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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALFREDO CHAIDEZ, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

JPMORGAN CHASE & CO.,
JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION,
MICROSOFT CORPORATION, and
NUANCE COMMUNICATIONS,
INC.,

Defendants.

Case No. 2:22-cv-6986

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Alfredo Chaidez (“Plaintiff”), individually and on behalf of all others
2 similarly situated, by and through his attorneys, makes the following allegations
3 pursuant to the investigation of his counsel and based upon information and belief,
4 except as to allegations specifically pertaining to himself and his counsel, which are
5 based on personal knowledge.

6 **NATURE OF ACTION**

7 1. Defendant JPMorgan Chase Bank, National Association (“Chase
8 Bank”) (a subsidiary of Defendant JPMorgan Chase & Co.) has integrated a voice
9 biometric security solution provided by Defendant Nuance Communications, Inc.
10 (“Nuance”) (a subsidiary of Defendant Microsoft Corporation), called Gatekeeper,
11 to detect and protect against instances of banking fraud.¹

12 2. Nuance’s Gatekeeper technology is used by numerous entities,
13 including Chase Bank, to monitor channels for voice-based interactions.

14 3. Chase Bank utilizes Gatekeeper to monitor the telephone lines that its
15 customers in California and across the nation call to, among other things, receive
16 support (“Contact Center”).

17 4. In a matter of seconds, Gatekeeper authenticates customers without
18 prompting them to enter passwords or PINs, recite specific phrases or statements,
19 or match the pitch, timbre, or rhythm of prior recordings of their speech. Rather,
20 Gatekeeper analyzes callers’ environments, their behavior, and other factors to
21 passively authenticate them as they speak on the phone with the Contact Center.²
22 Gatekeeper, in so doing, recognizes speakers and/or their speech, pinpoints identity
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26 ¹ [https://www.nuance.com/content/dam/nuance/en_us/collateral/enterprise/
infographic/ig-effortless-voice-auth%20jpmc-en-us.pdf](https://www.nuance.com/content/dam/nuance/en_us/collateral/enterprise/infographic/ig-effortless-voice-auth%20jpmc-en-us.pdf)

27 ² *Id.*

1 mismatches, and flags instances in which known fraudsters may be calling the
2 Contact Center, all without requesting or requiring callers' knowing cooperation.³

3 5. Critically, the Chase Bank Contact Center's implementation of
4 Gatekeeper records and examines customers' voice prints and/or other voice stress
5 patterns to ascertain the truth or falsity of statements that they make. For example,
6 the Contact Center utilizes Gatekeeper to assess statements made by customers as
7 to establish their identity (*i.e.*, stating that it is they who are the one calling), thus
8 verifying users.

9 6. Defendants never procured the express consent—written or
10 otherwise—of any person who interacted with Chase Bank's Contact Center, prior
11 to recording and examining Californian's voice prints and/or other voice stress
12 patterns.

13 7. Through their use of Gatekeeper, therefore, Defendants Chase Bank
14 and Microsoft Corporation have failed to comply with numerous provisions of of
15 the California Invasion of Privacy Act ("CIPA"), including CIPA §§ 631, 632, and
16 637.3.

17 8. Plaintiff brings this action to prevent Defendants from further violating
18 the privacy rights of California residents, and to recover statutory damages for
19 Defendants' having recorded and examined individuals' voice prints and/or other
20 voice stress patterns without pursuing express written consent, in contravention of
21 CIPA.

22 **PARTIES**

23 9. Plaintiff Alfredo Chaidez resides in Los Angeles and has an intent to
24 remain there, and he is therefore a citizen of California. Mr. Chaidez was in
25 California when he called the Contact Center.

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27 ³ *Id.*

1 10. Defendant Microsoft Corporation (“Microsoft”) is a Washington
2 corporation with its principal place of business located at 1 Microsoft Way,
3 Redmond, Washington 98052. Microsoft does business throughout California and
4 the entirety of the United States.

5 11. Nuance Communications, Inc. is a subsidiary of Microsoft and vendor
6 of voice recognition technologies. Nuance provides a voice biometric security
7 solution called “Gatekeeper,” which is at issue here and described more fully below.

