

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Crano v. Sojern, Inc.

Crano · No. 3:25-cv-02600-JSC · Decided September 19, 2025

SUMMARY

The United States District Court for the Northern District of California denied Sojern’s motion to transfer venue based on forum-selection clauses in Hilton’s website and loyalty-program agreements. The court held that Sojern had not established that Plaintiff agreed to those provisions. The court granted Sojern’s motion to dismiss, concluding that Plaintiff inadequately pleaded claims under the California Invasion of Privacy Act and the federal Wiretap Act, while denying the Article III standing challenge without prejudice.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	September 19, 2025
DOCKET	3:25-cv-02600-JSC
DISPOSITION	other
PROCEDURAL POSTURE	Putative class action in which Defendant moved to transfer venue under 28 U.S.C. § 1404(a), or alternatively to dismiss for lack of Article III standing and failure to state a claim under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).
STANDARD OF REVIEW	For transfer under 28 U.S.C. § 1404(a), the court weighs convenience and public-interest factors, giving controlling weight to a valid forum-selection clause and disregarding the plaintiff’s choice of forum and private-interest arguments. On a Rule 12(b)(6) motion, the court determines whether the complaint plausibly states a claim. Article III standing requires injury in fact, traceability, and redressability.
PRECEDENTIAL VALUE	unpublished
PARTIES	Suellen Crano v. Sojern, Inc.

TOPICS

venue

motions to dismiss

standing

consumer protection

civil procedure

PRACTICE AREAS

civil procedure

contracts

consumer protection

privacy and electronic communications

QUESTIONS PRESENTED

1. Whether the action should be transferred to the Eastern District of Virginia under 28 U.S.C. § 1404(a) based on forum-selection clauses in Hilton's Site Usage Agreement and Hilton Honors Terms and Conditions.
2. Whether Plaintiff adequately alleged Article III standing.
3. Whether Plaintiff adequately stated claims under the California Invasion of Privacy Act.
4. Whether Plaintiff adequately stated a claim under the federal Wiretap Act.
5. Whether Plaintiff adequately stated a claim for invasion of privacy under the California Constitution.
6. Whether Plaintiff adequately stated a claim under California's Unfair Competition Law.
7. Whether Plaintiff adequately stated an unjust enrichment claim.

HOLDINGS

1. The motion to transfer was denied because Sojern failed to establish the existence of a valid agreement between Plaintiff and Hilton containing an enforceable forum-selection clause.
2. An online agreement is enforceable under an inquiry-notice theory only when the website provides reasonably conspicuous notice of the terms and the consumer takes an action unambiguously manifesting assent; Sojern did not establish those requirements.
3. The motion to dismiss for lack of Article III standing was denied without prejudice because Defendant's argument challenged the sufficiency of Plaintiff's claims rather than standing.
4. Plaintiff failed to state a claim under California Penal Code § 631(a)(2) because she did not plausibly allege that Sojern intercepted her communications while they were in transit; the derivative § 631(a)(3) claim therefore also failed.
5. Plaintiff failed to state a claim under the Federal Wiretap Act because the alleged crime-tort exception to one-party consent was unsupported by the inadequately pleaded CIPA claim, and Plaintiff did not plausibly allege that the information constituted protected guest records under California Civil Code § 53.5.
6. Plaintiff failed to state a California constitutional invasion-of-privacy claim because she did not show that the tracked information was covered by California Civil Code § 53.5.
7. Plaintiff failed to state a UCL claim under either the unlawful or unfair prong because the predicate statutory claims failed and the unfair-prong allegations were conclusory.
8. Plaintiff failed to state an unjust enrichment claim because she did not state a claim for unlawful conduct underlying the alleged benefit.

KEY QUOTATIONS

“Accordingly, when presented with such an agreement, the court must disregard plaintiff’s choice of forum and the parties’ private interests.” (Discussion § I)

“an enforceable contract will be found based on an inquiry notice theory only if: (1) the website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action, such as clicking a button or checking a box, that unambiguously manifests his or her assent to those terms.” (Discussion § I.A.1)

“Plaintiff thus has not alleged the information is intercepted while in transit and fails to state a claim under Section 631(a)(2).” (Discussion § II.B.1)

FACTUAL BACKGROUND

Plaintiff alleged that she used Hilton.com in April 2024 and Marriott.com in August 2023 to search for and book hotel rooms. She alleged that Sojern's tracking technology on those websites collected information including hotel identification, hotel location, room price, number of rooms, booking dates, and the fact that she completed reservations, without her consent. She asserted that the collection and use of this information violated federal and California privacy laws and conferred an economic benefit on Sojern.

PROCEDURAL HISTORY

Plaintiff filed the action in March 2025 and then filed a First Amended Complaint adding allegations concerning Marriott.com and asserting claims under the California Invasion of Privacy Act, California's Unfair Competition Law, unjust enrichment, the federal Wiretap Act, and the California Constitution. The Court denied the motion to transfer, denied the standing-based motion to dismiss without prejudice, and granted the motion to dismiss for failure to state a claim, allowing amendment by October 16, 2025.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Plaintiff may file an amended complaint by October 16, 2025, may not add new defendants or claims without further leave of Court, and the amendment must address the deficiencies identified in the order.

