

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 78

24STCV13201

MONICA SANCHEZ vs CARS.COM INC., A DELAWARE CORPORATION

January 27, 2025

8:30 AM

Judge: Honorable Tiana J. Murillo
Judicial Assistant: D. Castro-Martinez
Courtroom Assistant: A. Comick

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Victoria Knowles for Scott J. Ferrell via LA Court Connect

For Defendant(s): Daniel Joseph Taylor via LA Court Connect

NATURE OF PROCEEDINGS: Case Management Conference; Hearing on Demurrer - without Motion to Strike

The Court's tentative ruling is posted online for the parties to review.

The matter is called for hearing.

The plaintiff and defendant submit to the Court's tentative ruling via email.

After reading and considering all moving documents, the Court adopts its tentative ruling as the final order of the Court, as follows:

The Demurrer - without Motion to Strike filed by Cars.com Inc. on 10/28/2024 is Sustained without Leave to Amend.

I. BACKGROUND

On September 24, 2024, plaintiff Monica Sanchez ("Plaintiff") filed a First Amended Complaint ("FAC") for violations of California Invasion of Privacy Act ("CIPA") against defendant Cars.Com Inc., d/b/a www.cars.com. The FAC sets forth a single cause of action for violation of CIPA, Penal Code section 638.51(a) against Defendant.

On October 28, 2024, Defendant filed a demurrer to the FAC on the grounds that the cause of action fails to state a claim against it.

On December 30, 2024, Plaintiff filed an opposition.

On January 6, 2025, Defendant filed a reply.

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II. PROCEDURAL REQUIREMENT

Before filing a demurrer, the demurring party is required to meet and confer with the party who filed the pleading demurred to for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. [Code of Civil Procedure (“CCP”) § 430.41(a).]

Defendant’s counsel declares that he contacted Plaintiff’s counsel to meet and confer on the issue, which raised issues nearly identical to the prior motion. After an exchange of email communications, Plaintiff’s counsel confirmed that no further meet and confer would resolve the issues. (Taylor Decl. ¶ 4.) The Court finds that Defendant has met the meet and confer requirement.

III. LEGAL STANDARD

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994.)

“A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. (CCP §§ 430.30, 430.70.) At the pleading stage, a plaintiff need only allege ultimate facts sufficient to apprise the defendant of the factual basis for the claim against him. (Semole v. Sansoucie (1972) 28 Cal. App. 3d 714, 721.) A “demurrer does not, however, admit contentions, deductions or conclusions of fact or law alleged in the pleading, or the construction of instruments pleaded, or facts impossible in law.” (S. Shore Land Co. v. Petersen (1964) 226 Cal.App.2d 725, 732 (internal citations omitted).)

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IV. REQUESTS FOR JUDICIAL NOTICE

Defendant requests the Court take judicial notice of (1) Minute Order, dated March 13, 2024, of the Superior Court of California, Central District, in Jose Licea vs. Hickory Farms LLC, Case No. 23STCV26148, (2) Minute Order, dated July 9, 2024, of the Superior Court of California, Central District, in Rebeka Rodriguez v. Fountain9, Inc., Case No. 24STCV04504, (3) Minute Order, dated April 23, 2024, of the Superior Court of California, Central District, in Miltita Casillas v. Transitions Optical, Inc., Case No. 23STCV30742, and (4) Minute Order, dated September 24, 2024, of the Superior Court of California, Central District, in Marielita Palacios v. Fandom, Inc., Case No. 24STCV11264.

Plaintiff requests the Court take judicial notice of (1) Minute Order filed on September 17, 2024 in Jurdi v. MSC Cruises (USA) LLC, No. 24STCV14098 (Cal. Super. Ct. L.A. Cty. Sept. 17, 2024), (2) Minute Order filed on October 28, 2024 in Heiting v. IHOP Restaurants, LLC, No. 24STCV14453 (Cal. Super. Ct. L.A. Cty. Oct. 28, 2024), and (3) Minute Order filed on November 21, 2024 in Price v. Entravision Communications Corp., No. 24SMCV02630.

The requests are granted. (Cal. Evid. Code § 452(d).)

