

APPENDIX

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FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 29, 2026

Christopher M. Wolpert
Clerk of Court

ANTHONY TRUPIA,

Plaintiff - Appellant,

v.

BOB MOORE ENTERPRISES,
L.L.C.,

Defendant - Appellee.

No. 25-6130
(D.C. No. 5:25-CV-00568-HE)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, MORITZ, and FEDERICO**, Circuit Judges.

Anthony Trupia, appearing pro se, appeals the district court's order dismissing his claims under the Telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. § 227, remanding his state-law claims, and denying his pending motions. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

I

Trupia filed an action in Oklahoma state court, alleging as follows. After he arranged for defendant Bob Moore Enterprises, L.L.C. (BME), to service his vehicle, BME enrolled him “in a marketing campaign involving automated text messages” without his “prior express written consent.” R. at 10. BME then sent two text messages to Trupia’s cell phone several months apart informing him that it was time for another service visit: “Hello Anthony, this is Amber at [BME]. Our records indicate that it’s already time for your next service visit. Can I help you schedule an appointment? Opt-out reply STOP.” *Id.* (internal quotation marks omitted). Trupia alleged that these “text messages were sent using an automatic telephone dialing system (ATDS) or prerecorded messages, as evidenced by their generic, automated nature and the identification of ‘Amber’ as an AI virtual assistant by a [BME] employee.” *Id.*

Based on these allegations, Trupia asserted four TCPA claims, four claims under Oklahoma’s Telephone Solicitation Act of 2022, Okla. Stat. tit. 15, §§ 775c.1–775c.6, and a claim under Oklahoma common law for intrusion upon seclusion. He sought damages, injunctive relief, and an order that BME pay fines to the United States and the State of Oklahoma.

BME removed the action to federal district court and thereafter filed a motion to dismiss all claims under Federal Rule of Civil

Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

The district court granted BME's motion to dismiss as to the TCPA claims. In two of those claims, Trupia asserted the text messages violated a TCPA provision that makes it unlawful to use an ATDS or "an artificial or prerecorded voice" to call a cellular telephone number without the recipient's "prior express consent," § 227(b)(1)(A)(iii).¹

The district court first addressed the claim based on the statutory prohibition on using an ATDS. The TCPA defines an ATDS as "equipment which has the capacity" both "to store or produce telephone numbers to be called, using a random or sequential number generator," and "to dial such numbers." § 227(a)(1). The district court concluded no reasonable inference could be drawn from Trupia's conclusory allegations that the equipment BME used to send text messages fell within this definition. The court further explained that because Trupia alleged BME had enrolled him "in a marketing campaign involving automated text messages," R. at 10, his "telephone number was not automatically or randomly generated, but selected from information [BME] possessed after [Trupia] arranged for

¹ A text message qualifies as a call within the ambit of this provision. See *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016).

vehicle service,” R. at 188. Consequently, the district court concluded Trupia could not establish BME used an ATDS to send him text messages.

The district court next considered the claim based on the TCPA’s prohibition on using an “artificial or prerecorded voice” to make calls to cell phones without the recipient’s consent. The court concluded text messages do not fall within the meaning of “artificial or prerecorded voice”; therefore, Trupia could not prevail on this claim, and allowing an opportunity to amend the claim would be futile.

In two other TCPA claims, Trupia asserted the text messages violated § 227’s requirement that all artificial or prerecorded telephone messages must state the caller’s telephone number and address, *see* § 227(d)(3)(A), and its prohibition on transmitting “misleading or inaccurate caller identification information,” § 227(e)(1). But in response to BME’s motion to dismiss, Trupia conceded he did not have a private right of action to enforce these requirements. After independent review, the district court agreed with that concession and dismissed those claims.

Having dismissed the federal claims, the district court declined to exercise supplemental jurisdiction over the state-law claims and remanded them to state court. The district court also denied Trupia’s motion to remand all claims and struck other pending motions as moot, including BME’s motion for sanctions, Trupia’s motion to strike that motion, and

Trupia's motions to disqualify BME's counsel and for sanctions. Trupia appeals.

II

Although we afford Trupia's pro se filings a liberal construction, he must "follow the same rules of procedure that govern other litigants." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (internal quotation marks omitted). One of those procedural rules is Federal Rule of Appellate Procedure 28(a)(8)(A). It requires an appellant's opening brief to include an "argument, which must contain . . . appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Fed. R. App. P. 28(a)(8)(A). Thus, an appellant's "brief must contain more than a generalized assertion of error, with citations to supporting authorities." *Garrett*, 425 F.3d at 841 (alteration and internal quotation marks omitted). "When a pro se litigant fails to comply with that rule, we cannot fill the void by crafting arguments and performing the necessary legal research." *Id.* (alteration and internal quotation marks omitted).

