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In ‘Novel’ Jurisdiction Issue, 9th Circuit Limits Where Consumers Can Sue E-Commerce Payment Platforms

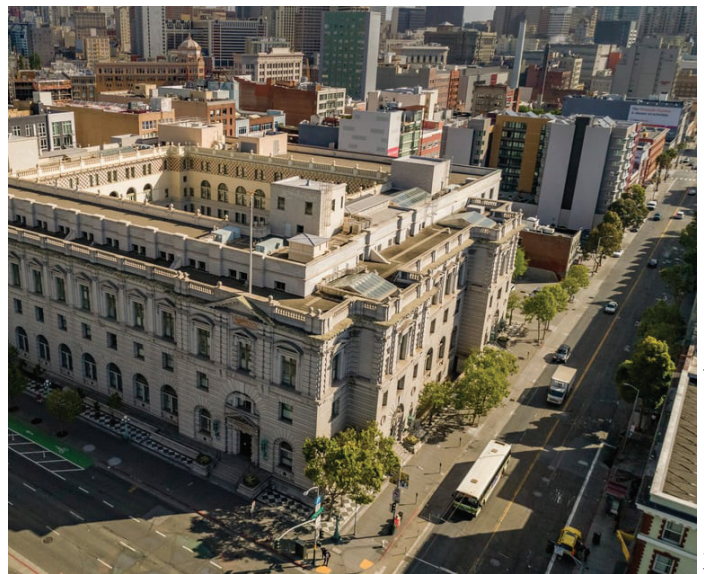
By Alaina Lancaster

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A federal appeals court hemmed in the jurisdictions where consumers have standing to sue national e-commerce payment platforms for certain claims in a ruling Tuesday.

In a case of first impression, a panel for the U.S. Court of Appeals for the Ninth Circuit found e-commerce companies such as Canada-based Shopify Inc. are not subject to specific jurisdiction in privacy and unfair competition claims just because a consumer made a purchase with the platform from a certain location.

The opinion rejected arguments from a proposed class of plaintiffs—represented by Public Citizen Litigation Group and Gutride Safier—alleging Shopify can be sued in California because it effectively reaches into the state electronically and inserts itself technologically into a transaction between a consumer and a California seller. The question of



(Photo: Jason Doiy/ALM)

United States Court of Appeal for the Ninth Circuit

whether platforms such as Shopify aim their conduct toward California for the purposes of jurisdiction is a new issue facing federal appeals courts, according to the decision.

“This type of personal jurisdiction question involving an online payment platform is novel,” wrote Judge Daniel Bress on behalf of the panel. “We have never addressed such a situation, nor, to our knowledge, have other circuits.”

The underlying August 2021 lawsuit claims Shopify, whose U.S.-based headquarters is in Delaware, violates California privacy and unfair competition laws by deliberately concealing its involvement in consumer transactions. Tuesday's ruling affirms a dismissal of the suit from Senior U.S. District Judge Phyllis Hamilton of the Northern District of California for lack of jurisdiction.

"We hold that the defendants are not subject to specific jurisdiction in California because they did not expressly aim their suit-related conduct at the forum state," wrote the panel, which also included Judges Consuelo Calahan and Bridget Bade. "When a company operates a nationally available e-commerce payment platform and is indifferent to the location of end-users, the extraction and retention of consumer data, without more, does not subject the defendant to specific jurisdiction in the forum where the online purchase was made."

The claims asserted by the name plaintiff, California resident Brandon Briskin, have nothing to do with Shopify's brick-and-mortar operations or contracts with merchants within the state, according to the ruling, so Briskin would have the same injuries regardless of whether he was physically located in California.

"To the extent Briskin suggests that Shopify's broader business actions in California

set the wheels in motion for Shopify to eventually inflict privacy related harm on him in California, such a butterfly effect theory of specific jurisdiction would be far too expansive to satisfy due process," Bress wrote.

The panel determined that courts ought to draw from case law in personal jurisdiction cases regarding interactive websites, in particular the court's 2011 ruling in *Mavrix Photo v. Brand Techs*; its 2020 decision in *AMA Multimedia v. Wanat*; and its 2022 opinion in *Will Co. v. Lee*.

The ruling marks a win for a team of Hueston Hennigan attorneys including Moez Kaba in Los Angeles. "We appreciate the Ninth Circuit's thorough opinion affirming our legal arguments," Kaba said in a statement. "As the opinion notes, it is important that long-established, traditional limits on the exercise of personal jurisdiction are applied fairly to online businesses."

Plaintiffs counsel included Public Citizen Litigation Group's Nicolas Sansone, Allison Zieve, and Scott Nelson, and Gutride Safier's Seth Safier, Matthew McCrary and Todd Kennedy in San Francisco.

The Hueston Hennigan team also included Sourabh Mishra in Newport Beach, California and Adam Minchew in New York City.