UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Hodge v. Travel + Leisure Co.

Hodge · No. 5:24-cv-06116-EJD · Decided April 11, 2025

SUMMARY

The United States District Court for the Northern District of California denied Travel + Leisure Co.'s motion to dismiss Vernicky Hodge's amended claims under the Telephone Consumer Protection Act and the Florida Consumer Collection Practices Act. The court held that Hodge plausibly alleged receipt of artificial or prerecorded calls and sufficiently alleged harassing communications, and it declined to dismiss for lack of Article III standing or failure to plead that the defendant was a statutory debt collector.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward J. Davila
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 11, 2025
DOCKET	5:24-cv-06116-EJD
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss Plaintiff's second amended complaint for lack of Article III standing and failure to state claims under the Telephone Consumer Protection Act and the Florida Consumer Collection Practices Act.
STANDARD OF REVIEW	For a facial Rule 12(b)(1) standing challenge, the Rule 12(b)(6) standard applies. On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences in the plaintiff's favor, and determines whether the complaint states a plausible claim; legal conclusions couched as factual allegations are not accepted as true.
PRECEDENTIAL VALUE	Unknown; federal district court opinion with no reported citation.

TOPICS

consumer protection · fair debt collection · motions to dismiss · standing · pleadings

PRACTICE AREAS

consumer protection · telephone consumer protection · fair debt collection · federal civil procedure

QUESTIONS PRESENTED

1. Whether Hodge adequately alleged an injury in fact supporting Article III standing for her TCPA and Florida Consumer Collection Practices Act claims.
2. Whether Hodge adequately pleaded that Defendant used an artificial or prerecorded voice in violation of the TCPA.
3. Whether Defendant's alleged consent to receive calls defeated the TCPA claim at the pleading stage.
4. Whether Hodge could add a Florida Consumer Collection Practices Act claim after receiving leave to amend without an express limitation on the scope of amendment.
5. Whether the Florida Consumer Collection Practices Act applies only to statutorily defined debt collectors.
6. Whether Hodge adequately pleaded harassment under section 559.72(7) of the Florida Statutes.

HOLDINGS

1. Because the alleged TCPA violation and the alleged receipt of unsolicited, harassing collection calls themselves constitute the claimed injury, Hodge adequately pleaded injury in fact and her standing questions are inseparable from the merits of her underlying claims.
2. The second amended complaint plausibly stated a TCPA claim by alleging sufficiently uniform, generic, and repetitive messages and call content from which the court could infer the use of an artificial or prerecorded voice.
3. Consent is an affirmative defense on which the defendant bears the burden and is not an element of the plaintiff's prima facie TCPA claim; dismissal based on consent is proper at the pleading stage only when the complaint itself establishes consent.
4. Hodge's addition of the Florida Consumer Collection Practices Act claim was proper because the prior leave to amend was not expressly limited and the claim was based on the same underlying events without apparent prejudice to Defendant.
5. A plaintiff need not plead that the defendant is a statutorily defined debt collector to state a claim under the Florida Consumer Collection Practices Act because the Florida Act applies to any person collecting debts, unlike the federal Fair Debt Collection Practices Act.
6. Hodge adequately pleaded harassment under section 559.72(7) because allegations of multiple calls per day for months, sometimes more than three calls per day, together with Defendant's disregard of her request to stop calling, support a reasonable inference of harassment at the motion-to-dismiss stage.

KEY QUOTATIONS

> *“Hodge pleads an injury in fact by pleading a TCPA violation, so the existence of standing is inseparable from the question of whether Hodge has adequately pled a TCPA violation.”* (at 2)

> *“consent “is an affirmative defense for which the defendant bears the burden of proof.””* (at 4)

> *“the question of whether conduct is harassing or abusive is ordinarily an issue for the factfinder.”* (at 5)

FACTUAL BACKGROUND

Hodge, a California resident, purchased timeshare properties from Travel + Leisure Co. between 2018 and 2019 and allegedly incurred regular payment obligations. When payments became past due, Defendant allegedly called her multiple times per day for months, including after she asked the calls to stop and once at 6:20 a.m. Hodge alleged that the calls and voicemails used uniform, generic, prerecorded content identifying the speaker as “Sarah from Wyndham Vacation Resorts,” requesting a call to the same toll-free number, and lasting approximately 26 seconds.

PROCEDURAL HISTORY

The court previously dismissed Plaintiff's TCPA and California debt-collection claims for failure to state a claim and granted leave to amend. Plaintiff filed a second amended complaint, renewed the TCPA claim, abandoned the California claim, and added a claim under the Florida Consumer Collection Practices Act. Defendant again moved to dismiss. The court denied the motion in its entirety.

