

2023 WL 5611404 (Utah Dist.Ct.) (Trial Order)

District Court of Utah,
Third Judicial District.
Tooele County

TOOELE CITY, Plaintiff,

v.

RE SEARCH WARRANT FOR RECORDS, Defendant,
LIFE360, Respondent.

No. 231300232.

July 13, 2023.

Order Denying Request for Finding of Contempt

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[Michael K. Erickson](#) (12503), Ray Quinney & Nebeker, 36 South State Street, Suite 1400, Salt Lake City, UT 84111, Telephone: (801) 323-3351, merickson@rgn.com.

[Teresa Welch](#), Judge.

***1 The Order of the Court is stated below:**

Dated: July 13, 2023

10:14:53 AM

/s/ TERESA WELCH

District Court Judge

Upon Plaintiff's petition, on April 26, 2023, this Court issued an Order to Show Cause Why Life360 and Jesse Kellar Should Not Be Held in Contempt and Sanctioned (the "**Order**"). The Order directed Respondent Life360, Inc. and its Head of Legal Operations, Jesse Kellar (collectively, "**Life360**" or "**Respondent**") to show cause why it should not be held in contempt of court for violating a court order—in this case, a search warrant directed to Life360 that had been signed by a Tooele County, Utah District Court Judge.

On June 12, 2023, Life360 filed a written response to the Order, and, on June 26, 2023, the Court held a hearing to determine if Life360 should be held in contempt of court.

Having reviewed Life360's written submission and considered the parties' oral arguments, the Court **DENIES** the government's Petition and in support thereof issues the following findings of fact, conclusions of law, and order:

RULE OF LAW

“[T]o prove contempt for failure to comply with a court order it must be shown that the person cited for contempt knew what was required, had the ability to comply, and intentionally failed or refused to do so.”  *Von Hake v. Thomas*, 759 P.2d 1162, 1172 (Utah 1988). In a civil contempt proceeding, “[t]hese three elements must be proven ... by clear and convincing evidence.” *Id.* Although the recipient of an order to show cause has the burden of justifying its alleged noncompliance, the burden of persuasion ultimately rests upon the party that sought the order to show cause.  *Coleman v. Coleman*, 664 P.2d 1155, 1156-57 (Utah 1983).

FINDINGS OF FACT

Life360 is a technology company that operates nationwide. Consumers may download Life360's mobile application on their personal devices and use either a free or paid version of the service. Life360 does not maintain any offices or own any property in Utah, and it has only one employee in the state. The company advertises on a nationwide basis and does not geographically target its advertisements to consumers in Utah.

On January 27, 2023, a Tooele County District Court Judge issued a search warrant (the “*Search Warrant*”) directing Life360 to produce “[a]ny and all historical location data” “from December 2022” “associated with any Life360 subscriber accounts using” a specified phone number or email address. The phone number and email address related to an ongoing criminal investigation in a fentanyl overdose case involving the decedent and their supplier. The Search Warrant was delivered to Life360 via email by a Tooele City detective the same day it was issued.

Life360 objected to the Search Warrant and informed Tooele City it did not intend to comply therewith because, among other reasons, the issuing Utah court lacked personal jurisdiction over Life360, a Delaware company headquartered in California. Life360 urged Tooele City prosecutors to obtain a search warrant issued by a court with personal jurisdiction over Life360—specifically, a court in San Mateo County, California, where Life360 is headquartered. Although Tooele City asked the San Mateo Police Department for assistance in obtaining a California search warrant, San Mateo indicated they were unable to assist due to resource constraints and they suggested that Tooele City law enforcement instead litigate Life360's objections in Utah.

*2 Subsequently, Plaintiff filed a petition for the Order to Show Cause, which issued on April 26, 2023.

