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*Attorneys for Plaintiff*

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MARINE SRAPIAN, individually and on behalf  
of all others similarly situated,

Case No. **24STCV04231**

Plaintiff,

**CLASS ACTION COMPLAINT**

v.

**DEMAND FOR JURY TRIAL**

MATTRESS FIRM, INC.,

Defendant.

1 Plaintiff Marine Srapian (“Plaintiff”) brings this action on behalf of herself and all others  
2 similarly situated against Defendant Mattress Firm, Inc. (“Defendant” or “Mattress Firm”). Plaintiff  
3 makes the following allegations pursuant to the investigation of her counsel and based upon  
4 information and belief, except as to the allegations specifically pertaining to herself, which are based  
5 on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. Defendant Mattress Firm, Inc. (“Defendant” or “Mattress Firm”) employs a software-  
8 as-a-service (“SaaS”) provided by NICE Ltd. (“NICE”), called NICE CXone. Mattress Firm  
9 employs at least two NICE CXone services (hereinafter, “CXone Services”) in its contact centers:  
10 CXone Quality Management and CXone Interactive Voice Response.

11 2. Through the CXone Services, NICE—as aided, agreed with, employed, and permitted  
12 by Mattress Firm—monitors, reads, records, learns the contents of, or otherwise intercepts the  
13 conversations between Mattress Firm’s contact center agents and Mattress Firm consumers (current  
14 and prospective customers). These consumers include individuals who call Mattress Firm (i.e., its  
15 customer service line) from California to, among other things, file warranty claims, request product  
16 information, and receive additional forms of Mattress Firm support.

17 3. Mattress Firm’s employment of the CXone Services involves NICE—a separate and  
18 distinct third-party entity from the parties to these conversations—using the CXone Services to  
19 eavesdrop upon and record Mattress Firm conversations to which it is not a party. That is to say,  
20 NICE collects the contents of telephone conversations between Mattress Firm and Mattress Firm  
21 consumers.

22 4. NICE needs access to this data to provide CXone Quality Management and CXone  
23 Interactive Voice Response features (including, *inter alia*, call recording, call transcription, and  
24 analysis thereof) described *infra*. Thus, NICE records, accesses, reads, and learns the contents of  
25 conversations between Californians and Mattress Firm.

26 5. Crucially, neither Defendant nor NICE procured the consent of any person who  
27 interacted with Mattress Firm’s contact center, prior to NICE recording, accessing, reading, and  
28 learning the contents of conversations between Californians and Mattress Firm’s contact center. This

1 is despite NICE having the capability to use the contents of conversations it collects through the  
2 CXone Services for purposes other than simply providing a recording to Mattress Firm.

3 6. Plaintiff brings this action to prevent Defendant from further violating the privacy  
4 rights of California residents, and to recover statutory damages from Defendant for failing to comply  
5 with the California Invasion of Privacy Act (“CIPA”) § 631.

6 **PARTIES**

7 7. Plaintiff Marine Srapian resides in Van Nuys, California and has an intent to remain  
8 there, and is therefore a citizen of California. Ms. Srapian was in California when she called Mattress  
9 Firm’s customer service line (at 877-384-2903).

10 8. Defendant Mattress Firm, Inc. (“Mattress Firm”) is a Delaware corporation with its  
11 principal place of business at 3250 Briarpark Drive, Suite 400, Houston, TX 77042. Defendant does  
12 business across the nation and operates dozens of retail stores throughout California.<sup>1</sup>

13 **JURISDICTION AND VENUE**

14 9. This Court has subject matter jurisdiction over this action pursuant to Article VI,  
15 section 10 of the California Constitution and Cal. Code Civ. Proc. § 410.10. This action is brought  
16 as a class action on behalf of Plaintiff and Class Members pursuant to Cal. Code Civ. Proc. § 382.

17 10. This Court has personal jurisdiction over Defendant. *First*, as noted above, Defendant  
18 operates dozens of retail stores in California. Thus, Defendant has availed itself of the privilege of  
19 doing business in California. *Second*, Defendant’s customer service line (and NICE’s recording  
20 thereof) are directly linked to Defendant’s physical operations in California, in that consumers call  
21 the customer service center regarding orders placed in stores. Thus, the conduct at issue here is  
22 directly related to Defendant’s business in California. *See Kauffman v. Papa John’s Int’l, Inc.*, 2024  
23 WL 171363, at \*3-4 (S.D. Cal. Jan. 12, 2024). *Finally*, Plaintiff and Class Members were harmed  
24 in California because that is where NICE—as enabled by Defendant—recorded Plaintiff and Class  
25 Members.

