." The FCC is directed to do so by "compar[ing] and evaluat[ing] alternative methods and procedures (including . . . telephone network technologies . . .) for their effectiveness in protecting such privacy rights." 47 U.S.C. § 227(c)(1)(A). Section 227(d), on the other hand, instructs the FCC to (1) revise its rules for telephone facsimile machines, requiring the use of machines that can mark the faxed pages with identifying information, (2) prescribe rules requiring automatic or prerecorded telemarketing messages to include the identity of the telemarketer at the beginning of the message and its telephone number or address during, or at the end, of the message, and (3) automatically release the called party's line within five seconds. Importantly, as discussed above, § 227(d) does not purport to regulate live telemarketing calls.

In adopting § 64.1601(e)(1), the FCC reasoned that "Caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again. Knowing the identity of the caller is also helpful to consumers who feel frightened or threatened by hang-up and 'dead air' calls." 68 Fed. Reg. at 44,167. Additionally, Caller ID allows a consumer to "make a do-not-call request during regular business hours," § 64.1601(e)(1), further protecting the subscriber's privacy right by preventing future calls. Although the FCC's consideration of what network information must be transmitted via Caller ID is technical, we think it falls within the scope of the technologies that § 227(c)(1)(A) directed the FCC to consider in protecting the privacy rights of consumers. *See* 68 Fed. Reg. at 44,166-67 (evaluating the cost efficiency and availability of different network technologies for network transmission).

Although the question is not free from doubt and the lines between regulations authorized by § 227(c) and (d) (or, perhaps, some combination of both) could be far clearer, for two reasons, we conclude that § 64.1601(e)(1) was promulgated pursuant to § 227(c) and, therefore, that a private right of action exists to enforce its provisions. First, to the extent the express terms of § 64.1601(e)(1) apply to live telemarketing calls, they would exceed the scope of regulation authorized by § 227(d), but not the scope of § 227(c). Second, by requiring the provision of information expressly for the purpose of allowing individuals "to make a do-not-call request," the regulation serves the purpose of § 227(c) of "protect[ing] subscribers from unrestricted commercial telemarketing calls." 68 Fed.

Reg. at 44,167. We must therefore reverse the award of summary judgment as to Count 4 of the first amended complaint (Count 3 of the third amended complaint).

4. Count 9 of the First Amended Complaint.

Count 9 of the first amended complaint alleges a violation of 47 C.F.R. § 64.1200(b)(3), which requires that any prerecorded call include an "automated, interactive voice- and/or key press-activated opt-out mechanism" to permit the recipient to request to be placed on a do-not-call list. The circuit court determined that no private cause of action exists for violation of this regulation. We agree.

In *Worsham v. Ehrlich*, 181 Md. App. 711, 728-29 (2008), this Court held that § 227(b) of the TCPA "deals with unsolicited calls, not deficient or improperly identified calls" and that the regulations appearing at 47 C.F.R. § 64.1200(a) carry out that purpose. This Court reasoned that regulations at § 64.1200(b)(1)-(2) were promulgated under § 227(d) and did not give rise to a private cause of action. *Id*. Likewise, the United States Court of Appeals for the Sixth Circuit determined that "[t]echnical and procedural standards specific to automated calls are included in § 227(d) and accompanying regulation 47 C.F.R. § 64.1200(b), which do not provide a private right of action or a statutory-damages provision." *Charvat*, 656 F.3d at 449; *accord Less v. Quest Diagnostics, Inc*., 515 F. Supp. 3d 715, 718 (N.D. Ohio 2021). Consistent with these cases, we conclude that there is no private cause of action for violation of the technical opt-out mechanism regulation and will affirm the grant of summary judgment on Count 9.

5. Count 12 of the First Amended Complaint.

Count 12 of the first amended complaint alleges that LifeStation violated the MDTCPA by violating 16 C.F.R. § 310.4(d)(1), which makes it an abusive telemarketing practice for a telemarketer not to disclose truthfully and promptly the identity of the seller. Section 310.4(d)(1) appears in the FTC's Telemarketing Sales Rule, promulgated under the authority of the Telemarketing and Consumer Fraud and Abuse Prevention Act.

