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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
NORTHERN (COEUR D’ALENE) DIVISION**

FEDERAL TRADE COMMISSION,)	CASE NO. 2:22-cv-00377-BLW
)	
Plaintiff,)	Honorable B. Lynn Winmill
)	
vs.)	REPLY IN SUPPORT OF MOTION
)	TO DISMISS PURSUANT TO FED.
KOCHAVA INC., corporation)	R. CIV. P. 12(b)(6) [Dkt. 7]
)	
Defendant.)	
)	
)	

TO THIS HONORABLE COURT:

Kochava, Inc. (“Kochava”) hereby respectfully submits its Reply in support of its Motion to Dismiss the Complaint of the Federal Trade Commission (“FTC”) pursuant to Federal Rule of Civil Procedure 12(b)(6).

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I. SUMMARY OF REPLY

The FTC raises a menagerie of overtly politicized but factually inept scenarios resulting in “harms” that rely on a series of bankrupt assumptions every step of the way. The FTC misrepresents repeatedly the legal authorities it cites in order to conjure up an otherwise fictitious harm. None of the cases the FTC cites are remotely relatable to the non-existent harm alleged in the FTC’s Complaint. Every single case the FTC offers involve practices or injuries to consumers already contemplated by more specific laws. The FTC also misconstrues the Federal Trade Commission Act (“FTCA”) requirements and definitions to its own detriment and further fails to show an ongoing violation based on the face of the FTC’s Complaint. Knowingly or not, the FTC concedes in its Opposition that its Complaint fails to state a claim against Kochava because it fails to cite a single law or authority which proscribes Kochava’s legitimate business practices due to an actual (non-speculative) harm.

II. THE FTC’S OPPOSITION CONFIRMS THE COMPLAINT FAILS TO SUFFICIENTLY PLEAD A VIOLATION OF THE FTCA

The only authorities the FTC cites in Opposition do not interpret (or even mention) the FTCA or discuss business practices even remotely similar to Kochava’s services. They are unquestionably inapplicable. The FTC fails to allege Kochava (1) causes or is likely to cause substantial injury to consumers; and (2) that Kochava’s practices are not outweighed by the benefits provided. 15 U.S.C. § 45(n).

A. The FTC’s Opposition Misrepresents How Federal Law Views Geolocation Data and Substitutes Its Interests Over Federal Law

The FTC alludes to personally identifiable information by stating that “tracking a phone to a single-family residence at night reveals the location of the phone owner’s home.” Opp. at 7; Compl. ¶ 22. The geolocation of a consumer’s home is a far cry from the FTCA’s criteria for

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