DISPOSITION

other

CASES CITED

- Bowen v. Energizer Holdings, Inc., 118 F.4th 1134, 1142 (9th Cir. 2024)
- Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004)
- Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Retail Prop. Tr. v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014)
- Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 101 (1998)
- Spokeo, Inc. v. Robins, 578 U.S. 330, 338, 342 (2016)
- Van Patten v. Vertical Fitness Grp., LLC, 847 F.3d 1037, 1043–44 (9th Cir. 2017)
- Wakefield v. ViSalus, Inc., 51 F.4th 1109, 1117–18 (9th Cir. 2022)
- Trim v. Reward Zone USA LLC, 76 F.4th 1157, 1160 (9th Cir. 2023)
- Smith v. Am.-Amicable Life Ins. Co. of Tex., No. 22-cv-333, 2022 WL 1003762, at *2 (E.D. Pa. Apr. 4, 2022)
- Johansen v. Vivant, Inc., No. 12-cv-7159, 2012 WL 6590551, at *3 (N.D. Ill. Dec. 18, 2012)
- Sams v. Yahoo! Inc., 713 F.3d 1175, 1179 (9th Cir. 2013)

- Jones v. Bock, 549 U.S. 199, 215 (2007)
- Zwerling v. Ford Motor Co., No. 5:19-cv-03622-EJD, 2023 WL 2899524, at *3 (N.D. Cal. Apr. 10, 2023)
- Brown v. Stored Value Cards, Inc., 953 F.3d 567, 574–75 (9th Cir. 2020)
- Vien-Phuong Thi Ho v. ReconTrust Co., 858 F.3d 568, 571 (9th Cir. 2017)
- Turner v. PHH Mortg. Corp., 467 F. Supp. 3d 1244, 1247 (M.D. Fla. 2020)
- Agrelo v. Affinity Mgmt. Servs., LLC, 841 F.3d 944, 952–53 (11th Cir. 2016)
- Alhassid v. Nationstar Mortg. LLC, 771 F. App'x 965, 969 (11th Cir. 2019)
- Helman v. Bank of Am., 685 F. App'x 723, 727 (11th Cir. 2017)
- Verizon Wireless Pers. Commc'ns, LP v. Bateman, 264 So. 3d 345, 351 n.6 (Fla. Dist. Ct. App. 2019)
- Gann v. BAC Home Loans Servicing LP, 145 So. 3d 906, 910 (Fla. Dist. Ct. App. 2014)
- Morgan v. Wilkins, 74 So. 3d 179, 181 (Fla. Dist. Ct. App. 2011)
- Schauer v. Gen. Motors Acceptance Corp., 819 So. 2d 809, 812 (Fla. Dist. Ct. App. 2002)
- Ryman v. Sears, Roebuck & Co., 505 F.3d 993, 994 (9th Cir. 2007)
- Boullosa v. Wells Fargo Bank, N.A., No. 8:22-cv-2642, 2023 WL 3584074, at *3 (M.D. Fla. May 22, 2023)
- Leahy-Fernandez v. Bayview Loan Servicing, LLC, 159 F. Supp. 3d 1294, 1304–05 (M.D. Fla. 2016)
- Story v. J.M. Fields, Inc., 343 So. 2d 675, 677 (Fla. Dist. Ct. App. 1977)
- Lawrence v. FPA Villa Del Lago, LLC, 584 F. Supp. 3d 1105, 1114 (M.D. Fla. 2022)
- Desmond v. Accts. Receivable Mgmt., Inc., 72 So. 3d 179, 181 (Fla. Dist. Ct. App. 2011)
- Schauer v. Morse Operations, Inc., 5 So. 3d 2, 5 (Fla. Dist. Ct. App. 2009)
- McCaskill v. Navient Sols., Inc., 178 F. Supp. 3d 1281, 1296 (M.D. Fla. 2016)

OPINION

Hodge v. Travel + Leisure Co.

PER CURIAM.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VERNICKY V. HODGE, Case No. 5:24-cv-06116-EJD Plaintiff, ORDER DENYING MOTION TO DISMISS

v.

TRAVEL + LEISURE CO., Re: ECF No. 41

Defendant. After the Court dismissed Plaintiff Vernicky Hodge's claims under the Telephone Consumer Protection Act (TCPA) and a California debt collection law, Hodge filed an amended complaint. She renewed her TCPA claim, but she dropped her California claim and replaced it with a claim under Florida's debt collection law: the Florida Consumer Collection Practices Act (Florida Act). Defendant Travel + Leisure Co. again moves to dismiss. Satisfied that Hodge has now met her pleading burden, the Court DENIES the motion.