In granting summary judgment to LifeStation, the circuit court reasoned that this count alleged nothing more than a "technical and procedural violation." However, unlike the counts discussed to this point, Count 12 is not premised on the TCPA and, therefore, its viability is not dependent upon determining whether the applicable regulation is authorized by a particular section of the TCPA. The MDTCPA makes it a violation of Maryland law, enforceable through a private right of action, for a person or entity to violate the Telemarketing Sales Rule. Comm. Law § 14-3202(a). Mr. Worsham alleged facts in his first amended complaint in support of this claim, to which he averred in his affidavit in support of his motion for partial summary judgment. That affidavit was part of the record at the hearing on the competing motions for summary judgment. We thus reverse the grant of summary judgment on Count 12 of the first amended complaint (Count 17 of the third amended complaint).

6. Counts 10, 11, and 13 of the First Amended Complaint.

Counts 10, 11, and 13 also alleged violations of the Telemarketing Sales Rule at §§ 310.4(b)(1)(iii)(B), 310.8(a), and 310.4(a)(8), respectively. The court granted summary judgment on Counts 10 and 13 because it concluded that only the live call was at issue and

that the live call did not violate the specified regulations. For the reasons discussed above, that ruling was based on a misapprehension and we shall reverse the grant of summary judgment on Counts 10 and 13 (Counts 15 and 13 of the third amended complaint).

The court also granted summary judgment on Count 11, which alleged a violation of the requirement that a telemarketer pay an annual fee to access the Do Not Call List in the area code in which it makes calls. The court reasoned that Mr. Worsham "provide[d] no facts to support his conclusion that LifeStation ha[d] not paid the annual fee[.]" We agree and, therefore, will affirm the grant of summary judgment on Count 11 (Count 18 of the third amended complaint).

7. Denial of Mr. Worsham's Motion for Partial Summary Judgment as to LifeStation's Liability for the Fifth Call.[16]

The circuit court did not abuse its discretion in denying Mr. Worsham's motion for partial summary judgment on his TCPA and MDTCPA claim related to the fifth call. Although LifeStation admits that the fifth call was made on its behalf by MLA, there are disputes of fact about its control over MLA bearing upon whether MLA's conduct may subject LifeStation to vicarious liability. In any event, "a trial judge has the discretion 1) to deny or 2) simply to defer the granting of summary judgment even when there is no genuine dispute of a material fact and even when all of the technical requirements for the entry of

[16] Mr. Worsham does not appeal from the denial of his motion for partial summary judgment on the wiretap law claims or his motion for partial summary judgment on his TCPA and MDTCPA claims arising from the other seven prerecorded calls.

such a judgment have been met." *Com. Union Ins. Co. v. Porter Hayden Co*., 116 Md. App. 605, 630 (1997).

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN ITS RESOLUTION OF THE DISCOVERY DISPUTES BUT SOME OF THE COURT'S RULINGS MUST BE VACATED IN LIGHT OF THIS OPINION.

"[O]ur discovery rules, which are broad and comprehensive in scope, have as their principal objective the required disclosure of all relevant facts surrounding the litigation before the court." *Androutsos v. Fairfax Hosp*., 323 Md. 634, 638 (1991). A party to a civil action "may obtain discovery regarding any matter that is not privileged, . . . if the matter sought is relevant to the subject matter involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Md. Rule 2-402(a). "A trial judge has the discretion to limit the scope of discovery in order to prevent its employment in an abusive fashion." *Drolsum v. Horne*, 114 Md. App. 704, 712-13 (1997).

We review a denial of discovery under the abuse of discretion standard. *Yacko v. Mitchell*, 249 Md. App. 640, 690 *cert. denied*, 474 Md. 737 (2021). A circuit court abuses its discretion in denying a request for discovery "only if no reasonable person would take the view adopted by the trial court in denying discovery." *Id*. (quoting *Sibley v. Doe*, 227 Md. App. 645, 658 (2016)).

Mr. Worsham contends that the court abused its discretion in denying his motions to compel responses to requests for production of documents and interrogatories and in denying his motion for immediate sanctions after LifeStation failed to appear for a

deposition. LifeStation responds that the court properly exercised its discretion in limiting Mr. Worsham's overbroad and abusive discovery and in "issu[ing] a Protective Order related to Mr. Worsham's deposition of LifeStation."[17]

A. Written Discovery

Mr. Worsham challenges the denial of his motions to compel LifeStation to respond to 14 requests for production of documents, Request Nos. 14, 16, 17, 28, 40-48, and two interrogatories, Interrogatory Nos. 23 and 24. We will address them in turn.

1. First Request for Production of Documents

Mr. Worsham challenges the denial of his motion to compel responses to the following two document requests:

> 14. Produce a copy of all Complaints filed against you which allege any TCPA violations.
>
> 16. Produce copies of any document you filed in order to do business in a name other than LifeStation, Inc., or which identify any name other than LifeStation, Inc. that you do business as.