Trupia's opening brief does not comply with Rule 28(a)(8)(A). In that brief, Trupia lists 42 issues. Some cite a statute or a case in support (many do not), but he provides no supporting argument, only a conclusion; and he provides no record citations. With one exception discussed below, he fares

no better in the argument section of his brief, advancing conclusory allegations of error with no substantive analysis of the district court's reasoning. In his reply brief, he attempts to remedy these shortcomings, but that effort comes too late. *See Sierra Club v. Okla. Gas & Elec. Co.*, 816 F.3d 666, 676 n.9 (10th Cir. 2016) ("We generally do not consider arguments raised for the first time in a reply brief").

Thus, we conclude Trupia has waived appellate review of the district court's order dismissing his TCPA claims, remanding his state-law claims, and denying his pending motions. *See Becker v. Kroll*, 494 F.3d 904, 913 n.6 (10th Cir. 2007) ("An issue or argument insufficiently raised in the opening brief is deemed waived."); *Garrett*, 425 F.3d at 841 ("We do not consider merely including an issue within a list to be adequate briefing." (internal quotation marks omitted)); *Christian Heritage Acad. v. Okla. Secondary Sch. Activities Ass'n*, 483 F.3d 1025, 1031 (10th Cir. 2007) ("Where an appellant lists an issue, but does not support the issue with argument, the issue is waived on appeal.").

The lone exception to our waiver conclusion based on inadequate briefing is Trupia's argument that the *Twombly/Iqbal* plausibility standard² used to assess the legal sufficiency of a complaint at the pleading

² *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

stage violates the Seventh Amendment's right to a jury trial and the Fourteenth Amendment's guarantee of due process. But Trupia did not raise this argument in the district court. Rather, he relied on the *Twombly/Iqbal* standard in his opposition to BME's motion to dismiss. See R. at 148. And because he has not argued for plain-error review on appeal, he has forfeited appellate review of this issue. See *Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011) (“[T]he failure to argue for plain error and its application on appeal . . . surely marks the end of the road for an argument for reversal not first presented to the district court.”).³ In any event, the Supreme Court has not overturned *Twombly* or *Iqbal*; they remain controlling law, and like the district court, we are bound to apply them. See *United States v. Venjohn*, 104 F.4th 179, 186 (10th Cir. 2024) (“The Supreme Court . . . makes plain the law that we and our district courts are bound to follow.”).

III

BME filed, in this court, a motion for sanctions against Trupia for his abusive litigation conduct, which includes correspondence using foul language, insults, personal attacks on BME's owners and counsel, and what

³ For the same reason, and in addition to inadequate-briefing waiver, Trupia has forfeited appellate review of any other issues he did not present to the district court.

could be construed as threats of physical harm to members of BME's ownership and their family. In its motion, BME relies on the inherent authority of federal courts to sanction conduct that "abuses the judicial process." Mot. at 5 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 107 (2017)). But that authority stems from courts' "inherent power[] . . . to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Haeger*, 581 U.S. at 107 (internal quotation marks omitted).

Here, the conduct BME says is sanctionable occurred between the parties in relation to their litigation in Oklahoma state court, after the federal district court remanded the state-law claims. Thus, there is an insufficient connection between that conduct and this appeal such that we may sanction Trupia under our inherent power. Instead, it appears the Oklahoma state court was the appropriate forum to entertain a motion for sanctions relating to Trupia's post-remand conduct. And in fact, BME informs us that, contemporaneously with the motion for sanctions here, it filed a similar motion for sanctions with the Oklahoma state court. See Mot. at 2 n.2. Accordingly, we deny BME's motion for sanctions.

IV

We affirm the district court's order dismissing Trupia's federal claims, remanding his state-law claims, and denying his pending motions. We deny BME's motion for sanctions (Dkt. No. 20).

