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***Attorneys for Plaintiffs and the Proposed Class***

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

NOELLE D'ANGELO and ANTHONY  
D'ANGELO, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

NISSAN NORTH AMERICA, INC. d/b/a  
INFINITI,

Defendant.

Case No. **23cv0980-AJB-AHG**

**CLASS ACTION COMPLAINT**

**JURY TRIAL REQUESTED**

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs Noelle D’Angelo and Anthony D’Angelo (collectively “Plaintiffs”),  
3 individually and on behalf of all others similarly situated, file this Class Action  
4 Complaint against Defendant Nissan North America Inc. d/b/a Infiniti,  
5 (“Defendant”) as the owner and operator of InfinitiUSA.com (the “Website”) for  
6 violations of the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§  
7 630–638 and California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code  
8 § 17200 *et seq.* Plaintiffs’ claims arise from Defendant’s secret integration of third  
9 parties’ software to secretly wiretap and eavesdrop on the private conversations of  
10 users of the chat features on the Website in real time and Defendant’s practice of  
11 allowing Third Parties to do so in order to harvest data for financial gain. Defendant  
12 did not obtain visitors’ consent to either the wiretapping or sharing of their private  
13 conversations. As a result, Defendant and the third parties have violated the CIPA  
14 in numerous ways. Plaintiffs bring these claims based upon personal knowledge,  
15 where applicable, information and belief, and the investigation of counsel, which  
16 included, among other things, consultations with experts in the field of data privacy.

17 **JURISDICTION AND VENUE**

18 1. This Court has subject matter jurisdiction of this action pursuant to 28  
19 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are  
20 100 or more class members, (ii) there is an aggregate amount in controversy  
21 exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is at least  
22 minimal diversity because at least one Plaintiff and Defendant are citizens of  
23 different states.

24 2. Pursuant to 28 U.S.C. Section 1391, venue is proper because a  
25 substantial part of the acts and events giving rise to the claims occurred in this  
26 District, including but not limited to Plaintiffs use of the Website and the illegal  
27 wiretapping of Plaintiffs’ communications.

1 3. Defendant is subject to personal jurisdiction because it has sufficient  
2 minimum contacts with California and it does business with California residents.

3 **PARTIES**

4 4. Plaintiffs Noelle D’Angelo and Anthony D’Angelo are residents and  
5 citizens of California.

6 5. Defendant Nissan North America, Inc. d/b/a Infiniti or Defendant is a  
7 multinational corporation headquartered in Tennessee, that does business in  
8 California, and owns, operates, and/or controls the Website InfinitiUSA.com.

9 **STATEMENT OF FACTS**

10 6. The California Invasion of Privacy Act (“CIPA”) prohibits both  
11 wiretapping and eavesdropping of electronic communications without the consent  
12 of all parties to the communication.

13 7. The CIPA provides that it is a violation of Cal. Penal Code § 631(a) for  
14 any person “by means of any machine, instrument, contrivance, or in any other  
15 matter,” to do any of the following:

16 Intentionally tap[], or make[] any unauthorized connection, whether  
17 physically, electrically, acoustically, inductively or otherwise, with  
18 any telegraph or telephone wire, line, cable, or instrument, including  
19 the wire, line, cable, or instrument of any internal telephonic  
20 communication system,

21 or

22 Willfully and without the consent of all parties to the  
23 communication, or in any unauthorized manner, read[] or attempt[]  
24 to read or learn the contents or meaning of any message, report, or  
25 communication while the same is in transit or passing over any wire,  
26 line or cable or is being sent from or received at any place within  
27 this state,

28 or

1 Use[], or attempt[] to use, in any manner, or for any purpose, or to  
2 communicate in any way, any information so obtained,  
3 or  
4 Aid[], agree[] with, employ[], or conspire[] with any person or  
5 persons to unlawfully do, or permit or cause to be done any of the  
6 acts or things mentioned above in this section.

