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8 **UNITED STATES DISTRICT COURT**  
 9 **EASTERN DISTRICT OF CALIFORNIA**

10  
 11 DAKOTA MASSIE and NEIL MANGLANI,  
 individually and on behalf of all others similarly  
 12 situated,

13 Plaintiffs,

14 v.

15 GENERAL MOTORS LLC and DECIBEL  
 16 INSIGHT, INC.,

17 Defendants.

Case No. 1:20-CV-01560-JLT

**FIRST AMENDED CLASS  
 ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Dakotah Massie and Neil Manglani (“Plaintiffs”), individually and on behalf of all  
2 others similarly situated, by and through their attorneys, make the following allegations pursuant to  
3 the investigation of their counsel and based upon information and belief, except as to allegations  
4 specifically pertaining to themselves and their counsel, which are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. This is a class action suit brought against Defendants General Motors LLC (“GM”) and  
7 Decibel Insight, Inc. (“Decibel”) (collectively, “Defendants”) for wiretapping the electronic  
8 communications of visitors to websites owned and operated by Defendant GM (the “Websites”).<sup>1</sup>  
9 The wiretaps, which are embedded in the computer code on the Websites, are used by Defendants to  
10 secretly observe and record website visitors’ keystrokes, mouse clicks,<sup>2</sup> and other electronic  
11 communications, including the entry of Personally Identifiable Information (“PII”), in real time. By  
12 doing so, Defendants have violated the California Invasion of Privacy Act (“CIPA”), Cal. Penal  
13 Code §§ 631 and 635, invaded Plaintiffs’ and Class members’ privacy rights in violation of the  
14 California Constitution, and violated provisions of the Federal Wiretap Act (specifically 18 U.S.C.  
15 § 2512).

16 2. In August 2020 and September 2020, Mr. Massie visited Chevrolet.com, one of the  
17 Websites. Likewise, in September 2020, Mr. Manglani visited Chevrolet.com. During the visits,  
18 Defendants recorded Plaintiffs’ electronic communications in real time, including Plaintiffs’ mouse  
19 clicks and keystrokes.

20 3. Plaintiffs bring this action on behalf of themselves and a class of all persons whose  
21 electronic communications were intercepted through the use of Defendants’ wiretap on the  
22 Websites.

23 //

24 //

25 \_\_\_\_\_  
26 <sup>1</sup> CHEVROLET, <https://www.chevrolet.com/>; BUICK, <https://www.buick.com/>; GMC,  
27 <https://www.gmc.com/>; CADILLAC, <https://www.cadillac.com/>.

28 <sup>2</sup> As used herein, the term “mouse clicks” also refers to “touch gestures” such as the “tap,” “swipe,”  
and similar gestures used on touchscreen devices.

**THE PARTIES**

1  
2 4. Plaintiff Dakotah Massie is a resident of Bakersfield, California and has an intent to  
3 remain there, and is therefore a domiciliary of California. In August 2020 and September 2020,  
4 prior to the filing of this lawsuit, Mr. Massie visited Chevrolet.com and browsed the vehicle  
5 selections on the website. Mr. Massie did not purchase anything while on Chevrolet.com. Mr.  
6 Massie was in Bakersfield when he visited the website. During the visit, Mr. Massie’s keystrokes,  
7 mouse clicks, and other electronic communications were intercepted in real time and were disclosed  
8 to Defendants GM and Decibel through the wiretap. Mr. Massie was unaware at the time that his  
9 keystrokes, mouse clicks, and other electronic communications were being intercepted in real-time  
10 and would be disclosed to Decibel, nor did Mr. Massie consent to the same.

11 5. Plaintiff Neil Manglani is a resident of Hacienda Heights, California and has an  
12 intent to remain there, and is therefore a domiciliary of California. In September 2020, prior to the  
13 filing of this lawsuit, Mr. Manglani visited Chevrolet.com and browsed the vehicle selections on the  
14 website. Mr. Manglani did not purchase anything while on Chevrolet.com. Mr. Manglani was at  
15 work in Los Angeles, California when he visited the website. During the visit, Mr. Manglani’s  
16 keystrokes, mouse clicks, and other electronic communications were intercepted in real time and  
17 were disclosed to Defendants GM and Decibel through the wiretap. Mr. Manglani was unaware at  
18 the time that his keystrokes, mouse clicks, and other electronic communications were being  
19 intercepted in real-time and would be disclosed to Decibel, nor did Mr. Manglani consent to the  
20 same.