Entered for the Court

Richard E.N. Federico
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

May 29, 2026

Anthony Trupia
605 SE 21st Street
Oklahoma City, OK 73129

RE: 25-6130, Trupia v. Bob Moore Enterprises
Dist/Ag docket: 5:25-CV-00568-HE

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

cc: Jared R. Boyer
Evan James Edler
Rodney K. Hunsinger II

CMW/ssb

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ANTHONY TRUPIA,	)	
	)	
Plaintiff,	)	
v.	)	NO. CIV-25-0568-HE
	)	
BOB MOORE ENTERPRISES, L.L.C.,	)	
	)	
Defendant.	)	

ORDER

Plaintiff Anthony Trupia filed this case in the District Court of Oklahoma County, State of Oklahoma, asserting claims of violations of the federal Telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. § 227, and Oklahoma’s Telephone Solicitation Act of 2022 (OTSA), 15 Okla. Stat. § 775C.1, *et seq.* He also asserted a claim under Oklahoma common law for “Intrusion upon Seclusion.” Defendant Bob Moore Enterprises, L.L.C. timely filed a notice of removal, removing the case to this court based on the existence of federal question jurisdiction under 28 U.S.C. § 1331.

Since removal, the following motions have been filed:

- Defendant’s Motion to Dismiss [Doc. #4];
- Defendant’s Emergency Motion for Sanctions Against Plaintiff for Litigation Misconduct and to Prevent Continued Threats/Intimidation [Doc. #6];
- Plaintiff’s Motion to Strike Defendant’s Motion for Sanctions Pursuant to Fed. R. Civ. P. 12(f) [Doc. #9];
- Plaintiff’s Motion to Disqualify HB Law Partners as Counsel [Doc. #10];

- Plaintiff's Motion to Remand to State Court Pursuant to 28 U.S.C. § 1447(c) [Doc. #11];
- Plaintiff's Motion for Sanctions Pursuant to Fed. R. Civ. P. 11(c) [Doc. #12];
- Plaintiff's Motion to Compel Defendant's Counsel to Forward Court Orders or For Clarification of Compliance Obligations [Doc. #13];
- Plaintiff's Motion for Leave to Use Electronic Filing [E-File] [Doc. #14].

As discussed below, the court concludes the motion to dismiss should be granted with respect to the TCPA claims. It further concludes the motion to disqualify and the motion to remand, at least insofar as it is based on matters referenced in it, should be denied. However, in light of the conclusion that the federal claims must be dismissed, and as the court declines to exercise supplemental jurisdiction over the remaining state law claims, the case will be remanded to state court on that basis. In light of that disposition, the other pending motions will be stricken as moot.

Motion to Remand

Plaintiff has moved to remand this case to state court on the basis that defendant's notice of removal "lacks a legitimate jurisdictional basis and violates the [TCPA's] statutory preference for state court adjudication." [Doc. #11, p. 1.]. The court disagrees. Although the TCPA provides for a private right of action in state courts, *see* 47 U.S.C. § 227(b)(3), the Supreme Court has held that "federal and state courts have concurrent jurisdiction over private suits arising under the TCPA." Mims v. Arrow Financial Servs., LLC, 565 U.S. 368, 372 (2012). Because plaintiff has asserted TCPA claims against defendant, federal-question jurisdiction under 28 U.S.C. § 1331 clearly exists. *See id.* at 377. Therefore,

defendant properly removed the case to this court pursuant to 28 U.S.C. § 1441(a) and it is not subject to remand on the basis set out in the motion.

Motion to Disqualify

Plaintiff has moved to disqualify HB Law Partners, PLLC, and its attorneys, Evan Elder and Jared Boyer, from representing defendant in these proceedings. According to plaintiff, the law firm and attorneys have violated Rules 1.7 and 8.4 of the Oklahoma Rules of Professional Code, 5 Okla. Stat. Ch. 1, App. 3-A, by Mr. Elder filing documents in this court using PACER credentials for his former employer, the Oklahoma Attorney General's Office, thereby "falsely impl[ying] state authority" [Doc. #10, p. 2], and by Mr. Boyer sending an email to plaintiff denying the Oklahoma Attorney General Office's involvement in the case, but allegedly "threaten[ing] criminal prosecution for 'intimidation/extortion' unless [p]laintiff reduced settlement demands[.]" [*Id.*, p. 1]. Plaintiff also asserts that defendant's owner donated money to the Oklahoma Attorney General in 2021 and 2022, and those donations, combined with the law firm's failure to withdraw, creates a "plausible appearance of favoritism, violating Rule 8.4 and public trust." [*Id.* at p. 2]. Further, plaintiff asserts that the law firm's refusal to withdraw after Mr. Elder's alleged "mistake" was identified violates Rules 4.4 and 4.5 of the Oklahoma Ethics Commission Rules, 74 Okla. Stat. Ch. 62, App. 1.

