

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAEVE CAMPLISSON; DAVID
SANCHEZ; and S.D., a minor, by and
through their legal guardian ELVIS
DICIERO, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

ADIDAS AMERICA, INC., an Oregon
corporation,

Defendant.

Case No.: 25-cv-603-GPC-KSC

ORDER:
(1) GRANTING DEFENDANT’S
REQUEST FOR JUDICIAL NOTICE
(2) DENYING THE MOTION TO
DISMISS

[ECF No. 19]

Before the Court are Defendant’s request for judicial notice, ECF No. 20, and
Defendant’s motion to dismiss Plaintiffs’ complaint, ECF No. 19. The motion to dismiss
has been fully briefed. ECF Nos. 22, 23. On November 14, 2025, the Court held a hearing
on this matter. ECF No. 31.

For the reasons below, the Court DENIES Defendant’s motion to dismiss.

///
///

1 **FACTUAL BACKGROUND**

2 Defendant adidas (“Defendant”) owns and uses its website www.adidas.com/us,
3 allowing consumers to buy and access information about the brand’s products. ECF No. 3
4 (“Compl.”) ¶ 21; ECF No. 19 (“Mot.”) at 4.¹ As part of its website, Defendant has
5 installed tracking pixels TikTok Pixel and Microsoft Bing (together, “Trackers”). Compl.
6 ¶ 3. Tracking pixels are “small, almost-invisible image[s]...embedded in a website or an
7 email to track a user’s activities.” *Id.* ¶ 23. When a user visits a website, the website’s
8 code installs the tracker into the user’s browser and can, at that point, track user
9 interactions “on its platform in order to place targeted advertisements.” *Id.* ¶¶ 26-27. The
10 tracked data can include “the user’s operating system, the type of website or email used,
11 the time when the website was accessed, the user’s IP address, and whether there are
12 cookies that previously have been set by the server hosting the pixel image.” *Id.* ¶ 23.

13 Each of the Trackers have different tracking capabilities. The TikTok Pixel
14 “enables website owners to track users’ interactions with the website” and “collects and
15 reports supplementary metadata, including timestamp (when an action took place), IP
16 address (which can be used to determine the geographic location of the user), unique
17 identifiers (which are assigned to a user’s device or browser session that distinguish one
18 user from another), device details (make, model, operating system), and browser
19 information.” *Id.* ¶ 30. It also uses “fingerprinting”—a process that collects information
20 about the website user and matches it to information within the existing TikTok database
21 across other websites with the pixel installed. *Id.* ¶ 31. This process associates
22 information gathered from the pixel with personally identifying information, allowing
23 one to track specific device activity. *Id.* TikTok Pixel also utilizes “AutoAdvanced
24

25
26 ¹ Throughout the order, the pagination for docketed documents is derived from the
27 numbering generated by the ECF system.

1 Matching,” which allows personal information (e.g., name, date of birth, address) to be
2 sent to TikTok and identify a targeted individual with certainty. *Id.* ¶ 34. This information
3 is used for analytics and advertising purposes for the website owner, but TikTok can also
4 share the data with third parties. *Id.* ¶¶ 35-36. Plaintiffs allege concerns that this private
5 data could also be shared with China to surveil the user, given previous concerns from
6 Congress, independent tech watchdogs, and human rights groups. *Id.* ¶¶ 38-42.

7 In comparison, the Microsoft Bat Bing Tracker similarly places a cookie on the
8 user’s browser to collect information, which is tracked by both the website owner and
9 Microsoft. *Id.* ¶ 43. This information includes a unique Microsoft ID, which “track users’
10 activity across the internet.” *Id.* ¶ 44.

11 Defendant does not actively notify users of the Trackers on its website. However,
12 the website has a link to its Terms and Conditions as well as its Privacy Policy. The
13 Terms and Conditions outlines that third-party trackers, such as cookies, are used for
14 targeted advertising. Mot. at 11. It also “explicitly directs consumers on how to opt out of
15 the collection of their data.” *Id.* The Privacy Policy “describe[s] that cookies and other
16 tracking technologies are implemented on the browser in order to collect and store data,
17 including the ability to recognize the users’ devices to deliver relevant advertisements.”
18 Compl. ¶ 50.