I. BACKGROUND

Hodge is a California resident who previously purchased timeshare properties from Defendant between 2018 and 2019. Second Am. Compl. (SAC) ¶¶ 4, 10, ECF No. 38. As a timeshare owner, Hodge must make regular payments on her timeshare properties. Id. ¶¶ 9, 14. When Hodge fails to timely make payments, Defendant allegedly calls her to try collecting on those past-due amounts. Id. ¶ 15. According to Hodge, she received multiple such calls per day, to the point that she specifically asked Defendant to stop calling her. Id. ¶¶ 23–24. Nonetheless, those calls purportedly continued, including one call that she received at 6:20 a.m. local time. Id. ¶¶ 27, 29. Hodge also claims that each of these calls used generic, prerecorded messages that all

In response, Hodge contacted a lawyer and filed this lawsuit. Id. ¶ 30. Initially, Hodge asserted claims under the TCPA and a California debt collection law. See Compl., ECF No. 1; Am. Compl., ECF No. 29. However, the Court dismissed both for failure to state a claim. Order, ECF No. 30. Upon amending her complaint, Hodge abandoned her California claim in favor of a new claim under the Florida Act. See SAC. Defendant now moves to dismiss again. Mot., ECF No. 41. This time, in addition to arguing that Hodge has failed to state a claim, Defendant also contends that Hodge lacks Article III standing. Id.

II. LEGAL STANDARD

Defendants can challenge a party's Article III standing under Rule 12(b)(1). Bowen v. Energizer Holdings, Inc., 118 F.4th 1134, 1142 (9th Cir. 2024). Such challenge can either be facial (attacking the sufficiency of the allegations) or factual (challenging the truth of the allegations through evidence). Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). Here, Defendant makes a facial challenge because it does not contest any allegations with evidence. The standard for Rule 12(b)(6) governs facial challenges. Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014). In turn, to survive a Rule 12(b)(6) motion, a plaintiff must allege sufficient facts to establish a plausible legal claim. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). Courts assessing whether plaintiffs have met this bar "accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the [plaintiff]." Retail Prop. Tr. v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014). Courts do not, however, "accept as true a legal conclusion couched as a factual allegation." Iqbal, 556 U.S. at 678 (citation omitted).

III. DISCUSSION

A. Article III Standing

Usually, the Court must confirm its jurisdiction before making any merits determinations. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 101 (1998). Sometimes, though, standing can be inextricably intertwined with the merits in a way that prevents courts from addressing standing

The only standing requirement that Defendant challenges is the need for an "injury in fact." Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016). For Hodge's TCPA claim, "the precise harm" needed to establish injury in fact is the harm caused by a TCPA violation. Van Patten v. Vertical Fitness Grp., LLC, 847 F.3d 1037, 1043 (9th Cir. 2017). As a consequence, Hodge "need not allege any additional harm beyond the one Congress has identified" in the TCPA to plead standing. Id. (quoting Spokeo, 578 U.S. at 342); see also Wakefield v. ViSalus, Inc., 51 F.4th 1109, 1117–18 (9th Cir. 2022). Put differently, Hodge pleads an injury in fact by pleading a TCPA violation, so the existence of standing is inseparable from the question of whether Hodge has adequately pled a TCPA violation.

The same is true of Hodge's claim under the Florida Act. Although there is no Ninth Circuit precedent exactly on point like there is for the TCPA, the Circuit's TCPA precedents explain that "the receipt of unsolicited phones calls" is an injury in fact because it "closely resembles traditional claims for 'invasions of privacy, intrusion upon seclusion, and nuisance.'" Wakefield, 51 F.4th at 1118 (quoting Van Patten, 847 F.3d at 1043). Hodge's Florida Act claim requires her to plead that someone "[w]illfully communicate[d] with [her] with such frequency as can reasonably be expected to harass [her], or willfully engage[d] in other conduct which can reasonably be expected to abuse or harass [her]." Fla. Stat. § 559.72(7). That exactly requires the type of unsolicited phone calls previously held to be an injury in fact in the TCPA context. Hodge can therefore establish standing by pleading her substantive claim under the Florida Act.

Since Hodge's standing is so closely tied to the merits of her underlying claims, the Court does not separately address standing. Instead, Hodge's standing to raise her TCPA and Florida Act claims rise or fall with those claims.