26  
27  
28 <sup>1</sup> <https://www.mattressfirm.com/en-us/stores/store-list/ca/>.

1 11. This Court is the proper venue for this action under the Cal. Code Civ. Proc.  
2 § 395.5 because Plaintiff was unlawfully recorded NICE—as enabled by Defendant—in this County.  
3 Thus, a substantial part of the events, omissions, and acts giving rise to the claims herein occurred  
4 in this County.

5 **FACTUAL ALLEGATIONS**

6 **I. The California Invasion of Privacy Act**

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

12 13. The California Supreme Court has repeatedly stated an “express objective” of CIPA  
13 is to “protect a person placing or receiving a call from a situation where the person on the other end  
14 of the line *permits an outsider to tap his telephone or listen in on the call.*” *Ribas v. Clark*, 38 Cal.  
15 3d 355, 364 (1985) (emphasis added)

16 14. Further, as the California Supreme Court has held in explaining the legislative  
17 purpose behind CIPA:

18 While one who imparts private information risks the betrayal of his  
19 confidence by the other party, a substantial distinction has been recognized  
20 between the secondhand repetition of the contents of a conversation and its  
21 *simultaneous dissemination to an unannounced second auditor, whether  
that auditor be a person or mechanical device.*

22 As one commentator has noted, such secret monitoring denies the speaker  
23 an important aspect of privacy of communication—the right to control the  
nature and extent of the firsthand dissemination of his statements.

24 *Ribas v. Clark*, 38 Cal. 3d 355, 360-61 (1985) (emphasis added; internal citations omitted).

25 15. As part of CIPA, the California Legislature enacted § 631(a), which prohibits any  
26 person or entity from [i] “intentionally tap[ping], or mak[ing] any unauthorized connection ... with  
27 any telegraph or telephone wire,” [ii] “willfully and without the consent of all parties to the  
28 communication ... read[ing], or attempt[ing] to read, or to learn the contents or meaning of any ...

1 communication while the same is in transit or passing over any wire, line, or cable, or is being sent  
2 from, or received at any place within [California],” or [iii] “us[ing], or attempt[ing] to use . . . any  
3 information so obtained.”

4 16. CIPA § 631(a) also penalizes [iv] those who “aid[], agree[] with, employ[], or  
5 conspire[] with any person” who conducts the aforementioned wiretapping, or those who “permit”  
6 the wiretapping.

7 17. Individuals may bring an action against the violator of CIPA § 631 for \$5,000 per  
8 violation. Cal. Penal Code § 637.2(a)(1). Plaintiff does so, here, against Mattress Firm.

9 **II. Defendant Violates the California Invasion of Privacy Act**

10 18. NICE provides a software-as-a-service (“SaaS”) called NICE CXone.<sup>2</sup>

11 19. CXone includes several CXone Services,<sup>3</sup> including “CXone Quality Management”<sup>4</sup>  
12 and “CXone Interactive Voice Response.”<sup>5</sup>

13 20. “CXone Quality Management” is a “full featured [] monitoring solution,”<sup>6</sup> used to  
14 “manage and improve [the] quality[]”<sup>7</sup> of contact center agents’ telephone exchanges with callers.  
15 The system “includes screen and call recording, agent self-evaluations, [and] automated feedback”<sup>8</sup>  
16 that is based on said call recordings and/or “listening to/viewing transcript[s]” derived therefrom.<sup>9</sup>

17 21. NICE describes how, using these materials, CXone Quality Management evaluates  
18 the exchanges between contact center agents and callers—down to nuances like, “specific keyword  
19  
20  
21

22 <sup>2</sup> <https://www.nice.com/products>.

23 <sup>3</sup> <https://www.nice.com/products>.

24 <sup>4</sup> <https://www.nice.com/products/quality-management>.

25 <sup>5</sup> <https://www.nice.com/products/interactive-voice-response-ivr>.

26 <sup>6</sup> <https://www.nice.com/glossary/what-is-contact-center-quality-management>.

27 <sup>7</sup> <https://www.nice.com/glossary/>.

28 <sup>8</sup> <https://www.nice.com/glossary/what-is-contact-center-quality-management>. (emphasis added).

<sup>9</sup> <https://www.nice.com/-/media/niceincontact/resources/products/189312qmaprodatasheet1218r41.ashx>. (emphasis added).