Plaintiff's disqualification request is without merit. Neither counsel nor the law firm violated Rules 1.7 or 8.4 by their alleged conduct or by their failure to withdraw because of any donations made by their client to the Oklahoma Attorney General. Moreover, Mr. Boyer's email cannot plausibly be construed as threatening criminal

prosecution of plaintiff for “intimidation/extortion” or anything of the sort. Further, neither counsel nor the law firm have violated Rules 4.4 and 4.5 of Oklahoma Ethics Commission Rules. Indeed, those rules do not even apply to them.

Motion to Dismiss

Defendant has moved, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss plaintiff’s complaint in its entirety. To overcome dismissal under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged. *Id.* Because plaintiff is proceeding *pro se*, the court construes the complaint liberally but does not assume the role of an advocate for him. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

In the complaint, plaintiff alleges that he contacted defendant in June 2024 to arrange service of his vehicle. Following that interaction and without his prior express written consent, defendant enrolled plaintiff in a marketing campaign involving automated text messages. On December 16, 2024 and March 5, 2025, plaintiff received unsolicited text messages stating “Hello Anthony, this is Amber at Bob Moore Enterprises, L.L.C. Our records indicate that it’s already time for your next service visit. Can I help you schedule an appointment? Opt-out reply STOP.” Plaintiff alleges that he did not provide prior express written consent to receive the text messages.

Additionally, in the complaint, plaintiff alleges that the text messages were sent “using an automatic telephone dialing system [ATDS] or prerecorded messages, as

evidenced by their generic, automated nature and the identification of ‘Amber’ as an AI virtual assistant by a Bob Moore Enterprises, L.L.C employee.” He also alleges that the text messages failed to provide the phone number or address of defendant, and that they originated from a phone number that provided misleading or inaccurate caller identification information. Further, plaintiff alleges the text messages intruded upon his privacy and seclusion, causing annoyance, frustration, and disruption.

Based on the factual allegations, plaintiff asserts that defendant violated the TCPA, specifically, 47 U.S.C. §§ 227(b)(1)(A)(iii), 227(d)(3)(A), and 227(e)(1), and the implementing regulations, 47 C.F.R. §§ 64.1200(a)(1), 64.1200(b)(1) and 64.1604(a), and that defendant violated the OTSA, specifically, 15 Okla. Stat. §§ 775C.3(A), 775C.3(B), and 775C.4(B)(1)-(2). For the claimed violations, plaintiff requests recovery of statutory damages. Plaintiff also asserts an “Intrusion upon Seclusion” claim under Oklahoma common law for which he requests recovery of compensatory damages. Further, plaintiff requests injunctive relief and an order requiring defendant to pay fines to the United States and the State of Oklahoma.

Count I - 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)(1) Claim

The TCPA makes it unlawful to make certain calls “using any automatic telephone dialing system” to “any telephone number assigned to a [] cellular telephone service” without the “prior express consent of the called party[.]” 47 U.S.C. § 227(b)(1)(A)(iii); *see also* 47 U.S.C. § 64.1200(a)(1)(iii). To state a claim under the statute, plaintiff must

allege that (1) the defendant called a cellular telephone number,¹ (2) using an automatic telephone dialing system, and (3) without the recipient's prior express consent. *See Hunsinger v. Alpha Cash Buyers, LLC*, Civil Action No. 3:21-CV-1598-D, 2021 WL 5040228, at 3 (N.D. Tex. Oct. 29, 2021). Defendant contends that plaintiff has failed to state a claim under the TCPA because he has failed to allege sufficient facts to plausibly establish the second element – using an automatic telephone dialing system.

The TCPA defines the term “automatic telephone dialing system” or ATDS as “equipment which has the capacity--(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). In *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021), the Supreme Court resolved a circuit split “regarding whether an autodialer must have the capacity to generate random or sequential phone numbers” or whether an ATDS “need only have the capacity to store numbers to be called and to dial such numbers automatically.” *Id.* at 401-02 (quotation marks and citations omitted). The Court determined that, “[t]o qualify as an ‘automatic telephone dialing system,’ a device must have the capacity to either store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator.” *Id.* at 399. The Court also stated that, “whether storing or producing numbers to be called, the equipment in question must use a random or sequential number generator.” *Id.* at 404.

¹ A text message to a cellular telephone qualifies as a call within the meaning of section 227(b)(1)(A)(iii). *See Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016).

The court agrees that plaintiff's allegations are not sufficient to establish that the equipment used by defendant to send the text messages qualified as an ATDS. There are no facts for the court to reasonably infer that the equipment had the capacity to either store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator.