V. DISCUSSION

CIPA

Penal Code section 638.51 states, “[e]xcept as provided in subdivision (b), a person may not install or use a pen register or a trap and trace device without first obtaining a court order pursuant to Section 638.52 or 638.53.” (Cal. Pen. Code, § 638.51, subd. (a).)

The FAC alleges in pertinent part the following. Plaintiff is a consumer privacy advocate who works as a “tester.” Plaintiff visited Defendant’s website, <https://www.cars.com> (the “Website”) in April 2024, and without Plaintiff’s knowledge or consent, Defendant secretly accessed Plaintiff’s device and installed “pen register” and “trap and trace” (“PR/TT”) tracking software. To make the Website load on a user’s internet browser, the browser sends a request to Defendant’s server, and in response to the request, the server sends a response back with instructions on how to properly display the Website. The server’s instruction causes at least one PR/TT beacon to be installed on the Website user’s internet browser, which sends the user’s IP

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address to the PR/TT beacon's software provider. The PR/TT beacon's software provider uses such PR/TT beacon to receive, store, and analyze data collected from website visitors, including visitors of Defendant's Website. Defendant installs the PR/TT beacon in the user's browsers to collect users' IP address. Because the PR/TT Beacon captures outgoing information –the IP address- from visitors to websites, the FAC alleges it is therefore a “pen register” for the purposes of Penal Code section 638.50(b). Plaintiff alleges the Website caused a PR/TT beacon to be installed on Plaintiff's browser to collect Plaintiff's IP address and to further collect additional information. Defendant therefore violated Pen. Code section 638.51(a).

Here, the FAC provides a lengthy exposition of theoretical possibilities of what website operators “can” do to deploy tracking software and how a website owner “can” correlate a grouping of fragments to create a unique digital profile of each website visitor. The FAC uses these theories of “can-dos” with very few specific allegations pertaining to Plaintiff or the Defendant and relies on “likening” alleged practices of companies to Defendant. (E.g. FAC ¶ 67: “In other words, companies like Defendant are collecting users' data and sending it to its PR/TT beacon's developer for a profit including by optimizing its marketing campaigns”.) The Court notes that Plaintiff's FAC is nearly identical to other CIPA actions filed by other tester plaintiffs in this department.

The Court is not aware of, nor do the parties cite, any controlling published authority in California on the issue of whether internet communications constitute “pen registers” or “track and trace devices” within the meaning of the CIPA. The Court therefore beings with the plain language and legislative intent of the statute.

“ ‘Pen register’ means a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents of a communication.” (Cal. Pen. Code, § 638.50, subd. (b).) It does not include a “device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider, or a device or process used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.” (Ibid.)

Likewise, a “trap and trace device” is a “device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.” (Cal. Pen. Code, § 638.50, subd. (c).)

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In construing a statute, the court’s fundamental task is to ascertain legislative intent to effectuate the purpose of the statute, and by giving the words their usual and ordinary meaning. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) If statutory terms are ambiguous, the court may examine extrinsic sources and choose sources that comport most closely with the Legislature’s apparent intent to promote the general purpose and avoid construction that would lead to absurd consequences. (*Id.* at 272.) The Penal Code commands construction of its provisions “according to the fair import of their terms, with a view to effect its objects and to promote justice”, but at the same time, penal statutes include only those offenses coming clearly within import of the language, and will not be given application beyond their plain intent. (See *DeMille v. Am. Fed'n of Radio Artists* (1947) 31 Cal. 2d 139, 156; Pen. Code §4.) Further, with construction of a criminal statute, the defendant must be given the benefit of every reasonable doubt as to whether the statute applies to him. (*In re Zerbe* (1964) 60 Cal. 2d 666, 668.)