8 12. At all relevant times, JPMorgan Chase Bank, National Association has
9 utilized the “Gatekeeper” product in its Contact Center.

10 13. Defendant JPMorgan Chase & Co. (“JPMorgan”) is a Delaware
11 corporation with its principal place of business at 270 Park Avenue, 39th Floor, New
12 York, New York 10017.

13 14. Defendant JPMorgan Chase Bank, National Association is a banking
14 subsidiary of Defendant JPMorgan Chase & Co. with its principal place of business
15 at 270 Park Avenue, New York, New York 10017. Chase Bank does business
16 throughout California and the entirety of the United States. Chase Bank owns and
17 operates the Contact Center.

18 **JURISDICTION AND VENUE**

19 15. This Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. § 1332(d) because this is a class action where there are more than 100
21 members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive
22 of interest, fees, and costs, and at least one member of the putative Class is a citizen
23 of a state different from Defendant.

24 16. This Court has personal jurisdiction over Defendants because
25 Defendants have purposefully availed themselves of the laws and benefits of doing
26 business in California, and Plaintiff’s claims arise out of each of the Defendants’
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1 forum-related activities. Further, Plaintiff called Chase Bank’s Contact Center in
2 California, and Plaintiff’s voiceprint biometrics and the content of Plaintiff’s
3 communications with Chase Bank were collected in California.

4 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
5 a substantial portion of the events giving rise to this action occurred in this District.

6 **FACTUAL BACKGROUND**

7 **I. The California Invasion Of Privacy Act**

8 18. The California Legislature enacted the Invasion of Privacy Act to
9 protect certain privacy rights of California citizens. The legislature expressly
10 recognized that “the development of new devices and techniques for the purpose of
11 eavesdropping upon private communications ... has created a serious threat to the
12 free exercise of personal liberties and cannot be tolerated in a free and civilized
13 society.” Cal. Penal Code § 630.

14 19. As part of CIPA, the California Legislature introduced § 631(a), which
15 prohibits any person or entity from (i) “intentionally tap[ping], or mak[ing] any
16 unauthorized connection ... with any telegraph or telephone wire,” (ii) “willfully
17 and without the consent of all parties to the communication ... read[ing], or
18 attempt[ing] to read, or to learn the contents or meaning of any ... communication
19 while the same is in transit or passing over any wire, line, or cable, or is being sent
20 from, or received at any place within [California],” or (iii) “us[ing], or attempt[ing]
21 to use ... any information so obtained.” CIPA § 631(a) also penalizes those who
22 “aids, agrees with, employs, or conspires with any person” who conducts the
23 aforementioned wiretapping.

24 20. The California Legislature also enacted CIPA § 632(a), which prohibits
25 any person or entity from “intentionally and without the consent of all parties to a
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1 confidential communication, us[ing] an electronic amplifying or recording device to
2 eavesdrop upon or record [a] confidential communication.”

3 21. Finally, the California Legislature enacted CIPA § 637.3, which
4 prohibits any person or entity from using “any system which examines or records in
5 any manner voice prints or other voice stress patterns of another person to determine
6 the truth or falsity of statements made by such other person without his or her express
7 written consent given in advance of the examination or recordation.”

8 22. Individuals may bring an action against the violator of CIPA §§ 631
9 and 632 for \$5,000 per violation. Cal. Penal Code § 637.2(a)(1). Individuals may
10 bring an action against the violator of CIPA § 637.3 for actual damages or \$1,000,
11 whichever is greater. Cal. Penal Code § 637.3(c).