7 8. Section 631(a) is not limited to phone lines. *See Matera v. Google Inc.*,  
8 No. 15-CV-04062-LHK, 2016 WL 8200619, at \*21(N.D. Cal. Aug. 12, 2016) (CIPA  
9 applies to “new technologies” and must be construed broadly to effectuate its  
10 remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, No. C 06-05289-  
11 WHA, 2006 WL 3798134, at \*5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs  
12 “electronic communications”); *In re Facebook, Inc. Internet Tracking Litigation*,  
13 956 F.3d 589 (9th Cir. 2020) (reversing dismissal of CIPA and common law privacy  
14 claims based on Facebook’s collection of consumers’ Internet browsing history).

15 9. Compliance with CIPA is easy, and the vast majority of website  
16 operators comply by conspicuously warning visitors if their conversations are being  
17 recorded or if third parties are eavesdropping on them. “CIPA compliance is not  
18 difficult. A business must take certain steps... with a chat feature... to ensure that it  
19 obtains valid consent consistent with the holdings of courts interpreting CIPA.”<sup>1</sup>

20 10. Unlike most companies, Defendant ignores CIPA. Instead, Defendant  
21 allows Third Parties to wiretap and eavesdrop on the chat conversations of all its  
22 website visitors. Why? Because, as one industry expert notes, “Live chat transcripts  
23 are the gold mines of customer service. At your fingertips, you have valuable  
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28 <sup>1</sup> See [www.leechtishman.com/insights/blog](http://www.leechtishman.com/insights/blog) (last accessed February 2023).

1 customer insight to make informed business decisions. . .When people are chatting,  
2 you have direct access to their exact pain points.”<sup>2</sup>

3 11. Defendant’s actions are not incidental to the act of facilitating e-  
4 commerce, nor are they undertaken in the ordinary course of business. To the  
5 contrary, as noted above, Defendant’s actions are contrary to industry norms and the  
6 legitimate expectations of consumers.

7 12. To enable the wiretapping, Defendant has covertly embedded a third-  
8 party’s code into its chat feature that automatically records and creates transcripts of  
9 all such conversations. To enable the eavesdropping, Defendant allows at least one  
10 independent Third Party (on information and belief, “Salesforce”) to secretly  
11 intercept in real time, eavesdrop upon, interpret, analyze, store, and use for that  
12 Third-Party’s own purposes transcripts of Defendant’s chat communications with  
13 unsuspecting website visitors – even when such conversations are private and deeply  
14 personal.

15 13. Chat communications on the Website are intercepted by Salesforce  
16 while those communications are in transit, and this is accomplished because the  
17 imbedded code directs those communications to be routed directly to Salesforce.  
18 Salesforce’s chat service is an Application Programming Interface (API) that is  
19 “plugged into” the Website. The chat function is run from Salesforce’s servers but  
20 allows for chat functionality on the Website. In other words, Salesforce runs the chat  
21 service from its own servers, but consumers interact with the chat service on  
22 Defendant’s Website, so it appears they are *only* communicating with a company  
23 representative of Defendant.

24 14. Thus, whenever a chat message is sent from a member of the Class to  
25 Defendant, it is first routed through Salesforce’s server. This enables Salesforce to  
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27 <sup>2</sup> See <https://www.ravience.co/post/improve-marketing-roi-live-chat-transcripts>  
28 (last accessed February 2023).

1 analyze, interpret, and collect customer-support agent interactions in real time to  
2 create live transcripts of communications *as they occur*, among other services.