19 Access to the Terms and Conditions and Privacy Policy is located in a hyperlink at
20 the “very bottom” or footer of the website in “small font.” *Id.* ¶ 51. The Defendant
21 maintains this location pursuant to the California Online Privacy Protection Act
22 (“CalOPPA”), Cal. Bus. & Prof. Code § 22575 *et seq.* Mot. at 12.

23 Plaintiffs, like other members of the defined Class, visited the adidas website and
24 did not “consent to having their personally identifiable and addressing information
25 collected, stored, or disseminated.” *Id.* ¶ 54. Thus, Plaintiffs maintain that their “injuries
26
27
28

1 occurred at the moment their information was improperly acquired by” Defendant. *Id.* ¶
2 56.

3 PROCEDURAL HISTORY

4 On March 14, 2025, Plaintiffs Maeve Complisson, David Sanchez, and S.D., a
5 minor, (collectively, “Plaintiffs”) filed a class action complaint against Defendant for
6 allegedly violating the California Invasion of Privacy Act (“CIPA”) when Defendant
7 installed and used tracking pixels on Plaintiffs’ and the Class’ browsers, which collected
8 their private information without their consent. ECF No. 1. Because Class members’
9 information would be stored via a tracking pixel on the Defendant’s website, Plaintiffs
10 argue these website trackers constitute a “pen register” under Cal. Penal Code §
11 638.50(b) and, without the Class members’ consent, violate CIPA § 638.51. ECF No. 3
12 (“Compl.”) ¶¶ 4-5. Defendant moves to dismiss the complaint for lacking Article III
13 standing and statutory standing and for failing to state a claim under Federal Rule of Civil
14 Procedure 12(b)(6). ECF No. 19 (“Mot.”) at 13-29.

15 LEGAL STANDARD

16 A. Federal Rule of Civil Procedure 12(b)(1)

17 Rule 12(b)(1) permits challenges to a court’s subject matter jurisdiction and
18 includes a challenge for lack of Article III standing. *See Chandler v. State Farm Mut.*
19 *Auto. Inc. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). Article III, Section 2 the United
20 States Constitution requires that a plaintiff have standing to bring a claim. *See Lujan v.*
21 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing requires that a
22 plaintiff show that he has (1) “suffered an injury in fact” that is “concrete and
23 particularized” and “actual or imminent” (2) “that is fairly traceable to the challenged
24 conduct of the defendant,” and (3) “that is likely to be redressed by a favorable judicial
25 decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338-39 (2016) (citing *Lujan v.*
26
27
28

1 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The plaintiff has the burden to allege
2 Article III standing. *See Lujan*, 504 U.S. at 561.

3 “At the pleading stage, general factual allegations of injury resulting from the
4 defendant's conduct may suffice, for on a motion to dismiss we ‘presum[e] that general
5 allegations embrace those specific facts that are necessary to support the claim.’” *Lujan*,
6 504 U.S. at 561 (citation omitted); *Cal. Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094,
7 1100 (9th Cir. 2023) (when “standing is challenged on the basis of the pleadings,” we
8 must “accept as true all material allegations of the complaint” and “construe the
9 complaint in favor of the complaining party.”).

10 **B. Federal Rule of Civil Procedure 12(b)(6)**

11 Rule 12(b)(6) allows a court to dismiss a complaint for “failure to state a claim
12 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Dismissal under Rule
13 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient
14 facts to support a cognizable legal theory. *Election Integrity Project Cal., Inc. v. Weber*,
15 113 F.4th 1072, 1081 (9th Cir. 2024) (citing *Navarro v. Block*, 250 F.3d 729, 732 (9th
16 Cir. 2001)). To survive a motion to dismiss, the complaint must contain a “short and
17 plain statement showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2),
18 backed by sufficient facts that make the claim “plausible on its face.” *Ashcroft v. Iqbal*,
19 556 U.S. 662, 678, (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547
20 (2007)). Plausibility requires “more than a sheer possibility that a defendant has acted
21 unlawfully.” *Iqbal*, 556 U.S. at 678. Rather, it requires enough factual content for the
22 court to “draw the reasonable inference that the defendant is liable for the misconduct
23 alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). In reviewing the plausibility of a
24 complaint, courts must “accept factual allegations in the complaint as true and construe
25 them in the light most favorable to the non-moving party.” *Dent v. Nat'l Football*
26 *League*, 968 F.3d 1126, 1130 (9th Cir. 2020). But courts do not accept as true allegations

