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

Heiting v. I Am Beyond LLC
23STCV27729

Dept. 12 SSC
Hon. Carolyn B. Kuhl
Date of Hearing: January 13, 2026

Defendant I Am Beyond LLC's Motion for Summary Judgment

Tentative Ruling: The Motion is granted.

Plaintiff filed this putative class action on November 9, 2023, alleging a single cause of action for violations of Penal Code section 631. Section 631, which is titled "Wiretapping," is part of the California Invasion of Privacy Act (CIPA). Section 631 states in relevant part:

> Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by

> a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both a fine and imprisonment in the county jail or pursuant to subdivision (h) of Section 1170. …

(Pen. Code, § 631, subd. (a).) Section 631, subdivision (a), thus makes four distinct patterns of conduct unlawful: (1) wiretapping a telegraph or telephone wire (tapping or making an "unauthorized connection"); (2) eavesdropping (reading the contents of a message while still in transit); (3) using information that has been obtained through either wiretapping or eavesdropping; and (4) aiding or employing another to do one or more of the first three unlawful actions. The parties and some courts refer to these four sections of subdivision (a) as the first through fourth "clauses." (See, e.g., *Licea v. Cinmar, LLC* (C.D. Cal. 2023) 659 F.Supp.3d 1096.

Plaintiff alleges that Defendant "is the proprietor of beyondyoga.com, an online platform that sells yoga apparel, maternity clothes, and menswear." (Compl., ¶ 8.) "During a browsing session on the Defendant's website, [Plaintiff] utilized the chat box [sic] feature. However, [Plaintiff] was not informed that her conversations were being recorded and exploited for commercial surveillance purposes without her consent." (Compl., ¶ 8.) Plaintiff alleges that the third-party Zendesk uses code to "intercept[] the inquiries that consumers believe are being sent directly to [Defendant's website] and diverts them to [Zendesk's website.]" (Compl., ¶ 9.) "Once Zendesk gains access to the user's information, it stores it for its own purposes. [Defendant] fails to inform its website users that their communications are being monitored and stored using an 'event listener' … ." (Compl., ¶ 9.) "Zendesk also shares the data it collects and stores with [Defendant] who adds the data to the existing profiles it has surreptitiously collected from its users." (Compl., ¶ 11.)

Plaintiff alleges that "Defendant aided, abetted, and even paid third parties to eavesdrop upon such conversations." (Compl., ¶ 25.) In her opposition to Defendant's demurrer, Plaintiff "confirm[ed] that she seeks to hold Defendant liable only for aiding and abetting third party Zendesk's violations of Section 631, not for direct violations of Section 631 by Defendant." (Pl's Opp. Def's Dem., filed Feb. 23, 2024, at p. 7.)

On April 18, 2025, Defendant filed the instant Motion for Summary Judgment. The Motion is made on the following grounds: (1) Plaintiff consented to any alleged violation of Penal Code section 631, subdivision (a); (2) Plaintiff did not suffer an "injury" within the meaning of Penal Code

section 637.2; (3) Defendant did not aid, agree with, employ, or conspire with Zendesk to violate section 631, subdivision (a); (4) Zendesk did not violate the first clause of section 631, subdivision (a) because the first clause does not apply to the internet and Plaintiff's chat occurred on the internet; (5) Zendesk did not violate the second clause of section 631, subdivision (a) because it could not and did not read, attempt to read, or otherwise learn the contents of Plaintiff's encrypted chat message while the message was being sent, received, or in transit; and (6) Zendesk did not violate the third clause of section 631, subdivision (a) because it did not violate the first two clauses.

After the Motion was filed, Plaintiff amended the Complaint to add Erin Weiler (Weiler) as an additional plaintiff. However, Weiler has since been dismissed from this action. The nature and basis of Plaintiff's claim against Defendant were not changed by the filing of the amended complaint.

Judicial Notice

Plaintiff requests judicial notice of documents that were filed in this action. The request is unnecessary, as the documents are already properly before the court as court filings.