1 mention[s],”<sup>10</sup> “did the agent use the standard greeting? Did she address all of the customer’s issues?  
2 Was she polite and professional? Did she offer cross-sell items appropriately?”<sup>11</sup>

3 22. CXone Quality Management “analyz[es] each interaction based on category,  
4 sentiment, and user-defined []phrases, delivering sophisticated analytical capabilities without an  
5 army of experts.”<sup>12</sup> All of this “[a]ccelerate[s] quality reviews with automated, AI-driven ...  
6 completion.”<sup>13</sup>

7 23. “CXone Interactive Voice Response”(or “IVR”) is a “voice and call-processing  
8 option that ... allows customers to interact with an automated menu in order to enter a call queue,  
9 connect with an agent, or complete a self-service interaction by enabling them to access information  
10 easily, complete transactions, or leave messages with no agent assistance required.”<sup>14</sup>

11 24. CXone Interactive Voice Response works “[b]y leveraging natural speech to collect  
12 caller information and ... applying AI,” as well as “Advanced Speech Recognition (ASR), Text-to-  
13 Speech (TTS) and Speech-to-Text (STT) transcription.”<sup>15</sup> In addition, IVR allows NICE clients to  
14 “[g]ain more insight into the customer journey by consolidating IVR data into [their] chosen system  
15 of record.”<sup>16</sup>

16 25. When NICE uses the CXone Services on a phone conversation, it is not like a tape  
17 recorder or a “tool” used by one party to record the other. Instead, NICE—a separate and distinct  
18 third-party entity from the parties to the conversation—uses the CXone Services to eavesdrop upon,  
19 record, extract data from, and analyze a conversation to which they are not a party. This is because  
20 NICE itself is collecting the content of any conversation. That data is then analyzed by NICE in the  
21

22 \_\_\_\_\_  
23 <sup>10</sup> <https://www.nice.com/-/media/niceincontact/resources/datasheets/2022/03/0001790-en-cxone-qm-analytics-datasheet.ashx?rev=1a73535055c443a0b321de8d44ab3b56>.

24 <sup>11</sup> <https://www.nice.com/glossary/what-is-contact-center-quality-management>.

25 <sup>12</sup> <https://www.nice.com/resources/nice-cxone-quality-management-analytics-datasheet>.

26 <sup>13</sup> <https://www.nice.com/products/quality-management>.

27 <sup>14</sup> <https://www.nice.com/glossary>.

28 <sup>15</sup> <https://www.nice.com/products/interactive-voice-response-ivr>. (emphasis added).

<sup>16</sup> [https://www.nice.com/-/media/niceincontact/resources/datasheets/2020/02/0003313\\_en\\_ivr-datasheet-q120.ashx](https://www.nice.com/-/media/niceincontact/resources/datasheets/2020/02/0003313_en_ivr-datasheet-q120.ashx).

1 manner alleged above before being provided to any entity that was a party to the conversation (like  
2 Defendant).

3 26. NICE has the capability to use the contents of conversations it collects through CXone  
4 Services for its own purposes. In the “NICE CXone Cloud Services Product Privacy Notice,” NICE  
5 “explains how NICE CXone ... collects, uses, and discloses personal data that [it] handle[s] or  
6 process[es] on behalf of Users ...that access and subscribe or otherwise use the NICE CXone Cloud  
7 Services.”<sup>17</sup>

8 27. In a section of its Privacy Notice entitled “What purposes this data is used for,” NICE  
9 States it uses data it collects through the CXone Services for, among other things, “direct marketing  
10 of [NICE’s] products and services,” and for “feature and performance improvement.”<sup>18</sup> Thus, NICE  
11 has the capability to use the wiretapped data it collects through CXone Services to market and  
12 improve its own products and services .

13 28. Mattress Firm maintains a “partnership with NICE” and uses “CXone cloud-based  
14 integrated platform and products ... [in] its contact centers[]”<sup>19</sup> and the telephone line(s) which said  
15 contact centers serve.

16 29. NICE’s website further reveals that “Mattress Firm has two contact centers staffed by  
17 67 agents who take inbound calls on topics ranging from filing warranty claims to requesting product  
18 information. ... By switching to NICE CXone, Mattress Firm was particularly excited to use a unified  
19 cloud platform that includes support for workforce management, quality management and skills-  
20 based routing.”<sup>20</sup>

21 30. Mattress Firm employs at least five NICE CXone Services, including CXone Quality  
22 Management and CXone Interactive Voice Response.<sup>21</sup> Through these services, NICE—as aided,  
23

24 <sup>17</sup> <https://www.nice.com/-/media/niceincontact/page-content/company/legal/nice-cxone-cloud-services-product-privacy-notice-2021-oct-28-approved.ashx>.