1 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.
2 *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 954 (9th Cir. 2023). Ultimately, the court
3 must be able to “draw the reasonable inference that the defendant is liable for the
4 misconduct alleged.” *Iqbal*, 556 U.S. at 663.

5 Where a motion to dismiss is granted, “leave to amend should be granted ‘unless
6 the court determines that the allegation of other facts consistent with the challenged
7 pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight Sys., Inc.*,
8 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture*
9 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)).

10 **REQUEST FOR JUDICIAL NOTICE & INCORPORATION BY REFERENCE**

11 Generally, on a motion to dismiss, courts will limit their review to the contents of
12 the complaint and may only consider extrinsic evidence that is properly presented as part
13 of the complaint. *See Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001).
14 However, under Federal Rule of Evidence 201, a district court may take notice of facts
15 not subject to reasonable dispute that are capable of accurate and ready determination by
16 resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

17 The incorporation by reference doctrine “is a judicially created doctrine”, where
18 the court “treats certain documents as though they are part of the complaint itself.” *Khoja*
19 *v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018); *Lee v. City of Los*
20 *Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

21 Defendant asks the Court to incorporate by reference and take judicial notice of
22 Defendant’s archival version of its Terms and Conditions as well as its Privacy Policy.
23 ECF No. 20. Defendant also requests judicial notice of 78 separate civil actions. *Id.*
24 Plaintiff requests judicial notice of the First Amended Complaint filed in *Licea v. Hickory*
25 *Farms LLC*, No. 23STCV26148, 2023 WL 11113637 (Superior Court of California, Los
26 Angeles County Dec. 4, 2023).

1 Defendant’s archival versions of its Terms and Conditions and Privacy Policy are
2 incorporated by reference doctrine because the complaint references the details of those
3 two exhibits. Compl. ¶¶ 50-51. Additionally, Defendant’s 78 civil actions and Plaintiff
4 First Amended Complaint from *Licea* are relevant to the instant case and are matters of
5 public record, so the Court may take judicial notice of them “without converting a motion
6 to dismiss into a motion for summary judgment.” *Lee*, 250 F.3d at 689 (quotations and
7 citations omitted). But the Court will not take judicial notice of the truth of any disputed
8 facts contained in those public records. *See id.*

9 DISCUSSION

10 Defendant moves to dismiss, arguing that the complaint fails to allege a concrete
11 privacy harm and, thus, lacks standing. Mot. at 14. The Defendant also argues that
12 Plaintiffs fail to state a claim under Rule 12(b)(6). *Id.* In response, Plaintiffs argue that
13 they have standing under CIPA and Article III because they have suffered an injury-in-
14 fact and the Trackers constitute a “pen register” and are unlawful to use under CIPA. *See*
15 ECF No. 22 (“Opp.”).

16 I. STANDING

17 A plaintiff “bears the burden of establishing standing.” *Lopez v. Candaele*, 630
18 F.3d 775, 785 (9th Cir. 2010). A plaintiff “must demonstrate standing for each claim he
19 or she seeks to press and for each form of relief sought.” *Washington Env’t Council v.*
20 *Bellon*, 732 F.3d 1131, 1139 (9th Cir. 2013) (citing *DaimlerChrysler Corp. v. Cuno*, 547
21 U.S. 332, 352 (2006)).

22 Here, Defendant argues that Plaintiffs do not meet (1) statutory and (2)
23 constitutional standing requirements. Specifically, Defendant maintains Plaintiffs have
24 failed to allege an injury in fact because Plaintiffs only plead a bare “procedural
25 violation” that does not accord to traditional privacy harms and legislative intent nor does
26 it allege enough detailed facts to establish concrete harm. Mot. at 7-16.