12 **II. Defendants Violate The California Invasion Of Privacy Act**

13 23. Gatekeeper is a “[b]iometric authentication and intelligent fraud
14 detection”⁴ tool that “delivers authentication and fraud prevention in every voice and
15 digital channel: live agent calls, IVRs [(interactive voice response automated
16 telephone systems)], messaging, mobile and web apps, and even connected devices
17 like smart TVs.”⁵

18 24. Gatekeeper integrates with a number of “Contact Center as a Service
19 providers including FIVE9 and Amazon Connect,”⁶ and it has been deployed by the
20 contact centers of numerous clients, including that of Chase Bank.⁷

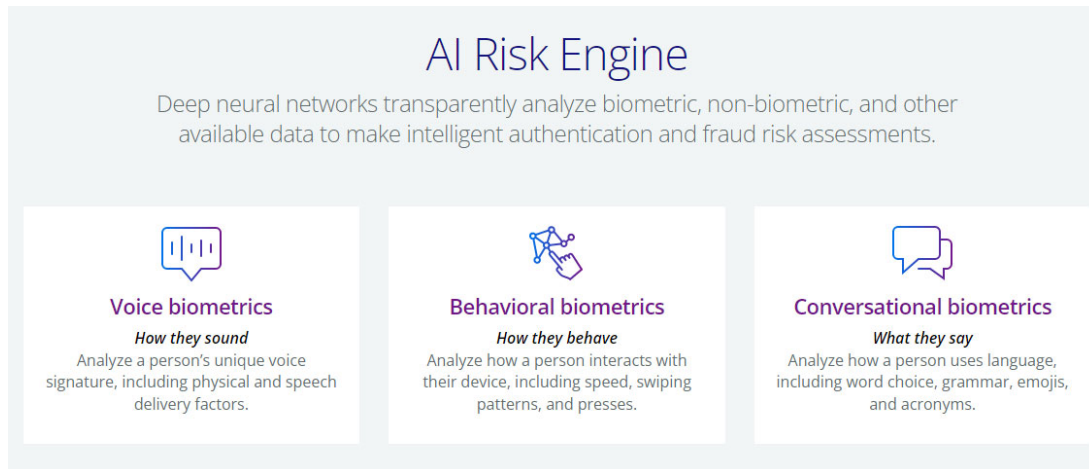
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23 ⁴ https://www.nuance.com/asset/en_us/collateral/enterprise/data-sheet/ds-nuance-gatekeeper-en-us.pdf

24 ⁵ <https://www.nuance.com/omni-channel-customer-engagement/authentication-and-fraud-prevention/gatekeeper.html>

25 ⁶ *Id.*

26 ⁷ https://www.nuance.com/content/dam/nuance/en_us/collateral/enterprise/infographic/ig-effortless-voice-auth%20jpmc-en-us.pdf

1 25. Gatekeeper utilizes “[d]eep neural networks” that “analyze biometric,
2 non-biometric, and other available data to make intelligent authentication and fraud
3 risk assessments.”⁸ In part, it “[a]nalyze[s] a person’s unique voice signature,
4 including physical and speech delivery factors,”⁹ as well as “how a person uses
5 language, including word choice, grammar, emojis, and acronyms.”¹⁰



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14 26. Gatekeeper further notes it “analyzes how a person sounds, how they
15 talk or type, and how they behave, while checking their device, network, location,
16 and other factors for signs of fraud.”¹¹

17 27. Gatekeeper then compares such data “with profiles of legitimate users
18 to detect abnormal behavior.”¹²

19 28. Gatekeeper collects and considers the unique voiceprint of the person
20 behind the call to “[a]uthenticate customers based on the distinct characteristics of
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22 ⁸ <https://www.nuance.com/omni-channel-customer-engagement/authentication-and-fraud-prevention/gatekeeper.html>

23 ⁹ *Id.*

24 ¹⁰ *Id.*

25 ¹¹ https://www.nuance.com/asset/en_us/collateral/enterprise/data-sheet/ds-nuance-gatekeeper-en-us.pdf

26 ¹² *Id.*

1 their voice, regardless of age or language”¹³ and ascertain the truth or falsity of
2 statements that consumers make.

3 29. Creating a voice print requires extracting an individual’s phonetic
4 features (including their unique speech patterns and characteristics) from their voice.
5 As such, a voice print serves as an audible “fingerprint” which can directly identify
6 an individual and can even reveal the speaker’s behavioral traits.

7 30. Gatekeeper does so “passively,”¹⁴ requiring “[n]o passwords, [an]d no
8 effort”¹⁵ to be inputted by those who are subject to its use. Instead, its functions may
9 be fulfilled surreptitiously, “[d]uring the first few seconds of normal conversation,”¹⁶
10 and without callers’ knowledge or consent to Nuance’s or Microsoft’s inclusion in
11 their conversations.

