

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Frasco v. Flo Health, Inc.

No. 21-cv-00757-JD (N.D. Cal. May 22, 2025) · No. 21-cv-00757-JD · Decided May 22, 2025

SUMMARY

The United States District Court for the Northern District of California resolves cross-motions for summary judgment by Meta and Flo Health in litigation concerning the collection and disclosure of users’ health and reproductive information. The court grants Meta summary judgment on the federal Wiretap Act, CDAFA, aiding-and-abetting intrusion, and UCL claims, while allowing the CIPA claims to proceed in specified respects. The court denies most of Flo’s motion, including as to timeliness and the CMIA claim, but grants judgment on all claims asserted by plaintiff Pietrzyk and certain standalone or agreed-upon claims.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	James Donato
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 22, 2025
DOCKET	21-cv-00757-JD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs and defendants Flo Health, Inc. and Meta filed cross-motions for summary judgment in a putative class action involving alleged disclosure and interception of health and other personal information.
STANDARD OF REVIEW	Summary judgment is appropriate under Federal Rule of Civil Procedure 56(a) when the movant is entitled to judgment as a matter of law and no genuine dispute of material fact requires resolution by a jury.
PRECEDENTIAL VALUE	unpublished district court opinion
PARTIES	Erica Frasco, et al. v. Flo Health, Inc., et al.

TOPICS

- summary judgment
- medical records privacy
- health law
- consumer protection
- evidence

PRACTICE AREAS

civil procedure

privacy law

consumer protection

health law

evidence

QUESTIONS PRESENTED

1. Whether Meta was entitled to summary judgment on plaintiffs' federal Wiretap Act claim based on Flo's consent to Meta's data collection practices.
2. Whether disputed facts precluded summary judgment on plaintiffs' California Invasion of Privacy Act claims against Meta.
3. Whether plaintiffs could establish damage or loss for their California Comprehensive Computer Data Access and Fraud Act claim after exclusion of their proposed expert.
4. Whether Meta was entitled to summary judgment on named plaintiffs' aiding-and-abetting intrusion-upon-seclusion claim and UCL claim.
5. Whether Flo was entitled to summary judgment on statute-of-limitations grounds, based on its class-waiver provision, or on the Confidentiality of Medical Information Act claim.
6. Whether summary judgment was proper on named plaintiffs' implied-contract, unjust-enrichment, and UCL claims and on all claims asserted by plaintiff Pietrzyk.

HOLDINGS

1. Summary judgment was granted to Meta because the undisputed record showed that Flo, a party to the communications, consented to Meta's data collection practices.
2. Summary judgment was denied because genuine disputes of material fact existed concerning consent, the timing and nature of Meta's alleged interception or eavesdropping, intent, and whether communications were intercepted in transit.
3. Summary judgment was granted because plaintiffs lacked admissible, non-speculative evidence establishing damage or loss after their proposed expert was excluded.
4. Summary judgment was denied because a jury could find that Flo's disclosures did not provide constructive notice, that plaintiffs did not learn of the alleged misconduct until January 2021, and that factual issues existed concerning fraudulent concealment.
5. Flo was not entitled to enforce the class waiver in its terms of use for the reasons stated in the court's certification order.
6. Summary judgment was denied because factual disputes existed concerning whether Flo's services and practices involved individually identifiable medical information and whether Flo fell within the statutory provisions governing businesses offering software or mobile applications designed to maintain medical information.
7. Summary judgment was granted to Flo on all claims asserted by Pietrzyk because he began using the Flo App after the class period and plaintiffs did not defend his claims.

KEY QUOTATIONS

“Disputes of fact abound with respect to the scope of consent, the timing of Meta’s “interception” or “eavesdropping,” whether Meta “intended” to intercept communications, whether Meta’s interception occurred while the communications were “in transit,” and the like.” (at 23-28)

“We begin by examining the statutory language, giving it a plain and commonsense meaning.” (at II.4)

FACTUAL BACKGROUND

Plaintiffs alleged that Flo Health and Meta collected, transmitted, or intercepted data generated through the Flo fertility and pregnancy-tracking application, including Custom Event data. The record contained disputes concerning user consent, the timing and nature of Meta's alleged interception, whether the data was identifiable or medical information, and whether users had constructive or actual notice of the alleged misconduct. The court also considered the exclusion of plaintiffs' proposed expert David Hoffman and the fact that named plaintiff Pietrzyk began using the application after the relevant class period.

PROCEDURAL HISTORY

The court resolved motions for summary judgment filed by Flo and Meta. The court granted summary judgment on some claims and denied it on others, allowing specified California Invasion of Privacy Act and Confidentiality of Medical Information Act claims to proceed, including on a classwide basis where stated. The court also denied a request for judicial notice as moot.

DISPOSITION

other

CASES CITED

- Frasco v. Flo Health, Inc. (Flo Health II), No. 21-cv-757-JD, 2025 WL 1433825, at *19 (N.D. Cal. May 19, 2025)
- Frasco v. Flo Health, Inc. (Flo Health II), 2025 WL 1433825, at *17-18 (N.D. Cal. May 19, 2025)
- Frasco v. Flo Health, Inc. (Flo Health I), No. 21-cv-757-JD, 2024 WL 4280933, at *3 (N.D. Cal. Sept. 23, 2024)
- LeBrun v. CBS TV Studios, Inc., 68 Cal. App. 5th 199, 211 (2021)
- Paracor Fin., Inc. v. Gen. Elec. Cap. Corp., 96 F.3d 1151, 1167 (9th Cir. 1996)
- Skidgel v. Cal. Unemployment Ins. App. Bd., 12 Cal. 5th 1, 14 (2021)

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