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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRANDON BRISKIN,  
Plaintiff,  
  
v.  
  
SHOPIFY INC., et al.,  
Defendants.

Case No. 21-cv-06269-PJH

**ORDER OF DISMISSAL**

Re: Dkt. Nos. 51, 52, 53

United States District Court  
Northern District of California

The three motions of defendants Shopify Inc., Shopify (USA) Inc., and Shopify Payments (USA) Inc. to dismiss plaintiff’s second amended complaint (“SAC”) all came on for hearing before this court on April 28, 2022. Plaintiff appeared through his counsel, Kali Backer. Defendants appeared through their counsel, Aravind Swaminathan and Thomas Fu. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

**BACKGROUND**

This putative class action for invasion of privacy concerns the collection of consumer data over an online shopping platform. Plaintiff Brandon Briskin is an Internet shopper and resident of Madera, California. SAC ¶ 8. Defendant Shopify Inc. is a Canadian company headquartered in Ottawa, Canada. SAC ¶ 9. Defendant Shopify (USA) Inc. (“Shopify USA”) is a Delaware company with its principal place of business in Ottawa, Canada. SAC ¶ 14. Defendant Shopify Payments (USA) Inc. (“Shopify Payments”) is a Delaware company with its principal place of business in Wilmington,

1 Delaware. SAC ¶ 15. Both Shopify USA and Shopify Payments are wholly owned  
2 subsidiaries of Shopify Inc. Plaintiff refers to the three defendants repeatedly and  
3 collectively throughout the SAC as “Shopify.”

4 **A. Allegations of defendants’ conduct with consumer data**

5 Defendants run an e-commerce platform that provides payment processing  
6 services to millions of merchants across the Internet. SAC ¶ 24. Defendants host  
7 merchants’ websites in addition to facilitating and verifying customers’ payment  
8 information. SAC ¶ 24. Plaintiff alleges that when a consumer begins the checkout  
9 process with one of Shopify’s merchant customers, the software makes it appear that the  
10 consumer communicates directly with the merchant, but in reality, the consumer does not  
11 send any information to the merchant. SAC ¶¶ 1-2, 4, 25-35, 82. Rather, Shopify’s  
12 software generates the payment form and collects all information entered into it. Id.  
13 Plaintiff complains that Shopify also installs cookies on users’ browsers to track  
14 consumers’ transactions across the Shopify merchant network. SAC ¶¶ 5, 38-41.

15 In June 2019, plaintiff purchased fitness apparel from IABMFG, a Shopify Inc.  
16 merchant, through IABMFG’s website. SAC ¶ 57. Plaintiff alleges that he, like other  
17 consumers, was uninformed of defendants’ conduct, and without consent, defendants  
18 collected sensitive private information, including consumers’ full names, addresses, email  
19 addresses, credit card numbers, IP addresses, the items purchased, and geolocation.  
20 SAC ¶¶ 2-3, 40, 81. In defendants’ course of collecting the data, they can decipher what  
21 data emanates from California because they have consumers’ billing addresses and  
22 geolocations. Id. Defendants take additional steps to use consumer data and make it  
23 profitable for themselves and their merchants by compiling the data into individualized  
24 profiles. SAC ¶¶ 6, 42-45. Defendants share information within the profiles of  
25 consumers with their merchants. Id. The information is valuable to the merchants  
26 because they provide insights into consumers’ creditworthiness before the transaction is  
27 final. Id.

1           When a consumer makes a purchase, defendants use the consumer’s data to  
2 provide their merchants with an “analysis” of the order that cross-references the details of  
3 the new transaction with the consumer’s purchase history to identify potential areas of  
4 fraud. SAC ¶ 43. In addition to building profiles and analyzing their data, defendants  
5 share consumer data with other non-merchant third-parties, such as Stripe and MaxMind,  
6 who, in turn, use the data to feed their own profiles on consumers. SAC ¶¶ 15-16, 46-47.