12 31. Nuance purports that it takes Gatekeeper “<1 sec audio to authenticate”
13 users, as opposed to “57 sec+ with other authentication methods,”¹⁷ while achieving
14 “99% authentication success” and “90% detection of fraudsters in 15 seconds or
15 less.”¹⁸

16 32. When Gatekeeper is used on a telephone conversation, it is not like a
17 tape recorder or a “tool” used by one party to record the other. Instead, Gatekeeper
18 involves Nuance and Microsoft—separate and distinct third-party entities from the
19 parties to the conversation—using Gatekeeper to eavesdrop upon, record, extra data
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21 ¹³ https://www.nuance.com/asset/en_us/collateral/enterprise/data-sheet/ds-nuance-gatekeeper-en-us.pdf

22 ¹⁴ https://www.nuance.com/content/dam/nuance/en_us/collateral/enterprise/infographic/ig-effortless-voice-auth%20jpmc-en-us.pdf

23 ¹⁵ *Id.*

24 ¹⁶ *Id.*

25 ¹⁷ https://www.nuance.com/asset/en_us/collateral/enterprise/data-sheet/ds-nuance-gatekeeper-en-us.pdf

26 ¹⁸ *Id.*

1 from, and analyze a conversation to which they are not a party. This is so because
2 Nuance and Microsoft themselves are collecting the voiceprints and content of any
3 conversation. That data is then analyzed by Nuance and Microsoft before being
4 provided to any entity that was a party to the conversation (like Chase Bank).

5 33. Gatekeeper is used by Nuance and Microsoft on calls between Chase
6 Bank and consumers to ascertain the truth or falsity of statements that consumers
7 make during their telephone conversations with Chase Bank's Contact Center. For
8 example, Gatekeeper assesses consumers' assertions regarding their respective
9 identities (*i.e.*, stating that it is they who are the one calling), as a means of
10 authenticating users.

11 34. By using Gatekeeper, Nuance and Microsoft, by virtue of collecting a
12 consumer's voiceprint, also collects the content of any conversations between Chase
13 Bank and consumers. Nuance and Microsoft, are required to collect and analyze
14 consumers' answers to Chase Bank's questions in order to verify who those
15 consumers are and the sentiment of consumers.

16 35. During consumers' calls with Chase Bank's Contact Center, Chase
17 Bank fails to inform consumers, prior to any recording, (i) that third parties,
18 Microsoft and Nuance, are listening in on consumers' confidential communications
19 with Chase Bank, (ii) that third parties, Microsoft and Nuance, are tapping or
20 otherwise making an unauthorized connection with the consumer's telephone
21 conversation using Gatekeeper, (iii) that the content of consumers' confidential
22 communications with Chase Bank are being recorded, collected, intercepted, and
23 analyzed by third parties, Microsoft and Nuance, using Gatekeeper, and (iv) that
24 consumers' voice prints and/or other voice stress patterns will be recorded or
25 examined by third parties, Microsoft and Nuance, using Gatekeeper.

1 36. Defendants, likewise, fail to pursue or obtain consent—written or
2 otherwise—from Contact Center callers, prior to allowing Microsoft and Nuance to
3 record, examine, intercept, collect, and analyze consumer’s voice prints and/or other
4 voice stress patterns and the content of their confidential conversations with Chase
5 Bank.

6 37. Therefore, Defendants’ conduct violates the rights of consumers set
7 forth by CIPA §§ 631, 632, and 637.3.

8 **III. Plaintiff Chaidez’s Experience**

9 38. Plaintiff Chaidez is a Chase Bank customer.

10 39. Plaintiff Chaidez has called Chase Bank’s Contact Center several
11 times, including, most recently, on August 17, 2022.

12 40. Plaintiff Chaidez reasonably expected his conversation with Chase
13 Bank to be confidential and only between Plaintiff Chaidez and Chase Bank. The
14 conversation was with a banking entity, which naturally involves the discussion of
15 confidential information, and Plaintiff Chaidez spoke to Chase Bank on his personal
16 telephone and not in the direct presence of others.