CONCLUSIONS OF LAW

Based on the factual record before the Court, Utah courts lack personal jurisdiction over Life360 in this matter. For a Utah court to compel Life360 to disclose records pursuant to  18 U.S.C. § 2703, part of the Electronic Communications Privacy Act (“*ECPA*”), consistent with state and federal law, the issuing Utah court must have:

- (1) authority under state law to issue extraterritorial search warrants, *United States v. Orisakwe*, 624 F. App'x 149, 155 (5th Cir. 2015) (“the plain text of [ECPA] permits a state to issue a search warrant [for out-of-state records] if authorized by the law of that state”); accord  *State v. Rose*, 330 P.3d 680, 685 n.5 (Ore. Ct. App. 2014) (no “provision of the SCA grants state courts the power to issue an out-of-state warrant if such a warrant is not authorized by state law”); and,
- (2) personal jurisdiction over Life360 as required by the due process protections of the Fourteenth Amendment. See, e.g.,  *In re Sealed Case*, 832 F.2d 1268 (D.C. Cir. 1987) (finding that district court must have personal jurisdiction over each of eight foreign companies in receipt of grand jury subpoena

before it can issue a valid order compelling the production of the companies' records);  *ClearOne, Inc. v. Revolabs, Inc.*, 369 P.3d 1269, 1272-73 (Utah 2016), *abrogated on other grounds by Raser Technologies, Inc. v. Morgan Stanley & Co., LLC*, 449 P.3d 150, 162 (Utah 2019) (“The authority of [a] state to hale a nonresident into a state court hinges on the ability to establish personal jurisdiction.”).

The parties have not argued that the Utah district court lacked authority under Utah law to issue extraterritorial search warrants. Consequently, this Court assumes without deciding that the issuing court had authority to issue extraterritorial warrants generally and addresses only whether the issuing court had personal jurisdiction over Life360 consistent with Utah law and the Fourteenth Amendment of the U.S. Constitution.¹

Whether the issuing Utah court may exercise personal jurisdiction over Life360 in a manner comporting with due process requires a fact-specific analysis of Life360's contacts with the state. Here, Life360's contacts with Utah are minimal and insufficient to give rise to either general or specific personal jurisdiction over the company.

Life360 is not subject to general jurisdiction in Utah. Life360 is neither incorporated in the state nor are its headquarters located here. See  *Daimler AG v. Bauman*, 571 U.S. 117, 118 (2014). Life360 has virtually no physical Utah presence: it does not own property in the state, does not have offices here, and has only one employee that works remotely in the state.  *DP Creations, LLC v. Adolly.com*, No. 2:22-cv-00230-DBB, 2023 WL 3510749, at *4 (D. Utah May 17, 2023); *Keaty LLC v. Blueprint Summer Programs Inc.*, 457 P.3d 432, 437 (Utah Ct. App. 2020). Although the company makes its products and services available to the residents of this state through its presence on the internet—as it does nationwide—Life360 does not thereby make itself “at home” here.

*3 There is likewise no basis for the exercise of specific jurisdiction over Life360. For a court to exercise specific jurisdiction over a defendant, (1) the defendant “must take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State,” (2) the controversy must relate to or arise out of the defendant's contacts with the forum, and (3) the exercise of jurisdiction must comport with notions of fair play and substantial justice.  *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1024-25 (2021); accord  *DP Creations, LLC*, 2023 WL 3510749, at *5. None of these three criteria are satisfied here.

First, Life360 does not direct any activities towards Utah. As noted above, Life360 does not maintain any offices or own any property in the state, and it has only one employee here. Further, that Life360's application and services are available through the Internet in Utah does not suffice to establish that Life360 directed its activities here: “Because the internet operates in every state regardless of where the user is physically located, potentially rendering the territorial limits of personal jurisdiction meaningless, specific jurisdiction can be based only on the [defendant] *intentionally directing* his/her/its activity or operation at the forum state rather than just having the activity or operation accessible there.” *Route App, Inc. v. Heuberger*, No. 2:22-CV-291-TS-JCB, 2022 WL 4109686, at *3-4 (D. Utah Sept. 8, 2022).

Similarly, although “[c]ontinuous and deliberate exploitation of the forum state market can satisfy the minimum contacts standard for specific jurisdiction,” a plaintiff would need to demonstrate “(a) high sales volume and large customer base and revenues, and (b) extensive nationwide advertising or ads targeting the forum state” to demonstrate such exploitation.  *Old Republic Ins. Co. v. Continental Motors, Inc.*, 877 F.3d 895, 914-15 (10th Cir. 2017). The government has offered evidence of neither and the Declaration of Jesse Kellar, Life360's Head of Legal Operations, affirms that Life360 does *not* engage in advertising that is geographically targeted to residents of this state. Under such circumstances, Life360's incidental activities in Utah do not establish that it has “purposefully avail[ed] itself of the privilege of conducting activities” in Utah. See  *Ford Motor Co.*, 141 S. Ct. at 1024.