21 6. Defendant General Motors LLC is a company incorporated under the laws of  
22 Delaware with its principal place of business at 300 Renaissance Center, Detroit, Michigan 48265.

23 7. GM does business throughout California and the entire United States.

24 8. GM owns and operates the Websites.

25 9. Defendant Decibel Insight, Inc. is a company incorporated under the laws of  
26 Delaware with its principal place of business at 501 Boylston Street, Boston, Massachusetts 02116.

27 10. Decibel is a marketing software-as-a-service (“SaaS”) company.  
28

1 11. Decibel provides a feature called “Session Reply,” which is at issue here and is  
2 described more fully below. At all relevant times here, GM has used Decibel’s “Session Reply”  
3 feature on the Websites.

4 **JURISDICTION AND VENUE**

5 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)  
6 because this case is a class action where the aggregate claims of all members of the proposed class  
7 are in excess of \$5,000,000.00, exclusive of interest and costs, and at least one member of the  
8 proposed class is citizen of state different from at least one Defendant.

9 13. This Court has personal jurisdiction over Defendants because each of the Defendants  
10 have purposefully availed themselves of the laws and benefits of doing business in this State, and  
11 Plaintiffs’ claims arise out of each of the Defendants’ forum-related activities. Furthermore, a  
12 substantial portion of the events giving rise to Plaintiffs’ claims occurred in this District.

13 14. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a  
14 substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this  
15 District.

16 15. Both Defendants also purposefully directed their activities at California, and the  
17 wiretapping at issue here arises from or relates to Defendants’ activities. As alleged more fully  
18 below, Defendants intentionally installed the wiretap at issue here on GM’s Websites. Defendant  
19 Decibel purposefully intercepted electronic transmissions from users of GM’s Websites, and GM  
20 purposefully aided and abetted Decibel’s conduct. The conduct also was expressly aimed at  
21 California residents. California is the largest market in the United States—indeed, if California  
22 were its own nation, California would have the fifth largest economy in the world. Defendants  
23 knew that a significant number of Californians would visit GM’s Websites, because they form a  
24 significant portion of GM’s customer base. By intercepting the transmissions of GM website users,  
25 Defendants targeted their wrongful conduct at customers, some of whom Defendants knew, at least  
26 constructively, were residents of California. It was foreseeable that Defendants’ interceptions and  
27 wiretapping would harm Plaintiffs and similarly-situated individuals, and that at least some of this  
28

1 harm would occur in California—where Defendants knew many customers and prospective  
2 customers resided.

3 16. The Websites’ Privacy Policies include a specific section dedicated to California  
4 law, and the Websites each include a web page specifically referencing California law and directed  
5 specifically at Californians who visit the website:

6 This site allows California residents to request (1) information on the  
7 personal information we collect, (2) that we not sell that personal  
8 information, and (3) that we delete that personal information as required  
under CCPA.

9 17. The Website has a national viewership and scope, which appeals to, and profits from,  
10 an audience in one particular state above most others: California. Because of the substantial  
11 California market, Defendants anticipated, desired, and achieved a substantial California viewer  
12 base.

13 **STATEMENT OF FACTS**

14 **I. Overview Of The Wiretaps**

15 18. Defendant Decibel develops a software of the same name that provides marketing  
16 analytics.

17 19. One of Decibel’s features is called “Session Replay.”

18 20. Session Replay provides a real-time recording of a user’s interactions on a website.  
19 Decibel says that Session Replay “tracks and records every session to ensure you have the details  
20 you need to better understand the customer online journey, troubleshoot errors, and put context  
21 around known issues.”

22 21. Decibel also notes “[f]rom start to finish, you get to see every click, scroll, mouse  
23 movement, and page view.”

