

THE  
NATIONAL LAW REVIEW

---

## Revocation of Consent Must Be Reasonable and Recollected

---

Wednesday, May 10, 2017

Two recent decisions rebuffed TCPA claims arising from calls or text messages that were received after the called parties had allegedly revoked their consent. The decisions reinforce that plaintiffs who intend to pursue such claims must: (1) revoke their consent in a reasonable rather than contrived manner; and (2) support their claims with specific facts rather than conclusory allegations.

First, in *Epps v. Earth Fare, Inc.*, No. 16-08221, 2017 WL 1424637 (C.D. Cal. Feb. 27, 2017), the Central District of California found that the plaintiff had not reasonably revoked her consent. Despite being prompted to text “STOP” if she wished to revoke her consent, the plaintiff purported to revoke her consent by responding with the text message: “I would appreciate [it] if we discontinue any further texts[.]”

The defendant moved to dismiss and argued that the plaintiff’s method of revoking consent had not been reasonable. Quite the contrary, the plaintiff’s conduct had been deliberately designed to frustrate the defendant’s automated system for registering revocations of consent. The defendant noted that this was one of several similar suits in which the same plaintiff had “‘purposely ignored the use of the STOP Command’ and chose instead to respond with long sentences—ones she knew the automated system would not understand—in order to bring this suit.” The court concluded that reasonableness depends on the totality of the circumstances, including whether the called party had a reasonable expectation that the caller would recognize his or her conduct as a revocation of consent. The court held that “[t]he totality of the plausibly alleged facts, even when viewed in Plaintiff’s favor, militate against finding that Plaintiff’s revocation method was reasonable.” It also rejected the notion that there is something improper about prompting called parties to text “STOP,” explaining that “heeding Defendant’s opt-out instruction would not have plausibly been more burdensome on Plaintiff than sending verbose requests to terminate the messages.”

Second, in *Self-Forbes v. Advanced Call Center Technologies, LLC*, No. 16-1088, 2017 WL 1364206 (D. Nev. Apr. 12, 2017), the District of Nevada entered summary judgment against a plaintiff whose affidavit regarding revocation of consent “merely restate[d] the allegations set forth in the complaint and d[id] not set forth specific facts to raise a genuine issue for trial.” In this case, the plaintiff alleged that she had received more than 500 debt collection calls and that she had picked up the phone several times to tell the defendant’s representatives to stop calling her. In discovery, the defendant produced call logs that showed that none of the calls had resulted in contact with the plaintiff, which would mean that the plaintiff’s allegations regarding revocation could not be correct. Rather than dispute the accuracy of the logs, the plaintiff submitted an affidavit that claimed that she had revoked consent by speaking with the defendant’s representatives several times in January. The court found that her affidavit did not create a genuine issue of fact because it did not identify the particular date of such conversations or the name of the defendant’s representatives that she allegedly told to stop calling her.

These two decisions provide strong support for challenging revocation of consent claims at the pleading stage and if necessary at the summary judgment stage.

© 2019 Drinker Biddle & Reath LLP. All Rights Reserved

Source URL: <https://www.natlawreview.com/article/revocation-consent-must-be-reasonable-and-recollected>

Drinker Biddle®

Article By [Michael P. Daly](#)  
[Daniel E. Brewer](#)[Anthony D. Glosson](#)  
[Drinker Biddle & Reath LLP](#) [TCPA Blog](#)

[Communications, Media & Internet  
Litigation / Trial Practice  
9th Circuit \(incl. bankruptcy\)](#)