Second, to the extent Life360 has contacts with the state of Utah, this controversy does not arise out of any such contacts. The criminal investigation does not involve Life360's activities in Utah; rather, Life360's only connection to the investigation is that participants in the activities underlying the investigation may have been running the mobile application during times relevant to the investigation. The fortuitous and coincidental acts of parties *other than* Life360—that is, of the decedent and/or the decedent's supplier—cannot be the basis for specific jurisdiction over *Life360*.

Finally, it would be unfair and unjust to exercise jurisdiction over Life360 here. No compulsory process may issue in the criminal context absent the proper exercise of personal jurisdiction over the recipient. *E.g.*,  *In re Sealed Case*, 832 F.2d at 1272-73 (finding that district court must have personal jurisdiction over each of eight foreign companies in receipt of grand jury subpoenas before it can compel production of records). The Utah Rules of Criminal Procedure similarly contemplate that evidence from out-of-state witnesses in a criminal case must be obtained via a court with jurisdiction over the nonresident. *See, e.g.*, [Utah Code Ann. § 77-21-3 \(2023\)](#) (to secure testimony from out-of-state witness a Utah court must issue a certificate requesting that a foreign state ensure the witness' attendance at trial); [Utah R. Crim. P. 14\(a\)\(5\) \(2020\)](#) (criminal subpoena may compel “attendance of a witness from anywhere in the state”). Accordingly, the exercise of specific jurisdiction over Life360 would not comport with notions of fair play and substantial justice.

*4 Because it lacked a basis to exercise either general or specific jurisdiction over Life360, the issuing court could not, consistent with the Fourteenth Amendment, compel Life360's compliance with the Search Warrant. It follows that this Court may not hold Life360 in contempt nor impose sanctions for Life360's failure to follow the Search Warrant's mandate.

 [Section 2703](#) of ECPA, a federal statute, does not change the constitutional analysis or outcome.  [Section 2703](#) does not speak to the existence or scope of personal jurisdiction that may be exercised by state courts. Rather, it provides that a government entity may require an entity subject to ECPA to disclose the content of its users' communications “only pursuant to a warrant” issued by a “court of competent jurisdiction.”  18 U.S.C. §§ 2703(a),  (b); *see*  18 U.S.C. § 2703(a),  (b) (state warrant must be issued “using State warrant procedures”); *id.* § 2711(3)(B) (state “court of competent jurisdiction” is one “authorized by the law of that State to issue search warrants”); *Orisakwe*, 624 F. App'x at 155.

The statute thus makes clear that a warrant authorized by state law is *necessary* before covered communications may be disclosed, but it does not suggest that the issuance of a state warrant, standing alone, is *sufficient* to compel disclosure by the recipient of the warrant.² Rather, the warrant must issue from a court of competent jurisdiction, and the due process protections of the Fourteenth Amendment mandate that a court have personal jurisdiction over a warrant recipient before it may be enforced.

ORDER

ACCORDINGLY, THE COURT ORDERS AS FOLLOWS:

The issuing court lacked personal jurisdiction over Respondent, and as such, the Search Warrant was not binding on Respondent.

Respondent has accordingly shown cause why it should not be held in contempt of court or sanctioned. Plaintiff's request that Respondent be held in contempt or sanctioned is **DENIED**.

** In accordance with the Utah State District Courts E-filing Standard No. 4, and [URCP Rule 10\(e\)](#), this Order does not bear the handwritten signature of the Judge, but instead displays an electronic signature at the upper right-hand corner of the first page of this Order. **

Footnotes

- 1 See  *ClearOne*, 369 P.3d at 1273 n.5 (where the Utah long-arm statute grants jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause and the parties do not dispute the applicability of the statute, the court may “assume the application of the statute and go straight to the due process issue”).
- 2 Although courts have held that  § 2703 authorizes extraterritorial legal process when authorized by state law, no court has addressed whether—much less concluded that—ECPA provides state courts with nationwide personal jurisdiction. See, e.g., *Orisakwe*, 624 F. App'x at 149 (rejecting criminal defendant's challenge to extraterritorial warrants directed at service providers because warrants complied with Nevada and Texas warrant statutes and thus with the Stored Communications Act; no consideration of personal jurisdiction over providers);  *Rose*, 330 P.3d at 685-86 (finding that Oregon long-arm statute permitted extraterritorial process over foreign providers over which the Oregon court had personal jurisdiction; defendant did not dispute jurisdiction over provider).