In his papers, plaintiff urges the court to accept his allegations regarding the ATDS, claiming that technical details involving the ATDS should be addressed at a later stage after discovery. The court disagrees. The allegation that "the text messages were sent using an automated telephone dialing system" is conclusory, and as such, cannot suffice to plausibly state the second element of the TCPA claim. Likewise, the additional allegations, "generic, automated nature" and "the identification of 'Amber' as an AI virtual assistant by a Bob Moore Enterprises, L.L.C. employee" cannot suffice to establish the ATDS element.

Further, it is apparent from the facts that have been alleged that plaintiff cannot establish that defendant used an ATDS to send the text messages. Plaintiff alleges that he contacted defendant to arrange service for his vehicle, and following that interaction, defendant enrolled plaintiff in a marketing campaign involving automated text messages. Thereafter, defendant sent plaintiff two unsolicited text messages from Amber, an AI virtual assistant, mentioning plaintiff's name in the text message and advising him that its records indicated it was time for his service visit. But dialing systems "us[ing] a pre-existing list of telephone numbers that are not automatically or randomly generated, but are drawn from other sources, including . . . from consumers themselves who voluntarily provided them" are not implicated by the TCPA. Soliman v. Subway Franchisee

Advertising Fund Trust, LTD., 101 F.4th 176, 183 (2nd Cir. 2024). An ATDS for purposes of TCPA liability “is one that generates *telephone* numbers.” *Id.* at 181 (emphasis in original); *see also Borden v. eFinancial, LLC*, 53 F.4th 1230, 1231 (9th Cir. 2022) (holding that an ATDS “must generate and dial random or sequential *telephone* numbers under the TCPA’s plain text” in a case involving an autodialer that selected telephone numbers from a pre-existing list of telephone numbers) (emphasis in original); Panzarella v. Navient Solutions, Inc., 37 F.4th 867, 881-82 (3d. Cir. 2022) (holding section 227(b)(1)(A)(iii) not violated where autodialing system did not rely on “random-or sequential-number generation” to call plaintiffs; it called them from “specific, curated borrower lists”); Beal v. Outfield Brew House, LLC, 29 F.4th 391, 393 (8th Cir. 2022) (holding that “an automated marketing system that sends promotional text messages to phone numbers randomly selected from a database of customers’ information” is not an ATDS within the meaning of the TCPA). According to the facts alleged and the reasonable inferences from those facts, plaintiff’s telephone number was not automatically or randomly generated, but selected from information defendant possessed after plaintiff arranged for vehicle service. Thus, plaintiff cannot establish that defendant used an ATDS in sending the text messages to him, and therefore, Count I is subject to dismissal with prejudice under Rule 12(b)(6).

Count III – 47 U.S.C. § 227(d)(3)(A) and 47 C.F.R. § 64.1200(b)(1) Claim and Count IV – 47 U.S.C. § 227(e)(1) and 47 C.F.R. § 64.1604(a) Claim

In his complaint, plaintiff asserts that defendant violated 47 U.S.C. §§ 227(d)(3)(A) and (e)(1), along with the implementing regulations, by failing to include its telephone

number or address in the text messages and by sending misleading and inaccurate caller identification information.

Defendant contends that plaintiff cannot enforce the alleged violations because the TCPA does not provide plaintiff with a private cause of action. In response, plaintiff “concedes there is no private right of action for Counts III and IV.” *See* [Doc. #25, ¶ 20].

Upon independent review, the court agrees that plaintiff has no private right of action to enforce violations of section 227(d)(3)(A) or section 227(e) and the implementing regulations. *See Ashland Hosp. Corp. v. Service Employees Intern. Union, Dist. 1199 WV/KY/OH*, 708 F.3d 737, 745 (6th Cir. 2013) (no private right of action for alleged violation of section 227(d)(3)(A)); *Cunningham v. Creative Edge Marketing LLC*, Civil Action No. 4:19-CV-00669-ALM-CAN, 2021 WL 2792353, at * 5 (E.D. Tex. June 16, 2021) (no private right of action for alleged violation of section 227(e)) (citing cases). Therefore, the court concludes Count III and IV are subject to dismissal with prejudice under Rule 12(b)(6).

Count II – 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)(1) Claim

The TCPA also prohibits the making of certain calls using “an artificial or prerecorded voice” to a “telephone number assigned to [] a cellular telephone service” without “the prior express consent of the called party[.]” 47 U.S.C. § 227(b)(1)(A)(iii); *see also* 47 U.S.C. § 64.1200(a)(1)(iii).