1 Here, Plaintiffs have specifically alleged that their personally identifiable
2 information was recorded without their consent, which violates the Plaintiffs right of
3 privacy. Thus, Plaintiffs have sufficiently alleged statutory standing. *See, e.g., Shah v.*
4 *Fandom, Inc.*, 754 F. Supp. 3d 924, 932 (N.D. Cal. 2024).

5 **B. Article III Standing – Injury in Fact**

6 To establish Article III standing, an injury must be “concrete, particularized, and
7 actual or imminent; fairly traceable to the challenged action; and redressable by a
8 favorable ruling.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quotation
9 marks omitted). An injury is “particularized” if it affects “the plaintiff in a personal and
10 individual way.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). In addition, for an
11 injury to be “concrete”, it must be “de facto,” meaning that it is “real” and not “abstract.”
12 *Id.* “[I]ntangible harms” can also be “concrete” such as “reputational harms, disclosure of
13 private information, and intrusion upon seclusion” or those “specified by the Constitution
14 itself.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

15 Where the plaintiff alleges an “intangible harm,” the Court assesses the identified
16 injury-in-fact by looking to “both history and the judgment of Congress” or the
17 legislature that enacted the provision. *Spokeo*, 578 U.S. at 340-41 (quotation marks
18 omitted); *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1273 (9th Cir. 2019) (looking to “[t]he
19 judgment of the Illinois General Assembly” to inform the Article III standing inquiry for
20 a claim alleging a violation of an Illinois privacy statute). First, historical practice can
21 indicate “whether an alleged intangible harm has a close relationship to a harm that has
22 traditionally been regarded as providing a basis for a lawsuit in English or American
23 courts.” *Spokeo*, 578 U.S. at 341. Second, a legislature's pronouncement may elevate de
24 facto injuries that were previously inadequate in law to the status of concrete, legally
25 cognizable injuries. *Id.*

1 However, even if the legislature has “grant[ed] a person a statutory right and
2 purport[ed] to authorize that person to sue to vindicate that right,” that alone is not
3 sufficient for standing. *Id.* “When a legislature has enacted a ‘bare procedural’ protection,
4 a plaintiff ‘cannot satisfy the demands of Article III’ by pointing only to a violation of
5 that provision, but also must link it to a concrete harm.” *Campbell v. Facebook, Inc.*, 951
6 F.3d 1106, 1117 (9th Cir. 2020) (quoting *Spokeo*, 578 U.S. at 342) (emphasis in original).
7 In contrast, if the legislature identifies a substantive right, a plaintiff may bring a claim
8 against the infringement of that right without “alleg[ing] any further harm to have
9 standing.” *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 983–84 (9th Cir. 2017); *see also*
10 *Campbell*, 951 F.3d at 1118 (concrete interests protected by the Electronic
11 Communications Privacy Act and the California Invasion of Privacy Act, which protect a
12 consumer's “substantive privacy interest” in his communications against someone
13 intercepting those communications “who does not have the right to access them”).

14 Defendants argue there is no concrete injury in fact because Plaintiffs’ claims are
15 a) not supported by legislative intent and b) inconsistent with traditional privacy harms.

16 **1. Legislative Intent**

17 Defendant contends that CIPA was meant to apply to landline telephones and not
18 to internet technologies that had not yet been invented when the statute was enacted. Mot.
19 at 20. Defendant also argues that construing the statute to a website’s collection of IP
20 addresses would “create absurd results” and disrupt internet commerce. *Id.* at 21. The
21 Defendant goes so far as to say, “the internet would cease to function.” *Id.*

22 However, legislators did not limit the statutory language to only telephone
23 technologies. *See, e.g., Javier v. Assurance IQ, LLC*, No. 21-16351, 2022 WL 1744107,
24 at *1 (9th Cir. May 31, 2022); *Greenley v. Kochava, Inc.*, 684 F. Supp. 3d 1024, 1050
25 (S.D. Cal. 2023); *Shah v. Fandom, Inc.*, 754 F. Supp. 3d 924, 933 (N.D. Cal. 2024).
26 Instead, they focused on broadly “protect[ing] right of privacy of the people of the state.”
27

