UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cupp v. ABC-Amega, Inc.

Cupp · No. 24-cv-07388-AMO · Decided March 26, 2025

SUMMARY

The United States District Court for the Northern District of California granted defendants' motion to dismiss Ronald Cupp's claims arising from alleged debt-collection calls. The court dismissed the Fair Debt Collection Practices Act and Rosenthal Act claims with prejudice as untimely and dismissed the Telephone Consumer Protection Act claim with leave to amend because the complaint did not adequately allege use of an automatic telephone dialing system. The court permitted amendment by May 1, 2025.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Araceli Martinez-Olguin
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 26, 2025
DOCKET	24-cv-07388-AMO
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that the FDCPA and Rosenthal Act claims were time-barred and that the TCPA claim failed to state a claim.
STANDARD OF REVIEW	On a motion to dismiss, the court accepts well-pleaded allegations as true and determines whether the complaint states a plausible claim for relief. Mere conclusory allegations and threadbare recitals of elements are insufficient.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Ronald Cupp v. ABC-Amega, Inc., BDO USA, P.C.

TOPICS

motions to dismiss · statute of limitations · consumer protection · fair debt collection · civil procedure

PRACTICE AREAS

consumer protection · telephone consumer protection · civil procedure

QUESTIONS PRESENTED

1. Whether Cupp's FDCPA and Rosenthal Act claims were barred by their one-year statutes of limitations.
2. Whether Cupp adequately pleaded that defendants used an automatic telephone dialing system in violation of the TCPA.
3. Whether Cupp should receive leave to amend his TCPA claim.

HOLDINGS

1. The FDCPA and Rosenthal Act claims were barred by their one-year statutes of limitations because the alleged collection calls occurred between May and December 2022, while Cupp filed suit in October 2024.
2. Cupp failed to state a TCPA claim because he alleged only conclusorily that defendants used an automatic telephone dialing system and pleaded facts suggesting that live operators specifically targeted him.
3. The TCPA claim was dismissed without prejudice, with leave to amend solely to add allegations concerning whether defendants used an ATDS and whether Cupp consented to the communications.

KEY QUOTATIONS

> *"To survive a motion to dismiss, a plaintiff needs to "proffer factual allegations that support a reasonable inference that an ATDS was used.""* (at 2)

> *"Without additional factual support, the Court must conclude that Cupp has not adequately pleaded an ATDS was used."* (at 2)

> *"Because Cupp's FDCPA and Rosenthal Act claims are barred by the statute of limitations, those claims are DISMISSED WITH PREJUDICE."* (at 3)

FACTUAL BACKGROUND

Between May and December 2022, BDO and ABC-Amega allegedly contacted Ronald Cupp by email and telephone seeking payment of $6,720 owed by nonparty AGC Enterprises, Inc. Cupp alleged that he received 13 calls, disputed the debt, and suffered anxiety, headaches, loss of sleep, and humiliation. His complaint asserted claims under the TCPA, FDCPA, and California's Rosenthal Act.

PROCEDURAL HISTORY

Cupp filed the action in the Northern District of California on October 23, 2024. BDO moved to dismiss, ABC-Amega joined the motion, and Cupp opposed it. The court granted the motion, dismissing the FDCPA and Rosenthal Act claims with prejudice and dismissing the TCPA claim without prejudice with limited leave to amend.

DISPOSITION

other

CASES CITED

- Brown v. Transworld Systems, Inc., 73 F.4th 1030, 1040 (9th Cir. 2023)
- Poorsina v. Peak Foreclosure Servs., Inc., 2021 WL 308609, at *3 (N.D. Cal. Jan. 29, 2021)
- Meyer v. Portfolio Recovery Assocs., LLC, 707 F.3d 1036, 1043 (9th Cir. 2012)
- Abante Rooter & Plumbing, Inc. v. Pivotal Payments, Inc., No. 16-CV-05486-JCS, 2017 WL 733123, at *8 (N.D. Cal. Feb. 24, 2017)
- Brown v. Collections Bureau of Am., Ltd., 183 F. Supp. 3d 1004, 1005 (N.D. Cal. 2016)
- Bell Atlantic v. Twombly, 550 U.S. 544, 127 S. Ct. 1955 (2007)
- Duguid v. Facebook, Inc., No. 15-cv-00985-JST, 2016 WL 1169365, at *5 (N.D. Cal. Mar. 24, 2016)
- Flores v. Adir Int'l, LLC, No. 15-cv-00076-AB, 2015 WL 4340020, at *4 (C.D. Cal. July 15, 2015)
- Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)

OPINION

Cupp v. ABC-Amega, Inc.

