

VICTORY FOR TRAVEL + LEISURE: Court Dismisses Claim Over Prerecorded Calls

Article By:

Brittany A. Andres

A bit of background.

The plaintiff Vernicky Hodge purchased two timeshare properties from the Defendant Travel + Leisure. In making those purchases, Hodge agreed to make certain monthly payments. Although Hodge would make her payments on time *most* of the times, *sometimes* she would payment her payments a few days late. In those instances, Hodge alleges Defendant would call her cell phone (sometimes three times a day), to collect on her missed/late payment. (I'm sure we've been here, right?). According to Hodge, Defendant used **prerecorded voicemails** to contact her. Based on receipt of the prerecorded calls, Hodge filed suit against Travel + Leisure.

Now, here's the key: the use of prerecorded calls. This is the crux of Hodge's claim, and once again, we're seeing a plaintiff sue over receiving prerecorded calls. As Eric has mentioned countless times, companies that use prerecorded calls to reach consumers really ramp up their risk exposure.

As a litigator, I come across many prerecorded call cases and it is quite unfortunate.

However, there is a good outcome here. Stick with me.

Defendant moved to dismiss Hodge's TCPA claim arguing that Hodge failed to sufficiently allege that Defendant used prerecorded voicemails to contact her.

At the pleading stage, a defendant can move to dismiss a claim if there are not sufficient factual allegations supporting an element of the claim.

Here, Plaintiff sues Travel + Leisure for violations of Section 227(b) of the TCPA, which makes it a violation to use an ATDS or an artificial or prerecorded voice without prior express consent.

Because an ATDS is not at issue, Plaintiff must allege sufficient allegations to demonstrate a prerecorded call or an artificial voice was used.

The Court noted Hodge only made two factual allegations regarding prerecorded calls:

- Hodge alleged that “she would be left prerecorded messages purportedly from ‘Sarah from Wyndham Vacation Resorts’ ” when declining to answer Defendant’s calls.
- Hodge alleged that “[o]n answered calls, Plaintiff would similarly be greeted by an artificial or prerecorded voice message.”

Other than these allegations, Hodge simply alleged, in conclusory fashion, that Defendant used prerecorded and/or artificial voice messages and placed dozens of calls to Plaintiff’s cell phone using a prerecorded voice message. But the Court found that these allegations are merely conclusory and conclusory allegations are not sufficient to state a claim. A complaint must contain sufficient *factual* allegations.

Therefore, the Court dismissed Hodge’s TCPA claim, with leave to amend.

Unfortunately, it is rare that a Court will dismiss a claim based on a pleading deficiency without giving the plaintiff another try to remedy the deficiency. But regardless, this is a win for Travel + Leisure.

We will keep a close eye on this one to see if it makes it passed the pleadings stage.

Hodge v. Travel + Leisure Co., Case No.: 5:24-cv-06116-EJD, 2025 WL 327741 (N.D. Cal. Jan., 29, 2025)

© 2025 Troutman Amin, LLP

National Law Review, Volume XV, Number 31

Source URL: <https://natlawreview.com/article/victory-travel-leisure-court-dismisses-claim-over-prerecorded-calls>