17 41. During the call with Chase Bank, Plaintiff Chaidez was asked to make
18 various “yes” or “no” statements in order to respond to questions Chase Bank asked
19 him, or to otherwise provide additional information to Chase Bank.

20 42. Unbeknownst to him, when Plaintiff Chaidez called Chase Bank’s
21 Contact Center, his telephone was tapped by Nuance and Microsoft using
22 Gatekeeper’s voice biometric security solution.

23 43. Likewise, when Plaintiff Chaidez gave his responses to Chase Bank’s
24 questions, Plaintiff Chaidez’s voice print and/or other voice stress patterns, as well
25 as the content of Plaintiff Chaidez’s confidential communications with Chase Bank,
26 were intercepted in-transit and captured, recorded, collected, read, analyzed and
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1 stored by Nuance and Microsoft using Gatekeeper’s voice biometric security
2 solution.

3 44. When Plaintiff Chaidez called Chase Bank’s Contact Center,
4 Defendants examined his voice, as well as voice print(s) that they had previously
5 stored, to determine the truth or falsity of Plaintiff Chaidez’s statements.

6 45. For instance, Defendants examined the truth or falsity of Plaintiff’s
7 assertions that it was, in fact, he, Alfredo Chaidez, who was calling the Contact
8 Center, as Defendants sought to verify Plaintiff Chaidez’s identity.

9 46. Defendants did not procure Plaintiff Chaidez’s consent, prior to
10 Nuance and Microsoft recording his voice print and examining his voice, nor prior
11 to Microsoft and Nuance tapping Plaintiff Chaidez’s phone or wiretapping his
12 confidential communications with Chase Bank.

13 47. Plaintiff Chaidez did not give his consent, written or otherwise, to
14 Defendants to have Microsoft and Nuance collect his voice print, to examine or
15 analyze his voice for any purpose whatsoever, nor did Plaintiff Chaidez given his
16 consent, written or otherwise, to Defendants to allow Microsoft and Nuance to
17 wiretap Plaintiff Chaidez’s confidential communications with Chase Bank.

18 48. Plaintiff Chaidez has, therefore, had his privacy severely invaded and
19 been exposed to the risks and harmful conditions created by Defendants’ violations
20 of CIPA alleged herein.

21 **CLASS ALLEGATIONS**

22 49. Plaintiff seeks to represent a class defined as all residents of the State
23 of California who had their voice prints or other elements of their conversations
24 recorded by Microsoft and Nuance using Gatekeeper (the “Class”).

25 50. Plaintiff also seeks to represent a subclass defined as all residents of the
26 State of California who had their voice prints or other elements of their conversations
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1 with Chase Bank recorded by Microsoft and Nuance using Gatekeeper (the
2 “Subclass”).

3 51. The Class and Subclass shall be collectively referred to as the
4 “Classes.”

5 52. The following people are excluded from the Classes: (1) any Judge
6 presiding over this action and members of his or her family; (2) Defendants,
7 Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which
8 Defendants or their parents have a controlling interest (including current and former
9 employees, officers, or directors); (3) persons who properly execute and file a timely
10 request for exclusion from the Classes; (4) persons whose claims in this matter have
11 been finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel
12 and Defendants’ counsel; and (6) the legal representatives, successors, and assigns
13 of any such excluded persons.

14 53. **Numerosity:** The number of persons within the Classes are substantial
15 and believed to amount to thousands, if not millions of persons. It is, therefore,
16 impractical to join each member of the Classes as a named plaintiff. Further, the
17 size and relatively modest value of the claims of the individual members of the
18 Classes renders joinder impractical. Accordingly, utilization of the class action
19 mechanism is the most economically feasible means of determining and adjudicating
20 the merits of this litigation. Moreover, the Classes are ascertainable and identifiable
21 from Defendants’ records.

