

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

OPINION

Fregosa

PER CURIAM.

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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-
25 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.