

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

**Civil Division**

Central District, Spring Street Courthouse, Department 2

**25STCV11722**

**CLARK SANTORO vs LULU & GEORGIA, INC.**

November 21, 2025

8:30 AM

Judge: Honorable Steven A. Ellis  
Judicial Assistant: Armando Garcia  
Courtroom Assistant: R. Luna

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Via LACourtConnect Wendy Miele by Kiran Sekhon

For Defendant(s): Via LACourtConnect Samuel Zeev Hyams-Millard

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**NATURE OF PROCEEDINGS:** Case Management Conference; Hearing on Demurrer - without Motion to Strike (CRS # 938162381472)

The Court's tentative ruling is provided to counsel, through the Court's website, before the hearing is held.

The above-captioned matters are called for hearing.

The issues are discussed and argued.

After discussion and argument, the Court's tentative ruling, on the Demurrer, becomes the final ruling of the Court as indicated below:

The Demurrer - without Motion to Strike filed by Lulu & Georgia, Inc., a California corporation on 09/17/2025 is Overruled.

**Background**

On April 22, 2025, Plaintiff Clark Santoro (“Plaintiff”) filed a complaint against Lulu & Georgia, Inc. (“Defendant”) and Does 1 through 25, asserting one cause of action for violations of the California Trap and Trace Law (Penal Code section 638.51.).

Plaintiff alleges that Defendant is the proprietor of a website that serves as an online platform for decor and home furnishings, and Defendant entered into an agreement with TikTok whereby Defendant installed TikTok software on its website that was used to identify website visitors. (Compl., ¶¶ 11–13.) Plaintiff alleges the software acts via a “fingerprinting” process by which it collects as much data as it can from a user, including device and browser information, geographic information, referral tracking, and URL tracking. (Compl., ¶¶ 15–16.) When the website asks for information such as name, date of birth, and address, this information is also collected, and Plaintiff alleges all collected data is sent to TikTok. (Compl., ¶¶ 17–18.)

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On September 19, 2024, Plaintiff visited the Defendant's website, and Defendant did not obtain either express or implied consent from Plaintiff "to be subjected to data sharing with TikTok for the purposes of fingerprinting and de-anonymization." (Compl., ¶¶ 14, 24.)

On September 17, 2025, Defendant filed this demurrer to the Complaint, along with a request for judicial notice. Plaintiff filed an opposition, along with his own request for judicial notice, on October 1. Defendant filed a reply, along with an additional request for judicial notice, on October 7.

**Legal Standard**

Code of Civil Procedure section 430.10 provides:

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

- (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.
- (b) The person who filed the pleading does not have the legal capacity to sue.
- (c) There is another action pending between the same parties on the same cause of action.
- (d) There is a defect or misjoinder of parties.
- (e) The pleading does not state facts sufficient to constitute a cause of action.
- (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.
- (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct.
- (h) No certificate was filed as required by Section 411.35."

A general demurrer under Code of Civil Procedure section 430.10, subdivision (e), tests whether the complaint states a cause of action. (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747; see also

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1 Weil & Brown, California Practice Guide: Civil Procedure Before Trial [2025], ¶ 7:40.)

“We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.” (*Centinela Freeman Emergency Medical Associates v. Health Net of California* (2016) 1 Cal.5th 994, 1010; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; accord *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924; *Marina Pacific Hotel and Suites v. Fireman’s Fund Insurance Company* (2022) 81 Cal.App.5th 96, 104.) All reasonable inferences must be drawn in favor of the pleading. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Marina Pacific Hotel and Suites, supra*, 81 Cal.App.5th at p. 104.) Even “improbable” facts alleged in the pleading must be accepted as true. (*Marina Pacific Hotel and Suites, supra*, 81 Cal.App.5th at pp. 104-105.)

Courts must “liberally construe the pleading” and “give the complaint a reasonable interpretation, reading it as a whole and its parts in context.” (*Id.* at p. 105.)

A complaint must contain a “statement of facts constituting the cause of action, in ordinary and concise language.” (Code Civ. Proc., § 425.10, subd. (a)(1); see also *C.A. v. William S. Hart High School Dist.* (2012) 53 Cal.4th 861, 872 [“the complaint need only allege facts sufficient to state a cause of action”].) Ordinarily, a complaint “is sufficient if it alleges ultimate rather than evidentiary facts.” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) Ultimate facts are those upon which “the right to recover depends” and are “essential” to the cause of action. (*Estes v. Eaton Corp.* (2020) 51 Cal.App.5th 636, 643 fn. 2; see also 1 Weil & Brown, *supra*, ¶ 6:124.)

A plaintiff is required to plead only “the essential facts of [its] case” that are sufficient “to acquaint a defendant with the nature, source and extent of [the] cause of action.” (*Doe, supra*, 42 Cal.4th at p. 550.) Mere boilerplate or pleading of legal conclusions is not sufficient. (*Id.* at p. 551 fn. 5.) But a plaintiff need not allege “each evidentiary fact that might eventually form part of plaintiff’s proof” at trial. (*C.A., supra*, 53 Cal.4th at p. 872.)