25 <sup>18</sup> *Id.* (emphasis added).

26 <sup>19</sup> <https://www.nice.com/resources/mattress-firm-boosts-operational-efficiency-with-nice-cxone>.

27 <sup>20</sup> <https://www.nice.com/-/media/niceincontact/resources/customer-stories/2022/rebranded-assets/cxone-mattress-firm-cs.ashx?rev=7b56f70d7cae473483cde090a5d9dbb8>.

28 <sup>21</sup> *Id.*

1 agreed with, employed by, permitted by, or otherwise enabled by Defendant—reads, learns,  
2 monitors, and otherwise intercepts the content of communications between Mattress Firm and its  
3 customers.

4 31. During consumers’ calls, Mattress Firm fails to inform consumers, prior to any  
5 recording: (i) that a third party, NICE, is listening in on consumers’ communications with Mattress  
6 Firm, (ii) that a third party, NICE, is tapping or otherwise making an unauthorized connection with  
7 the consumer’s telephone conversation using the CXone Services, and (iii) that the content of  
8 consumers’ communications with Mattress Firm are being recorded, collected, intercepted, and  
9 analyzed by a third party, NICE, using the CXone Services. Mattress Firm therefore failed to procure  
10 consumers’ consent for the conduct at issue. And during these calls, consumers reasonably expected  
11 their conversations with Mattress Firm to be only between themselves and Mattress Firm.

12 **III. Plaintiff’s Experience**

13 32. Plaintiff Srapian has called Mattress Firm’s telephone line multiple times, including  
14 on or around March 24, 2023 and March 28, 2023.

15 33. During these calls, Plaintiff reasonably expected her conversations with Mattress  
16 Firm to be only between herself and Mattress Firm.

17 34. On her calls, Plaintiff spoke to the IVR system and also spoke with human Mattress  
18 Firm contact center agents regarding a mattress that she was intrigued by and ultimately purchased.

19 35. When speaking with the IVR system, Plaintiff reasonably expected the conversations  
20 would be only between herself and the Mattress Firm. Plaintiff was not aware, nor did she have any  
21 reason to suspect, that the IVR system was being provided by a third party, NICE, rather than  
22 Mattress Firm. She did not expect or have any reason to expect that NICE, a third party, was listening  
23 in on her conversations.

24 36. When speaking with the human Mattress Firm contact center agents, Plaintiff  
25 reasonably expected the conversations would be only between herself and the Mattress Firm human  
26 contact center agents. Plaintiff was not aware, nor did she have any reason to suspect, that a quality  
27 management system was being provided by a third party, NICE, rather than Mattress Firm. She did  
28



1 not expect or have any reason to expect that NICE, a third party, was listening in on her  
2 conversations.

3 37. Nonetheless, NICE, through the CXone Services, eavesdropped on Plaintiff's entire  
4 conversations with the Mattress Firm human contact center agents. NICE, through the CXone  
5 Services, monitored the conversations between Plaintiff and Mattress Firm. NICE recorded and  
6 transcribed Plaintiff's conversations in real time, performed Advanced Speech Recognition, Text-to-  
7 Speech and Speech-to-Text functions, analyzed the exchanges for specific keyword mentions  
8 (including by Plaintiff), evaluated Plaintiff's sentiment, categorizing Plaintiff's interactions, and  
9 used this information to supply AI-driven evaluation and feedback to the Mattress Firm human  
10 contact center agents with whom she dealt.

11 38. Through this process, NICE read and learned, in real time, the contents of Plaintiff's  
12 conversations with Mattress Firm.

13 39. Mattress Firm failed to inform Plaintiff, prior to recording: (i) that a third party, NICE,  
14 was listening in on Plaintiff's communications with Mattress Firm, (ii) that a third party, NICE, was  
15 tapping or otherwise making an unauthorized connection with Plaintiff's telephone conversations  
16 using the CXone Services, and (iii) that the content of Plaintiff's confidential communications with  
17 Mattress Firm were being recorded, collected, intercepted, and analyzed by a third party, NICE, using  
18 the CXone Services. Mattress Firm therefore failed to procure Plaintiff's consent for the conduct at  
19 issue.