3 15. Defendant neither informs visitors of this conduct nor obtains their  
4 consent to these intrusions. By contrast, Salesforce boasts that it harvests data from  
5 the chat transcripts it intercepts, eavesdrops upon, interprets, analyzes, stores, and  
6 uses for a variety of its own purposes—all without Plaintiffs’ or class members’  
7 consent—saying, “Every time your agents log in to Chat, a Chat session record is  
8 automatically created. These session records store information about your agents’  
9 and customers’ interactions online, such as how many chat requests were processed,  
10 how long agents spent online, or how long agents were actively engaged in chats  
11 with customers.”<sup>3</sup>

12 16. Salesforce continues, “Every time an agent chats with a customer,  
13 Salesforce automatically creates a visitor record that identifies the customer’s  
14 computer. Each new visitor is associated with a session key, which Salesforce  
15 creates automatically. A session key is a unique ID that is stored in the visitor record  
16 and on the visitor's PC as a cookie. If a customer participates in multiple chats,  
17 Salesforce uses the session key to link the customer to their visitor record,  
18 associating that record to all related chat transcripts.”<sup>4</sup>

19 17. Each unsuspecting visitor has their conversations exhaustively  
20 analyzed in combination with a vast amount of data organized into numerous  
21 attributes that Salesforce has collected about the visitor via its “Service Cloud”  
22 platform. With respect to the intercepted chat conversation alone, Salesforce’s chat  
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24 <sup>3</sup> See [https://help.salesforce.com/s/articleView?id=sf.live\\_agent\\_session\\_records.htm&  
25 type=5](https://help.salesforce.com/s/articleView?id=sf.live_agent_session_records.htm&type=5) (last accessed April 2023).

26 <sup>4</sup> [https://help.salesforce.com/s/articleView?id=sf.live\\_agent\\_visitor\\_records.htm&ty  
27 pe=5](https://help.salesforce.com/s/articleView?id=sf.live_agent_visitor_records.htm&type=5) (last accessed April 2023).  
28

1 transcripts contains nearly 40 unique fields, including: the amount of time in seconds  
2 before an unanswered chat request was disconnected; the name of the account  
3 associated with the transcript; the average time that it took an agent to respond to a  
4 chat visitor's message; the maximum time it took an agent to respond to a chat  
5 visitor's message; the number of messages an agent sent during the chat; the skill  
6 associated with the live chat button used to initiate the chat; the type and version of  
7 the browser used by the visitor; the visitor's browser language selection; the case  
8 associated with the chat; the chat button that the visitor clicked to initiate the chat;  
9 the total duration of the chat in seconds; the name of the contact that participated in  
10 the chat; the user who created the transcript, including creation date and time; the  
11 date and time the transcript was created; the deployment from which the visitor  
12 initiated the chat; the time the chat ended; whether the visitor or the agent ended the  
13 chat; the user who last modified the transcript, including date and time; the date and  
14 time the transcript was last modified; the name of the lead that was generated by the  
15 chat or discussed during the chat; a unique, numerical identifier automatically  
16 assigned to the transcript; a unique, numerical identifier automatically assigned to  
17 the visitor; the visitor's geographic location; the visitor's network or Internet Service  
18 Provider; the user's operating system; the site the visitor was on before they came to  
19 Defendant's website; the time that the visitor initially requested the chat; the screen  
20 resolution used by the visitor; the time that the agent answered the chat request;  
21 whether a chat was requested but not answered; the whisper messages from  
22 supervisors; a string that identifies the type of browser and operating system the  
23 visitor used; the average time that it took a visitor to respond to an agent comment;  
24 the maximum time it took a customer to respond to an agent's message; the IP  
25 address of the computer that the visitor used during the chat; the number of messages

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1 a visitor sent during the chat; and the total amount of time a chat request was waiting  
2 to be accepted by an agent.<sup>5</sup>

3 18. In addition, Salesforce utilizes a number of cookies to record a Website  
4 visitor's activity during and after the visitor's chat sessions with Defendant and to  
5 link to a current chat the transcripts of previously intercepted chats between the  
6 visitor and Defendant.<sup>6</sup>

7 19. These are but a few examples of how Salesforce used and uses  
8 Plaintiffs' and class members' conversations with Defendant that it intercepted in  
9 real time without Plaintiffs' and class members' consent.

10 20. Salesforce's exploitation, modernization, use of, and interaction with  
11 the data it gathers through the chat feature in real time makes it more than a mere  
12 "extension" of Defendant.

