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ChatBot or Not: California Federal Courts Limit CIPA Applicability

The Northern District of California recently issued a decision further constraining plaintiffs' ability to assert claims under the California Invasion of Privacy Act (CIPA). In [Ambriz v. Google, LLC](#), the plaintiff filed a putative class action alleging that Google violated CIPA § 631(a) because its Cloud Contact Center AI software-as-a-service, a virtual customer service tool, wiretapped, eavesdropped on, and recorded his call to Verizon's customer service center.

The court dismissed the plaintiff's CIPA claim, holding that it was barred by Section 631(b), which exempts telephone companies and their agents from liability "where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility or telephone company." *First*, the court reasoned, Verizon is a telephone company within the meaning of § 631(b). *Second*, the complaint alleged that Google acted as Verizon's agent under § 631(b)(1) insofar as its Cloud Contact Center AI provides a "virtual agent" to interact with Verizon customers who thus "reasonably believe the virtual agent is provided by the company they are calling (e.g., Verizon)." *Third*, Google's alleged wiretapping conduct was "for the purpose of . . . operation of the services and facilities of" Verizon. On this last point, the court rejected the plaintiff's argument that only wiretapping "necessary" to a telephone company's services is exempted under § 631(b)(1), given that the plain language of the statute does not contain such a necessity requirement.

This decision reflects a recent trend by federal courts in California scrutinizing the abundance of putative class action claims asserting violations of CIPA. For example, in [Garcia v. Build.com](#), the Southern District of California dismissed claims under CIPA § 631(a), which prohibits intentional wiretapping and imposes liability on any person who aids another in carrying out conduct prohibited in the section. This was the second time the court dismissed the plaintiff's claims on the ground that the plaintiff failed to adequately plead the

existence of a third-party eavesdropper (noting that a defendant cannot eavesdrop on its own conversations) separate from Build.com, or that any third party committed a predicate violation that the defendant aided and abetted. The court held that the plaintiff's allegations about the defendant's chat functions were "conclusory, unsupported, and insufficient."

Dozens of lawsuits have been filed in California state and federal courts seeking damages for claims under CIPA, but whether these claims can survive motions to dismiss remains difficult to predict. Plaintiffs have attempted to push the boundaries of CIPA to adapt to ever-changing technology, but courts are starting to require more detail to meet pleading standards. The viability of many such claims appears to depend on the strength of specific factual allegations that suggest a third party is benefitting from use of the data, and not simply acting as a recorder. For example, in [*Jones v. Peloton Interactive Inc.*](#), the Southern District of California held that the plaintiff stated a claim by alleging that Peloton's third-party software, "Drift[,] functions as a third-party eavesdropper because it uses the intercepted data for its own purposes including to improve the technological function and capabilities of its patented AI software assets for the exclusive purpose of increasing the value of Drift's shareholders equity in the company." The court allowed this case to proceed to discovery upon finding that the complaint adequately alleged that Drift used the intercepted data for its own benefit, and not solely for the use of the party to the communication, *i.e.*, Peloton.

This area of the law is constantly evolving, and companies who use website chat features and chatbots should be mindful of these developments.

Build.com is a client of Gibbons P.C. the firm and, specifically, the author of this blog post was actively involved in the litigation.

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