

ANOTHER BIG VICARIOUS LIABILITY WIN FOR TCPA DEFENDANT: Nevada Court Holds Providing Scripts and Training Alone Insufficient for TCPA Agency Liability

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Hi TCPAWorld! Another huge vicarious liability win for a TCPA defendant!

The United States District Court for the District of Nevada has dismissed **with prejudice** all claims alleged by Plaintiff Kelly Usanovic (“Usanovic”) against Americana LLC (DBA Berkshire Hathaway HomeServices Nevada Properties or “BHHS”). *Kelly Usanovic v. Americana, L.L.C.*, No. 2:23-cv-01289-RFB-EJY, 2025 WL 961657 (D. Nev. Mar. 31, 2025). The court concluded that Usanovic failed to plausibly allege that BHHS could be held liable for unsolicited calls made by its affiliated real estate agents under federal agency law principles.

Kelly Usanovic filed a class action lawsuit in August 2023 against BHHS alleging violations of the TCPA. Specifically, Usanovic claimed BHHS agents repeatedly called her cell phone despite it being listed on the National DNC Registry.

Usanovic alleged that BHHS should be vicariously liable under the TCPA, arguing that the company had provided training materials encouraging agents to cold-call consumers using third-party vendors like RedX, Landvoice, Vulcan7, and Mojo—vendors who purportedly supplied phone numbers on the National DNC Registry. Usanovic alleged these materials showed BHHS’s control and authorization of agents’ unlawful calls, seeking to hold BHHS responsible via agency theories of actual authority, apparent authority, and ratification.

Well, Judge Richard F. Boulware II disagreed and granted BHHS’s motion to dismiss **WITH PREJUDICE** reasoning that vicarious liability under the TCPA requires establishing a true agency relationship under federal common-law agency principles.

The court found that although BHHS was alleged to have provided general scripts, training, and recommendations on dialers and vendors, these actions alone were insufficient to establish an agency relationship. Critically, the Court underscored that Usanovic failed to allege essential elements of agency, such as BHHS’s direct control over the agents’ day-to-day call activities, the agents’ working hours, or their choice of leads. Simply offering resources and optional training sessions does not establish the requisite control necessary for vicarious liability under the TCPA.

On actual authority, the Court concluded that merely providing guidance to agents does not demonstrate authorization or instruction to call numbers listed on the Do Not Call Registry.

Regarding apparent authority, the Court stated that Usanovic did not plead any statements from BHHS that could reasonably lead her to believe the agents were authorized to violate the TCPA. The mere identification of agents as affiliated with BHHS was deemed insufficient.

Finally, for ratification, the Court found no allegations that BHHS knowingly accepted benefits from agents' unauthorized calls or acted with willful ignorance.

Thus, because Usanovic's complaint lacked plausible facts to support any of these common law agency theories, the court dismissed the TCPA claims **with prejudice**—denying further amendment due to prior opportunities to correct these deficiencies.

There you have it! Another court ruling that knowledge of illegality is required for vicarious liability to attach!

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