

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 17 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

AMANDA DAGHALY, individually and  
on behalf of all others similarly situated,

Plaintiff - Appellant,

v.

BLOOMINGDALES.COM, LLC,

Defendant - Appellee.

No. 23-4122

D.C. No.

3:23-cv-00129-L-BGS

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
M. James Lorenz, District Judge, Presiding

Argued and Submitted November 22, 2024  
San Jose, California

Before: BERZON and FRIEDLAND, Circuit Judges, and KENNELLY, District  
Judge.\*\*

Amanda DaghalY appeals the district court's dismissal of her complaint  
without leave to amend for lack of personal jurisdiction. We affirm the dismissal,

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Matthew F. Kennelly, United States District Judge for  
the Northern District of Illinois, sitting by designation.

but on a different basis: Daghaly has not pleaded a concrete injury that confers Article III standing.

Daghaly alleges that Bloomingdales.com, LLC used third-party tracking software to intercept and record the online communications of visitors to its website, in violation of the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code § 631, as well as other California statutes.<sup>1</sup>

CIPA prohibits the unauthorized reading, learning, or use of the “*contents or meaning* of any message, report, or communication.” Cal. Pen. Code § 631(a) (emphasis added). “[T]he California legislature intended to protect . . . historical privacy rights”—rights which “have long been actionable at common law”—“when they passed . . . CIPA.” *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 598 (9th Cir. 2020) (quotation marks omitted). CIPA thus “codif[ies] a substantive right to privacy, the violation of which gives rise to a concrete injury sufficient to confer standing.” *Id.*

Here, the only injury Daghaly asserts is the violation of her privacy rights as codified by CIPA. Daghaly lacks standing because her allegations are insufficient to state a claim under the CIPA provision she invokes. Daghaly makes general allegations about how Bloomingdales.com intercepts website visitors’

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<sup>1</sup> The operative complaint also includes a claim under the federal Wiretap Act, 18 U.S.C. § 2510, *et seq.*, that Daghaly has since withdrawn.

communications and monitors their actions, including the types of information Bloomingdales.com collects and the mechanisms of collection. She also alleges that the information collected is transmitted to third parties. But Daghaly's allegations about her own interactions with the Bloomingdales.com website are sparse. She alleges only that she "visited" and "accessed" the website. She states that she was "subjected to the interception of her Website Communications," but she does not allege that she herself actually made any communications that could have been intercepted once she had accessed the website. She does not assert, for example, that she made a purchase, entered text, or took any actions other than simply opening the webpage and then closing it.

Daghaly points to no authority suggesting that the fact that she visited Bloomingdales.com (as opposed to information she might have entered while using the website) constitutes "contents" of a communication within the meaning of CIPA Section 631. *Cf. Smith v. Maryland*, 442 U.S. 735, 736 n.1, 741 (1979) (finding no Fourth Amendment privacy violation for use of pen registers that "record[] the numbers dialed on a telephone" but "do not acquire the *contents* of communications"). Even inferring from Daghaly's complaint that the fact of her visit to the Bloomingdales.com website was "transmitted to one or more third parties," that transmission cannot without more provide the basis for a Section 631 claim.

Daghaly has thus failed to “clearly allege facts demonstrating” that she “suffered an injury in fact that is concrete, particularized, and actual or imminent.” *Winsor v. Sequoia Benefits & Ins. Servs., LLC*, 62 F.4th 517, 523 (9th Cir. 2023) (alteration omitted) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) and *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)). We therefore affirm the district court’s dismissal of Daghaly’s complaint. Our affirmance is based solely on Daghaly’s failure to establish standing; we have not considered whether the district court properly determined that it lacked personal jurisdiction over Bloomingdales.com.

The district court dismissed the complaint for lack of personal jurisdiction rather than lack of standing, so it did not consider whether to allow amendment so as to plausibly allege standing. We therefore vacate the district court’s entry of final judgment and remand with instructions that the district court grant leave to amend if properly requested. If Daghaly can establish standing after amendment, the district court can consider anew whether specific personal jurisdiction can be established, a question that may be informed by this court’s forthcoming en banc decision in *Briskin v. Shopify, Inc.*, No. 22-15815, *reh’g en banc granted*, 101 F.4th 706 (May 14, 2024).

**AFFIRMED IN PART, VACATED IN PART, and REMANDED.**