PER CURIAM.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RONALD CUPP, Case No. 24-cv-07388-AMO Plaintiff,

ORDER GRANTING DEFENDANTS'

v. MOTION TO DISMISS

ABC-AMEGA, INC., et al., Re: Dkt. No. 8 Defendants. This action concerns the purported attempted collection from pro se Plaintiff Ronald Cupp of a debt owed to Defendant BDO USA, P.C. ("BDO") by nonparty AGC Enterprises, Inc. ECF 1. Defendants BDO and ABC-Amega, Inc. move to dismiss Cupp's complaint. ECF 8. The motion is fully briefed and is suitable for determination without oral argument. See Civ. L.R. 7-6. Thus, the Court VACATES the April 10, 2025 hearing. Having carefully reviewed the parties' papers and the relevant legal authority, the Court GRANTS Defendants' motion for the reasons discussed below.

I. BACKGROUND[1]

Cupp alleges that between May 2022 and December 2022, BDO – an accounting firm – purchased or took over an account of a company called AGC Enterprises, and demanded of Cupp payment in an amount of $6,720.00. Compl. ¶¶ 7-9, 19. BDO made these demands first by email, and subsequently by phone calls. Compl. ¶¶ 9, 15. Cupp also received phone calls from

ABC-Amega, a licensed collection agency. Compl. ¶ 15. In total, Cupp received 13 phone calls – eight 1 As it must, the Court accepts Cupp’s well-pleaded allegations in the complaint as true and from BDO and five from ABC-Amega. Compl. ¶¶ 15-16. Cupp disputed the debt in writing as well as over the phone with employees of both BDO and ABC-Amega. Compl. ¶ 13. As a result of the collection attempts, Cupp has suffered anxiety, headaches, loss of sleep, and humiliation. Compl. ¶ 21. Cupp filed a complaint in this Court on October 23, 2024, alleging violations of the Telephone Consumer Protection Act (“TCPA”), the Fair Debt Collection Practices Act (“FDCPA”), and the California Fair Debt Collection Practices Act (“Rosenthal Act”). ECF 1 at 4-9. On November 18, 2024, BDO filed a motion to dismiss Cupp’s complaint for failure to state a claim, ECF 8, which ABC-Amega, Inc. joined on November 19, 2024, ECF 11. On December 9, 2024, Cupp filed his opposition, ECF 17, and on December 16, 2024, BDO replied, ECF 18.

II. DISCUSSION

Defendants move to dismiss Cupp’s complaint because his FDCPA and Rosenthal Act claims are barred by the statute of limitations and additionally urges the Court to dismiss the Cupp’s TCPA claim because he has failed to state a claim. The Court first addresses Defendants’ statute of limitations argument before considering whether Cupp has adequately pleaded his claims. FDCPA and Rosenthal Act violations trigger a one-year statute of limitations. See Brown v. Transworld Systems, Inc., 73 F.4th 1030, 1040 (9th Cir. 2023); see also 15 U.S.C. 1692k(d); Poorsina v. Peak Foreclosure Servs., Inc., 2021 WL 308609, at *3 (N.D. Cal. Jan. 29, 2021). Cupp alleges he received BDO’s and ABC’s phone calls between May 2022 and December 2022. Compl. ¶ 19. In his opposition, Cupp concedes that when he filed his complaint in October 2024, the statute of limitations on his FDCPA and Rosenthal Act claims had already expired, ECF 17 at 4-5. Accordingly, those claims must be dismissed. Turning to Cupp’s remaining claim under the TCPA, the Court finds that Cupp has not adequately pleaded the claim. Cupp alleges BDO violated the TCPA, which prohibits “any person within the United States, or any person outside the United States if the recipient is in the United States, to make any call . . . using any automatic telephone dialing system or an artificial or 47 U.S.C. § 227(b)(1)(A)(iii). To state a claim under this provision of the TCPA, Cupp must establish three elements: (1) the defendant called a cellular telephone number; (2) using an automatic telephone dialing system (“ATDS”); (3) without the recipient’s prior express consent. Meyer v. Portfolio Recovery Assocs., LLC, 707 F.3d 1036, 1043 (9th Cir. 2012). Defendants first argue Cupp’s claim fails to because Cupp does not allege that Defendants used an ATDS to call him, the second element. ECF 8-1 at 15. The Court agrees. The TCPA defines an “automatic telephone dialing system” as “equipment that has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). To survive a motion to dismiss, a plaintiff needs to “proffer factual allegations that support a reasonable inference that an ATDS was used.” Abante Rooter &