LifeStation objected to those requests on the basis that each was overly broad, unduly burdensome, and unlikely to lead to admissible information.

The court ruled that, "as written," each request was overly broad and sustained the objections without prejudice, thereby allowing Mr. Worsham to rephrase them. We are not persuaded that the court abused its broad discretion by sustaining LifeStation's objection to Request No. 14. As the circuit court implicitly recognized, however, that does

[17] As we will explain, the court did not issue a protective order relative to the deposition.

not mean that none of the information requested falls within the ambit of discoverable evidence. On remand, Mr. Worsham can attempt to formulate a request that is more narrowly tailored to his allegations.

We are similarly not persuaded that the court abused its broad discretion by sustaining LifeStation's objection to Request No. 16, at least as currently phrased. A request for all documents that "identify any name other than LifeStation, Inc. that you do business as" could potentially sweep in every memorandum, letter, invoice, or other document containing a trade name used by LifeStation and, therefore, was overly broad. Although we discern no basis for objecting to the first part of the request, the court did not abuse its discretion in declining to compel a response to the full request as phrased.

2. Second Request for Production of Documents

Mr. Worsham next challenges the denial of his motion to compel a response to Request No. 17, which asked LifeStation to produce "copies of all documents and communications between you and MLA International, Inc., including but not limited to contracts, agreements, scripts, emails, letters, faxes, and notes." LifeStation objected that it already had produced its contract with MLA and that any other responsive documents were not relevant or likely to lead to the discovery of relevant information.

The court ruled that Mr. Worsham's request was "overly broad and burdensome" as drafted. Again, we perceive no abuse of discretion in light of the broad and unrestricted nature of the request. Mr. Worsham is free to fashion a more appropriate request on remand.

3. Fourth Request for Production of Documents

In his fourth request for production, Mr. Worsham asked LifeStation to:

> 28. Produce "*All substantially different advertising, brochures, telemarketing scripts, and promotional materials*" used to advertise any of your products or services from September 1, 2016 to April 30, 2017, including those required by 16 C.F.R. § 310.5(a)(1), including any such documents or materials used with respect to or to attempt to contact the Plaintiff or call his phone numbers.
>
> 30. Produce documents containing "*The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations*" for you for the period from September 1, 2016 to April 30, 2017, including those required by 16 C.F.R. § 310.5(a)(4), including such documents related to any person who had contact with the Plaintiff for you or on your behalf.

LifeStation objected to both requests on the basis that they were vague, overbroad, irrelevant, and unlikely to lead to admissible information, and asserted that it had already produced all responsive documents.[18]

The circuit court ruled that the requests for production were "substantially similar" to Request No. 16, which it had also found overbroad, and sustained LifeStation's objection. Although Request Nos. 28 and 30 are time limited, both seek a broad array of materials that are not reasonably calculated to lead to the discovery of information relevant to the claims asserted by Mr. Worsham. In objecting to Request No. 28, LifeStation argued

[18] In his motion to compel, Mr. Worsham stated that LifeStation's entire document production consisted of three documents: (1) a copy of a 2016 federal class action complaint filed against it and the opinion dismissing that case; (2) the audio recording of the live call; and (3) the 2013 Marketing Services Agreement between LifeStation and MLA. He maintained that none of those documents could be deemed responsive to Request Nos. 28 and 30.

that Mr. Worsham's request would not produce relevant documents because it was "in no way tailored towards [his] specific claims in this case." Although the request seeks telemarketing scripts, which are at the heart of Mr. Worsham's case, it also seeks copies of advertising brochures and other promotional materials that do not appear connected to Mr. Worsham's claims. We do not think the circuit court abused its discretion in concluding that Request No. 28, as phrased, is overly broad. Similarly, regarding Request No. 30, the circuit court did not abuse its discretion in declining to compel LifeStation to produce identifying information for all employees who made calls on behalf of LifeStation given that Mr. Worsham received only one call directly from LifeStation and the caller's identity appears to be known.

4. Sixth Request for Production of Documents

Mr. Worsham's sixth set of written discovery requests included nine document requests, Request Nos. 40-48, addressed to assertions made by LifeStation in its motions to strike the second and third amended complaints. Although the court did not abuse its discretion in denying the motion to compel at the time based on its orders striking the second and third amended complaints, we will vacate the discovery order denying the motion to compel responses to Request Nos. 40-48 based on our decision to reverse the orders striking those amendments. On remand, the court should revisit those requests on their merits.