20 40. Plaintiff has, accordingly, had her privacy invaded and been exposed to the risks and  
21 harmful conditions created by Defendant's violations of CIPA alleged herein.

22 **CLASS ALLEGATIONS**

23 41. Plaintiff seeks to represent a class defined as all California residents who called  
24 Mattress Firm's customer service line while in California and whose conversations with Mattress  
25 Firm were intercepted and recorded by NICE.

26 42. The following people are excluded from the Class: (i) any Judge presiding over this  
27 action and members of her or her family; (ii) Defendant, Defendant's subsidiaries, parents,  
28 successors, predecessors, and any entity in which Defendant or their parents have a controlling

1 interest (including current and former employees, officers, or directors); (iii) persons who properly  
2 execute and file a timely request for exclusion from the Class; (iv) persons whose claims in this  
3 matter have been finally adjudicated on the merits or otherwise released; (v) Plaintiff's counsel and  
4 Defendant's counsel; and (vi) the legal representatives, successors, and assigns of any such excluded  
5 persons.

6 43. **Numerosity:** The number of persons within the Class is substantial and believed to  
7 amount to thousands, if not millions of persons. It is, therefore, impractical to join each member of  
8 the Class as a named Plaintiff. Further, the size and relatively modest value of the claims of the  
9 individual members of the Class renders joinder impractical. Accordingly, utilization of the class  
10 action mechanism is the most economically feasible means of determining and adjudicating the  
11 merits of this litigation. Moreover, the Class is ascertainable and identifiable from Defendant's  
12 records.

13 44. **Commonality and Predominance:** There are well-defined common questions of fact  
14 and law that exist as to all members of the Class and that predominate over any questions affecting  
15 only individual members of the Class. These common legal and factual questions, which do not vary  
16 between members of the Class, and which may be determined without reference to the individual  
17 circumstances of any Class member, include, but are not limited to, the following:

- 18 (a) Whether Defendant violated CIPA § 631;  
19 (b) Whether Defendant sought or obtained prior consent—express or  
20 otherwise—from Plaintiff and the Class; and  
21 (c) Whether Plaintiff and members of the Class are entitled to actual  
and/or statutory damages for the aforementioned violations.

22 45. **Typicality:** The claims of the named Plaintiff are typical of the claims of the Class  
23 because the named Plaintiff, like all other members of the Class members, called Mattress Firm's  
24 telephone line and had the content of her communications with Mattress Firm read, learned,  
25 analyzed, and/or examined by NICE.

26 46. **Adequate Representation:** Plaintiff is an adequate representative of the Class  
27 because her interests do not conflict with the interests of the Class members she seeks to represent,  
28 she has retained competent counsel experienced in prosecuting class actions, and she intends to

1 prosecute this action vigorously. The interests of members of the Class will be fairly and adequately  
2 protected by Plaintiff and her counsel.

3 47. **Superiority:** The class mechanism is superior to other available means for the fair  
4 and efficient adjudication of the claims of members of the Class. Each individual member of the  
5 Class may lack the resources to undergo the burden and expense of individual prosecution of the  
6 complex and extensive litigation necessary to establish Defendant’s liability. Individualized  
7 litigation increases the delay and expense to all parties and multiplies the burden on the judicial  
8 system presented by the complex legal and factual issues of this case. Individualized litigation also  
9 presents a potential for inconsistent or contradictory judgments. In contrast, the class action device  
10 presents far fewer management difficulties and provides the benefits of single adjudication, economy  
11 of scale, and comprehensive supervision by a single court on the issue of Defendant’s liability. Class  
12 treatment of the liability issues will ensure that all claims and claimants are before this Court for  
13 consistent adjudication of the liability issues.

14 **CAUSES OF ACTION**

15 **COUNT I**

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

18 48. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
19 forth herein.

20 49. Plaintiff brings this claim individually and on behalf of the members of the proposed  
21 Class against Defendant.

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

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

27 Intentionally taps, or makes any unauthorized connection, whether  
28 physically, electrically, acoustically, inductively or otherwise, with any  
telegraph or telephone wire, line, cable, or instrument, including the wire,

1 line, cable, or instrument of any internal telephonic communication  
2 system,

3 *Or*

4 Willfully and without the consent of all parties to the communication, or  
5 in any unauthorized manner, reads or attempts to read or learn the contents  
6 or meaning of any message, report, or communication while the same is  
7 in transit or passing over any wire, line or cable or is being sent from or  
8 received at any place within this state,

9 *Or*

10 Uses, or attempts to use, in any manner, or for any purpose, or to  
11 communicate in any way, any information so obtained,

12 *Or*

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

16 52. The CXone Services are a “machine, instrument, contrivance, or ... other manner”  
17 used to engage in the prohibited conduct at issue here.