B. TCPA

Hodge claims that Defendant violated the TCPA by using an artificial or prerecorded voice when making calls to Hodge. See Trim v. Reward Zone USA LLC, 76 F.4th 1157, 1160 (9th Cir. 2023). The Court initially dismissed Hodge's claim because she failed to offer non-conclusory allegations from which the Court could infer that Defendant used an artificial or prerecorded

The average person can often tell that she is receiving prerecorded messages when, over the course of multiple calls, the messages that she receives are suspiciously uniform. Hodge has alleged that here. She asserts that whenever Defendants left a message on her phone, the speaker in the message would claim to be "Sarah from Wyndham Vacation Resorts." SAC ¶¶ 19–20. Hodge also alleges that the messages were uniform: they asked Plaintiff to call the same toll-free number; each lasted approximately the same amount of time (26 seconds); and each was generic, without any reference to Hodge's specific information. Id. ¶ 20. Further, when Hodge picked up calls from Defendant, those calls also allegedly contained identical content. Id. ¶ 21. All this is enough for the Court to conclude at the pleading stage, when drawing all inferences in favor of Hodge, that she received artificial or prerecorded messages. Calls with humans on the other side of the line are unlikely to be that uniform. Accordingly, the Court finds that Hodge has stated a TCPA claim. See Smith v. Am.-Amicable Life Ins. Co. of Tex., No. 22-cv- 333, 2022 WL 1003762, at *2 (E.D. Pa. Apr. 4, 2022); Johansen v. Vivant, Inc., No. 12-cv-7159, 2012 WL 6590551, at *3 (N.D. Ill. Dec. 18, 2012).

Defendant counters that Hodge has consented to receive calls, and that is fatal because the TCPA allows companies to use artificial or prerecorded messages when a consumer consents. However, consent “is an affirmative defense for which the defendant bears the burden of proof.” Van Patten, 847 F.3d at 1044. It “is not an element of a plaintiff’s prima facie case.” Id. Hodge therefore had no obligation to negate Defendant’s claim of express consent through her allegations, and the Court can only dismiss Hodge’s TCPA claim on the consent defense if the “allegations in the complaint suffice to establish” consent. Sams v. Yahoo! Inc., 713 F.3d 1175, 1179 (9th Cir. 2013) (quoting Jones v. Bock, 549 U.S. 199, 215 (2007)). Nothing in the SAC, when construed in Hodge’s favor, shows that she consented to artificial or prerecorded messages. As a result, the Court DENIES the motion to dismiss Hodge’s TCPA claim.

C. Florida Act

Before turning to the merits of Hodge’s Florida Act claim, the Court first addresses whether Hodge had leave to add that claim when Hodge’s earlier complaints did not raise the At the outset, the Court observes that it did not expressly limit Hodge in any way when it granted leave to amend. All the Court said was that it “grants Defendant’s motion to dismiss with leave to amend.” Order 1, 5. What is more, even when the Court has expressly limited the scope of amendment to correct specific pleading deficiencies, it has allowed plaintiffs to add new claims in light of the Ninth Circuit’s policy in favor of liberal amendment. See Zwerling v. Ford Motor Co., No. 5:19-cv-03622-EJD, 2023 WL 2899524, at *3 (N.D. Cal. Apr. 10, 2023) (quoting Brown v. Stored Value Cards, Inc., 953 F.3d 567, 574–75 (9th Cir. 2020)). In any case, it is hard to see how the addition of a Florida Act claim causes any prejudice to Defendant given how early this case is in its life and the fact that the Florida Act claim is based on the same underlying events as the TCPA claim. The Court finds nothing inappropriate with Hodge’s decision to add a Florida Act claim and proceeds to consider that claim on the merits.