13 21. Given the nature of Defendant's business, visitors often share highly  
14 sensitive personal data with Defendant via the Website's chat feature. Visitors  
15 would be shocked and appalled to know that Defendant secretly records those  
16 conversations and allows a third party to secretly eavesdrop on these recorded  
17 conversations in real time under the guise of "data analytics." Visitors would also be  
18 shocked to learn that Defendant allows a third party to interpret, analyze, and also  
19 use these intercepted conversations for that third party's own uses and business  
20 purposes.

21 22. Defendant's conduct is illegal, offensive, and contrary to visitor  
22 expectations: indeed, a recent study conducted by the Electronic Privacy Information  
23 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9

24 \_\_\_\_\_  
25 <sup>5</sup>

26 [https://help.salesforce.com/s/articleView?language=en\\_US&id=sf.live\\_agent\\_transcript\\_fields.htm&type=5](https://help.salesforce.com/s/articleView?language=en_US&id=sf.live_agent_transcript_fields.htm&type=5) (last accessed April 2023).

27 <sup>6</sup> [https://help.salesforce.com/s/articleView?id=sf.chat\\_cookies.htm&type=5](https://help.salesforce.com/s/articleView?id=sf.chat_cookies.htm&type=5) (last  
28 accessed April 2023).



1 in 10 adults are “very concerned” about data privacy, and (2) 75% of adults are  
2 unaware of the extent to which companies gather, store, and exploit their personal  
3 data.

4 23. Within the statute of limitations period, Plaintiffs visited the Website.  
5 Plaintiffs and the class members used smart phones (cellular telephones with  
6 integrated computers to enable web browsing) and/or wifi-enabled tablets and  
7 laptops that use a combination of cellular and landline telephony and engaged with  
8 the “chat” feature of the Website to communicate with Defendant. As such, class  
9 member conversations with Defendant were transmitted from “cellular radio  
10 telephones” and/or “landline telephones” as defined by CIPA.

11 24. By definition, Defendant’s chat communications from its website are  
12 transmitted to website visitors by either cellular telephony or landline telephony.<sup>7</sup>

13 25. Defendant did not inform Class Members that Defendant was secretly  
14 recording their chat conversations or allowing, aiding, and abetting Salesforce to  
15 intercept and eavesdrop on them in real time.

16 26. Defendant did not inform Class Members that Defendant was allowing,  
17 aiding, or abetting Salesforce to read, attempt to read or to learn the contents or  
18 meaning of Class Members’ chat conversations on the Website in real time while  
19 those conversations were being sent from or received in California.

20 27. Defendant did not inform Class Members that Defendant was allowing,  
21 aiding, or abetting Salesforce to use or attempt to use or to communicate information  
22 previously obtained from Class Members’ chat conversations on the Website—let  
23 alone to exploit that information for financial gain.

24 28. Defendant did not obtain Class Members’ express or implied consent  
25 to wiretap or allow Salesforce to eavesdrop on visitor conversations, nor did Class

26 \_\_\_\_\_  
27 <sup>7</sup> See <https://www.britannica.com/technology/Internet>, “The Internet works through  
28 a series of networks that connect devices around the world through telephone lines”  
(last downloaded February 2023).

1 Members know at the time of the conversations that Defendant was secretly  
2 recording them and allowing third parties to eavesdrop on them.

3 29. Indeed, on information and belief, Defendant knew that being truthful  
4 and transparent about their conduct may dissuade people from using the chat feature  
5 of the Website—and thereby deprive Defendant of those persons’ valuable data that  
6 Defendant sought to secretly and sophisticatedly exploit.

7 **CLASS ALLEGATIONS**

8 30. Plaintiffs bring this action individually and on behalf of all others  
9 similarly situated (the “Class”) defined as follows:

10 All persons within the state of California who within the statute of  
11 limitations period: (1) communicated with Defendant via the chat  
12 feature on the Website, and (2) whose communications were recorded  
13 and/or eavesdropped upon in real time by Salesforce or any other third  
14 party without prior consent.