18 53. NICE is a separate legal entity from Mattress Firm that offers “‘software-as-a-service’  
19 and not merely a passive device.” *Saleh v. Nike, Inc.*, 562 F. Supp. 3d 503, 520 (C.D. Cal. 2021).  
20 Accordingly, NICE was a third party to any communication between Plaintiff and members of the  
21 Class, on the one hand, and as Mattress Firm, on the other. *Id.* at 521; *see also Flowers v. Twilio,*  
22 *Inc.*, 2016 WL 11684603, at \*1 (Cal. Super. Ct. Aug. 2, 2016) (“[T]he complaint makes clear that it  
23 is Twilio, not its clients, that recorded the communications ... The allegations are not, as Twilio  
24 asserts, that Twilio simply provided a software product that third parties misused.”)

25 54. NICE also a third party wiretapper because it has the capability to use the contents of  
26 conversations it collects through the CXone Services for its own purposes, other than simply  
27 furnishing the recording to Defendant. *Javier v. Assurance IQ, LLC*, 649 F. Supp. 3d 891, 900 (N.D.  
28 Cal. 2023); *see also Yockey v. Salesforce, Inc.*, --- F. Supp. 3d ---, 2023 WL 5519323, at \*5 (N.D.  
Cal. Aug. 25, 2023).

1           55. At all relevant times, through the CXone Services, NICE violated the first prong of  
2 CIPA § 631(a) by intentionally tapping, electrically or otherwise, the lines of telephone  
3 communication between Plaintiff and Class Members, on the one hand, and Mattress Firm, on the  
4 other hand.

5           56. At all relevant times, through the CXone Services, NICE violated the second prong  
6 of CIPA § 631(a) by willfully and without the consent of all parties to the communication, or in any  
7 unauthorized manner, reading or attempting to read or learn the contents of electronic  
8 communications between Plaintiff and Class Members, on the one hand, and Mattress Firm, on the  
9 other hand, while the electronic communications were in transit or passing over any wire, line or  
10 cable or were being sent from or received at any place within California,.

11           57. At all relevant times, by contracting for the provision of the CXone Services and  
12 allowing NICE to access and intercept Plaintiff's and Class Members' communications, Mattress  
13 Firm violated the fourth prong of CIPA § 631(a) by aiding, agreeing with, employing, permitting, or  
14 otherwise enabling NICE's unlawful wiretapping.

15           58. Mattress Firm failed to inform Plaintiff and Class Members: (i) that a third party,  
16 NICE, was listening in on communications between Plaintiff and Class Members, on the one hand,  
17 and Mattress Firm on the other hand; (ii) that a third party, NICE, was tapping or otherwise making  
18 an unauthorized connection with Plaintiff's and Class Members' conversations with Mattress Firm  
19 using the CXone Services; and (iii) that the content of Plaintiff's and Class Members'  
20 communications with Mattress Firm were being recorded, collected, intercepted, and analyzed by a  
21 third party, NICE, using the CXone Services.

22           59. Accordingly, neither Plaintiff nor any Class Member provided their prior consent to  
23 NICE's interception of their communications with Defendant, nor did Plaintiff and Class Members  
24 consent to Defendant's employment of the same.

25           60. Pursuant to Cal. Penal Code § 637.2, Plaintiff and Class Members have been injured  
26 by the violations of CIPA § 631(a), and each seeks statutory damages of \$5,000 for each of Mattress  
27 Firm's violations of CIPA § 631(a).

**PRAYER FOR RELIEF**

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

- (a) For an order certifying the Class, naming Plaintiff as representative of the Class, and naming Plaintiff’s attorneys as Class Counsel to represent the Class;
- (b) For an order declaring that Defendant’s conduct violates the statute referenced herein;
- (c) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- (d) For actual, compensatory, statutory, and/or punitive in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Class their reasonable attorneys’ fees, expenses, and costs of suit.

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: February 20, 2024

Respectfully submitted,

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

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*Attorneys for Plaintiff*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: ['Unlawful Wiretapping': Class Action Claims Mattress Firm Allows AI Service to Secretly Record Customer Service Calls](#)

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