CASES CITED

- Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex., 571 U.S. 49, 62-67 (2013)
- Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 513-14 & n.4 (9th Cir. 1988)
- Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1267 (9th Cir. 2006)
- Keebaugh v. Warner Bros. Ent. Inc., 100 F.4th 1005, 1012, 1014 (9th Cir. 2024)
- Berman v. Freedom Fin. Network, LLC, 30 F.4th 849, 855-56, 866 (9th Cir. 2022)
- Sellers v. JustAnswer LLC, 73 Cal. App. 5th 444, 463-64, 481 (2021)

- Godun v. JustAnswer LLC, 135 F.4th 699, 709-10 (9th Cir. 2025)
- Whalen v. NBA Props., Inc., No. 25-CV-01030-CRB, 2025 WL 1948591, at *3 (N.D. Cal. July 16, 2025)
- Holland Am. Line Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 455-56 (9th Cir. 2007)
- TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Muslim Advocs. v. U.S. Dep't of Just., No. 18-CV-02137-JSC, 2019 WL 3254230, at *7 (N.D. Cal. July 19, 2019)
- Tavernetti v. Superior Ct., 22 Cal. 3d 187, 192 (1978)
- Yockey v. Salesforce, 688 F. Supp. 3d 962, 970 (N.D. Cal. 2023)
- Hammerling v. Google LLC, 615 F. Supp. 3d 1069, 1093 (N.D. Cal. 2022)
- S.D. v. Hytto Ltd., No. 18-CV-00688-JSW, 2019 WL 8333519, at *6 (N.D. Cal. May 15, 2019)
- Valenzuela v. Keurig Green Mountain, Inc., 674 F. Supp. 3d 751, 758 (N.D. Cal. 2023)
- Hazel v. Prudential Fin., Inc., No. 22-cv-07465-CRB, 2023 WL 3933073, at *2 (N.D. Cal. June 9, 2023)
- Mastel v. Miniclip SA, 549 F. Supp. 3d 1129, 1137 (E.D. Cal. 2021)
- In re Yahoo Mail Litig., 7 F. Supp. 3d 1016, 1026 (N.D. Cal. 2014)
- Doe v. Meta Platforms, Inc., 690 F. Supp. 3d 1064, 1077 (N.D. Cal. 2023)
- In re Facebook, Inc. Internet Tracking Litig., 956 F.3d 589, 601 (9th Cir. 2020)
- Snyder v. G6 Hosp. LLC, No. 5:24-CV-02423-AH-(SHKX), 2025 WL 1254382, at *4 (C.D. Cal. Apr. 14, 2025)
- Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999)
- Aleksick v. 7-Eleven, Inc., 205 Cal. App. 4th 1176, 1185 (2012)
- Warren v. PNC Bank Nat'l Ass'n, No. 22-CV-07875-WHO, 2023 WL 3182952, at *10 (N.D. Cal. Apr. 30, 2023)
- Landers v. Quality Commc'ns, Inc., 771 F.3d 638, 644 (9th Cir. 2014), as amended (Jan. 26, 2015)
- Astiana v. Hain Celestial Grp., 783 F.3d 753, 762 (9th Cir. 2015)
- Doe I v. Google LLC, 741 F. Supp. 3d 828, 849 (N.D. Cal. 2024)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
 SUELLEN CRANO, Case No. 3:25-cv-02600-JSC 8 Plaintiff, ORDER RE: MOTION TO
 TRANSFER 9 v. VENUE; MOTION TO DISMISS 10 SOJERN, INC., Re: Dkt. Nos. 17, 28
 Defendant. 11 12 13 Suellen Crano filed this putative class action against Sojern alleging it illicitly
 tracked her 14 information in violation of the Electronic Communications Privacy Act, 18 U.S.C.
 § 2511, and 15 various California laws when she booked hotel rooms on the Hilton and Marriott
 websites.

Sojern 16 moved to transfer venue to the District Court for the Eastern District of Virginia
 pursuant to 28 17 U.S.C. § 1404(a) based on a forum selection clause in the Hilton Honors Terms

and the Hilton 18 Site Usage Agreement, or alternatively, to dismiss under Federal Rules of Civil Procedure 19 12(b)(1) and 12(b)(6). (Dkt. No. 17.1) In response, Plaintiff filed the now operative Amended 20 Complaint.

(Dkt. No. 19.) Following an order to show cause, the parties submitted additional 21 briefing on the motion to transfer and Sojern filed a new motion to dismiss. (Dkt. Nos. 26, 28, 22 33.) The motions are now fully briefed and came before the Court for hearing on August 21, 23 2025.

Having considered the parties' briefs and arguments, the Court DENIES the motion to 24 transfer and GRANTS the motion to dismiss. 25 // 26 // 27 1 BACKGROUND 2 A. First Amended Complaint Allegations 3 Plaintiff alleges she visited the Hilton.com website in April 2024 and the Marriott.com 4 website in August 2023 to search for and book hotels. (Dkt. No. 19 at ¶ 4.)

Unbeknownst to her, 5 both Hilton and Marriott had installed Sojern's tracking technology on their websites to collect 6 information contained in her communications with the hotel's websites and provide, among other 7 things, targeted advertising. (Id. at ¶¶ 4, 30.)