1. Scope of Coverage

Defendant begins by arguing that Hodge’s Florida Act claim fails because the Act only applies to “debt collectors,” and Hodge has not alleged that Defendant is a debt collector under the Act. Defendant appears to base this argument on a two-step chain of logic. First, the Florida Act expressly instructs courts construing its terms to give “due consideration and great weight . . . to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act” (Federal Act). Fla. Stat. § 559.77(5). Second, the Federal Act applies only to debt collectors. Vien-Phuong Thi Ho v. ReconTrust Co, 858 F.3d 568, 571 (9th Cir. 2017). From this, Defendant concludes that the Florida Act must also apply only to debt collectors, like the Federal Act does. Some courts share that view. Turner v. PHH Mortg. Corp., 467 F. Supp. 3d 1244, 1247 (M.D. Fla. 2020). But the Court disagrees. “Although the [Florida Act] is modeled after the [Federal Act], the two statutes are not identical in all respects.” Agrelo v. Affinity Mgmt. Servs., LLC, 841 F.3d 944, 952–53 (11th Cir. 2016). One way the two differ is that the Federal Act explicitly bars only debt collectors from conducting certain collection activities while the Florida Act applies to any “person” collecting debts. Id. at 953 (first quoting 15 U.S.C. §§ 1692e; then quoting id. § 1692f; and then quoting Fla. statutorily defined debt collector.” Id.; see also Alhassid v. Nationstar Mortg. LLC, 771 F. App’x 965, 969 (11th Cir. 2019); Helman v. Bank of Am., 685 F. App’x 723, 727 (11th Cir. 2017). Florida state courts are in accord. Verizon Wireless Pers. Commc’ns, LP v. Bateman, 264 So. 3d 345, 351 n.6 (Fla. Dist. Ct. App. 2019); Gann v. BAC Home Loans Servicing LP, 145 So. 3d 906, 910 (Fla. Dist. Ct. App. 2014); Morgan v. Wilkins, 74 So. 3d 179, 181 (Fla. Dist. Ct. App. 2011); Schauer v. Gen. Motors Acceptance Corp., 819 So. 2d 809, 812 (Fla. Dist. Ct. App. 2002). On questions of Florida law, the Court must follow Florida’s intermediate appellate courts unless there is evidence that the Florida Supreme Court would reach a different decision. Ryman v. Sears, Roebuck & Co., 505 F.3d 993, 994 (9th Cir. 2007). There is no such evidence here, so the Court finds that failure to plead Defendant is a debt collector does not require dismissal.

2. Harassment

Apart from its argument about the scope of the Florida Act, Defendant also challenges the sufficiency of Hodge’s allegations as to the specific provision of the Act she invokes. Under that provision, willful communications that can reasonably be expected to harass a plaintiff are prohibited. Fla. Stat. § 559.72(7). Defendant claims that Hodge has failed to allege the calls she received were harassing. When trying to determine whether a plaintiff has pled harassment, courts consider a multitude of factors. Boullosa v. Wells Fargo Bank, N.A., No. 8:22-cv-2642, 2023 WL 3584074, at *3 (M.D. Fla. May 22, 2023) (quoting Leahy-Fernandez v. Bayview Loan Servicing, LLC, 159 F. Supp. 3d 1294, 1304–05 (M.D. Fla. 2016)). The most important of those factors are the frequency of calls received and the purpose of those calls. Story v. J.M. Fields, Inc., 343 So. 2d 675, 677 (Fla. Dist. Ct. App. 1977); Lawrence v. FPA Villa Del Lago, LLC, 584 F. Supp. 3d 1105, 1114 (M.D. Fla. 2022) (citation omitted). Although there are no hard and fast rules, courts have found 100 calls made over five months to be indicative of harassment while seven calls over six months are not. Desmond v. Accts. Receivable Mgmt., Inc., 72 So. 3d 179, 181 (Fla. Dist. Ct. App. 2011) (first citing Story, 343 So. 2d at 677; and then citing Schauer v. Morse Operations, Inc., 5 So. 3d 2, 5 (Fla. Dist. Ct. App. 2009)). As for purpose, courts find harassing purpose when calls

Here, Hodge alleges that she received multiple phone calls per day for months, sometimes receiving more than three calls a day. SAC § 25. And even though she does not describe the information that was exchanged on those calls, she does allege that she asked Defendant to stop contacting her, and that Defendant ignored her request. Id. 49] 23-24. This is much closer to 100 calls over five months than the other end of the spectrum, and Defendant’s decision to ignore Hodge’s request it suggests that Defendant was making calls for improper purposes. Granted, the allegations just described are hardly the epitome of clarity and detail. But this case comes to the Court on a motion to dismiss where the Court must draw all inferences in favor of the plaintiff. Retail Prop. Tr., 768 F.3d at 945. Moreover, “the question of whether conduct is harassing or abusive is ordinarily an issue for the factfinder.” McCaskill v. Navient Sols., Inc., 178 F. Supp. 3d 1281, 1296 (M.D. Fla. 2016) (citations omitted). That being so, Hodge’s allegations are enough to support an inference of harassment at this stage of litigation. The Court DENIES

5 the motion to dismiss Hodge’s Florida Act claim.

|| Iv. CONCLUSION

The Court DENIES the motion to dismiss. a IT IS SO ORDERED. 2 |) Dated: April 11, 2025 =O.

EDWARD J. DAVILA

United States District Judge Case No: 5:24-cv-06]16-FIJD