In its motion, defendant contends that Count II is subject to dismissal under Rule 12(b)(6) because the text messages were informational in nature rather than advertising or telemarketing in nature. According to defendant, informational messages do not require

written consent. Rather, they require only consent. Defendant maintains that plaintiff consented to the text messages by providing his telephone number to defendant when arranging service, and the messages only provided information with respect to service.

Plaintiff counters the text messages had dual purposes. Specifically, they had an informational purpose as well as a marketing purpose. Because the text messages had a dual purpose, plaintiff asserts they violated the TCPA when sent by defendant. In addition, plaintiff admits that while researching his claims, he “encountered a strong potential argument against Count[] II” that “text messages do not constitute prerecorded voice messages.” Doc. #25, ¶ 43(a). However, he argues that defendant has waived this “appropriate and strong” argument by not raising it.

It is well-established that the “court may dismiss *sua sponte* [under Rule 12(b)(6)] when it is patently obvious that the plaintiff could not prevail on the facts alleged, and allowing him an opportunity to amend his complaint would be futile.” Hall, 935 F.2d at 1110 (quotation marks and citation omitted). Here, based on the facts alleged and existing case authority, it is patently obvious that plaintiff cannot state a TCPA claim against defendant for making a call using “an artificial or prerecorded voice.” See Soliman, 101 F.4th at 186 (text message is not a “artificial voice”); see also Trim v. Reward Zone USA, LLC, 76 F.4th 1157, 1161 (9th Cir. 2023) (“prerecorded voice” requires audible sounds and affirming dismissal because a text message did not include an audible component). Because plaintiff cannot prevail on the facts alleged in the complaint and allowing him an opportunity to amend his complaint would be futile in light of existing law, the court concludes that Count II is subject to dismissal with prejudice under Rule 12(b)(6).

State Law Claims

Under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental jurisdiction if it “has dismissed all claims over which it has original jurisdiction.” The Tenth Circuit has stated that “[w]hen all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state law claims.” Koch v. City of Del City, 660 F.3d 1228, 1248 (10th Cir. 2011) (quoting Smith v. City of Enid ex rel. Enid City Comm’n, 149 F.3d 1151, 1156 (10th Cir. 1998)). Here, the court concludes that dismissal of all claims over which it has original jurisdiction—the TCPA claims, is appropriate under Rule 12(b)(6). The only remaining claims are state law claims against defendant. The court declines to exercise supplemental jurisdiction over those claims and will remand those claims to state court for further proceedings.

Conclusion

Accordingly, for the reasons stated, plaintiff’s Motion to Remand [Doc. #11] and Motion to Disqualify [Doc. # 10] are **DENIED**.

Defendant’s Motion to Dismiss [Doc. #4] is **GRANTED** to the extent all claims under the federal Telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. § 227, are **DISMISSED WITH PREJUDICE** under Fed. R. Civ. P. 12(b)(6). Pursuant to 28 U.S.C. § 1367(c)(3), the court declines to exercise supplemental jurisdiction over the remaining state law claims and **REMANDS** this action to state court for further proceedings with respect to those claims.

In light of the court’s disposition, the other pending motions [Doc. Nos. 6, 9, 12, 13, and 14] are **STRICKEN as MOOT**.

IT IS SO ORDERED.

Dated this 5th day of August, 2025.



JOE HEATON
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeal
Tenth Circuit

July 7, 2026

Christopher M. Wolpert
Clerk of Court

ANTHONY TRUPIA,

Plaintiff - Appellant,

v.

BOB MOORE ENTERPRISES, L.L.C.,

Defendant - Appellee.

No. 25-6130
(D.C. No. 5:25-CV-00568-HE)
(W.D. Okla.)

ORDER

Before **MATHESON, MORITZ, and FEDERICO**, Circuit Judges.

The appellant's motion for leave to file an oversized petition for rehearing is granted. The clerk shall file the petition as of the date it was received.

Appellant's petition for rehearing is denied by the panel that rendered the decision.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

Per Curiam

APPENDIX D

STATUTORY AND RULE PROVISIONS INVOLVED

47 U.S.C. § 227 provides in relevant part:

(a) Definitions

As used in this section—

(1) The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

* * *

(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice

—

* * *

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the

called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States;

* * *

(3) Private right of action

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

Federal Rule of Appellate Procedure 28(a)(8) provides:

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

* * *

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);