

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

**In Re T-MOBILE CUSTOMER DATA
SECURITY BREACH LITIGATION**

MDL No. 3019

Master Case No.: 4:21-MD-03019-BCW

THIS DOCUMENT RELATES TO:

JAMES ACHERMANN, individually, and on
behalf of a class of similarly situated persons,

Plaintiff,

4:22-CV-00065-BCW

Northern District of California Case No:
3:21-CV-08995-JD

v.

T-MOBILE USA, INC.,

Defendant.

ORAL ARGUMENT REQUESTED

**PLAINTIFF'S MOTION TO REMAND LAWSUIT TO THE
SAN FRANCISCO COUNTY SUPERIOR COURT**

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY 1

III. LEGAL STANDARD..... 2

 A. REMOVAL..... 2

 B. ARTICLE III STANDING 3

IV. DISCUSSION 6

 A. THERE IS NO SUBJECT-MATTER JURISDICTION OVER THE CLAIMS IN
 THE COMPLAINT BECAUSE PLAINTIFF LACKS ARTICLE III STANDING
 AS TO HIS CLAIMS..... 6

V. CONCLUSION..... 8

TABLE OF AUTHORITIES

Cases

<i>Am. Civil Liberties Union of Nev. v. Lomax</i> , 471 F.3d 1010 (9th Cir. 2006)	3
<i>ASARCO Inc. v. Kadish</i> , 490 U.S. 605 (1989).....	9
<i>Bassett v. ABM Parking Services, Inc.</i> , 2018 WL 987954 (9th Cir. 2018)	6
<i>Bercut v. Michaels Stores Inc.</i> , No. 17-cv-01830-PJH, 2017 WL 2807515 (N.D. Cal. June 29, 2017).....	7
<i>Burns v. Mammoth Media, Inc.</i> , No. CV2004855DDPSKX, 2021 WL 3500964 (C.D. Cal. Aug. 6, 2021)	7
<i>Burton v. MAPCO Exp., Inc.</i> , 47 F.Supp.3d 1279 (N.D.Ala.2014).....	5
<i>Edelstein v. Westlake Wellbeing Props., LLC</i> , No. CV 17-06488-AB (JEMx), 2017 WL 5495153 (C.D. Cal. Nov. 15, 2017).....	8
<i>Gaus v. Miles, Inc.</i> , 980 F.2d 564 (9th Cir. 1992)	2, 9
<i>Green v. eBay Inc.</i> , No. CIV.A.14-1688, 2015 WL 2066531 (E.D.La. May 4, 2015).....	4
<i>Grosset v. Wenaas</i> , 42 Cal.4th 110 (Cal. 2008).....	5
<i>Hansen v. Grp. Health Coop.</i> , 902 F.3d 1051 (9th Cir. 2018)	8
<i>I.C. v. Zynga, Inc.</i> , 2021 WL 3271187 (July 30, 2021)	7
<i>In re Barnes & Noble Pin Pad Litig.</i> , No. 12-cv-8617, 2013 WL 4759588 (N.D.Ill. Sept. 3, 2013).....	5
<i>In re Sci. Applications Int'l Corp. (SAIC) Backup Tape Data Theft Litig.</i> , 45 F. Supp. 3d 14 (D.D.C. 2014).....	5
<i>Kanter v. Warner-Lambert Co.</i> , 265 F.3d 853 (9th Cir. 2001)	2
<i>Larroque v. First Advantage LNS Screening Sols., Inc.</i> , No. 15-cv-04684-JSC, 2016 WL 4577257 (N.D. Cal. Sept. 2, 2016).....	7
<i>Lee v. Hertz Corp.</i> , No. 15-cv-04562-BLF, 2016 WL 7034060 (N.D. Cal. Dec. 2, 2016).....	7
<i>Lewert v. P.F. Chang's China Bistro, Inc.</i> , No. 14-cv-4787, 2014 WL 7005097 (N.D.Ill. Dec. 10, 2014).....	5
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	3

