

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)