A demurrer for uncertainty under Code of Civil Procedure section 430.10, subdivision (f), is “disfavored” and will be sustained “only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” (*A.J. Fistes Corp. v. GDL Best Contractors* (2019) 38 Cal.App.5th 677, 695; accord *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3.) A complaint need not be “a model of clarity” and must only contain sufficient allegations to put the defendants on notice of the claims against them. (*A.J. Fistes Corp., supra*, 38 Cal.App.5th at p. 695.) As the Court of Appeal has observed, “where a

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complaint is in some respects uncertain, ... ambiguities can be clarified under modern discovery procedures.” (*Khoury v. Maly’s of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616; see also 1 Weil & Brown, *supra*, ¶¶ 7:85-7:86.)

A demurrer can be sustained only when it disposes of an entire cause of action. (*Poizner v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119; *Kong v. City of Hawaiian Gardens Redev. Agency* (2003) 108 Cal.App.4th 1028, 1046.)

Leave to amend should be granted when “there is a reasonable possibility that the defect can be cured by amendment.” (*Centinela Freeman, supra*, 1 Cal.5th at p. 1010; *Blank, supra*, 39 Cal.3d at p. 318; *Shaeffer v. Califia Farms* (2020) 44 Cal.App.5th 1125, 1145.)

**Meet and Confer Requirement**

Before filing a demurrer, the parties must “meet and confer in person, by telephone, or by video conference.” (Code Civ. Proc., § 430.41, subd. (a).) This requirement has been satisfied. (Deagle Decl., ¶ 8.)

**Request for Judicial Notice**

Defendants requests that the Court take judicial notice of three documents from the legislative history of Assembly Bill 929 in 2015, three documents from the legislative history of Assembly Bill 1924, and one order in another case in the Los Angeles County Superior Court. Plaintiff requests that the Court take judicial notice of two orders in other cases in the Los Angeles County Superior Court.

The requests are granted. The Court notes that rulings in other superior court cases have no precedential effect.

**Discussion**

Defendant demurs to the sole cause of action in the Complaint, brought under Penal Code section 638.51.

The California Invasion of Privacy Act (“CIPA”) is codified at Penal Code sections 630 through 638.55. Penal Code section 638.51 provides, in pertinent part:

“(a) Except as provided in subdivision (b), a person may not install or use a pen

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register or a trap and trace device without first obtaining a court order pursuant to Section 638.52 or 638.53.

(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.

(2) To protect the rights or property of the provider.

(3) To protect users of the service from abuse of service or unlawful use of service.

(4) To record the fact that a wire or electronic communication was initiated or completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service.

(5) If the consent of the user of that service has been obtained.

....”

(Penal Code, § 638.51.) A “trap and trace device” is defined as:

“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.”

(Penal Code, § 638.50, subd. (c).)

And “electronic communication” is defined as:

“any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, but does not include any of the following:

(A) Any wire communication defined in [Penal Code section 629.51, subd.

(a)(1)].

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(B) Any communication made through a tone-only paging device.

(C) Any communication from a tracking device.

(D) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.”

(Penal Code, § 629.51, subd. (a)(2); see also Penal Code, § 638.50, subd. (a) [providing that the definition of “electronic communication” in section 629.51 applies to the CIPA].)

Penal Code section 637.2 creates a private right of action for any person injured by a violation of the CIPA.

To state a cause of action for violation of section 638.51, it is sufficient for a plaintiff to allege that a defendant installed or used a trap and trace device without first obtaining a court order (unless that use falls into a statutory exception) and that the plaintiff was injured thereby. Plaintiff does so here: he alleges that Defendant installed software onto its website to collect user data to identify the source of incoming electronic pulses without a warrant. (Compl., ¶¶ 13, 21-23.)

Defendant nonetheless argues that Plaintiff fails to state facts sufficient to constitute a cause of action because (1) Plaintiff does not allege that any information tied to him was actually collected; (2) Penal Code section 638.51 applies only to telephone communications, not websites; (3) the TikTok software is not a trap and trace device; and (4) Defendant is statutorily exempt from liability because it is a provider of an electronic communication service through its website.

First, liberally construing the Complaint, as the Court must on a demurrer, Plaintiff sufficiently alleges that his information was collected. (Compl., ¶¶ 13-14, 26.)

Second, the definition of electronic communications is not limited to telephone communications. The legislative history certainly contains some indication of the primary policy concerns that led to the enactment of section 638.51, but the plain language of the statute controls over the references to telephone communications in the legislative history.

Third, Plaintiff adequately alleges in the Complaint that the TikTok software captures more than “the contents of a communication” and in fact captures identifying information regarding website users. (Compl., ¶¶ 13, 15-20, 22-23, 31.)

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Fourth, Plaintiff adequately alleges in the Complaint that the exemption of section 638.51, subdivision (b)(1) does not apply, as the TikTok software is not limited to the purpose of operating, maintaining, or testing of the website. (Compl, ¶ 17.)

Accepting the allegations of the Complaint as true, Plaintiff has stated sufficient facts to constitute a cause of action for violation of section 638.51.

**Conclusion**

The Court **OVERRULES** the demurrer of Defendant Lulu & Georgia, Inc.

Defendant's counsel is to respond to the Complaint, per code.

On the Court's own motion, the Case Management Conference scheduled for 11/21/2025 is continued to 02/26/2026 at 08:30 AM in Department 2 at Spring Street Courthouse.

Plaintiff's counsel is directed to give notice.