Plumbing, Inc. v. Pivotal Payments, Inc., No. 16-CV-05486-JCS, 2017 WL 733123, at *8 (N.D. Cal. Feb. 24, 2017) (citing Brown v. Collections Bureau of Am., Ltd., 183 F. Supp. 3d 1004, 1005 (N.D. Cal. 2016)). Cupp asserts that "Defendant(s) . . . use[d] an automatic telephone dialing system," Compl. ¶ 15, but this is no more than a "threadbare recital[] of the elements of the claim for relief, supported by mere conclusory statements," Bell Atlantic v. Twombly, 550 U.S. 544, 127 S. Ct. 1955 (2007). Without additional factual support, the Court must conclude that Cupp has not adequately pleaded an ATDS was used. Indeed, the reasonable inference drawn from the factual allegations in the complaint suggests the opposite – that the phone calls Cupp received were made by live operators seeking to speak with Cupp specifically. "Where . . . a 'plaintiff's own allegations suggest direct targeting that is inconsistent with the sort of random or sequential number generation required for an ATDS,' courts conclude that the allegations are insufficient to state a claim for relief under the TCPA." Duguid v. Facebook, Inc., No. 15-cv-00985-JST, 2016 WL 1169365, at *5 (N.D. Cal. Mar. 24, 2016) (quoting Flores v. Adir Int'l, LLC, No. 15-cv-00076-AB, 2015 WL 4340020, at *4 (C.D. Cal. July 15, 2015)). That is the case here. For example, Cupp alleges he "talked to a lady who was making phone collections from a controller's office of BDO in TN," Compl. ¶ 17, and that he received a call from someone "claiming to be VP of ABC [who] threatened she would have support a reasonable inference that Defendants used an ATDS. Abante Rooter & Plumbing, 2017 WL 733123, at *8. Defendants argue Cupp's TCPA claim also fails because he consented to the communications, and has failed to establish the third element. Because Cupp has not sufficiently alleged that Defendants used an ATDS, the Court need not consider whether Cupp has adequately pleaded that he did not consent to the calls. A plaintiff may amend a complaint only to allege "other facts consistent with the challenged pleading," Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986), and the Court is skeptical that Cupp can allege that Defendants used an ATDS without contradicting allegations in his complaint. However, because leave to amend "shall be freely given when justice so requires . . . and this policy is to be applied with extreme liberality," Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990), dismissal of Cupp's complaint is without prejudice.

UL. CONCLUSION

Because Cupp's FDCPA and Rosenthal Act claims are barred by the statute of limitations, 3 those claims are DISMISSED WITH PREJUDICE. Moreover, as Cupp has failed to state a a claim under the TCPA, that claim is DISMISSED with leave to amend solely for the purpose of 3 adding allegations regarding whether Defendants used an ATDS and whether Cupp consented to the communications. Any amended complaint SHALL BE FILED no later than May 1, 2025. In preparing a second amended complaint, Cupp may wish to contact the Federal Pro

Bono Project’s || Help Desk —a free service for pro se litigants — by calling (415) 782-8982 to make an appointment to obtain legal assistance from a licensed attorney. More information about the program is available online at the Court’s website, https://www.cand.uscourts. gov.

IT IS SO ORDERED.

Dated: March 26, 2025 1. 2 (Nnaceh dele

ARACELI MARTINEZ-OLGUIN

United States District Judge

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