1 Cal. Penal Code § 630. In fact, in passing CIPA, legislators have recognized that “the
2 invasion of privacy resulting from the continual and increasing use of such devices and
3 techniques has created a serious threat to the free exercise of personal liberties.” *Id.*

4 This broad language is focused on elevating the privacy injuries and has not
5 limited itself to a specific technology. There is no indication of a bare procedural
6 protection on the part of the legislature, as discussed below. Thus, Plaintiffs’ claim of
7 privacy harms from the Trackers fall within the scope of the statute, and analysis of
8 legislative intent does not indicate a lack of standing.

9 2. Traditional Privacy Harms

10 Defendant argues that Plaintiffs do not implicate traditional privacy harms because
11 the information was not sensitive and was not disseminated or misused. Mot. at 17.
12 Defendant maintains, by not having these characteristics, the alleged injury is not
13 concrete and particularized.

14 As mentioned above, an intangible injury, such as a privacy harm, is “concrete”
15 when it bears a “close relationship to harms traditionally recognized as providing a basis
16 for lawsuits in American courts.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021).
17 Within this understanding, “violations of the right to privacy have long been actionable at
18 common law.” *Patel v. Facebook*, 932 F.3d 1264, 1272 (9th Cir. 2019) (quoting
19 *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 983 (9th Cir. 2017)). More specifically, this
20 right “encompass[es] the individual's control of information concerning his or her
21 person.” *Eichenberger*, 876 F.3d at 983 (quoting *U.S. Dep't of Justice v. Reporters*
22 *Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989)). In fact, the Ninth Circuit
23 recognizes that “the statutory claims, the legislative history and statutory text demonstrate
24 that Congress and the California legislature intended to protect these historical privacy
25 rights when they passed...CIPA.” *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d
26 589, 598 (9th Cir. 2020). CIPA codifies “a substantive right to privacy, the violation of
27

1 which gives rise to a concrete injury sufficient to confer standing.” *Id.* There is no
2 requirement that there be additional injury beyond the violation of that right or that the
3 information collected must necessarily be sensitive and misused. *See, e.g., Conohan v.*
4 *Rad Power Bikes Inc.*, No. CV 25-0106 PVC, 2025 WL 1111246, at *5 (C.D. Cal. Apr. 3,
5 2025).

6 Defendant, in turn, relies on *Popa*, arguing the Ninth Circuit clarified that the harm
7 must be “embarrassing, invasive, or otherwise private.” *Popa v. Microsoft Corp.*, 153
8 F.4th 784, 791 (9th Cir. 2025). However, Defendant’s reliance on *Popa* is misplaced.
9 Rather than introducing new case law that adds heightened requirements for privacy
10 harms, *Popa* uses the same common law rules discussed above and evaluates the specific
11 facts of that case. *Popa* involved a claim against the defendant’s use of session-replay
12 technology, which collected information on what products the plaintiff browsed and
13 where her mouse hovered while on the website. *Id.* at 786. Given that the information
14 concerned how the plaintiff interacted with the site rather than her personal, private
15 information, the *Popa* court found that the nature of the collected information was not
16 “embarrassing, invasive, or otherwise private” and did not fall within the traditional
17 privacy harms at common law. *Id.* at 791-92.

18 This is distinguishable from the facts presented in this case, where the collection of
19 Plaintiffs’ information concerns their person, is much broader in scope, and has been
20 found to be a privacy harm in a wide variety of cases. *See, e.g., Gabrielli v. Haleon US*
21 *Inc.*, No. 25-CV-02555-WHO, 2025 WL 2494368 (N.D. Cal. Aug. 29, 2025) (“[T]he
22 session-replay technology [in *Popa*] was not alleged to track anything beyond her
23 interactions with the website she chose to visit, and the information gathered was only
24 alleged to be used by the owner of that website. In contrast, [the plaintiff here] alleges
25 that the cookies [the defendant] stores on users’ devices allow third parties ‘to track and
26 collect data in real time regarding ... user input data,’ which includes ‘[t]he information
27
28

1 the user entered into the Websites' form fields, including search queries, the user's name,
2 age, gender, email address, location, and/or payment information, demographic
3 information,' and also 'device information, session information, and/or geolocation
4 data.'). Here, rather than just recording clicks and movements on the Defendant's
5 website, Plaintiffs have alleged that the Trackers on Defendant's website have collected a
6 broad set of their personal identifying and addressing information without their consent
7 and in violation of CIPA. This claim maintains a violation of privacy, particularly in the
8 control of their own information. Thus, the injury-in-fact is in accordance with traditional
9 privacy harms and is concrete. Plaintiffs do not lack Article III standing.