7           **B.       Shopify’s Contacts with California**

8           Plaintiff alleges that Shopify’s efforts to drive Internet-based sales in California go  
9 beyond simply making its software available for use by California companies—Shopify  
10 actively courts California merchants who it knows are doing business with California  
11 consumers. For instance, in 2017, Shopify built Kylie Cosmetics, one of its largest online  
12 merchants, a pop-up store in Los Angeles with the goal of learning more about its base of  
13 consumers. SAC ¶ 10. Shopify sent members of its own team as well as hired an  
14 agency to secure workers to run the store. Id. In 2018, Shopify deepened its ties with  
15 California when it opened a physical store in Los Angeles to serve as a hub where its  
16 merchants can learn about its products and receive “business advice” and “learn about  
17 the company’s online platform.” SAC ¶¶ 11-12. As of 2018, California was home to over  
18 80,000 Shopify merchants with 10,000 in Los Angeles alone. SAC ¶ 11-12.

19           **C.       Plaintiff’s Claims**

20           Plaintiff alleges that he never granted consent for defendants to collect and use his  
21 data in the methods described above, and he seeks to represent a class of similarly  
22 situated consumers. His proposed class definition is as follows: “All natural persons who,  
23 between August 13, 2017 and the present, submitted payment information via Shopify’s  
24 software while located in California.” SAC ¶ 68. The SAC brings the following claims on  
25 behalf of plaintiff and the proposed class against all three defendants, all under California  
26 law:

- 27           1. Violation of the California Invasion of Privacy Act, California Penal Code § 631;
- 28           2. Violation of the California Invasion of Privacy Act, California Penal Code § 635;

- 1 3. Invasion of Privacy Under California's Constitution;
- 2 4. Intrusion Upon Seclusion;
- 3 5. Violation of the California Computer Data Access and Fraud Act, Cal. Penal
- 4 Code § 502; and
- 5 6. Violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code
- 6 § 17200, et seq.

#### 7 **D. Procedural History**

8 The original complaint was filed on August 13, 2021, naming only Shopify Inc. and  
9 Shopify USA. Dkt. 1. Before defendants responded, plaintiff filed a first amended  
10 complaint on October 29, 2021. Dkt. 17. Defendants filed separate motions to dismiss in  
11 response on December 8, 2021. Dkt. 29 and 30. Rather than opposing the motions,  
12 plaintiff sought leave of court to file a second amended complaint, which defendants  
13 opposed. Dkt. 36-40. The court granted plaintiff leave to file, and plaintiff filed, the now-  
14 operative second amended complaint, which added Shopify Payments and added some  
15 allegations intended to address defects highlighted by defendants' prior motions. Dkt. 43  
16 and 44.

17 In response to the second amended complaint, the three defendants filed the  
18 instant motions to dismiss. Dkt. 51, 52, and 53. All three defendants ask the court to  
19 dismiss the complaint pursuant to Federal Rule of Civil Procedure 8(a)(2) for failure to  
20 provide adequate notice of the claims against them, or in the alternative, pursuant to  
21 Federal Rule 12(b)(2) for lack of personal jurisdiction, or in the further alternative,  
22 pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon  
23 which relief can be granted.

#### 24 **DISCUSSION**

25 From the several grounds for dismissal offered in defendants' moving papers, the  
26 court focuses on only two grounds for dismissal: (1) whether the SAC comports with the  
27 pleading requirements of Rule 8 and (2) whether the court may exercise jurisdiction over  
28 the defendants.

1 **A. Sufficiency of Pleading**

2 **1. Legal Standard**

3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the  
4 legal sufficiency of the claims alleged in the complaint. Ileto v. Glock Inc., 349 F.3d 1191,  
5 1199-1200 (9th Cir. 2003). Under Federal Rule of Civil Procedure 8, which requires that  
6 a complaint include a “short and plain statement of the claim showing that the pleader is  
7 entitled to relief,” Fed. R. Civ. P. 8(a)(2), a complaint may be dismissed under Rule  
8 12(b)(6) if the plaintiff fails to state a cognizable legal theory, or has not alleged sufficient  
9 facts to support a cognizable legal theory. Somers v. Apple, Inc., 729 F.3d 953, 959 (9th  
10 Cir. 2013). “A complaint which lumps together multiple defendants in one broad  
11 allegation fails to satisfy the notice requirement of Rule 8(a)(2).” Adobe Sys. Inc. v. Blue  
12 Source Grp., Inc., 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) (cleaned up).