The information collected included the relevant 8 hotel ID, hotel name/location, hotel room price, number of rooms, check-in date, check-out date, 9 and that Plaintiff completed her reservations. (Id. at ¶ 4.) Sojern collected this information 10 without Plaintiff's consent. (Id.) 11 B. Procedural History 12 Plaintiff originally filed this action in March 2025 bringing claims on behalf of a class of 13 California consumers who had their "personal information collected by Sojern while booking an 14 inn, hotel, motel, or lodginghouse." (Dkt.

No. 1 at ¶ 78.) Sojern moved to transfer venue to the 15 District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a) based on a 16 forum selection clause in the Hilton Honors Terms and the Hilton Site Usage Agreement, or 17 alternatively, to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Dkt. No. 18 17.) Two weeks later, Plaintiff filed the now operative First Amended Complaint, adding 19 allegations about her use of the Marriott.com website in addition to the Hilton.com website and 20 pleading claims for: (1) violation of the California Invasion of Privacy Act, Cal. Pen.

Code § 21 631(a); (2) violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 22 17200 et seq.; (3) unjust enrichment; (4) violation of the Electronic Communications Privacy Act, 23 18 U.S.C. § 2511(1) et seq.; and (5) invasion of privacy under the California Constitution. 24 As Plaintiff did not file a response to Sojern's motion, the Court issued an Order to Show 25 Cause as to whether Plaintiff consented to transfer of the action to the Eastern District of Virginia 26 where her action against Hilton arising out of the same conduct was pending.

See Crano et al v. 27 Hilton Worldwide Holdings Inc. et al., No. 25-305-RDA, Dkt. No. 34 (E.D. Va. Feb. 5, 2025). 1 opposition to the motion to transfer explaining she had filed her Amended

Complaint in lieu of a 2 response to the motion and sought to address the issues raised by Sojern by, among other things, 3 adding allegations as to her use of the Marriott.com website.

(Dkt. No. 26.) Sojern has since filed 4 a reply to the motion to transfer and a new motion to dismiss which is fully briefed. (Dkt. Nos. 5 28, 33, 35, 38.) After briefing was complete, Plaintiff filed a notice indicating she has voluntarily 6 dismissed her action against Hilton in the Eastern District of Virginia. (Dkt. No. 37.) 7 DISCUSSION 8 I. MOTION TO TRANSFER 9 Sojern moves to transfer venue under 28 U.S.C. § 1404(a) based on a forum selection 10 clause in two agreements governing the terms of Plaintiff's relationship with Hilton: the Hilton 11 Site Usage Agreement and the Hilton Honors Terms.

Sojern insists Plaintiff's claims arise from 12 her interaction with the Hilton website and the case should be transferred to the Eastern District of 13 Virginia because: (1) the forum-selection clause encompasses Plaintiff's claims against Sojern, (2) 14 the forum-selection clause is valid and enforceable and specifies "exclusive venue" in the Eastern 15 District of Virginia, and (3) Plaintiff cannot show that public interest factors weigh so heavily 16 against transfer the valid forum-selection clause should be disregarded.

(Dkt. No. 17 at 15.) 17 Under 28 U.S.C. § 1404(a) a district court may "transfer any civil action to any other 18 district or division where it might have been brought or to any district or division to which all 19 parties have consented.... for the convenience of parties and witnesses." 28 U.S.C. § 1404(a).

In 20 considering such a transfer, the court "must evaluate both the convenience of the parties and 21 various public-interest considerations" weighing "the relevant factors and decid[ing] whether, on 22 balance, a transfer would serve 'the convenience of parties and witnesses' and otherwise promote 23 'the interest of justice.'" *Atl. Marine Const. Co. v. U.S. Dist.*

Ct. for W. Dist. of Texas, 571 U.S. 24 49, 62–63 (2013) (quoting 28 U.S.C. § 1404(a)). "The calculus changes, however, when the 25 parties' contract contains a valid forum-selection clause, which represents the parties' agreement 26 as to the most proper forum." *Id.* at 63 (cleaned up).

Under such circumstances, "a proper 27 application of § 1404(a) requires that a forum-selection clause be given controlling weight in all 1 bargained for by the parties, [the court] protects their legitimate expectations and furthers vital 2 interests of the justice system." *Id.* at 63.

Accordingly, when presented with such an agreement, 3 the court must disregard plaintiff's choice of forum and the parties' private interests. *Id.* at 63–64. 4 It instead "consider[s] arguments about public-interest factors only," and "those factors will rarely 5 defeat a transfer motion." *Id.* at 64. Further, "the party acting in violation of the forum-selection 6 clause... must bear the burden of showing that public-interest factors overwhelmingly disfavor a 7 transfer." *Id.* at 67.

8 Sojern contends Plaintiff is a Hilton Honors member who consented to both the Hilton 9 Honors Terms & Conditions, the Site Usage Agreement, and Hilton’s Global Privacy Statement. 10 According to Sojern, when a user books a stay on Hilton’s website, the user agrees to the Site 11 Usage Agreement and Global Privacy Statement, and Hilton Honors members agree to the Hilton 12 Honors Terms & Conditions as well as the Global Privacy statement.

So, argues Sojern, Plaintiff 13 is bound by the forum selection clauses in the Site Usage Agreement and the Hilton Honors Terms 14 & Conditions which provide “any action at law or in equity arising out of or relating to the terms 15 of this Agreement shall be filed only in the United States District Court for the Eastern District of 16 Virginia.” (Dkt. No. 18 at 87 (Site Usage Agreement)); see also Dkt.