22 54. **Commonality and Predominance:** There are well-defined common
23 questions of fact and law that exist as to all members of the Classes and that
24 predominate over any questions affecting only individual members of the Classes.
25 These common legal and factual questions, which do not vary between members of
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1 the Classes, and which may be determined without reference to the individual
2 circumstances of any Class member, include, but are not limited to, the following:

- 3 (a) Whether Defendants violated CIPA §§ 631, 632, and
4 637.3;
- 5 (b) Whether Defendants sought or obtained prior express
6 consent—written or otherwise—from Plaintiff and the
7 Class; and
- 8 (c) Whether Plaintiff and members of the Classes are entitled
9 to actual and/or statutory damages for the aforementioned
10 violations.

11 55. **Typicality:** The claims of the named Plaintiff are typical of the claims
12 of the Class because the named Plaintiff, like all other members of the Classes
13 members, called Chase Bank’s Contact Center and had his voice print and/or voice
14 stress patterns, as well as the content of his confidential communications with Chase
15 Bank, recorded, stored, collected, read, analyzed, and/or examined by Microsoft and
16 Nuance.

17 56. **Adequate Representation:** Plaintiff is an adequate representative of
18 the Classes because his interests do not conflict with the interests of the Class
19 members he seeks to represent, he has retained competent counsel experienced in
20 prosecuting class actions, and he intends to prosecute this action vigorously. The
21 interests of members of the Classes will be fairly and adequately protected by
22 Plaintiff and his counsel.

23 57. **Superiority:** The class mechanism is superior to other available means
24 for the fair and efficient adjudication of the claims of members of the Classes. Each
25 individual member of the Classes may lack the resources to undergo the burden and
26 expense of individual prosecution of the complex and extensive litigation necessary
27 to establish Defendants’ liability. Individualized litigation increases the delay and
28 expense to all parties and multiplies the burden on the judicial system presented by

1 the complex legal and factual issues of this case. Individualized litigation also
2 presents a potential for inconsistent or contradictory judgments. In contrast, the class
3 action device presents far fewer management difficulties and provides the benefits
4 of single adjudication, economy of scale, and comprehensive supervision by a single
5 court on the issue of Defendants’ liability. Class treatment of the liability issues will
6 ensure that all claims and claimants are before this Court for consistent adjudication
7 of the liability issues.

8 **CAUSES OF ACTION**

9 **COUNT I**

10 **Violation Of The California Invasion Of Privacy Act,**
11 **Cal. Penal Code § 631(a)**

12 58. Plaintiff repeats the allegations contained in the foregoing paragraphs
13 as if fully set forth herein.

14 59. Plaintiff brings this claim individually and on behalf of the members of
15 the proposed Classes against Defendants.

16 60. CIPA § 631(a) imposes liability for “distinct and mutually independent
17 patterns of conduct.” *Tavernetti v. Superior Ct.*, 22 Cal. 3d 187, 192-93 (1978).

18 61. To establish liability under CIPA § 631(a), a plaintiff need only
19 establish that the defendant, “by means of any machine, instrument, contrivance, or
20 in any other manner,” does any of the following:

21 Intentionally taps, or makes any unauthorized connection,
22 whether physically, electrically, acoustically, inductively
23 or otherwise, with any telegraph or telephone wire, line,
24 cable, or instrument, including the wire, line, cable, or
instrument of any internal telephonic communication
system,

25 *Or*

26 Willfully and without the consent of all parties to the
27 communication, or in any unauthorized manner, reads or
28 attempts to read or learn the contents or meaning of any

1 message, report, or communication while the same is in
2 transit or passing over any wire, line or cable or is being
3 sent from or received at any place within this state,
Or

4 Uses, or attempts to use, in any manner, or for any
5 purpose, or to communicate in any way, any information
6 so obtained,

6 *Or*

7 Aids, agrees with, employs, or conspires with any person or
8 persons to unlawfully do, or permit, or cause to be done any of
9 the acts or things mentioned above in this section.

10 62. Microsoft and Nuance’s Gateway product is a “machine, instrument,
11 contrivance, or ... other manner” used to engage in the prohibited conduct at issue
12 here.

