

NOOM SCORES A CIPA VICTORY: Noom Wins On Motions to Dismiss Based on Jurisdictional Grounds

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Hi CIPAWorld! The Baroness here and it's HOT CIPA SUMMER!

More CIPA news for you folks

In a recent case in the Southern District of California, Noom, the renowned digital health and wellness platform, successfully navigated two motions to dismiss, asserting lack of subject matter jurisdiction and personal jurisdiction.

Here are the facts.

Noom, a Delaware corporation with its principal place of business in New York, runs the website <http://www.noom.com>, helping individuals achieve their weight loss goals.

Plaintiff Erika Mikulsky alleged that Noom embedded various Session Replay code from third-party providers on its website to analyze user interactions (nothing out of the ordinary, right?)

Mikulsky alleged that while she visited Noom's website, her communications were captured by Session Replay Code and sent to various Session Replay Providers in violation of CIPA.

Subject Matter Jurisdiction

Hopefully you folks know, to establish standing, "a plaintiff must show (i) that he suffered an **injury** in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely **caused** by the defendant; and (iii) that the injury would likely be **redressed** by judicial relief." *TransUnion*, 141 S. Ct. at 2203 (citing *Lujan*, 504 U.S. at 560–61).

To establish the first element of standing, "injury in fact," "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (citing *Lujan*, 504 U.S. at 560). "A 'concrete' injury must be 'de facto'; that is, it must actually exist." *Id.* at 340, 136 S.Ct. 1540. A concrete injury must be "real" and not "abstract." *Id.*

Noom argued that Mikulsky lacked Article III standing. Specifically, she failed to adequately allege that she suffered an injury in fact.

In response, Mikulsky argued that she sufficiently alleged an injury in fact based on the allegations that she “typ[ed] her personal information in text fields.”

But so what?

The Court stated that to survive a motion to dismiss, a plaintiff must identify the “**specific personal information she disclosed** that implicates a protectable privacy interest.”

Mikulsky did not do so. Instead, she conclusory alleged that she disclosed “personal information” without stating what she disclosed. Indeed, the Court stated, Mikulsky’s allegations “did not allow the Court to determine whether [she] ha[d] a protectable privacy interest in that information. Without more, the Court was unable to determine whether the ‘personal information’ [she] inputted [was] protected or whether it was merely information akin to basic contact information that would not trigger a protectable privacy interest.”

Accordingly, Mikulsky’s conclusory allegation was insufficient to allege a concrete harm that is required for Article III standing.

Great win for Noom.

And there’s more.

Personal Jurisdiction

General Jurisdiction

The Court also found that Mikulsky failed to establish that the Court had general jurisdiction over Noom.

To satisfy general jurisdiction, a defendant’ conduct must be so “continuous and systematic as to render [them] essentially at home in the forum state.” LNS Enterprises LLC v. Cont’l Motors, Inc., 22 F.4th 852, 859 (9th Cir. 2022).

Mikulsky argued that because Noom is registered to do business in California, that its contacts are sufficient to satisfy general jurisdiction. However, the Court stated because Noom is a Delaware corporation with a principal place of business in New York, Noom is not “at home” in California. Therefore, the Court did not have general jurisdiction over Noom.

Specific Jurisdiction

Plaintiff also argued that the Court had specific jurisdiction over Noom. However, just because Noom had a website that was accessible to California consumers, Mikulsky failed to show **conduct directly targeting California**.

More specifically, the Court stated “What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.”

Therefore, the Court granted Noom's motion to dismiss, but Mikulsky gets another chance: the Court granted her leave to amend her complaint. Will she amend? We're excited to see how this unfolds.

Mikulsky v. Noom, Inc., No. 3:23-CV-00285-H-MSB, 2023 WL 4567096 (S.D. Cal. July 17, 2023).

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