No. 18 at 100 (Hilton Honors 17 Terms & Conditions). 18 A. Whether There is a Valid Agreement 19 The first question is whether the forum selection clause is valid and enforceable. Federal 20 law governs a forum selection clause’s validity. *Manetti–Farrow, Inc. v. Gucci America, Inc.*, 858 21 F.2d 509, 513 (9th Cir. 1988).

Here, however, Plaintiff challenges the validity of the agreement 22 containing the forum selection clause as opposed to the clause itself; that is, Plaintiff insists Sojern 23 has not met its burden of demonstrating a valid and enforceable agreement containing the forum 24 selection clause because it has not shown “the presentation of those agreements on Hilton’s 25 website was sufficient to provide notice to consumers and bind them to their terms.” (Dkt.

No. 26 at 15.) 27 As a threshold matter, neither party discusses what law applies to the contract formation 1 15.) Defendant’s reply cites the Ninth Circuit’s decision in *Keebaugh v. Warner Bros. Ent. Inc.*, 2 100 F.4th 1005, 1012 (9th Cir. 2024), which applies California law on contract formation. (Dkt. 3 No. 33 at 7.)

The Court thus assumes both parties agree California law applies despite the New 4 York choice of law provision in the Site Usage Agreement. (Dkt. No. 18 at 87.) See *Nagrampa v. 5 MailCoups, Inc.*, 469 F.3d 1257, 1267 (9th Cir. 2006) (finding parties waive choice of law 6 provision when they proceed on assumption that California law governs). Application of 7 California law is further appropriate here as courts consider “an agreement to arbitrate [] a 8 specialized forum selection clause,” *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514, 9 n.4 (9th Cir.

1988), and “[i]n determining whether the parties have agreed to arbitrate a particular 10 dispute, federal courts apply state-law principles of contract formation.” *Berman v. Freedom Fin. 11 Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022).

The Court thus applies California law to the 12 contract formation question. 13 “To form a contract under... California law, the parties must manifest their mutual assent 14 to the terms of the agreement.” *Berman*, 30 F.4th at 855. “Parties traditionally manifest assent by 15 written or

spoken word, but they can also do so through conduct.” Id. “However, ‘[t]he conduct of 16 a party is not effective as a manifestation of his assent unless he intends to engage in the conduct 17 and knows or has reason to know that the other party may infer from his conduct that he assents.’” 18 Id. (alteration in original) (quoting Restatement (Second) of Contracts § 19(2) (1981)). “These 19 elemental principles of contract formation apply with equal force to contracts formed online.

Thus, 20 if a website offers contractual terms to those who use the site, and a user engages in conduct that 21 manifests her acceptance of those terms, an enforceable agreement can be formed.” Id. at 855–56. 22 “As the party seeking to enforce the forum selection clause, [Sojern] “bears ‘the burden of proving 23 the existence of an agreement... by a preponderance of the evidence.’” Whalen v. NBA Props., 24 Inc., No. 25-CV-01030-CRB, 2025 WL 1948591, at *3 (N.D.

Cal. July 16, 2025) (quoting Norcia 25 v. Samsung Telecomms. Am., LLC., 845 F.3d 1279, 1283 (9th Cir. 2017) (citation omitted)). 26 1. The Site Usage Agreement 27 In California, “internet contracts are classified ‘by the way in which the user purportedly 1 sign-in wraps.’” Keebaugh v. Warner Bros. Ent. Inc., 100 F.4th 1005, 1014 (9th Cir. 2024) 2 (quoting Sellers v. JustAnswer LLC, 73 Cal. App.

5th 444, 463 (2021)). Here, Sojern contends a 3 link to the Site Usage Agreement was provided to Plaintiff, but she was not required to separately 4 indicate she had read and agreed to the Agreement; rather, “By clicking ‘Book Reservation,” she 5 agreed to the Site Usage Agreement. (Dkt. No. 33 at 6.)

The Court thus employs the inquiry- 6 notice “sign-in wrap” analytical framework. See Berman, 30 F.4th at 866 (citing Sellers, 73 Cal. 7 App. 5th at 463–64). 8 [A]n enforceable contract will be found based on an inquiry notice theory only if: (1) the website provides reasonably conspicuous notice 9 of the terms to which the consumer will be bound; and (2) the consumer takes some action, such as clicking a button or checking a 10 box, that unambiguously manifests his or her assent to those terms.

11 Berman, 30 F.4th at 856. “Reasonably conspicuous notice of the existence of contract terms and 12 unambiguous manifestation of assent to those terms by consumers are essential if electronic 13 bargaining is to have integrity and credibility.” Berman, 30 F.4th at 856 (cleaned up). 14 In support of its motion to transfer, Sojern offers screenshots of the Hilton.com booking 15 website as well as a Declaration from Fjorela Shanti, a senior paralegal in Hilton’s Dispute 16 Resolution Legal Department, that Hilton filed in Plaintiff’s action against Hilton in the Eastern 17 District of Virginia.

(Dkt. No. 18 at Ex. B (ECF 13), Ex. J (ECF 134).) 2) While Sojern included 18 these documents with the motion to transfer, its motion did not address the contract formation 19 issue; instead,

Sojern only included the contract formation argument in its reply brief in response 20 to Plaintiff's contention she did not enter an agreement with Hilton containing a forum selection 21 22 2 Sojern requests judicial notice of several documents, including, as relevant here, copies the Hilton.com booking pages and a declaration submitted by Hilton in Plaintiff's action in the 23 Eastern District of Virginia.