5. Third Set of Interrogatories

Mr. Worsham challenges the denial of his motion to compel responses to two interrogatories:

> 23. State all contact information that you have had at any time for Grace Sabako, including but not limited to street addresses, mailing addresses, phone numbers (land line and/or cellular), email addresses and Facebook accounts.
>
> 24. State fully the factual basis for your defense of Counts 20-22 of the Second Amended Complaint regarding the Maryland Wiretap Law violations allegedly committed by LifeStation, Inc. and Grace Sabako.

LifeStation objected to Interrogatory No. 23 on the bases that it sought irrelevant information, confidential and/or privileged information, and information already in the public domain to which Mr. Worsham had equal access. It objected to Interrogatory No. 24, claiming that because it had not yet answered the second amended complaint, it had not determined its defense to the wiretap law counts.

The circuit court denied Mr. Worsham's motion to compel by a line order when it granted LifeStation's motion for summary judgment. We perceive no abuse of the court's discretion in denying the motion to compel responses to Interrogatory Nos. 23 and 24 in the then-prevailing procedural posture. Given our other holdings in this opinion, however, we will vacate the court's order denying Mr. Worsham's motion to compel responses to Interrogatory Nos. 23 and 24, which should be revisited on remand. We further observe that LifeStation's objection based on the availability of the information sought through other means is not a valid one. *See* Md. Rule 2-402(a) ("It is not ground for objection that the information sought is already known to or otherwise obtainable by the party seeking discovery[.]").

B. Deposition

Under Rule 2-411, "[a]ny party to an action may cause the testimony of a person . . . to be taken by deposition for the purpose of discovery or for use as evidence in the action or for both purposes." On November 16, 2018, Mr. Worsham filed a notice of deposition of LifeStation's corporate designee, to take place on November 30, 2018. At that time, a motion for a protective order filed by LifeStation on October 29, 2018 was pending. In that motion, LifeStation sought an order of protection from "abusive and harassing discovery," citing the volume of written discovery requests filed by Mr. Worsham.

LifeStation's counsel responded by email to Mr. Worsham's notice of deposition, asking that he withdraw the notice pending a ruling on its motion for protective order. Alternatively, counsel advised Mr. Worsham that she would supplement LifeStation's motion for protective order to clarify that it also applied to deposition discovery. Mr. Worsham did not respond or withdraw his notice of deposition. Three days before the deposition was scheduled to take place, LifeStation supplemented its motion for protective order to request that it apply to written and deposition discovery.

On November 29, 2018, counsel for LifeStation advised Mr. Worsham that it would not appear for deposition the following day. After LifeStation failed to appear for deposition, Mr. Worsham moved for immediate sanctions under Rule 2-432(a). The circuit court eventually denied the motion for protective order and the motion for immediate sanctions as moot when it granted summary judgment in favor of LifeStation. In that

posture, we cannot say that the court abused its discretion by so ruling. Given our reversal, in part, of the grant of summary judgment, however, we will vacate the denial of the motion for protective order and the motion for sanctions and remand for further proceedings.

IV. THE CIRCUIT COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DENYING THE MOTION TO DISQUALIFY.

By Rule, a judge must "disqualify . . . in any proceeding in which the judge's impartiality might reasonably be questioned, including[,]" when a judge "has a personal bias or prejudice concerning a party[.]" Md. Rule 18-102.11(a)(1). "Generally speaking, a judge is required to recuse . . . from a proceeding when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *Matter of Russell*, 464 Md. 390, 402 (2019). "On the other hand, 'there is a strong presumption . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.'" *Conner v. State*, 472 Md. 722, 738 (2021) (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)). "The decision to recuse oneself ordinarily is discretionary and will not be overturned except for abuse." *Att'y Grievance Comm'n v. Shaw*, 363 Md. 1, 11 (2001).

Mr. Worsham contends that the judge who ruled on the motions for summary judgment and several discovery motions erred or abused her discretion in two ways: (1) by rescinding a prior determination to recuse; and (2) by denying a motion to disqualify her from presiding over the dispositive motions hearing based on her demonstrated bias against him. Neither contention is meritorious.

Mr. Worsham's first contention is premised on a letter dated May 15, 2019, issued after scheduling issues arose in several of Mr. Worsham's pending cases in the circuit court, in which the motions judge advised the parties to those cases that, among other things, she would "rescind[] [her] recusal" in another case and this one. Although Mr. Worsham contends that the motions judge erred in "un-recus[ing]" herself, the judge explained on the record that she had never actually recused herself in the first place. To the contrary, the recusal that was rescinded in the May 2019 letter had been administratively and incorrectly designated by the Clerk's Office. The motions judge thus did not err or abuse her discretion in reversing that administrative error.

