

TCPA Quick Hitter: When is there Specific Personal Jurisdiction Over an Out-of-State TCPA Defendant?



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TCPA defendants often face the peril of being dragged into court in faraway venues. This can make defending the case difficult, needlessly expensive and may subject to the Defendant to a hostile out-of-state fact finder.

Personal jurisdiction limitations have been used to good effect in extracting individuals and corporate officers from out-of-state TCPA cases over the years, but the doctrine has been underutilized as a tool to earn dismissal of claims and against corporate defendants. Although Plaintiffs often plead jurisdiction exists owing to the residence of the Plaintiff within the forum state and receipt of a text message or phone call there, such lean allegations are actually insufficient to establish specific personal jurisdiction as a decision out of California from yesterday explains.

In *Fabricant v. Paramount Payment Sys.*, CV 19-3148 FMO (SKx), 2019 U.S. Dist. LEXIS 84720 (C.D. Cal. May 20, 2019) the court reviewed the allegations of a Plaintiff's complaint—apparently sua sponte—and offered a neat and tidy primer on personal jurisdiction. The jurisdictional allegations were simple and common: Florida defendants. California Plaintiff. Plaintiff alleges receipt of text, but does not allege anything else regarding defendants' practices in the state of California. Held: these allegations are insufficient.

The Court identifies three prong test for assessing specific personal jurisdiction: 1) Defendant must purposefully avails himself of the privilege of conducting activities in the forum; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable." Importantly, "[t]he plaintiff cannot be the only link between the defendant and the forum." The *Fabricant* complaint lacked any allegations regarding the Defendants' conduct availing itself of California jurisdiction. Rather the Complaint alleged only conduct *specific to the Plaintiff*. But the law on personal jurisdiction looks at conduct directed at *the forum* not at *the Plaintiff*—even if the Plaintiff is a resident of that forum. So the Court issued an order compelling Plaintiff to amend the complaint or face dismissal of the action.

When facing TCPA litigation—especially in class actions—in a forum outside a defendant's home state keep personal jurisdiction issues in mind. As *Fabricant* demonstrates, the issue can afford a defense not just to individuals and corporate officers but to corporate defendants as well. If the Defendant was not intentionally targeting the forum state with a call or messaging campaign there is a good chance that specific personal jurisdiction in that state will not be proper.

Obtaining a successful dismissal of an out-of-state claim can help limit the pool of available claimants—predatory consumer lawyers will face the barrier of having to look for a new claimant residing within an appropriate forum if the previous claimant is unwilling to litigate out of state— and these [same personal jurisdiction issues likely compel dismissals of out-of-state claimants in putative TCPA class actions.](#)

But word to the wise: personal jurisdiction issues are waived if not raised at the outset of a case and few courts will take it upon themselves to review jurisdictional allegations as the *Fabricant* court did. Be vigilant and yield no advantage
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