

Motion to Dismiss Denied: Plaintiff's Prerecorded Message Allegations Adequately Assert ATDS Violation

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Plaintiff Gary Cannioto filed a lawsuit against a defendant debt collection agency, Simon's Agency, Inc., for "repeatedly placing automated calls to him in an attempt to collect a debt from someone else" in *Cannioto v. Simon's Agency*, Case # 19-CV-6686-FPG, 2020 U.S. Dist. LEXIS 95774 (W.D.N.Y. May 29, 2020); the TCPA claim has survived the opinion. The defendant had moved to dismiss the complaint, and in response, Plaintiff filed a motion to amend the complaint.

Plaintiff's proposed amended complaint alleges that: his cell phone began ringing and when he answered, he heard a prerecorded message asking to speak with a woman about an unpaid debt. The message then directed him to wait on the line to speak with a representative to let them know whether or not he was indeed the debtor. Plaintiff waited and told a representative they had the wrong person. The rep assured him they'd stop calling; yet at least 16 more [automated calls](#) were made to him as he reiterated to other representatives the debtor was not him or known to him.

The Court held the plaintiff's FDCPA claim failed because he didn't allege certain threshold facts. As to the remaining TCPA ATDS violation claim, the Defendant argued it was inadequately pled, but the court was not swayed. Plaintiff's proposed complaint alleged that a prerecorded message told him to wait to speak with the next available representative. Furthermore, he claimed that the defendant's "automated system requested that Plaintiff indicate by pressing specific numbers whether or not he was [the debtor]...and that Defendant's predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator." Therefore, the court held that the "Plaintiff's claim adequately states a claim for violation of the TCPA."

At the end of the day, an ATDS can be plausibly inferred at the pleadings stage with allegations of a robotic voice, lack of a human response, and generic content. Here Plaintiff cleared that threshold, and so the court allowed his claim to proceed. We'll keep an eye on this one as it develops.

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