15 31. Excluded from the Class are Defendant, its past or current officers,  
16 directors, affiliates, legal representatives, predecessors, successors, assigns and any  
17 entity in which any of them have a controlling interest, as well as all judicial officers  
18 assigned to this case as defined in 28 USC § 455(b) and their immediate families.

19 32. **NUMEROSITY:** Members of the Class are so numerous and  
20 geographically dispersed that joinder of all members of the Class is impracticable.  
21 Plaintiffs believe that there are hundreds of thousands of members of the Class  
22 widely dispersed throughout the United States. Class members can be identified  
23 from Defendant’s records.

24 33. **COMMONALITY:** Questions of law and fact common to the members  
25 of the Class predominate over questions that may affect only individual members of  
26 the Class because Defendant has acted on grounds generally applicable to the Class.  
27 Such generally applicable conduct is inherent in Defendant’s wrongful conduct.  
28 Questions of law and fact common to the Class include:

- 1 a. Whether Defendant caused electronic communications from Class
- 2 Members with the Website to be recorded, intercepted, and/or
- 3 monitored;
- 4 b. Whether Defendant aided and abetted a third party in eavesdropping on
- 5 such communications in real time;
- 6 c. Whether Class Members consented to Defendant’s disclosure of their
- 7 private conversations to third parties in the manner required by CIPA
- 8 [Cal. Penal Code § 631(a)];
- 9 d. Whether any Third Party read or attempted to read or to learn the
- 10 contents or meaning of Class Members’ chat conversations on the
- 11 Website in real time while those conversations were being sent from or
- 12 received in California;
- 13 e. Whether any Third Party used or attempted to use or to communicate
- 14 information that was previously intercepted from Class Members’ chat
- 15 conversations;
- 16 f. Whether the Class is entitled to damages as a result of Defendant’s
- 17 conduct.

18 34. TYPICALITY: As persons who visited the Website and whose  
19 electronic communication was recorded, intercepted and eavesdropped upon,  
20 Plaintiffs are asserting claims that are typical of the Class.

21 35. ADEQUACY: Plaintiffs will fairly and adequately protect and  
22 represent the interests of the members of the Class. Plaintiffs’ interests are coincident  
23 with, and not antagonistic to, those of the members of the Class. Plaintiffs are  
24 represented by counsel with experience in the prosecution of class action litigation  
25 generally and in the emerging field of digital privacy litigation specifically.

26 36. SUPERIORITY: Class action treatment is a superior method for the fair  
27 and efficient adjudication of the controversy. Such treatment will permit a large  
28 number of similarly situated persons to prosecute their common claims in a single

1 forum simultaneously, efficiently, and without the unnecessary duplication of  
2 evidence, effort, or expense that numerous individual actions would engender. The  
3 benefits of proceeding through the class mechanism, including providing injured  
4 persons or entities a method for obtaining redress on claims that could not  
5 practicably be pursued individually, substantially outweighs potential difficulties in  
6 management of this class action. Plaintiffs know of no special difficulty to be  
7 encountered in litigating this action that would preclude its maintenance as a class  
8 action.

9 **FIRST CAUSE OF ACTION**

10 **Aiding and Abetting Violations of the California Invasion of Privacy Act**  
11 **Cal. Penal Code § 631(a), Clause Four**

12 37. Plaintiffs incorporate by reference the preceding paragraphs as if fully  
13 set forth herein.

14 38. Section 631(a) of California’s Penal Code imposes liability upon any  
15 entity who “by means of any machine, instrument, contrivance, or in any other  
16 manner,” (1) “intentionally taps, or makes any unauthorized connection, whether  
17 physically, electrically, acoustically, inductively, or otherwise, with any telegraph  
18 or telephone wire, line, cable, or instrument, including the wire, line, cable, or  
19 instrument of any internal telephonic communication system,” or (2) “**willfully and**  
20 **without the consent of all parties to the communication, or in any unauthorized**  
21 **manner, reads, or attempts to read, or to learn the contents or meaning of any**  
22 **message, report, or communication while the same is in transit or passing over**  
23 **any wire, line, or cable, or is being sent from, or received at any place within**  
24 **this state”** or (3) “uses, or attempts to use, in any manner, or for any purpose,  
25 or to communicate in any way, any information so obtained[.]” Clause Two is  
26 often referred to as “interception,” and Clause Three as “use.”

