

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

West District, Santa Monica Courthouse, Department P

**24SMCV02630**

**CAROL PRICE vs ENTRAVISION COMMUNICATIONS CORPORATION**

November 21, 2024

8:30 AM

Judge: Honorable Elaine W. Mandel

Judicial Assistant: E. Sam

Courtroom Assistant: A. Hamilton

CSR: None

ERM: None

Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Robert Tauler by Camrie Ventry (LACC)

For Defendant(s): Wynter Lavier Deagle (LACC); Dane Brody Chanove (LACC)

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

The parties are provided with the Court's tentative ruling, available on the Court's website for review.

The matters are called for hearing.

Both sides submit on the tentative ruling.

The tentative ruling is adopted as the final order of the Court as follows:

**Final Ruling**

Price v. Entravision Communications Corp., Case no. 24SMCV02630

Hearing date November 21, 2024

Defendant Entravision Communications' Demurrer to the Complaint

Plaintiff Price sues defendant Entravision Communications Corp. for violations of the California Trap and Trace Law (Cal. Penal Code §638.51) arising from defendant's alleged use of information collection software ("TikTok software") on its website. Defendant demurs, arguing the complaint fails to allege facts sufficient to constitute a cause of action.

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." Holiday Matinee, Inc. v. Rambus, Inc. (2004) 118 Cal.App.4th 1413, 1420. A complaint "is sufficient if it alleges ultimate rather than evidentiary facts," Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 550, but plaintiff must allege essential facts "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. Doheny Park Terrace Homeowners Ass'n., Inc. v. Truck Ins. Exchange (2005)

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132 Cal.App.4th 1076, 1099.

Defendant argues plaintiff fails to allege that her data was collected. Plaintiff alleges: (1) defendant operates TikTok software on its website (Complaint paras. 1 and 11); (2) the TikTok software collects data from every visitor of the website (Complaint paras. 12 – 17); and (3) plaintiff visited the website on January 7, 2024 (Complaint para. 2). Plaintiff’s allegations that defendant collects data from every visitor to its website and she visited that website establish her claim for unlawful collection of private data.

Defendant next argues plaintiff has not pleaded use of a pen register as required by Penal Code §638.51 per Application of U.S. of Am. For an Ord. Authorizing Use of a Cellular Tel. Digital Analyzer (C.D. Cal. 1995) 885 F. Supp. 197. Plaintiff argues defendant’s reliance on federal law is misplaced and distinguishable and “Neither CIPA nor the modern version of the federal statutes cited in Digital Analyzer limit the definition of ‘pen register’ or ‘trap and trace device’ to physical devices attached to telephone lines. Instead, these provisions currently define pen register and trap and trace as a ‘device or process’ without referencing physical attachment to anything. (See Pen. Code, § 638.50; 18 U.S.C. § 3127.)” *Heiting v. Taylor Fresh Foods, Inc.* (July 28, 2024) L.A. Sup Court Case No. 24STCV12891 at p. 4. No allegation of a physical pen register device is necessary.

Defendant argues it is an electronic communications service provider within the meaning of Penal Code §638.51, so is exempt from liability. Penal Code §638.51(b)(1) states: “(b) A provider of electronic or wire communication service may use a pen register or a trap and trace device for any of the following purposes: (1) To operate, maintain, and test a wire or electronic communication service.”

Plaintiff argues whether defendant is exempt is a question of fact, not suitable for the court to determine on demurrer, where all allegations must be taken as true. The court agrees.

Defendant argues plaintiff failed to plead the use of a device or process as required by Penal Code §638.51. Plaintiff alleges “The TikTok Software is a process to identify the source of electronic communication by capturing incoming electronic impulses and identifying dialing, routing, addressing and signaling information generated by users, who are never informed that the Website is collaborating with the Chinese government to obtain their phone number and other identifying information.” Compl. para. 19. This is sufficient to allege existence and use of a process under Penal Code §638.51.

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Defendant argues punitive damages should be dismissed because plaintiff failed to plead oppression, fraud or malice. Plaintiff argues a reasonable jury could find defendant's conduct of engaging in purported criminal activity is vile or contemptible and that intentionally invading consumers' privacy without their knowledge or consent was done with willful and conscious disregard to the privacy rights of website visitors.

Further, courts routinely hold that there is no cause of action for punitive damages, so punitive damages are not subject to demurrers. See, e.g., *Grieves v. Superior Ct.* (1984) 157 Cal. App. 3d 159, 163. The proper method of challenging a prayer for punitive damages is a motion to strike.

OVERRULED. Defendant to answer within 15 court days.

\*\*\*\*\*END OF FINAL RULING\*\*\*\*\*

The Demurrer - without Motion to Strike filed by Entravision Communications Corporation on 08/07/2024 is Overruled.

Pursuant to oral stipulation, the Case Management Conference scheduled for 11/21/2024 is continued to 02/20/25 at 08:30 AM in Department P at Santa Monica Courthouse.

The parties are ordered to file a joint status conference report, due five (5) court days prior to the status conference date. The joint status report is not to exceed three (3) pages, include input from all parties, and shall be e-filed by plaintiff's counsel.

Notice is waived.