Discussion

The Court Declines to Deny the Motion on Procedural Grounds

Plaintiff argues that the Motion is procedurally defective because it was filed before Plaintiff amended the Complaint to add Weiler. In essence, Plaintiff contends that Defendant should have to re-file the Motion before the court can rule on it. This formalistic argument is rejected.

"[A] court granting plaintiff leave to amend a cause of action should not at the same time attempt to summarily adjudicate material issues which underlie that same cause of action. After a cause of action is amended, the court may rule in favor of the defendant if, upon subsequent motion, or perhaps renewal of the earlier motion if appropriately framed, it is shown there are no triable material issues of fact which would permit recovery on that theory." (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 (*State Compensation*), internal citations, quotation marks, and ellipses omitted.) However, the court in *State Compensation* ultimately addressed the merits question (i.e., whether the amended complaint raised new issues of fact); because the amended complaint's allegations raised such new issues, the motion for summary adjudication could not be granted. (*Id.* at pp. 1131-1134.) This is why the court was

able to reject the defendant's argument that the court had "exalt[ed] form over substance." (*Id.* at p. 1131.) Here, by contrast, the filing of the amended complaint in no way changed Plaintiff's claim against Defendant.

The holding in *Harding v. Lifetime Financial, Inc.* (2025) 109 Cal.App.5th 753 (*Harding*) demonstrates why this court does not accept Plaintiff's technical procedural argument. There, the plaintiff argued that "summary judgment was improper because the trial court granted his motion to file a first amended complaint immediately before granting [the defendants'] summary judgment motion." (*Id.* at p. 761.) The plaintiff contended that "the newly filed amended complaint superseded the original complaint that was the subject of [the defendants'] summary judgment motion, rendering summary judgment on the original complaint improper." (*Id.*) The Fourth District Court of Appeal rejected this argument for two reasons: (1) the parties had the opportunity to brief the merits issues; and (2) the amended pleading did not "materially change the issues at play," even though it did "contain more specific allegations" on the relevant issue. (*Id.* at pp. 761-762.) The appellate court thus could not "see how the outcome would have been any different had the trial court denied the summary judgment motion and forced [the defendants] to file a new motion challenging the amended complaint." (*Id.* at p. 762.)

There is no good reason to delay adjudication of the Motion merely because Plaintiff added Weiler to this case after the instant Motion was filed. The parties have fully briefed the relevant issues. The amended complaint in this action in no way changes the nature or basis of the claim brought by Plaintiff. Weiler has now been dismissed, and this case is in the exact same state it was in prior to the amendment of the Complaint. Requiring Defendant to re-file the same Motion would exalt form over substance for no proper purpose. The issues are ripe for decision.

The Motion Is Granted

It is clear from the briefing that Plaintiff's claim is based on the contention that Defendant violated the fourth clause of Penal Code section 631(a) by aiding, agreeing with, or employing Zendesk to violate the second clause of section 631(a). In order to prevail on her claim at trial, Plaintiff would thus have to offer evidence showing that Zendesk "willfully and without the consent of [Plaintiff], read[], or attempt[ed] to read, or to learn the contents or meaning of [the parties' communications] while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state." (Pen. Code, § 631, subd. (a).) Plaintiff has not met her burden to offer evidence sufficient to create a genuine issue of material fact as to Defendant's liability.

Defendant has presented evidence tending to show that Zendesk did not and could not read or attempt to read the content of the communications *while the same was in transit*. (See *Valenzuela v. Keurig Green Mountain, Inc.* (N.D. Cal. 2023) 674 F.Supp.3d 751, 758 [" '[w]hile' is the key word here"].) Plaintiff here does not present argument or authority to show that Zendesk could violate the second clause if it read or attempted to read the contents of the communications at some later time after the communications were transmitted. Any such argument would require the court to ignore the clear statutory language in the second clause. As this court has explained previously, Defendant cannot be liable under section 631(a) if it merely shared the contents of the communications *after* those communications were sent. (Minute Order, June 3, 2024, at p. 3, citing *Rogers v. Ulrich* (1975) 52 Cal.App.3d 894, 898.