Generally, CIPA criminalizes wiretapping, eavesdropping, interception or recording of telephone communications without authorization from a court. (Cal. Pen. Code, §§ 630, et seq.) Here, the legislative history of the CIPA suggests that “pen register” and “track and trace devices” refers to devices or processes that are used to record or decode dialing, routing, addressing, or signaling information from telephone numbers, not internet communications such as websites. Penal Code section 638.51 and its legislative history suggest that section 638.51 applies only to telephone-tracking technology, not IP address-collecting software used by a website to improve its user functionality and the effectiveness of its marketing. The California legislature enacted Assembly Bill 929, the genesis of CIPA section 638.51, in 2015 to create a comprehensive framework governing how California law enforcement officials could obtain and use a pen register or trap and trace device, just like its federal counterpart. In enacting Assembly Bill 929, the California Legislature adopted the same authorization provision in CIPA section 638.52 that courts have relied on under the federal Pen Register Act to find that the Act applied only to mechanical, telephone number-tracing technology, not technology used to collect the IP address from a desktop computer. Thus, the legislative history of the CIPA suggests that “pen register” and “track and trace devices” refer to devices or processes that are used to record or decode dialing, routing, addressing, or signaling information from telephone numbers, and not internet communications such as websites.

Both parties rely on several federal cases and other trial court rulings as persuasive authority. The Court is not persuaded by those authorities, and therefore finds that Plaintiff fails to state a cause of action under Penal Code section 638.51.

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B. Reasonable Expectation of Privacy

Plaintiff's allegations are premised on the principle that her constitutional right to privacy has been violated by the Website collecting her IP address. (FAC ¶ 6.) The elements of a state constitutional cause of action for invasion of privacy, are (1) identification of a specific, legally protected privacy interest, and (2) a reasonable expectation of privacy on plaintiff's part. (See *Hill v. Nat'l Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1, 36 (Hill).) Customs, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy. (Id. at 36.)

Plaintiff alleges that "the IP address enables a device to communicate with another device—such as a computer's browser communicating with a server..." (FAC ¶ 35) and is a basic function of accessing the internet. (*United States v. Forrester* (9th Cir. 2008) 512 F.3d 500, 510 (Forrester) ["Every computer or server connected to the Internet has a unique IP address."].) Plaintiff alleges that through an IP address, the user's geographical location "can" be determined. (FAC ¶ 36.) However, a person has no legitimate expectation of privacy in information voluntarily turned over to third parties, even if the information is revealed on the assumption that it will be used only for a limited purpose and that the confidence placed in the third party will not be betrayed. (*United States v. Morel* (1st Cir. 2019) 922 F.3d 1, 8 (Morel) quoting *United States v. Miller* (1976) 425 U.S. 435, 443.) Here, Plaintiff chose to visit Defendant's website and allowed the Website to collect Plaintiff's IP address. (Morel 922 F.3d at 9 ["an internet user generates the IP address data ... only by making the affirmative decision to access a website or application."].) Internet users rely on third-party equipment to engage in communication, and thus "Internet users have no expectation of privacy in the to/from addresses of their messages or the IP addresses of the websites they visit because they should know that this information is provided to and used by Internet service providers for the specific purpose of directing the routing of information." (Forrester, 512 F.3d at 510.)

"[C]ourts have long distinguished between the contents of a communication (in which a person may have a reasonable expectation of privacy) and record information about those communications (in which a person does not have a reasonable expectation of privacy)...And we have allowed the warrantless collection of email and IP addresses under the same reasoning because email and IP addresses "constitute addressing information and do not necessarily reveal any more about the underlying contents of communication than do phone numbers." (*In re Zynga Priv. Litig.* (9th Cir. 2014) 750 F.3d 1098, 1108, citing Forrester, 512 F.3d at 509-511.) As alleged by Plaintiff, here "[t]he PR/TT beacon does not collect the content of Plaintiff's electronic communications with the Website." (FAC ¶ 82.)

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Thus, even if, arguendo, the collection of Plaintiff's IP address constitutes operation of a pen register, Plaintiff has no reasonable expectation in the privacy of her computer's IP address since she chose to access the Website.

VI. CONCLUSION

The demurrer filed by Cars.Com Inc., d/b/a www.cars.com against Plaintiff's FAC is SUSTAINED without leave to amend.

Order to Show Cause Re: Dismissal is scheduled for 05/05/2025 at 08:30 AM in Department 78 at Stanley Mosk Courthouse.

Moving party is to give notice.