



Privacy & Cybersecurity Update

July 2024

Judge Reverses Ruling on Punitive Damages in California Invasion of Privacy Act Case

Thompson Hine [previously reported](#) on a court's tentative ruling in *Sanchez v. Unite Eurotherapy, Inc.*, Los Angeles County, Case No.: 24-ST-CV-02282, wherein Judge Treu allowed a plaintiff's California Invasion of Privacy Act (CIPA) complaint to include requests for both punitive damages and attorney fees. More specifically, the CIPA case focuses on plaintiff Monica Sanchez's allegation that defendant Unite Eurotherapy, Inc. "secretly deployed spyware" within its corporate website and this activity is essentially the equivalent of "installing 'pen register' and 'trap and trace' software in violation of CIPA."

The complaint provides that by "knowingly violating" CIPA – which is a criminal statute – the defendant acted with "oppression and malice" and therefore the plaintiff is entitled to punitive damages. The complaint also stated that the plaintiff is entitled to attorney fees. The defendant filed a motion to strike arguing for the court to remove both of these forms of relief from the complaint.

In a tentative ruling, Judge Treu concluded that a reasonable jury could find both that the defendant's conduct (i) of engaging in purported criminal activity is vile or contemptible, and (ii) of intentionally invading consumers' privacy without their knowledge or consent was done with willful and conscious disregard to the privacy rights of its website visitors. The judge also noted that California's Code of Civil Procedure authorized a court to award attorney fees in any legal proceeding which has resulted in the enforcement of "an important right affecting the public interest" and plaintiff's rights under CIPA satisfies this threshold. Consequently, in his tentative ruling, Judge Treu denied the defendant's motion to strike the provisions

in plaintiff's complaint requesting punitive damages and attorney fees.

However, **Judge Treu ultimately reversed his tentative ruling on punitive damages.** The court's ruling specifically states: "After considering the arguments of counsel and after reviewing the court's ruling, the court amends its tentative ruling as follows: 1. The motion to strike punitive damages is granted ..." The court, however, also granted the plaintiff 20 days to amend her complaint to address this issue, and continued to allow for the plaintiff to recover attorney fees.

Although many businesses will welcome Judge Treu's reversal with respect to punitive damages, his previous tentative ruling remains on the record. Accordingly, this case will likely encourage plaintiffs to continue to pursue these types of CIPA claims and correspondingly demand punitive damages and attorney fees from defendants. Businesses need to stay abreast of these legal developments, including whether a court rules that third-party cookies, pixels, and tags constitute a pen register or trap and trace device as a matter of law. They also need to continue to assess their websites' technical configurations to minimize risk in this area.

FOR MORE INFORMATION

For more information, please contact:

Steven G. Stransky

216.566.5646, Steve.Stransky@ThompsonHine.com

Jennifer A. Adler

404.407.3694, Jennifer.Adler@ThompsonHine.com

ATLANTA CHICAGO CINCINNATI CLEVELAND COLUMBUS DAYTON LOS ANGELES NEW YORK WASHINGTON, D.C.

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel. This document may be considered attorney advertising in some jurisdictions.

© 2024 THOMPSON HINE LLP. ALL RIGHTS RESERVED.