



# Federal Court Rules Conclusory Pleading of TCPA Autodialer Insufficient

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In his recent decision in *Knutson v. Reply!, Inc.*, 2011 WL 291076 (S.D. Cal. Jan. 27, 2011), Judge Roger Benitez of the United States District Court for the Southern District of California dismissed a complaint under the Telephone Consumer Protection Act, 47 U.S.C. 227 ("TCPA"), because the plaintiff failed to plead more than conclusory allegations as to the "autodialer" prong of the statute. This ruling is significant because it reinforces a key dismissal argument for TCPA defendants.

What happened:

The plaintiff filed suit under the TCPA based on a series of unsolicited telephone calls related to his real estate business. *Id.* at \*1. The court held that to assert a cause of action, the plaintiff needed to successfully plead 1) that defendant made the call, 2) that plaintiff was charged for the call, and 3) that call was made using an automatic telephone dialing system ("autodialer"). *Id.* The plaintiff met the first two prongs of this test but failed to meet the third because his sole autodialer allegation was the conclusory statement that the defendant used an "automatic dialing system as defined by 47 U.S.C. 227(a)(1)." *Id.* at \*2. Relying on *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Kramer v. Autobytel, Inc.*, 2010 U.S. Dist. LEXIS 137257 (N.D. Cal. Dec. 29, 2010), the court held that "[a]s an isolated assertion, it is conclusory to allege that messages were sent 'using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.' Such a naked assertion need not be taken as true." *Id.* The court held that the plaintiff's autodialer allegation, standing alone with no other supporting facts, was inadequate because "[t]here is nothing in the complaint that allows the court to infer the calls were randomly generated or impersonal." *Id.* The court therefore dismissed the complaint without prejudice. *Id.* Read more ...