(Dkt. No. 18.) Judicial notice permits courts to notice an adjudicative fact if it is "not subject to reasonable dispute," meaning the fact is "generally known" or "can be 24 accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting Fed. R. Evid.

25 201). While a court may take judicial notice of matters of public record, "a court cannot take judicial notice of disputed facts contained in such records." *Id.* Because courts routinely take 26 judicial notice of "court filings and other matters of public record," *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.1 (9th Cir. 2006), the Court takes notice of the Shanti 27 Declaration.

(Dkt. Nos. 18, Ex. J.) Likewise, because "websites and their contents may be 1 clause. 2 On reply, Sojern insists Plaintiff was provided reasonably conspicuous notice because the 3 Site Usage Agreement is "hyperlinked, underlined, and in blue text as part of the click-thru 4 || process and again hyperlinked (although not underlined) several lines below the "Book 5 || Reservation" button.

(Dkt. No. 33 at 6 (citing Dkt. No. 18, Ex. B at 1).) Sojern describes Exhibit 6 || Bas "Hilton.com Reservation Payment Page (Archived), as filed in *Crano v. Hilton Worldwide 7 Holdings, Inc.*, 25-cv-00305-RDA-IDD, Dkt. No. 32-3 (E.D. Va. Jan. 24, 2025)." (Dkt. No. 18 at 8 2.) Exhibit B is two pages and is reproduced below: 9 wn case ae Coop eoeC DBoamaehete eS | Page af agelDS Hilign soe | 10 baa Payment and Guest Datals Sten 3 of 3 1 1 errr reer reer reece ener AN fields are required unless marked ootionall 12 = Payment Cand number Monch ¥ Year ¥ 15 A 16 Lo Guest information First Name Z, 1 8 Last Name 19 Email 20 21 22 = Special requests 23 Traveling with a pet, service animal, etc.

24 □ Add apECIAL requests 25 View optional services ¥ 26 Guarantee and Cancellation Policy 27 By clicking "Book Reservation." [agree to the Rulea and Restrictions, Site Usage Agreement ©, and acknowledge that Hilton will collect, use, ehere and iranefer my mflormation #4 gel oul m Hilten's Global Privacy Staterment 28 bilipasi eb, enchiva orpfwulb(tite1 01011 PSoddliionVeww billion, □□□□□□□□□□□□□□□□□□□□□□□□ in 1 (Dkt.

No. 18 at 13.) 2 wun chase CASH RBeOeC Doooreendle be | Pepe of PageDe (Calitomia consumers, click bere 2 to lean about Huituiés collection and use of your personal uiflonmalion ae Ll 4 *"kHReam Internet access may mot oe Complinerntary at properties with a resen charge 5

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ond Human Trafficking Agnes 13 14 2021 Hike 15 || (kt.

No. 18 at 14.) a 16 At oral argument, Plaintiff raised several issues as to Exhibit B and whether
Sojern had & 17 || met its burden of establishing either reasonably conspicuous notice or Plaintiffs
assent to the Site. we.. □ Z 18 Usage Agreement. Two of these arguments are dispositive here.

First, Sojern only provides a 19 partial version of what Plaintiff would have seen when booking
her reservation; that is, the above 20 screenshots do not accurately reflect the totality of Plaintiff's
booking process—the first page 21 begins at “Step 3 of 3” and the page break prevents the viewer
from seeing the page as it would 22 || have appeared to a user booking a reservation.

23 Second, Sojern has not established the screenshots reflect what Plaintiff would have seen 24 ||
when she booked in April 2024 as the top of the page includes the Hilton Honors logo and 25
Plaintiff alleges she booked through Hilton.com. (Dkt. No. 19 at § 4.) 26 ye eee Ce iE BOSS
CiommentT® TO ee Ra ele Hilton Signin | Join 27 —neneee 28 ee ost Cetal 1 (Dkt.

No. 18 at 13.) Indeed, the “current version” of the booking page has “Hilton” not “Hilton 2
Honors” at the top. (Dkt. No. 18, Ex. A.) At oral argument, Sojern was unable to explain why the 3
Hilton Honors logo appears on the screenshot Sojern relies on to establish notice to Plaintiff or 4
why only partial screenshots of the booking flow were provided. 5 Under California law, the
question of whether “the website provides reasonably 6 conspicuous notice of the terms to which
the consumer will be bound” is “fact-intensive” and is 7 informed by the “totality of the
circumstances.” *Godun v. JustAnswer LLC*, 135 F.4th 699, 709 8 (9th Cir.

2025) (internal citations omitted). “[U]nder California law— ‘even minor differences’ in 9 the
design elements may make the difference in this fact-intensive analysis. At bottom, when 10
visually analyzing the conspicuousness of an advisal and any hyperlinks, courts must be tuned to
11 the expectations of a reasonably prudent internet user.” *Id.* at 710 (quoting *Sellers v.*
JustAnswer 12 LLC, 73 Cal. App.

5th 444, 481 (2021)). Sojern has not provided sufficient evidence for the Court 13 to conduct this
“fact-intensive” analysis and therefore has failed to satisfy its burden of 14 demonstrating Plaintiff
agreed to Hilton’s Site Usage Agreement. 15 2.