Defendant has presented the expert report of Sandeep Chatterjee, Ph.D (Chatterjee). (See Murphy Decl., Ex. 13.) Chatterjee is clearly qualified to offer expert testimony as to the functioning of software like that provided by Zendesk for operation of the chat feature of Defendant's website. (See, e.g., Murphy Decl., Ex. 13, at pp. 8-12.) Chatterjee's opinions as to Defendant's website and the chat feature provided by Zendesk's software are properly based on Chatterjee's experience and on Chatterjee's review of the relevant evidence, including internal documents and the "source code" for Zendesk's software. (See Murphy Decl., Ex. 13, ¶ 28; see also First Amended Complaint, ¶ 10 [alleging that this source code "embeds content from another website ([]in this case, Zendesk …) within a web page," and "intercepts inquiries that consumers believe are being sent directly to [Defendant] and diverts them to zendesk.com"].) Plaintiff has thus failed to show that Chatterjee's testimony, as a general matter, is inadmissible.

Defendant presents evidence showing that the contents of the communications on the chat feature were encrypted. (Hackert Decl., ¶ 11.) Chatterjee attests that the content of the communications on the chat feature "are sent to [Defendant's] instance of Zendesk's Software-as-a-Service (SaaS) and Zendesk does not 'gain access to the user's information' or 'store it for its own purposes,' as incorrectly alleged in the Complaint." (Murphy Decl., Ex. 13, ¶ 8, brackets, footnotes, and bolded typeface omitted.) "An 'instance' is the specific execution of a piece of software. For example, while Zendesk may use the same underlying software for dozens or hundreds of clients, individual 'instances' of that software are used for individual clients like [Defendant] so they are using a dedicated execution of the software." (Murphy Decl., Ex. 13, at p. 6, fn. 1.) Chatterjee attests "that when a person uses an Internet browser on their wireless mobile

device to connect to [Defendant's] instance of Zendesk's SaaS, like Ms. Heiting apparently did here, … the operation and use of encryption technologies and network communications software make it virtually impossible for anyone, including Zendesk, to intercept the contents of an online chat communication while it is 'in transit' … and … the structure and functionality of the Zendesk SaaS means that Zendesk has no access to the content of the communication at any time, and certainly not while a communication is in transit." (Murphy Decl., Ex. 13, ¶ 12 [internal bolded typeface omitted].) Chatterjee explains that "a message is actually transmitted over a physical medium (which includes radiofrequency signals over a wireless medium) as bits, i.e., 1s and 0s, that in and of themselves have no meaning – without the appropriate application context." (Murphy Decl., Ex. 13, ¶ 124.) Chatterjee further explains: "these 1s and 0s are encrypted while they are sent over the Internet, meaning they are functionally unreadable without access to the decryption key. All that is transmitted from a person's wireless mobile device to [Defendant's] siloed instance of the Zendesk Support, is a series of 0's and 1's, that is unreadable while 'in transit.' Indeed, the encryption that occurs before the contents of any chat communication reach the Zendesk Support makes decrypting ciphertext back to cleartext virtually impossible." (Murphy Decl., Ex. 13, ¶ 125.) Plaintiff's objections to this testimony are overruled. The court does not merely assume, as Plaintiff suggests, that Chatterjee's use of the phrase "in transit" necessarily accords with the statutory language of section 631(a). Rather, the evidence supports a conclusion that Zendesk did not violate the second clause of the statute.

In an attempt to raise a triable issue of fact as to the question of whether Zendesk violated the second clause, Plaintiff relies on a declaration by Dr. Timothy Libert (Libert), Plaintiff's expert witness. The Libert declaration is inadmissible in its entirety because Libert failed to sign his declaration under penalty of perjury. A declarant must sign his declaration "under penalty of perjury that the [the contents of the declaration are] true and correct." (Code Civ. Proc., § 2015.5.) The failure to meet this requirement renders the declaration inadmissible. (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 619.) Defendant first argued that Libert's declaration was inadmissible under section 2015.5 in objections filed on July 31, 2025. Since that time, Plaintiff has not attempted to present an admissible declaration by Libert. Because Plaintiff has failed to offer admissible evidence to create an issue of material fact as to Defendant's factual defenses, the Defendant's Motion for Summary Judgment is granted.