13 As a general rule, “Plaintiffs’ failure to allege what role each Defendant played in  
14 the alleged harm makes it exceedingly difficult, if not impossible, for individual  
15 Defendants to respond to Plaintiffs’ allegations.” In re iPhone Application Litig., No. 11-  
16 MD-02250-LHK, 2011 WL 4403963, at \*8 (N.D. Cal. Sept. 20, 2011) (Koh, J.).  
17 Accordingly, a complaint that lumps multiple defendants together in broad allegations  
18 falls short of providing the necessary notice under Rule 8(a)(2). Gen-Probe, Inc. v.  
19 Amoco Corp., 926 F. Supp. 948, 961 (S.D. Cal.1996). Put another way, a plaintiff’s  
20 allegations must “provide sufficient notice to all of the Defendants as to the nature of the  
21 claims being asserted against them,” including “what conduct is at issue.” Villalpando v.  
22 Exel Direct Inc., No. 12-CV-04137 JCS, 2014 WL 1338297, at \*5 (N.D. Cal. Mar. 28,  
23 2014).

24 **2. Analysis**

25 Here, plaintiff admittedly alleges all claims against all three defendants without  
26 distinguishing the conduct of any single entity, referring collectively to “Shopify.” SAC  
27 ¶ 18. Plaintiff contends that the three related entities are sufficiently put on notice of the  
28 claims alleged against them. Not so. The complaint does not allege plaintiff’s particular

1 claims against any specific defendant, and rather generally alleges all claims against all  
2 defendants without identifying which defendant is responsible for his alleged injuries. It  
3 thus fails to put any of the three defendants fairly on notice of the claims against them,  
4 and the SAC must be dismissed.

5 **B. Personal Jurisdiction**

6 **1. Legal Standard**

7 A federal court may dismiss an action under Federal Rule of Civil Procedure  
8 12(b)(2) for lack of personal jurisdiction. When resolving a motion to dismiss under Rule  
9 12(b)(2) on written materials, the court accepts uncontroverted facts in the complaint as  
10 true and resolves conflicts in affidavits in the plaintiffs' favor. Mavrix Photo, Inc. v. Brand  
11 Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011). The party seeking to invoke a federal  
12 court's jurisdiction bears the burden of demonstrating jurisdiction. Picot v. Weston, 780  
13 F.3d 1206, 1211 (9th Cir. 2015). "Federal courts ordinarily follow state law in determining  
14 the bounds of their jurisdiction over persons." Daimler AG v. Bauman, 571 U.S. 117, 125  
15 (2014); see Fed. R. Civ. P. 4(k)(1)(a). California's long arm statute permits exercise of  
16 personal jurisdiction to the fullest extent permissible under the U.S. Constitution, and  
17 therefore, the court's inquiry "centers on whether exercising jurisdiction comports with  
18 due process." Picot, 780 F.3d at 1211; see Cal. Code Civ. Pro. § 410.10.

19 The Due Process Clause of the Fourteenth Amendment "limits the power of a  
20 state's courts to exercise jurisdiction over defendants who do not consent to jurisdiction."  
21 Martinez v. Aero Caribbean, 764 F.3d 1062, 1066 (9th Cir. 2014). Due process requires  
22 that the defendant "have certain minimum contacts with it such that the maintenance of  
23 the suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe  
24 Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). Under  
25 the "minimum contacts" analysis, a court can exercise either "general or all-purpose  
26 jurisdiction," or "specific or conduct-linked jurisdiction." Daimler, 571 U.S. at 121-22  
27 (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).  
28

1 A court may exercise specific jurisdiction over a defendant if its less-substantial  
2 contacts with the forum give rise to the claim or claims pending before the court—that is,  
3 if the cause of action “arises out of” or has a substantial connection with that activity.

4 Hanson v. Denckla, 357 U.S. 235, 250-53 (1958); see also Goodyear, 564 U.S. at 924-  
5 25. To determine whether a defendant’s contacts with the forum state are sufficient to  
6 establish specific jurisdiction, the Ninth Circuit employs a three-part test:

- 7 (1) The non-resident defendant must purposefully direct his  
8 activities or consummate some transaction with the forum or  
9 resident thereof; or perform some act by which he purposefully  
10 avails himself of the privilege of conducting activities in the  
11 forum, thereby invoking the benefits and protections of its laws;  
12 (2) the claim must be one which arises out of or relates to the  
13 defendant’s forum-related activities; and  
14 (3) the exercise of jurisdiction must comport with fair play and  
15 substantial justice, i.e. it must be reasonable.