10 **II. RULE 12(b)(6): FAILURE TO STATE A CLAIM**

11 Defendant argues that Plaintiff has failed to "state a claim upon which relief can be
12 granted." Fed. R. Civ. P. 12(b)(6). Specifically, Defendant maintains there is a failure
13 because 1) cookies are not "pen registers" under CIPA's plain text and legislative intent;
14 2) alternatively, Defendant consented to installing the "pen registers" on its site as the
15 "user;" and 3) alternatively, Plaintiffs agreed to the Privacy Policy and, thus, consented to
16 the cookies. Mot. at 14. The Court takes each of Defendant's arguments in turn.

17 **A. CIPA Pen Register**

18 Section 638.50 defines pen register as "a device or process that records or decodes
19 dialing, routing, addressing, or signaling information transmitted by an instrument or
20 facility from which a wire or electronic communication is transmitted, but not the
21 contents of a communication." Cal. Penal Code § 638.50(b). This definition has been
22 understood to be intentionally broad and not limited to specific technology, as "all CIPA
23 provisions are to be interpreted in light of the broad privacy-protecting statutory purposes
24 of CIPA." *Javier v. Assurance IQ, LLC*, 2022 WL 1744107, at *1-2 (9th Cir. May 31,
25 2022); *see also Matera v. Google Inc.*, No. 15-CV-04062-LHK, 2016 WL 8200619, at
26
27
28

1 *20 (N.D. Cal. Aug. 12, 2016). Thus, a pen register can encapsulate internet
2 communications.

3 Here, Plaintiffs have alleged that the Trackers were installed on Plaintiffs’ and
4 Class members’ browsers and collected personally identifying and addressing
5 information, such as IP addresses. Compl. ¶ 55. Defendants, in turn, argue that trackers
6 cannot be a pen register because it only captures “*certain specific* outgoing information”
7 rather than a technology “*installed on devices* that allow law enforcement to identify *all*
8 outgoing communications *from that device.*” Mot. at 24 (emphasis in original).
9 Additionally, Defendants contend that the information collected through fingerprinting is
10 substantive rather than just dialing, routing, addressing, and signaling information, thus
11 making the claim outside the scope of the statute. *Id.* at 24-25.

12 Turning to Defendant’s first argument, Section 638.50’s language does not limit a
13 pen register to a process that collects *all* information. Limiting the statute’s intentionally
14 broad language in such away would take away from CIPA’s purpose of protecting
15 privacy, making it underinclusive. *See Fregosa v. Mashable, Inc.*, No. 25-CV-01094-
16 CRB, 2025 WL 2886399, at *5 (N.D. Cal. Oct. 9, 2025) (“Courts interpreting CIPA have
17 consistently treated the broad statutory language as intentional and significant.”).

18 Additionally, most cases in this and other districts have also recognized that
19 website-based trackers can plausibly constitute a pen register. *See, e.g., Greenley v.*
20 *Kochava, Inc.*, 684 F. Supp. 3d 1024, 1050 (S.D. Cal. 2023) (finding “a private
21 company's surreptitiously embedded software” that “identifies consumers, gathers data,
22 and correlates that data through unique ‘fingerprinting’” can be a pen register); *Zarif v.*
23 *Hwareh.com, Inc.*, 789 F. Supp. 3d 880 (S.D. Cal. 2025) (same); *Moody v. C2 Educ. Sys.*
24 *Inc.*, 742 F. Supp. 3d 1072, 1076 (C.D. Cal. 2024) (“Plaintiff's allegations that the
25 TikTok Software is embedded in the Website and collects information from visitors
26 plausibly fall within the scope of §§ 638.50 and 638.51.”); *but see Kishnani v. Royal*
27