As a separate and alternative ground for decision, Libert's declaration fails to offer evidence in conflict with Defendant's factual presentation

supporting its position that it did not violate Section 631. For example, Plaintiff relies on paragraphs 43 and 47 of Libert's declaration to dispute the following fact: "When the chat messages themselves were sent between the customer and the Beyond Yoga Dashboard, they were encrypted when sent, while in transit, and when received, and they remained encrypted when they were stored on the Beyond Yoga Dashboard." (See Def's Reply to Pl's Sep. St., Def's Fact No. 10, at pp. 11-12.) It is worth pointing out that these two paragraphs of Libert's declaration do not create an issue of fact. Libert's opinions are not based on how Zendesk would have operated on a third-party's website; instead, Libert recounts how a chat feature on *Zendesk*'s own website would allow for the transmission of chat content to Zendesk. (See Libert Decl., ¶ 43.) But the fact that communications with Zendesk on its website are shared with Zendesk fails to show that communications with Defendant on its website led to the content of those communications being shared with Zendesk.

In an attempt to dispute evidence showing that Zendesk did not violate the second clause of section 631(a), Plaintiff also cites paragraphs 4 and 5, and Exhibits 3 and 4 of the Tauler Declaration. (See Def's Reply to Pl's Sep. St., Def's Fact No. 12, at p. 15.) The cited evidence consists of Defendant's responses to special interrogatories. The cited discovery responses do not raise a triable issue of fact because they do not tend to show that Zendesk read or attempted to read the contents of the communications on the chat feature at the time those communications were still in transit. And even if Plaintiff could show that Zendesk "had access to … chat logs, which were retained for training, analytics, and marketing purposes," this purported fact would not dispute the fact that Zendesk did not read or attempt to read *the contents* of the communications *while in transit*. (Def's Reply to Pl's Sep. St., Def's Fact No. 12, at p. 15.)

Improper Citations in the Opposition

In the Opposition to the Motion, Plaintiff's counsel, Robert Tauler, has quoted language from cases that cannot be found in those cited cases. For example, Plaintiff claims that the Ninth Circuit in *In re Facebook, Inc. Internet Tracking Litigation* (9th Cir. 2020) 956 F.3d 589 emphasized "that 'a lack of clarity and user control over data collection practices' [sic] weighs against any inference of implied consent.' " Plaintiff does not provide a pincite for this quotation. But the quoted language cannot be found in the opinion cited by Plaintiff. There are multiple examples of Plaintiff's counsel seemingly inventing quotations. Again, by way of another example, Plaintiff's counsel has written the following:

> In *Cline v. Reetz-Laiolo* (N.D. Cal. 2018) 329 F. Supp. 3d 1000, the Court stated: "A defendant may not hide behind a claim of 'implied consent' where the plaintiff . . .lacked knowledge of the mechanisms by which the data was obtained."

(Pl's Opp., at p. 12.) Yet the quoted language cannot be found in the cited opinion.

As Defendant notes, it is likely that Mr. Tauler's briefing was influenced by hallucinations that are inherent in the use of artificial intelligence and that Mr. Tauler did not check and correct the erroneous purported citations before the Opposition was filed. The Second District Court of Appeal has sanctioned an attorney for including such "hallucinations" in a brief filed with that court, noting that "[m]any courts confronted with AI-generated authorities have concluded that filing briefs containing fabricated legal authority is sanctionable." (*Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426, 441, 444.) The court stated:

> To state the obvious, it is a fundamental duty of attorneys to *read* the legal authorities they cite in appellate briefs or any other court filings to determine that the authorities stand for the propositions for which they are cited. Plainly, counsel did not read the cases he cited before filing his appellate briefs: Had he read them, he would have discovered, as we did, that the cases did not contain the language he purported to quote, did not support the propositions for which they were cited, or did not exist.

(*Id.* at p. 445, emphasis in original.)

Nonetheless, this court does not impose sanctions on counsel. Rather, if this court's ruling on this Motion were overturned on appeal, and if Mr. Tauler sought certification of a class on behalf of Plaintiff Heiting, this court would consider whether Mr. Tauler's lapses of duty rendered him inadequate as counsel for the class.