27 39. Section 631(a) also imposes liability upon any entity “**who aids, agrees**  
28 **with, employs, or conspires with any person or persons to unlawfully do, or**

1 **permit, or cause to be done any of the acts or things mentioned above in this**  
2 **section”.**

3 40. Here, Defendant aids and abets Salesforce to commit both unlawful  
4 interception and unlawful use under Section 631(a), surreptitiously and as a matter  
5 of course.

6 41. Section 631 of the California Penal Code applies to internet  
7 communications and thus applies to Plaintiffs’ and the Class’s electronic  
8 communications with the Website. “Though written in terms of wiretapping,  
9 Section 631(a) applies to Internet communications. *Javier v. Assurance IQ, LLC*,  
10 No. 21-16351, 2022 WL 1744107, at \*1 (9th Cir. May 31, 2022).

11 42. Salesforce’s software embedded on the Website to intercept, eavesdrop  
12 upon, and record Plaintiffs’ and the Class’s communications qualifies as a “machine,  
13 instrument, contrivance, or ... other manner” used to engage in the prohibited  
14 conduct alleged herein.

15 43. At all relevant times, Defendant intentionally caused the internet  
16 communications between Plaintiffs and Class Members on the one hand and  
17 Defendant’s Website on the other hand to be intercepted, eavesdropped upon, and  
18 recorded by Salesforce by using its software embedded into the Website. Defendant  
19 paid Salesforce for its services to do exactly that, and more.

20 44. By its use of Salesforce’s software, Defendant aided and abetted  
21 Salesforce to intercept and eavesdrop upon such conversations in real time while  
22 those conversations were being sent from or received in California.

23 45. By its use of Salesforce’s software, Defendant aided and abetted at least  
24 one third party to read, attempt to read or to learn the contents or meaning of  
25 Plaintiffs’ and Class Members’ chat conversations on the Website in real time while  
26 those conversations were being sent from or received in California.

27 46. By its use of Salesforce’s software, Defendant aided and abetted  
28 Salesforce to use or attempt to use or to communicate information previously

1 intercepted from Plaintiffs’ and Class Members’ chat conversations on the Website  
2 while those conversations were being sent from or received in California.

3 47. Plaintiffs and Class Members did not expressly or impliedly consent to  
4 any of Defendant’s actions.

5 48. Defendant’s conduct constitutes numerous independent and discreet  
6 violations of Cal. Penal Code § 631(a), entitling Plaintiffs and Class Members to  
7 injunctive relief and statutory damages.

8 **SECOND CAUSE OF ACTION**

9 **Violations of the California Invasion of Privacy Act**

10 **Cal. Penal Code § 632.7**

11 49. Plaintiffs incorporate by reference the preceding paragraphs as if fully  
12 set forth herein.

13 50. Section 632.7 of California’s Penal Code imposes liability upon anyone  
14 “who, without the consent of all parties to a communication, intercepts or receives  
15 and intentionally records, or assists in the interception or reception and intentional  
16 recordation of, a communication transmitted between two cellular radio telephones,  
17 a cellular radio telephone and a landline telephone, two cordless telephones, a  
18 cordless telephone and a landline telephone, or a cordless telephone and a cellular  
19 radio telephone.”

20 51. Plaintiffs and the class members communicated with Defendant using  
21 telephony subject to the mandates and prohibitions of Section 632.7.

22 52. Defendant’s communication from the chat feature on its website is  
23 transmitted via telephony subject to the mandates and prohibitions of Section 632.7.