13 63. Microsoft and Nuance are “separate legal entit[ies] that offer[]
14 ‘software-as-a-service’ and not merely a passive device.” *Saleh v. Nike, Inc.*, 562 F.
15 Supp. 3d 503, 520 (C.D. Cal. 2021). Accordingly, Microsoft and Nuance were third
16 parties to any communication between Plaintiff and members of the Classes, on the
17 one hand, and any entity Plaintiff and members of the Classes were communicating
18 with, such as Chase Bank, on the other. *Id.* at 521.

19 64. At all relevant times, by using Gateway, Microsoft and Nuance
20 intentionally tapped, electrically or otherwise, the lines of telephone communication
21 between Plaintiff and Class Members, on the one hand, and the entities with whom
22 Plaintiff and Class Members were communicating, on the other hand.

23 65. At all relevant times, by using Gateway, Microsoft and Nuance
24 intentionally tapped, electrically or otherwise, the lines of telephone communication
25 between Plaintiff and Subclass Members, on the one hand, and Chase Bank, on the
26 other hand.

1 66. At all relevant times, by using Gateway, Microsoft and Nuance
2 willfully and without the consent of all parties to the communication, or in any
3 unauthorized manner, read or attempted to read or learn the contents or meaning of
4 electronic communications of Plaintiff and putative members of the Classes, while
5 the electronic communications were in transit or passing over any wire, line or cable
6 or were being sent from or received at any place within California.

7 67. At all relevant times, by using Gateway, Microsoft and Nuance used
8 the content of Plaintiff's and members of the Classes' communications to analyze
9 Plaintiff's and members of the Classes' voices for identification and emotion, and
10 that content was illegally obtained in violation of the other, aforementioned prongs
11 of CIPA § 631(a).

12 68. At all relevant times, Chase Bank aided, agreed with, employed, or
13 otherwise enabled Microsoft and Nuance to implement Gateway and to accomplish
14 the wrongful conduct at issue here.

15 69. Plaintiff and members of the Classes did not consent to any of
16 Defendants' actions discussed above. Nor have Plaintiff or members of the Classes
17 consented to Defendants' intentional access, interception, reading, learning,
18 recording, collection, and analysis of Plaintiff and members of the Classes'
19 communications.

20 70. The violation of CIPA § 631(a) constitutes an invasion of privacy
21 sufficient to confer Article III standing.

22 71. Pursuant to Cal. Penal Code § 637.2, Plaintiff and Subclass Members
23 have been injured by the violations of CIPA § 631(a), and each seeks statutory
24 damages of \$5,000 for each of Microsoft and Nuance's violations of CIPA § 631(a).

COUNT II
Violation Of The California Invasion of Privacy Act,
Cal. Penal Code § 632

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3 72. Plaintiff repeats the allegations contained in the foregoing paragraphs
4 as if fully set forth herein.

5 73. Plaintiff brings this claim individually and on behalf of the members of
6 the proposed Subclass against Defendants Microsoft and Nuance.

7 74. CIPA § 632(a) prohibits and entity from
8 intentionally and without the consent of all parties to a
9 confidential communication, uses an electronic amplifying or
10 recording device to eavesdrop upon or record the confidential
11 communication, whether the communication is carried on among
12 the parties in the presence of one another or by means of a
13 telegraph, telephone, or other device, except a radio.

14 75. Microsoft and Nuance’s Gateway product is an “electronic amplifying
15 or recording device.”

16 76. At all relevant times, the communications between Plaintiff and
17 Subclass Members, on the one hand, and Chase Bank, on the other, were
18 confidential.

19 77. At all relevant times, Microsoft and Nuance intentionally used Gateway
20 to eavesdrop upon and record the confidential communications of Plaintiff and
21 Subclass Members, on the one hand, and Chase Bank, on the other.

22 78. When communicating with Chase Bank, Plaintiff and Subclass
23 Members had an objectively reasonable expectation of privacy. Plaintiff and
24 Subclass Members did not reasonably expect that anyone other than Chase Bank
25 would be on the line, and that other, third party entities, Microsoft and Nuance,
26 would intentionally use an electronic amplifying or recording device to eavesdrop
27 upon and record the confidential communications of Plaintiff and Subclass
28 Members.