1 *Caribbean Cruises Ltd.*, No. 25-CV-01473-NW, 2025 WL 1745726, at *4 (N.D. Cal.
2 June 24, 2025) (finding a tracker’s fingerprinting did fall within the language of § 638).
3 This is true even if only IP addresses are collected. *See, e.g., Shah v. Fandom, Inc.*, 754
4 F. Supp. 3d 924, 931 (N.D. Cal. 2024) (finding tracking software that record IP addresses
5 to plausibly constitute a pen register); *Mirmalek v. Los Angeles Times Commc'ns LLC*,
6 No. 24-CV-01797-CRB, 2024 WL 5102709, at *4 (N.D. Cal. Dec. 12, 2024) (same);
7 *Gabrielli v. Haleon US Inc.*, No. 25-CV-02555-WHO, 2025 WL 2494368, at *11 (N.D.
8 Cal. Aug. 29, 2025) (same).

9 This Court agrees with those cases. Plaintiffs have sufficiently alleged that the
10 Trackers record Class members’ personal information, including the addressing
11 information contained in an IP address, and thus plausibly constitute pen registers.

12 **B. Consent Exception**

13 Though in most cases a pen register requires a court order, a pen register may be
14 used “[i]f the consent of the user of that service has been obtained.” Cal. Penal Code §
15 638.51(b)(5). Defendant argues that, if the Trackers are pen registers, the Trackers may
16 be lawfully used because (1) Defendant consented and (2) Plaintiffs consented.

17 **1. Defendant’s Consent**

18 Defendant first maintains that its consent defeats Plaintiffs’ claim. Specifically,
19 Defendant contends that it is a “user” of the Trackers and have, thus, consented to the use
20 and installation of the Trackers on its website. Mot. at 27.

21 However, this argument is unconvincing. The point at issue is that the Trackers
22 were installed on Class member’s personal browsers and collected their information.
23 Thus, the consent exception does not turn on whether Defendant can consent to cookies
24 and trackers on its website but whether Plaintiffs and Class members consented to the
25 placement of Trackers on their browsers. *See Rodriguez v. Autotrader.com, Inc.*, 762 F.
26 Supp. 3d 921 (C.D. Cal. 2025) (“Given the location and degree of control that the visitor
27
28

1 has over the software, it only seems natural that the visitor, not Defendant, would be
2 software's user in these circumstances.”); *Moody v. C2 Educ. Sys. Inc.*, 742 F. Supp. 3d
3 1072, 1077 (C.D. Cal. 2024) (finding similar arguments “do not foreclose the possibility
4 that Plaintiff is the relevant user under California law, at least at the motion to dismiss
5 stage”).

6 Thus, Defendant is not the appropriate “user” to defeat Plaintiffs’ claim.

7 **2. Plaintiffs’ Consent**

8 In the alternative, Defendant asserts that Plaintiff has consented to the use of pen
9 registers. Mot. at 27. Defendant’s Privacy Policy states that “cookies and other tracking
10 technologies are implemented on the browser in order to collect and store data.” Compl. ¶
11 50. The Terms and Conditions, “which is binding on all visitors to the website,”
12 incorporates the Privacy Policy. Mot. at 28. Both the Privacy Policy and the Terms and
13 Conditions are in the footer of every page of Defendant’s website, so in Defendant’s
14 view, Plaintiff was put on notice that the website had Trackers and consented to their use.
15 *Id.* at 28-29.

