

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Deanne Niedziela v. Viator, Inc., Tripadvisor, Inc., and Does 1-50,
inclusive

Niedziela v. Viator · No. 8:24-cv-01224-JWH-JDE · Decided September 25, 2025

SUMMARY

The United States District Court for the Central District of California grants in part and denies in part defendants Viator, Inc. and Tripadvisor, Inc.’s motion to dismiss a negligence action arising from injuries sustained during a Costa Rica tour booked through Viator. The court holds that Section 230 immunity applies to portions of the claim based on publishing or failing to vet third-party content, but does not foreclose claims based on an alleged failure to warn or Viator’s material contribution through its Badge of Excellence. The excerpt begins consideration of defendants’ additional argument that Viator’s Terms of Use waived liability.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	John W. Holcomb
JURISDICTION	United States District Court for the Central District of California
DECIDED	September 25, 2025
DOCKET	8:24-cv-01224-JWH-JDE
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss a negligence action arising from injuries sustained during a tour booked through Viator's website. Defendants also sought transfer based on a forum-selection clause, but withdrew that request after consenting to the court's jurisdiction.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts material factual allegations as true and construes them in the light most favorable to the nonmoving party. The complaint must contain sufficient factual matter to state a plausible claim for relief. The court also considered whether amendment could cure the pleading deficiencies under Rule 15(a).

TOPICS

motions to dismiss

negligence

waiver

contracts

civil procedure

PRACTICE AREAS

civil procedure

negligence

internet law

contracts

QUESTIONS PRESENTED

1. Whether Section 230 of the Communications Decency Act immunized Viator and Tripadvisor from Niedziela's negligence claims.
2. Whether an exculpatory clause in Viator's online Terms of Use barred Niedziela's claims.
3. Whether Niedziela adequately pleaded a cognizable basis for liability against Tripadvisor separate from its parent-subsidiary relationship with Viator.
4. Whether Niedziela should be granted leave to amend her claims against Tripadvisor.

HOLDINGS

1. Section 230 did not immunize defendants from liability to the extent Niedziela's negligence claim was based on failure to warn about the tour's risks, because that theory did not seek to hold defendants liable as publishers or speakers for failing to monitor or remove third-party content. Section 230 did apply to the extent the claim was based on advertising or including the tour listing on the website, but the Badge of Excellence allegations sufficiently pleaded material contribution to the listing.
2. The Terms of Use did not bind Niedziela because Viator's booking screen did not provide reasonably conspicuous notice of the terms and therefore did not establish inquiry notice and unambiguous assent.
3. The complaint failed to allege facts supporting a cognizable theory of direct liability against Tripadvisor beyond its parent-subsidiary relationship with Viator, so the claims against Tripadvisor were dismissed without prejudice.
4. Niedziela was permitted to amend her complaint to allege additional facts concerning Tripadvisor's liability.

KEY QUOTATIONS

“In ruling on a Rule 12(b)(6) motion, “all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.”” (III.A)

“But “it is not enough that a claim, including its underlying facts, stems from third-party content for § 230.”” (IV.B.1.b)

“For the Terms of Use to be enforceable, Defendants must show that Niedziela had inquiry notice of the terms” (IV.B.2)

FACTUAL BACKGROUND

Niedziela and her husband booked a Costa Rica tour through Viator after relying on Viator's representations concerning the safety and quality of experiences listed on its platform. The tour listing displayed a Badge of Excellence, stated that the tour was stroller accessible and suitable for most travelers, and did not warn of risks associated with falling branches. During the tour, a large tree branch struck Niedziela, fracturing her spine and paralyzing her. She asserted negligence claims against Viator, Tripadvisor, and Does 1-50.

PROCEDURAL HISTORY

Niedziela filed the action in Orange County Superior Court in May 2024. Defendants removed it to the Central District of California in June 2024 and moved to dismiss. The court granted dismissal without prejudice as to Tripadvisor, denied dismissal as to Viator, and allowed amendment to allege additional facts concerning Tripadvisor.

DISPOSITION

other

CASES CITED

- Am. Family Ass'n v. City & County of San Francisco, 277 F.3d 1114, 1120 (9th Cir. 2002)
- Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000)
- Doe v. United States, 8 F.3d 494, 497 (9th Cir. 1993)
- Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002)
- Gerritsen v. Warner Bros. Entertainment, Inc., 112 F. Supp. 3d 1101, 1020 (C.D. Cal. 2015)
- Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005)
- Calise v. Meta Platforms, Inc., 103 F.4th 732, 736-46 (9th Cir. 2024)
- Kimzey v. Yelp! Inc., 836 F.3d 1263, 1268, 1270 (9th Cir. 2016)
- Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1100-01 (9th Cir. 2009)
- Doe v. Internet Brands, 824 F.3d 846, 848-51 (9th Cir. 2016)
- Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1162 (9th Cir. 2008)
- Dryoff v. Ultimate Software Group, 934 F.3d 1093, 1098 (9th Cir. 2019)
- Lemmon v. Snap, Inc., 995 F.3d 1085, 1094 (9th Cir. 2021)
- Doe v. Reddit, Inc., 2021 WL 5860904, at *5 (C.D. Cal. Oct. 7, 2021)
- Berman v. Freedom Financial Network, LLC, 30 F.4th 849, 856-57 (9th Cir. 2022)
- Meyer v. Uber Technologies, Inc., 868 F.3d 66, 78 (9th Cir. 2017)

- Oberstein v. Live Nation Entertainment, Inc., 60 F.4th 505, 515-16 (9th Cir. 2023)
- Keebaugh v. Warner Bros. Entertainment Inc., 100 F.4th 1005, 1010, 1021 (9th Cir. 2024)
- United States v. Bestfoods, 524 U.S. 51, 61 (1998)
- Opperman v. Path, Inc., 84 F. Supp. 3d 962, 976 (N.D. Cal. 2015)

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