16 Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1142 (9th Cir. 2017). With respect to the first  
17 prong, courts apply a “purposeful avilment” analysis in suits sounding in contract and a  
18 “purposeful direction” analysis (also known as the effects test) in suits sounding in tort.  
19 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). The  
20 purposeful direction test applies here because plaintiff’s claims sound in tort.

21 Under the Calder effects test, purposeful direction exists when a defendant  
22 commits an act outside the forum that was intended to and does in fact cause injury in  
23 the forum, meaning, the defendant must (1) commit an intentional act (2) expressly aimed  
24 at the forum (3) that causes harm that the defendant knows is likely to be suffered in the  
25 forum. Calder v. Jones, 465 U.S. 783, 788-89 (1984); Washington Shoe Co. v. A-Z  
26 Sporting Goods Inc., 704 F.3d 668, 673 (9th Cir. 2012). The effects test focuses on “the  
27 forum in which the defendant’s acts were felt, whether or not the actions themselves  
28 occurred within the forum.” Mavrix, 647 F.3d at 1228. “However, referring to the Calder  
test as an effects test can be misleading. For this reason, we have warned courts not to  
focus too narrowly on the test’s third prong—the effects prong—holding that ‘something  
more’ is needed in addition to a mere foreseeable effect.” Pebble Beach Co. v. Caddy,  
453 F.3d 1151, 1156 (9th Cir. 2006) (citation omitted).



1           **2. Analysis**

2           Here, plaintiff offers no argument that any of the three defendants, based in either  
3 Canada or Delaware, are subject to general jurisdiction in this court. The assessment  
4 thus focuses on whether defendants' conduct gives rise to specific jurisdiction.

5           Plaintiff's allegations establish only that Shopify is IABMFG's vendor for an online  
6 sales platform. A vendor's sale of a product to IABMFG — even if IABMFG has  
7 substantial business here and the vendor knew it — does not establish specific personal  
8 jurisdiction over the vendor. Further, as plaintiff alleges, "Shopify is an e-commerce  
9 platform that enables merchants to sell products online." SAC ¶ 24. Such passive  
10 conduct does not represent an intentional act directed at California residents. Shopify  
11 serves as an agent of IABMGF, providing hosting services for the latter's website, which  
12 falls far short of invoking the benefits and protections of California's laws. Though  
13 plaintiff makes much of Shopify's Los Angeles-based storefront (SAC ¶¶ 10-12), even if  
14 the court considered that to be purposeful availment of the benefits of this forum (it does  
15 not), plaintiff still flatly fails to clarify how his Internet-based claims arise from or even  
16 relate to those activities. The court does not have specific jurisdiction over Shopify Inc. or  
17 Shopify USA based on these allegations.

18           Plaintiff additionally makes specific jurisdictional claims about the conduct of  
19 Shopify Payments in this forum, namely, the entity's contract with Stripe. "[T]he mere  
20 existence of a contract with a party in the forum state does not constitute sufficient  
21 minimum contacts for jurisdiction." Sher v. Johnson, 911 F.2d 1357, 1362 (9th Cir.  
22 1990). So too here. Shopify Payments' contract with a forum resident is not sufficient to  
23 show that the defendant expressly aimed acts at the forum state, as is necessary to fulfill  
24 the express aiming prong of the purposeful direction test. See Speidel v. Markota, 2021  
25 WL 3463895, at \*4 (C.D. Cal. 2021). Therefore, the court lacks both general and specific  
26 personal jurisdiction over these three defendants.

27 //

28 //



**CONCLUSION**

For the reasons stated above, the court GRANTS defendants' motions to dismiss. Dismissal for failure to give defendants notice of the claims alleged against each of them would be with leave to amend. However, the court DISMISSES the action without leave to amend because it does not have personal jurisdiction over any of the defendants.

**IT IS SO ORDERED.**

Dated: May 5, 2022

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON  
United States District Judge

United States District Court  
Northern District of California

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