16 Plaintiff responds by highlighting that “Plaintiffs were never notified that
17 [Defendant’s] website used [the] Trackers, and...were never provided a meaningful
18 opportunity to consent to having their data collected.” Opp. at 28. In essence, Plaintiffs
19 maintain that because the Terms and Conditions were not readily visible and because
20 there was no “pop-up window informing users that their data is being collected.” *Id.*

21 For a website user to be contractually bound by a site’s terms, the user need not
22 have actual knowledge of the browsewrap agreement. *Nguyen v. Barnes & Noble Inc.*,
23 763 F.3d 1171, 1177 (9th Cir. 2014). Instead, the website must put “a reasonably prudent
24 user on inquiry notice of the terms of the contract.” *Id.* “Whether a user has inquiry notice
25 of a browsewrap agreement, in turn, depends on the design and content of the website
26 and the agreement's webpage.” *Id.* Still, “[u]nless the website operator can show that a
27
28

1 consumer has actual knowledge of the agreement, an enforceable contract will be found
2 based on an inquiry notice theory only if: (1) the website provides reasonably
3 conspicuous notice of the terms to which the consumer will be bound; and (2) the
4 consumer takes some action, such as clicking a button or checking a box, that
5 unambiguously manifests his or her assent to those terms.” *Berman v. Freedom Fin.*
6 *Network, LLC*, 30 F.4th 849, 856 (9th Cir. 2022).

7 In terms of conspicuousness, many courts have refused to enforce browsewrap
8 agreements “[w]here the link to a website's terms of use is buried at the bottom of the
9 page or tucked away in obscure corners of the website where users are unlikely to see it.”
10 *Nguyen*, 763 F.3d at 1177; *see, e.g., In re Zappos.com, Inc., Customer Data Sec. Breach*
11 *Litig.*, 893 F. Supp. 2d 1058 (D. Nev. 2012) (“The Terms of Use is inconspicuous, buried
12 in the middle to bottom of every Zappos.com webpage among many other links, and the
13 website never directs a user to the Terms of Use.”); *Hines v. Overstock.com, Inc.*, 668 F.
14 Supp. 2d 362 (E.D.N.Y. 2009), *aff'd*, 380 F. App'x 22 (2d Cir. 2010) (finding no notice
15 where plaintiff “could not even see the link to them without scrolling down to the bottom
16 of the screen”).

17 Here, Defendant’s website does not make the Terms and Conditions conspicuous.
18 The website users must, instead, find the details of the terms and the Privacy Policy by
19 scrolling down to the footer of the page. Thus, Defendant does not meet the first
20 requirement to put Plaintiffs on notice.

21 However, even if the notice was conspicuous, the website must provide a
22 mechanism for “affirmative action to demonstrate assent.” *Nguyen*, 763 F.3d at 1178. For
23 example, though Defendant cites to *Moretti* and *Silver* as cases in support of its position,
24 those cases involved websites where affirmative consent was requested. In *Moretti*, “an
25 individual using the Hotwire website cannot complete a booking without checking the
26 ‘Acceptance Box’ acknowledging the acceptance of ‘Hotwire's terms and conditions and
27
28

1 other applicable rules.” *Moretti v. Hertz Corp.*, 2014 WL 1410432, at *3 (N.D. Cal. Apr.
2 11, 2014). *Silver*, similarly, involved a “purchase checkout page [that] required plaintiffs
3 to agree to Instacart's terms of service and privacy policy whenever they placed an
4 order.” *Silver v. Stripe Inc.*, No. 4:20-CV-08196-YGR, 2021 WL 3191752, at *3 (N.D.
5 Cal. July 28, 2021). Defendant’s website only hyperlinked the Terms and Conditions at
6 the footer of the website and did not have a pop-up window or other mechanism that
7 would obtain Plaintiffs’ and Class members’ affirmative consent. Therefore, Defendant
8 does not meet the second requirement to put Plaintiffs on notice.

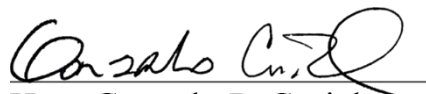
9 In sum, Defendants have not adequately shown that Plaintiffs and Class members
10 were put on notice of the Terms and Conditions and the Privacy Policy that outlined the
11 use of the Trackers. Thus, Plaintiffs have not consented to the use of pen registers on
12 their web browsers.

13 **CONCLUSION**

14 For the foregoing reasons, the Court **DENIES** the Defendant’s motion to dismiss
15 the complaint.

16 **IT IS SO ORDERED.**

17 Dated: November 18, 2025

18 
19 Hon. Gonzalo P. Curiel
20 United States District Judge
21
22
23
24
25
26
27
28