24 53. As set forth above, Defendant recorded telephony communication  
25 without the consent of all parties to the communication in violation of Section 632.7.

26 54. As set forth above, Defendant also aided and abetted a third party in the  
27 interception, reception, and/or intentional recordation of telephony communication  
28 in violation of Section 632.7.

1 **THIRD CAUSE OF ACTION**

2 **Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §**  
3 **17200 *et seq.* (“UCL”)**

4 55. Plaintiffs incorporate by reference the preceding paragraphs as if fully  
5 set forth herein.

6 56. Defendant’s conduct set forth above in unlawful and in violation of  
7 CIPA and its implementing regulations. As such, Defendant has violated the Unfair  
8 Competition Law’s “unlawful” prong with respect to the California Class members.

9 57. Defendant’s conduct violated Cal. Penal Code § 631 and thus violated  
10 the UCL’s unlawful prong.

11 58. Defendant’s conduct also invaded the privacy of the Plaintiffs and Class  
12 Member and was therefore unlawful and unfair.

13 59. Defendant should be enjoined from making such additional invasions  
14 of privacy.

15 60. Defendant should also be ordered to secure prior express consent before  
16 any further wiretapping of electronic communication.

17 61. Defendant should also be required to pay reasonable costs and  
18 attorneys’ fees.

19 **FOURTH CAUSE OF ACTION**

20 **Invasion of Privacy Under California’s Constitution**

21 62. Plaintiffs incorporate by reference the preceding paragraphs as if fully  
22 set forth herein.

23 63. Californians have a constitutional right to privacy. Moreover, the  
24 California Supreme Court has definitively linked the constitutionally protected right  
25 to privacy within the purpose, intent and specific protections of the CIPA. In  
26 addition, California’s explicit constitutional privacy provision (Cal. Const., 1 § 1)  
27 was enacted in part specifically to protect California from overly intrusive business  
28 practices that were seen to pose a significant and increasing threat to personal

1 privacy. Thus, we believe that California must be viewed as having a strong and  
2 continuing interest in the full and vigorous application of the provisions of section  
3 630.

4 64. Plaintiffs and other members of the Class have an interest in conducting  
5 personal activities (such as visiting websites), without observation or interference,  
6 including visiting websites and communicating without being subjected to secret  
7 wiretaps.

8 65. Defendant intentionally invaded the privacy rights of Plaintiffs and  
9 other members of the Class, and worked cooperatively with a third party to do so.

10 66. This invasion of privacy is serious in nature and scope and constitutes  
11 a breach of social norms in the digital age.

12 67. Thus, Plaintiffs seek all relief available for invasion of privacy under  
13 the California Constitution on behalf of themselves and members of the alleged  
14 Class.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for the following relief against Defendant:

- 17 A. An order certifying the Class, naming Plaintiffs as the representatives of the  
18 Class and Plaintiffs' attorneys as Class counsel;
- 19 B. An order declaring Defendant's conduct violates CIPA;
- 20 C. An order of judgment in favor of Plaintiffs and the Class and against  
21 Defendant on the causes of action asserted herein;
- 22 D. An order enjoining Defendant's conduct as alleged herein and any other  
23 injunctive relief that the Court finds proper;
- 24 E. An order awarding damages, including statutory damages where applicable, to  
25 Plaintiffs and the Class in amount to be determined at trial;
- 26 F. An Order awarding Plaintiffs and the Class their reasonable litigation  
27 expenses and attorneys' fees;
- 28



1 G. An Order awarding Plaintiffs and the Class pre-judgment and post-judgment  
2 interest, to the extent allowable; and

3 H. All other relief that would be just and proper as a matter of law or equity, as  
4 determined by the Court.

5  
6 **JURY DEMAND**

7 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs,  
8 individually and on behalf of the proposed Class, demand a trial by jury on all issues  
9 so triable.

10  
11 DATED: May 26, 2023

Respectfully Submitted,

/s/ Kas L. Gallucci

Kas L. Gallucci

12  
13  
14 **LAW OFFICES OF**

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