

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Dawn Fregosa v. Mashable, Inc.

No. 25-cv-01094-CRB (N.D. Cal. Jan. 23, 2026) · No. 25-cv-01094-CRB · Decided January 23, 2026

SUMMARY

The United States District Court for the Northern District of California denied Mashable, Inc.’s motion to certify the court’s order denying dismissal for interlocutory appeal under 28 U.S.C. § 1292(b). The court found that, although the proposed appeal involved a controlling legal question and could materially advance the litigation, Mashable failed to show substantial grounds for a difference of opinion regarding whether the California Invasion of Privacy Act applies to the alleged use of website pen registers.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Charles R. Breyer
JURISDICTION	United States District Court for the Northern District of California
DECIDED	January 23, 2026
DOCKET	25-cv-01094-CRB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under 28 U.S.C. § 1292(b) to certify the court's order denying its motion to dismiss for interlocutory appeal and sought a stay of the proceedings.
STANDARD OF REVIEW	Certification under 28 U.S.C. § 1292(b) is discretionary, but the moving party must establish all three statutory requirements: a controlling question of law, substantial grounds for difference of opinion, and that an immediate appeal may materially advance termination of the litigation. The requirements are jurisdictional and the statute is construed narrowly.
PRECEDENTIAL VALUE	Unpublished federal district court order; persuasive value only.
PARTIES	Mashable, Inc. v. Dawn Fregosa

TOPICS

interlocutory appeal

appellate jurisdiction

final judgment rule

statutory interpretation

consumer protection

PRACTICE AREAS

civil procedure

appellate procedure

privacy law

consumer protection

QUESTIONS PRESENTED

1. Whether the court's order denying Mashable's motion to dismiss presented a controlling question of law, substantial grounds for difference of opinion, and an issue for which immediate appeal could materially advance termination of the litigation under 28 U.S.C. § 1292(b).
2. Whether the proceedings should be stayed pending the requested interlocutory appeal.

HOLDINGS

1. Certification was denied because Mashable failed to demonstrate substantial grounds for difference of opinion, even though the court agreed that the CIPA applicability question was controlling and that an immediate appeal could potentially resolve the litigation.
2. A stay was denied because the motion to certify for interlocutory appeal was denied.

KEY QUOTATIONS

“Section 1292(b) is a departure from the normal rule that only final judgments are appealable, and therefore must be construed narrowly.” (at 1)

“Mashable loses the Court on the requirement that there be substantial grounds for differences of opinion.” (at 2)

“mere disagreement with the Court’s conclusion is insufficient to show that there is a ‘substantial ground for difference of opinion.’” (at 2)

“novelty alone is insufficient” (at 2)

FACTUAL BACKGROUND

Fregosa alleged that Mashable violated the California Invasion of Privacy Act by embedding third-party trackers on its website. Her operative complaint characterized the software as pen registers and did not advance an alternative theory that the software constituted a trap-and-trace device. Mashable contended that CIPA's pen-register prohibition did not apply to the website software and argued that the issue warranted interlocutory review.

PROCEDURAL HISTORY

Fregosa brought a putative class action alleging that Mashable violated the California Invasion of Privacy Act by embedding third-party trackers on its website. Mashable moved to dismiss the Second Amended Complaint, but

the court denied that motion. Mashable then moved to certify the denial order for interlocutory appeal and to stay the proceedings; the court denied the motion.

