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# One Call Complaint Could Satisfy TCPA Willfulness Standard

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Under the Telephone Consumer Protection Act (TCPA) a court may award $1500 per call where a defendant "willfully or knowingly" violates the statute. But can a single errant call meet such an intent standard?

In *Ryan Odom v. ECA Marketing, Inc.*, 2020 U.S. Dist. LEXIS 151714, EDCV 20-851 JGB (SHKx), United States District Court for the Central District of California, August 20, 2020, Mr. Odom brought a TCPA class action suit against ECA Marketing, Inc. (ECA) for a single call to his cellphone with an unsolicited prerecorded message for a book and video package. The Court noted that Mr. Odom's complaint "inferred from this message that Defendant has a practice of making pre-recorded calls to advertise using an automatic telephone dialing system which places calls without the need for human callers." Odom also alleged that "other consumers received the same pre-recorded message under the same or similar circumstances…" In separate counts of his complaint, plaintiff claimed both negligent and knowing and/or willful violations of the TCPA.

Apparently conceding it might have been negligent, ECA moved to dismiss the knowing and/or and willful TCPA count for failure to state a claim. After all, this was but a single call. There were no allegations that ECA made multiple calls or that it called Mr. Odom after he objected. And even the Court conceded that "the Defendant is correct that a single automated phone call, without more, may fall short of willfulness under the TCPA."

But this was a motion to dismiss for failure to state a claim. Judge Jesus G. Bernal noted that "plaintiff has alleged facts that raise a 'plausible inference' of liability" and in the context of a motion to dismiss for failure to state a claim "courts must accept well-pleaded factual allegations from plaintiffs' complaints as true."

Accepting the allegations as fact, the Court went on to apply its "plausible inference" analytical framework as follows: (a) it was "logical for [Odom] to infer that Defendant was using an automatic dialing system to place the pre-recorded robocall he received—automated messages are evidence of automated calls;" and (b) "[b]y nature, automatic dialing systems produce a vast volume of calls, more than an individual person could dial;" so (c) "[i]t is more than plausible that others received the same pre-recorded message;" thus (d) "[t]he plausible inference that many consumers received identical automated telemarketing messages from Defendant could satisfy the standard for willfulness under the TCPA."

Quite a leap? – implied use of an ATDS could implicate knowing and/or willful TCPA misconduct.

In a final flourish, Judge Bernal allowed that it might seem “odd that ‘a single prerecorded message received on [Plaintiff’s] cell phone’ could give rise to a federal cause of action.” But the Court observed such an “oddity is Congress’ to own.” Motion to dismiss denied.

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