The Hilton Honors Terms & Conditions 16 Sojern’s argument as to Plaintiff’s agreement to the
Hilton Honors Terms & Conditions 17 and the forum selection clause in those Terms is even more
attenuated. Plaintiff contends she has 18 been a Hilton Honors member since 1995. Apparently
conceding it has not offered evidence of 19 what the Hilton Honors Terms provided, if anything,
as to a forum selection clause in 1995 when 20 Plaintiff signed up to be a Hilton Honors member,

Sojern argues in a footnote that the screenshot 21 attached as Exhibit A to the request for judicial notice includes the line “I also agree to the Hilton 22 Honors Program Terms and Conditions” above the “Book Reservation” button on the Hilton.com 23 website.

(Dkt. No. 33 at 6 n.2.) However, as Sojern conceded at oral argument, Exhibit A is a 24 screenshot of the current version the Hilton.com website, not the version in effect when Plaintiff 25 made her reservation on Hilton.com in 2024.

Accordingly, Sojern has not offered evidence of a 26 valid agreement between Plaintiff and Hilton based on the Hilton Honors Terms. 27 *** 1 between Plaintiff and Hilton containing a forum selection clause, Sojern’s motion to transfer is 2 denied. See *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 455-56 (9th Cir. 2007) 3 (holding “Holland America does not meet its burden to establish jurisdiction under the 4 Washington forum selection clause” because “the facts and allegations” “are too thin to meet its 5 initial burden to support jurisdiction under the Washington forum selection clause.”).

6 II. MOTION TO DISMISS 7 Sojern moves to dismiss the Amended Complaint for lack of Article III standing and 8 failure to state a claim. 9 A. Article III Standing 10 Article III of the United States Constitution “confines the federal judicial power to the 11 resolution of ‘Cases’ and ‘Controversies.’” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203, 12 (2021). “For there to be a case or controversy under Article III, the plaintiff must have a ‘personal 13 stake’ in the case—in other words, standing.” *Id.* (citations omitted).

To establish standing 14 sufficient to satisfy constitutional requirements, “a plaintiff must show (i) that he suffered an 15 injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely 16 caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.” *Id.* 17 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992)).

18 Sojern insists Plaintiff has failed to demonstrate an injury fairly traceable to it because her 19 allegations do not implicate any wiretapping law or privacy rights. Sojern’s argument is at bottom 20 that Plaintiff has failed to state a claim—that is a Rule 12(b)(6) motion to dismiss for failure to 21 state a claim, not a question of Article III standing.

Muslim Advocs. v. U.S. Dep’t of Just., No. 18- 22 CV-02137-JSC, 2019 WL 3254230, at *7 (N.D. Cal. July 19, 2019). The motion to dismiss for 23 lack of Article III standing is therefore denied without prejudice. 24 B. Failure to State a Claim 25 1. CIPA Claim 26 California Penal Code § 631 “prescribes criminal penalties for three distinct and mutually 27 independent patterns of conduct.” *Tavernetti v. Superior Ct.*, 22 Cal. 3d 187, 192 (1978).

These 1 (1) when a person “by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes 2 any unauthorized connection... with any telegraph or telephone wire, line, cable, or instrument,” 3 (2) when a person “willfully and without consent of

all parties to the communication, or in any unauthorized manner, reads, or 4 attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit,” 5 or (3) when a person “uses, or attempts to use, in any manner, or for 6 any purpose, or to communicate in any way, any information so obtained.” 7 *Yockey v. Salesforce*, 688 F. Supp. 3d 962, 970 (N.D.

Cal. 2023) (quoting Cal. Penal Code § 631). 8 Plaintiff brings a claim under the second and third clauses. As discussed at oral argument, 9 based on the motion to dismiss record as presented, the consent issue cannot be resolved as a 10 matter of law. Sojern’s argument that the information at issue was “record information” rather 11 than the contents of Plaintiff’s communications is likewise unavailing.

Plaintiff alleges Sojern 12 intercepted information “that identified the relevant hotel ID, hotel name/location, hotel room 13 price, number of rooms, check in date, check out date, and the fact that Plaintiff Crano completed 14 her reservations.” (Dkt. No. 19 at ¶ 4.) This information is not akin to “page visits” as Sojern 15 suggests, but is instead user created information—where and when Plaintiff was planning to and 16 did stay at a hotel and how many rooms she booked.

See, e.g., *Hammerling v. Google LLC*, 615 F. 17 Supp. 3d 1069, 1093 (N.D. Cal. 2022) (“URLs are record information when they only reveal a 18 general webpage address and basic identification information, but when they reproduce a person’s 19 personal search engine queries, they are contents.”); *S.D. v. Hytto Ltd.*, No. 18-CV-00688-JSW, 20 2019 WL 8333519, at *6 (N.D.

Cal. May 15, 2019) (“Examples of record information include the 21 origin of a phone call, a phone call’s length, and geolocation data from an app” whereas content 22 “is a person’s intended message to another and the essential part of a communication.) (cleaned 23 up). 24 Plaintiff has nevertheless not adequately alleged a violation of clause two because she has 25 not plausibly alleged Sojern intercepted the communication while it was in transit.