DISPOSITION

other

CASES CITED

- Couch v. Telescope, Inc., 611 F.3d 629, 633 (9th Cir. 2010)
- In re Cement Antitrust Litigation, 673 F.2d 1020, 1026 (9th Cir. 1981)
- James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1067 n.6 (9th Cir. 2002)
- Spread Your Wings, LLC v. AMZ Grp. LLC, No. 20-CV-03336-VKD, 2020 WL 7122513, at *2 (N.D. Cal. Dec. 4, 2020)
- Fandom, Inc., 754 F. Supp. 3d 924, 933 (N.D. Cal. 2024)
- Camplisson v. Adidas Am., Inc., 2025 WL 3228949, at *8 (S.D. Cal. Nov. 18, 2025)
- Shah v. Fandom, Inc., No. 24-CV-01062-RFL, 2024 WL 6903081, at *2 (N.D. Cal. Dec. 16, 2024)
- Reese v. BP Exploration (Alaska) Inc., 643 F.3d 681, 688 (9th Cir. 2011)
- Steshenko v. Gayrard, No. 13-CV-03400-LHK, 2014 WL 7204784, at *2 (N.D. Cal. Dec. 16, 2014)
- Lewis v. Magnite, Inc., 2025 WL 3687546, at *13 (C.D. Cal. Dec. 4, 2025)

OPINION

1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT 6 FOR THE NORTHERN DISTRICT
OF CALIFORNIA 7 8 DAWN FREGOSA, Case No. 25-cv-01094-CRB 9 Plaintiff, ORDER
DENYING MOTION TO 10 v. CERTIFY FOR INTERLOCUTORY APPEAL 11 MASHABLE,
INC., 12 Defendant. 13 Plaintiff Dawn Fregosa brought a putative class action against Defendant
Mashable, 14 Inc. (“Mashable”) under the California Invasion of Privacy Act (“CIPA”), Cal. Penal
Code 15 §§ 630, et seq.

Fregosa alleges that Mashable violated the Pen Register Act by embedding 16 third-party trackers
on its website. Mashable previously moved to dismiss Fregosa’s 17 Second Amended Complaint.
Dkt. 34. The Court denied the motion. Order (dkt. 53). 18 Mashable now moves to certify for
interlocutory appeal and to stay the proceedings. Mot. 19 (dkt. 56).

For the reasons discussed below, the motion is DENIED.¹ The Court presumes 20 familiarity with
the facts and arguments for this order. 21 Ordinarily, a party may seek review of a district court’s
rulings only after the entry 22 of final judgment. See 28 U.S.C. § 1291 (providing that courts of
appeal “shall have 23 jurisdiction of appeals from all final decisions of the district courts of the
United 24 States[.]”).

In exceptional circumstances, however, courts may deviate from the final- judgment rule and certify an order for interlocutory review pursuant to 28 U.S.C. 26 § 1292(b). Section 1292(b) provides a “narrow exception to the final judgment rule” and 27 1 “requires the district court to expressly find in writing that all three § 1292(b) requirements 2 are met.” *Couch v. Telescope, Inc.*, 611 F.3d 629, 633 (9th Cir.

2010). “These 3 certification requirements are (1) that there be a controlling question of law, (2) that there 4 be substantial grounds for difference of opinion, and (3) that an immediate appeal may 5 materially advance the ultimate termination of the litigation.” *In re Cement Antitrust 6 Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1981). These requirements are jurisdictional, and the 7 party seeking certification bears the burden of demonstrating that they have been satisfied.

8 *Couch*, 611 F.3d at 633. “Section 1292(b) is a departure from the normal rule that only 9 final judgments are appealable, and therefore must be construed narrowly.” *James v. Price 10 Stern Sloan, Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002).

The decision to certify an order 11 for interlocutory appeal is a matter within the court’s discretion. *Spread Your Wings, LLC 12 v. AMZ Grp. LLC*, No. 20-CV-03336-VKD, 2020 WL 7122513, at *2 (N.D. Cal. Dec. 4, 13 2020). 14 Mashable has failed to demonstrate that extraordinary circumstances warrant an 15 interlocutory appeal. Of the three certification requirements, the Court agrees with 16 Mashable on two of them.

The question of whether CIPA’s pen register prohibition 17 applies to the software on Mashable’s website is indeed controlling. See Mot. at 5. 18 Fregosa’s operative complaint explicitly describes the software as “pen registers.” See, 19 e.g., SAC (dkt. 30) ¶¶ 49–56, 222. If Mashable’s argument on applicability is correct, then 20 Fregosa could lose. See Mot. at 5.

