UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

James Julian v. Kirkendall Dwyer II, LLP, et al.

Julian v. Kirkendall Dwyer II, LLP · No. 2:25-cv-02510-HLT-GEB · Decided March 12, 2026

SUMMARY

The United States District Court for the District of Kansas denied Kirkendall Dwyer II, LLP's motion to dismiss claims arising from alleged unsolicited telemarketing calls in violation of the Telephone Consumer Protection Act and Kansas Consumer Protection Act. The court held that the complaint plausibly connected Kirkendall to more than one call and that the alleged alternative explanation involving an insurance company did not overcome that plausibility at the pleading stage. The court also declined to hold that the Kansas Consumer Protection Act claim was barred as a matter of law because some calls concerned insurance.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Holly L. Teeter
JURISDICTION	United States District Court for the District of Kansas
DECIDED	March 12, 2026
DOCKET	2:25-cv-02510-HLT-GEB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the plaintiff's Telephone Consumer Protection Act and Kansas Consumer Protection Act claims.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and determines whether the complaint contains sufficient factual matter to state a claim that is plausible on its face. Legal conclusions and conclusory statements are not accepted as true.
PRECEDENTIAL VALUE	unknown

TOPICS

motions to dismiss · consumer protection · statutory interpretation · insurance · civil procedure

PRACTICE AREAS

civil procedure | consumer protection | telemarketing litigation | statutory interpretation | insurance

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that more than one of the challenged telemarketing calls was made by or on behalf of Kirkendall for purposes of the TCPA claims.
2. Whether the Kansas Consumer Protection Act claim was barred at the pleading stage because some of the challenged calls concerned insurance, which is excluded from the KCPA definition of consumer transaction.

HOLDINGS

1. The complaint plausibly alleged that more than one of the challenged calls was made by or on behalf of Kirkendall, so the TCPA claims could not be dismissed on the theory that an insurance company was the obvious source of the calls.
2. The court could not conclude as a matter of law at the pleading stage that the KCPA claim was barred merely because some of the challenged telemarketing calls concerned insurance.

KEY QUOTATIONS

> *"But absent an 'obvious' alternative explanation, it is not for the court to decide on a 12(b)(6) motion which is more likely between two plausible inferences that may equally be drawn from the factual allegations in a complaint."*

> *"There is no carveout for unsolicited calls about insurance."*

FACTUAL BACKGROUND

Julian alleged that his telephone number had been on the National Do-Not-Call Registry since April 25, 2006, yet he received approximately 40 telemarketing calls between May and August 2025. The calls solicited insurance, health plans, and Social Security-related services and allegedly were made by telemarketers working for or through Kirkendall. Some calls directly connected Julian to Kirkendall personnel, while another telemarketer identified herself as a Kirkendall vendor and EvolveTech referred to its continued partnership with Kirkendall. Julian alleged that the calls were automated, that he never consented to them, and that he repeatedly requested removal from call lists.

PROCEDURAL HISTORY

James Julian filed suit against Kirkendall Dwyer II, LLP, and other entities alleging violations of the TCPA and KCPA arising from unsolicited telemarketing calls. Kirkendall moved to dismiss the TCPA claims on plausibility grounds and the KCPA claim on the ground that the calls concerned insurance transactions excluded from the KCPA. The district court denied the motion to dismiss.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Jones v. Addictive Behav. Change Health Grp., LLC, 364 F. Supp. 3d 1257, 1265 (D. Kan. 2019)
- Schmitendorf v. Juicy's Vapor Lounge, Inc., 2025 WL 2966205, at *3 (D. Kan. 2025)
- Cavlovic v. J.C. Penney Corp., Inc., 2018 WL 2926433, at *4-5 (D. Kan. 2018)
- Logan v. Farmers New World Life Ins. Co., 2023 WL 2730109, at *2 (D. Kan. 2023)
- Wright v. Enhanced Recovery Co., LLC, 227 F. Supp. 3d 1207, 1211-12 (D. Kan. 2016)
- Moore v. The Climate Corp., 2016 WL 4527991, at *9 (D. Kan. 2016)