Cal. Penal 26 Code § 631(a)(2). “‘While’ is the key word here.” *Valenzuela v. Keurig Green Mountain, Inc.*, 27 674 F. Supp. 3d 751, 758 (N.D. Cal. 2023). “[I]nterception under the meaning of the statute must 1 occur during transmission of the communication.” *Hazel v. Prudential Fin., Inc.*, No. 22-cv- 2 07465-CRB, 2023 WL 3933073, at *2 (N.D. Cal. June 9, 2023) (cleaned up) (collecting cases).

3 “[T]he crucial question under § 631(a)’s second clause is whether [Plaintiff] has plausibly alleged 4 that [Sojern] read one of [their] communications while it was still in transit, i.e., before it reached 5 its intended recipient.” *Mastel v. Miniclip SA*, 549 F. Supp. 3d 1129, 1137 (E.D. Cal. 2021) (citing 6 *Mireskandari v. Mail*, 12-cv-02943-MMM (FFMx), 2013 WL 1219559, at *10 n.44 (C.D.

Cal. 7 July 30, 2013)). Plaintiff's allegations do not plausibly support an inference her communications 8 were read while in transit; rather, she alleges "a website developer like Hilton and Marriott can use 9 its source code to commandeer the user's computing device, causing the device to 10 contemporaneously in real time and invisibly re-direct the users' personally identifiable guest 11 records and communications to third parties like Sojern." (Dkt.

No. 19 at ¶ 25 (emphasis added); 12 see also ¶ 40 ("Sojern...collects as much information relating to a hotel guest as possible all from 13 different sources ...stores that information in a centralized location ... where it matches data 14 points and creates detailed profiles.") Plaintiff thus has not alleged the information is intercepted 15 while in transit and fails to state a claim under Section 631(a)(2).

16 Because clause three is dependent on a violation of clauses one or two, Plaintiff's clause 17 three claim necessarily fails as well. See *Tavernetti v. Superior Ct.*, 22 Cal. 3d 187, 192 (1978) 18 (stating section 631(a) outlines "criminal penalties for three distinct and mutually independent 19 patterns of conduct: intentional wiretapping, willfully attempting to learn the contents or meaning 20 of a communication in transit over a wire, and attempting to use or communicate information 21 obtained as a result of engaging in either of the previous two activities.") (emphasis added).

22 Plaintiff's CIPA claim is thus dismissed for failure to state a claim.³ 23 2. Federal Wiretap Act 24 The Electronic Communications Privacy Act ("ECPA" or "Federal Wiretap Act"), 18 25 U.S.C. § 2510 et seq., provides for civil penalties against any person who "intentionally intercepts, 26 endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, 27 1 oral, or electronic communication." 18 U.S.C. § 2511(1)(a).

The Federal Wiretap Act is a one- 2 party consent statute. 18 U.S.C. § 2511(2)(d); see also *In re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016, 3 1026 (N.D. Cal. 2014) ("[T]he consent of one party is a complete defense to a Wiretap Act 4 claim."). Sojern insists Plaintiff cannot state a claim under the Wiretap Act because both Hilton 5 and Marriott—the parties to alleged communication—consented to Sojern's involvement.

6 Plaintiff counters the "crime-tort" exception to one-party consent applies. See *Doe v. Meta 7 Platforms, Inc.*, 690 F. Supp. 3d 1064, 1077 (N.D. Cal. 2023) (stating the one-party consent 8 "exception does not apply, however, where the interceptor acts 'for the purpose of' committing 9 any crime or tort in violation of state or federal law."). Plaintiff's crime-tort exception argument is 10 predicated on her CIPA claim and her allegations that Sojern's actions violate California's Guest 11 Records statute, California Civil Code § 53.5(a).

(Dkt. No. 35 at 29.) But, as discussed above, 12 Plaintiff's CIPA claim is inadequately pled and thus does not provide a basis for the crime-tort 13 exception. 14 Plaintiff's reliance on California's Guest Records statute is similarly unavailing.

The 15 statute, Civil Code section 53.5(a), provides: 16 an innkeeper, hotelkeeper, motelkeeper, lodginghouse keeper, or owner or operator of an inn, hotel, motel, lodginghouse, or other 17 similar accommodations, or any employee or agent thereof, who offers or accepts payment for rooms, sleeping accommodations, or 18 board and lodging, or other similar accommodation, shall not disclose, produce, provide, release, transfer, disseminate, or otherwise 19 communicate, except to a California peace officer, all or any part of a guest record orally, in writing, or by electronic or any other means to 20 a third party without a court-issued subpoena, warrant, or order.

21 Cal. Civ. Code § 53.5(a). Sojern insists the statute does not apply to it because it is not an 22 innkeeper or hotelkeeper; that is, while the statute might apply to Hilton or Marriott it does not 23 apply to Sojern. Neither the amended complaint nor Plaintiff's opposition addresses this issue. 24 Nor does Plaintiff's amended complaint or opposition address how the records at issue constitute 25 guest records.

Civil Code § 53.5(c) defines "guest record" as "any record that identifies an 26 individual guest... including, but not limited to, their name, social security number or other unique 27 identifying number, date of birth, location of birth, address, telephone number, driver's license 1 number." Plaintiff has not alleged facts that plausibly support an inference "the hotel ID, hotel 2 name/location, hotel room price, number of rooms, check in date, check out date, and the fact that 3 Plaintiff Crano completed her reservations" constitute a guest record under Section 53.5(c).