Fregosa’s response that she could also state a CIPA 21 claim by characterizing the software as a “trap and trace device” is unavailing, since her 22 complaint does not advance that theory and is currently limited to “pen registers.” See 23 Opp’n (dkt. 67) at 5; SAC ¶ 222. And on materially advancing the termination of 24 litigation, Fregosa does not seriously argue that immediate appeal could not potentially 25 resolve the case.

See Opp’n at 12–13. 26 Mashable loses the Court on the requirement that there be substantial grounds for 27 differences of opinion. As Fregosa notes, every federal court to tackle the CIPA 1 *Fandom, Inc.*, 754 F. Supp. 3d 924, 933 (N.D. Cal. 2024) (denying motion to dismiss 2 claims based on pen registers collecting information such as IP addresses); *Camplisson v. 3 Adidas Am., Inc.*, 2025 WL 3228949, at *8 (S.D.

Cal. Nov. 18, 2025) (same). That is 4 hardly a substantial ground for difference of opinion. And Mashable pointing to some 5 California trial court decisions favoring its interpretation does not change that calculus. 6 See Dkts. 78, 79 (statements of recent decisions filed by Mashable); Reply

(dkt. 69) at 5–6. 7 As Judge Lin noted in her own order denying certification on this question, “those 8 opinions are not controlling, even in the California state courts.” *Shah v. Fandom, Inc.*, 9 No. 24-CV-01062-RFL, 2024 WL 6903081, at *2 (N.D.

Cal. Dec. 16, 2024) (recognizing 10 that “the state court decisions did not engage in the same extended interpretation of the 11 statutory terms”); see also *Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 12 2011) (“Our interlocutory appellate jurisdiction does not turn on a prior court’s having 13 reached a conclusion adverse to that from which appellants seek relief.”).

14 Mashable’s other arguments are also unpersuasive. Chiefly, Mashable reiterates its 15 issues with the Court’s order, such as whether pen registers can capture a calling party’s 16 information or whether parties to the communication are exempted from liability. Reply at 17 6–11. But “mere disagreement with the Court’s conclusion is insufficient to show that 18 there is a ‘substantial ground for difference of opinion.’” See *Steshenko v. Gayrard*, No. 19 13-CV-03400-LHK, 2014 WL 7204784, at *2 (N.D.

Cal. Dec. 16, 2014) (citing *Couch*, 20 611 F.3d at 633). 21 Mashable’s remaining points center on the novelty of the issue and potential policy 22 implications. But “novelty alone is insufficient,” especially when the Court finds that the 23 grounds for differing opinions are not substantial. *Id.* Moreover, while the Court 24 understands Mashable’s concerns regarding potential impacts to other website operators 25 and exposure of liability, the Court finds them to be overstated.² In its order on 26 27 2 Organizations acting as amici have asked the Court for leave to file amicus briefs in support of Mashable’s motion.

Dkts. 57, 59. A “district court has broad discretion to permit the filing of 1 || Mashable’s motion to dismiss, the Court was not painting on a blank canvas. Order at 4, 9 2 || (collecting cases). It was not the first to favor Fregosa’s interpretation of the Pen Register 3 Act—and certainly not the last. See, e.g. *Lewis v. Magnite, Inc.*, 2025 WL 3687546, at 4 |) *13 (C.D.

Cal. Dec. 4, 2025) (rejecting motion to dismiss based on substantially the same 5 || arguments on pen registers). Mashable’s “prophecy has not come to fruition in the last few 6 || years since other courts have interpreted CIPA as this Court” did. *Id.* 7 For the foregoing reasons, Mashable’s motion to certify for interlocutory appeal is 8 || DENIED. 9 IT IS SO ORDERED.

10 Dated: January 23, 2026 <— — CHARLES R. BREYER 11 United States District Judge 2 12 13 14 15 16 19 20 21 22 23 24 25 26 27 28 briefs and determines that they reflect concerns similar to what Mashable has already raised—and the Court rejects, especially in light of the unanimity of federal courts on the issue.