<i>Moore v. United Parcel Serv., Inc.</i> , No. 18-CV-07600-VC, 2019 WL 2172706 (N.D. Cal. May 13, 2019).....	6, 8
<i>Pac. Mar. Ass’n v. Mead</i> , 246 F. Supp. 2d 1087 (N.D. Cal. 2003).....	2
<i>Peters v. St. Joseph Servs. Corp.</i> , 74 F.Supp.3d 847, 2015 WL 589561 (S.D.Tex.2015).....	5
<i>Polo v. Innoventions Int’l, LLC</i> , 833 F.3d 1193 (9th Cir. 2016)	2, 6
<i>Reilly v. Ceridian Corp.</i> , 664 F.3d 38 (3d Cir. 2011).....	5, 8
<i>Remijas v. Neiman Marcus Grp., LLC</i> , No. 14c1735, 2014 WL 4627893 (N.D.Ill. Sept. 16, 2014).....	5
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016).....	3, 6
<i>Storm v. Paytime, Inc.</i> , 90 F.Supp.3d 359, No. 14-cv-1138, 2015 WL 1119724 (M.D.Pa. Mar. 13, 2015).....	4
<i>Syed v. M-I, LLC</i> , 853 F.3d 492 (9th Cir. 2017)	7
<i>Terrell v. Costco Wholesale Corp.</i> , No. C16-1415JLR, 2017 WL 2169805 (W.D. Wash. May 16, 2017).....	7
<i>TransUnion LLC v. Ramirez</i> , 141 S. Ct. 2190 (2021).....	3, 7
<i>U.S. Hotel & Resort Mgmt., Inc. v. Onity, Inc.</i> , No. CIV.13-1499, 2014 WL 3748639 (D.Minn. July 30, 2014)	5
<i>Valdez v. Allstate Ins. Co.</i> , 372 F.3d 1115 (9th Cir. 2004)	2
<i>Van Patten v. Vertical Fitness Grp., LLC</i> , 847 F.3d 1037 (9th Cir. 2017)	3
<i>Wallace v. ConAgra Foods Inc.</i> , 747 F.3d 1025 (8th Cir. 2014)	5, 8
<i>Williams v. Nichols Demos, Inc.</i> , 2018 WL 3046507 (N.D. Cal. June 20, 2018).....	6, 8
Statutes	
28 U.S.C. § 1332.....	2, 8
28 U.S.C. § 1447.....	2
California Civil Code § 1747.....	6
California Civil Code § 1708.150.....	1

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff moves to remand this action to the Superior Court of San Francisco where it was originally filed. This Court should remand the action to state court because there is no basis for federal subject-matter jurisdiction. This action is brought under the California Consumer Privacy Act (“CCPA”) (California Civil Code § 1798.150, *et seq.*), a statute that allows for statutory damages in the absence of actual damages. Plaintiff asserts that Defendant violated the CCPA in derogation of his rights. Plaintiff’s operative complaint alleges a single cause of action under the CCPA seeking statutory damages and injunctive relief only. Plaintiff has not alleged a claim for actual damages or other “concrete” injury as required for Article III standing. This Court therefore does not have subject-matter jurisdiction as the claims brought by the Plaintiff under the CCPA do not satisfy Article III’s “case and controversy” requirement. District courts across the country have remanded similar cases and ruled that the proper course of action when Article III standing is absent is to remand and allow the action to proceed in state court which has concurrent jurisdiction. Because this Court does not have Article III subject-matter jurisdiction, Plaintiff respectfully requests that the Court remand this action to the Superior Court of San Francisco.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On August 19, 2021, Plaintiff filed a putative class action against Defendant in the Superior Court of San Francisco. *See generally*, Def’s. Notice of Removal of Civil Action; ECF No. 1. On September 20, 2021, Plaintiff filed a First Amended Complaint (“FAC”) alleging two causes of action: 1) violation of the CCPA (Civ. Code § § 1798.150) and 2) violation of California’s Unfair Competition Law (Bus. & Prof. Code § 17200).

On November 18, 2018, the San Francisco Superior Court granted Plaintiff’s request to dismiss the Second Cause of Action under the UCL without prejudice. On November 19, 2021, Plaintiff filed a Second Amended Complaint (“SAC”) alleging a single cause of action under the CCPA. (For the Court’s convenience, a copy of Plaintiff’s recently filed SAC is attached to the Declaration of Edward J. Wynne as Exhibit 1.) The SAC is the operative complaint in the Superior Court action.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.