See 4 *Snyder v. G6 Hosp. LLC*, No. 5:24-CV-02423-AH-(SHKX), 2025 WL 1254382, at *4 (C.D. Cal. 5 Apr. 14, 2025) (stating plaintiff had "not explain[ed] how" the "dates of the trip, number of guests, 6 username, etc., constituted guest records under California Civil Code § 53.5."). 7 Accordingly, Plaintiff's Federal Wiretap Act claim is dismissed for failure to state a claim.

8 3. Invasion of Privacy Under the California Constitution 9 To bring a claim for invasion of privacy under the California Constitution, plaintiffs must 10 allege "(1) they possess a legally protected privacy interest, (2) they maintain a reasonable 11 expectation of privacy, and (3) the intrusion is so serious... as to constitute an egregious breach of 12 the social norms such that the breach is highly offensive." In re Facebook, Inc. Internet Tracking 13 Litig., 956 F.3d 589, 601 (9th Cir.

2020) (cleaned up). Plaintiff contends Sojern intruded upon her 14 privacy interest because "her identity and room reservation information [] was confidential as a 15 matter of law under the Guest Records Statute." (Dkt. No. 35 at 30.) This argument fails for the 16 same reason it does with her Federal Wiretap Act claim—she has not shown that the information 17 Sojern allegedly tracked is covered by Section 53.5.

Accordingly, her invasion of privacy claim 18 is dismissed for failure to state a claim. 19 4. UCL Claim 20 The UCL defines unfair competition as "any unlawful, unfair or fraudulent business act

or 21 practice.” Cal. Bus. & Prof. Code, § 17200.

The statute is written in the “disjunctive” and 22 establishes three varieties of unfair competition, with each as a basis for liability. *Cel-Tech 23 Comm'n, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) (citation omitted). 24 Plaintiff brings a claim under the lawful and unfair prong. (Dkt. No. 19 at ¶¶ 105, 107.) 25 As to the unlawful prong, Plaintiff’s claim is predicated on her CIPA claim and her Civil 26 Code Section 53.5 claim and thus must be dismissed for the same reason as those claims.

See 27 *Aleksick v. 7-Eleven, Inc.*, 205 Cal.App.4th 1176, 1185 (2012) (“When a statutory claim fails, a 1 As to the unfair prong, Plaintiff alleges Sojern’s “‘unfair’ acts and practices include its 2 violation of privacy interests protected by the statutes identified above [referring to CIPA and 3 Section 53.5].” (Dkt. No. 19 at ¶ 107.) Plaintiff further alleges Sojern’s conduct is an unfair 4 business practice “because these practices offend established public policy and hurt Plaintiff and 5 class members, which cannot be reasonably avoided, and that outweighs any benefit to consumers 6 or competition.

The conduct also is immoral, unethical, oppressive, unscrupulous, and 7 substantially injurious to consumers.” (Id. at ¶ 108.) Plaintiff’s conclusory allegations fails to state 8 a claim under the unfair prong. See *Warren v. PNC Bank Nat’l Ass’n*, No. 22-CV-07875-WHO, 9 2023 WL 3182952, at 2 *10 (N.D. Cal. Apr. 30, 2023) (“[t]he ‘unfair’ prong requires proving 10 either: (1) the public policy which is a predicate to a consumer unfair competition action is 11 tethered to specific constitutional, statutory or regulatory provisions, or (2) that the challenged 12 business practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to 13 consumers.”) (cleaned up).

Plaintiff’s allegations merely parrot the statutory language and 14 therefore fail to state a claim. See *Landers v. Quality Commc’ns, Inc.*, 771 F.3d 638, 644 (9th Cir. 15 2014), as amended (Jan. 26, 2015) (rejecting argument “[c]onclusory allegations that merely recite 16 the statutory language are adequate.”). 17 Accordingly, Plaintiff’s UCL claim is dismissed for failure to state a claim.

18 5. Unjust Enrichment Claim 19 Under California law, unjust enrichment is “synonymous with restitution” and describes 20 “the theory underlying a claim that a defendant has been unjustly conferred a benefit through 21 mistake, fraud, coercion, or request.” *Astiana v. Hain Celestial Group, Inc.*, 783 F.3d 753, 762 22 (9th Cir. 2015). Plaintiff alleges Sojern unjustly received an economic benefit from its collection 23 of Plaintiff’s personal and private data without her consent. “But because [] plaintiff[] ha[s] not 24 stated a claim against [Sojern] for any unlawful conduct, [she] ha[s] also failed to state an unjust 25 enrichment claim.” *Doe I v. Google LLC*, 741 F. Supp. 3d 828, 849 (N.D.

Cal. 2024). 26 Accordingly, Plaintiff's unjust enrichment claim is dismissed. 27 CONCLUSION 1
Sojern's motion to dismiss with leave to amend the claims alleged in the amended complaint. 2 ||
Plaintiff may not add new defendants or claims without further leave of Court. 3 Any amended
complaint is due by October 16, 2025. 4 This Order disposes of Docket Nos. 17, 28.

5 6 IT IS SO ORDERED. 7 Dated: September 19, 2025 8 9 re JACQUELINE SCOTT CORLEY
10 United States District Judge 11 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28