Mr. Worsham's second contention is based on his claim that the motion's judge's impartiality might reasonably be questioned based upon personal bias or prejudice against him arising from her participation in his attorney grievance proceeding. *See Att'y Grievance Comm'n v. Worsham*, 441 Md. 105 (2014). We summarized the history of that proceeding in our recent unreported opinion in *Worsham v. Eaves*, No. 654, Sept. Term 2020, 2021 WL 2980362 (Md. App. July 15, 2021) ("*Worsham I*"), which we need not repeat, and incorporate here by reference. Mr. Worsham contends that the motions judge's participation in that proceeding demonstrated bias against him, including through her findings that his testimony was "absurd and evasive," that he made misrepresentations to the court, that he filed a frivolous tax appeal, and that he acted intentionally, maliciously, and vindictively in the representation of one of his clients. Mr. Worsham also contends that the motions judge should have recused herself because, at the time she ruled, he had

filed a lawsuit against her seeking an order recusing her from participation in all of his pending lawsuits.

As the proponent of the motion to disqualify, Mr. Worsham bore the "heavy burden to overcome the presumption of impartiality" by "prov[ing] that [the motions judge] has a personal bias or prejudice against him[.]" *Shaw*, 363 Md. at 11. He failed to satisfy his burden to "establish a factual basis upon which a reasonable person with knowledge of the facts concerning" the motions judge's involvement in his attorney grievance proceeding "would entertain doubt that [she] could preside fairly and impartially over [this case]." *Conner*, 472 Md. at 744. As the Court of Appeals reiterated in *Conner*, "[a] trial judge is not required to recuse when [the party moving to disqualify] alleges bias arising from a source within the 'four corners of the courtroom.'" *Id.* (second alteration in *Conner*) (quoting *Doering v. Fader*, 316 Md. 351, 355 (1989)). Rather, "the alleged prejudice must result from an extrajudicial source and parties cannot attack a judge's impartiality on the basis of information and beliefs acquired while acting in his or her judicial capacity." *Boyd v. State*, 321 Md. 69, 77 (1990) (internal quotation marks removed) (quoting *United States v. Monaco*, 852 F.2d 1143, 1147 (9th Cir. 1988)).

Here, Mr. Worsham's allegations of bias stem from the motions judge's participation in his attorney grievance proceeding. Because the judge was acting in her judicial capacity when she presided over that hearing, her opinions formed and findings made in that proceeding are not a basis upon which she was required to recuse. Likewise, the motions judge's decisions that were adverse to Mr. Worsham in this case are not an

independent basis for recusal. *See Reed v. Balt. Life Ins. Co.*, 127 Md. App. 536, 552 (1999) ("It is settled law that a motion for recusal may not ordinarily be predicated upon the judge's rulings in the case at hand or a related case.").

The motions judge's status as the defendant in *Worsham I* when she presided in this case also did not require her to disqualify. Quoting with approval from *United States v. Owens*, 902 F.2d 1154, 1156 (4th Cir. 1990), the Court of Appeals has reasoned that litigants may not "create the basis for recusal by their own deliberate actions. To hold otherwise would encourage inappropriate 'judge shopping.' It would invite litigants to test the waters with a particular judge and then to take steps to create recusal grounds if the waters prove uncomfortably hot." *Regan v. State Bd. of Chiropractic Exam'rs*, 355 Md. 397, 414-15 (1999). Mr. Worsham may not force the judge to recuse by initiating a collateral attack upon her decision not to recuse.

We discern no basis of any kind to question the impartiality of the motions judge in this case. Accordingly, we will affirm the court's decision denying Mr. Worsham's motion to disqualify.

CONCLUSION

We will affirm the grant of summary judgment in favor of LifeStation on Counts 9 and 11 of the first amended complaint; reverse the grant of summary judgment in favor of LifeStation on the remaining counts; affirm the denial of Mr. Worsham's motion for summary judgment; reverse the orders striking the second and third amended complaints and the order of default against Mr. Ayala; affirm the court's denials of Mr. Worsham's

motions to compel discovery responses except with respect to Document Request Nos. 40-48 and Interrogatories 23 and 24, as to which the denials are vacated; vacate the court's denial of LifeStation's motion for protective order and Mr. Worsham's motion for sanctions concerning LifeStation's deposition; and remand for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY APPELLEE.