1 79. Plaintiff and Subclass Members did not consent to any of Microsoft and
2 Nuance’s actions. Nor have Plaintiff or Subclass Members consented to Microsoft
3 and Nuance’s intentional use of an electronic amplifying or recording device to
4 eavesdrop upon and record the confidential communications of Plaintiff and
5 Subclass Members.

6 80. The violation of CIPA § 632(a) constitutes an invasion of privacy
7 sufficient to confer Article III standing.

8 81. Pursuant to Cal. Penal Code § 637.2, Plaintiff and Subclass Members
9 have been injured by the violations of CIPA § 632(a), and each seeks statutory
10 damages of \$5,000 for each of Microsoft and Nuance’s violations of CIPA § 632(a).

11 **COUNT III**
12 **Violation Of The California Invasion Of Privacy Act,**
13 **Cal. Penal Code § 637.3**

14 82. Plaintiff repeats the allegations contained in the foregoing paragraphs
15 as if fully set forth herein.

16 83. Plaintiff brings this claim individually and on behalf of the members
17 of the proposed Classes against Defendants.

18 84. CIPA § 637.3 prohibits any person or entity in the State of California
19 from using “any system which examines or records in any manner voice prints or
20 other voice stress patterns of another person to determine the truth or falsity of
21 statements made by such other person without his or her express written consent
22 given in advance of the examination or recordation.”

23 85. Nuance’s Gatekeeper voice biometric security solution is a “system
24 which examines or records in any manner voice prints or other voice stress patterns”
25 because it records and examines voice prints and/or other voice stress patterns,
26 including those of the Plaintiff and the Classes.
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1 86. Microsoft and Nuance used the Gatekeeper voice biometric security
2 solution, as enabled by Chase Bank or other entities with whom Plaintiff and the
3 Classes were communicating, to record and examine the voice prints and/or other
4 voice stress patterns of Plaintiff and the Classes when they called the Chase Bank
5 Contact Center or another call center.

6 87. Microsoft and Nuance, through Gatekeeper, recorded and examined
7 Plaintiff's and the Classes' voice prints to determine the truth or falsity of their
8 statements—including, for example, their statement about who they claimed to be.
9 Chase Bank, or other entities with whom Plaintiff and the Classes were
10 communicating, also used the voiceprints recorded by Microsoft and Nuance to
11 determine the truth or falsity of Plaintiff's and the Classes' statements.

12 88. Defendants did not obtain prior express written consent from Plaintiff
13 and the Classes to use, examine, or record their voice prints and/or other voice stress
14 patterns for any purpose whatsoever.

15 89. The violation of CIPA § 637.3 constitutes an invasion of privacy
16 sufficient to confer Article III standing.

17 90. Plaintiff and members of the Classes seek statutory damages of \$1,000
18 for each of Defendants' violation of CIPA § 637.3.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
21 situated, seeks judgment against Defendants, as follows:

- 22 (a) For an order certifying the Classes under Fed. R. Civ. P. 23,
23 naming Plaintiff as the representative of the Classes, and
24 naming Plaintiff's attorneys as Class Counsel to represent the
25 Classes;
- 26 (b) For an order declaring that Defendants' conduct violates the
27 statutes referenced herein;
- 28

- 1 (c) For an order finding in favor of Plaintiff and the Classes on all
2 counts asserted herein;
- 3 (d) For statutory damages of \$5,000 for each violation of CIPA
4 §§ 631(a) and 632(a), and \$1,000 for each violation of CIPA
5 § 637.3;
- 6 (e) For pre- and post-judgment interest on all amounts awarded;
- 7 (f) For an order of restitution and all other forms of equitable
8 monetary relief; and
- 9 (g) For an order awarding Plaintiff and the Classes their reasonable
10 attorney's fees and expenses and costs of suit.

11 **JURY TRIAL**

12 Plaintiff demands a trial by jury for all issues so triable.

13 Dated: September 27, 2022

14 Respectfully submitted,

15 **BURSOR & FISHER, P.A.**

16 By: /s/ Neal J. Deckant

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Chase Bank Does Not Secure Consent Before Capturing, Examining Calif. Callers' Voiceprints, Class Action Says](#)
