

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEREMIAH REVITCH,  
Plaintiff,

v.

NEW MOOSEJAW, LLC, et al.,  
Defendants.

Case No. 18-cv-06827-VC

**ORDER DISMISSING FIRST  
AMENDED COMPLAINT WITH  
LEAVE TO AMEND**

Re: Dkt. Nos. 24, 25, 31, 32

Revitch sues New Moosejaw, LLC and NaviStone, Inc. in a purported class action for violation of the California Invasion of Privacy Act (“CIPA”) and for other state law violations.

As an initial matter, Revitch has not adequately pled diversity jurisdiction under the Class Action Fairness Act (“CAFA”) because he has not alleged that there are at least 100 people in the proposed class. *See* 28 U.S.C. § 1332(d)(2), (5); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 552 (2014); *see also Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1093 (9th Cir. 2004).

Turning to NaviStone’s motion to dismiss, Revitch has not alleged Article III standing with sufficient specificity. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548-49 (2016). Without any allegations about the content of the communications Revitch had with New Moosejaw or NaviStone, or about the files accessed from his computer, Revitch has not identified a concrete and particularized harm. Although Revitch explains the operation of the NaviStone code by way of example through the use of an apparently hypothetical name and address, he has not alleged with enough specificity how his own privacy interests were invaded. *Cf. Low v. LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1021 (N.D. Cal. 2012) (“Because Plaintiffs have alleged that *their information* has been disclosed to third parties by LinkedIn’s policies, Plaintiffs have sufficiently


articulated, with particularity, injury as to themselves for the purposes of Article III standing.”).

Accordingly, NaviStone’s February 27, 2019 motion to dismiss is granted, with leave to amend. New Moosejaw’s February 27, 2019 motion to dismiss Revitch’s First Amended Complaint, as well as New Moosejaw’s January 16, 2019 and NaviStone’s January 16, 2019 motions to dismiss Revitch’s original complaint, are denied as moot.

Any second amended complaint is due within 21 days of this order. Revitch has now been put on notice, from the defendants’ motions to dismiss, of other potential defects in his complaint. The next iteration will therefore presumably reflect Revitch’s best effort to state claims in terms of jurisdiction, timeliness, and substance.

**IT IS SO ORDERED.**

Dated: May 1, 2019

  
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VINCE CHHABRIA  
United States District Judge