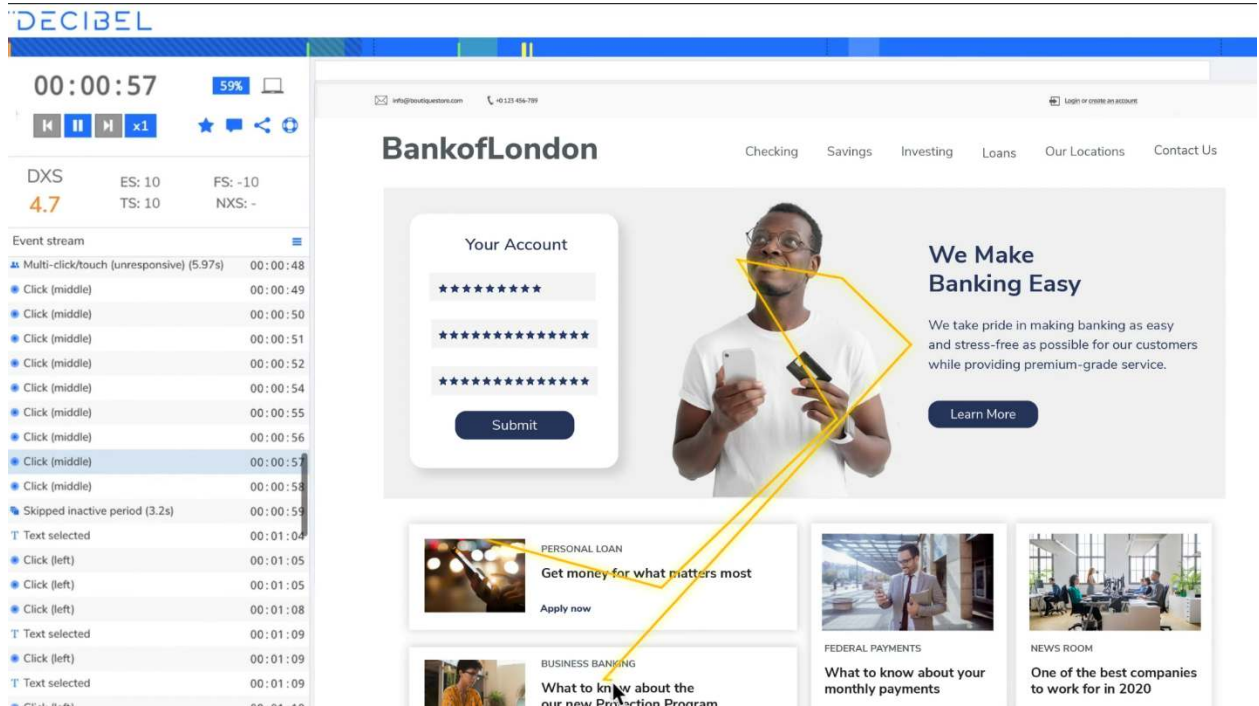
24 22. Session Replay is used whether a consumer is browsing a website on their desktop,  
25 mobile device, tablet, or mobile application.

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27 //

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1 23. A marketing video on Decibel’s website demonstrates how Session Replay works.  
2 In the video, a user’s individual mouse movements, clicks, and keystrokes are mapped and  
3 recorded:



16 24. During the above-pictured portion of the video, a narrator states that “Decibel  
17 records every session to ensure that you have the details you need to better understand the customer  
18 online journey.”

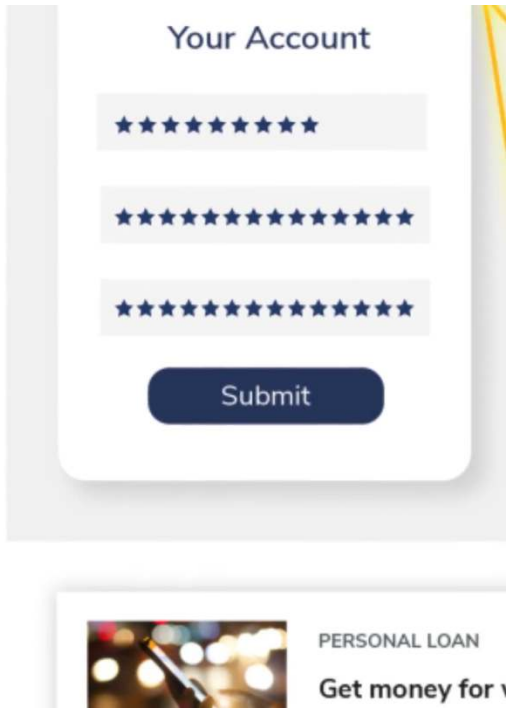
19 25. In the next segment of the video, the narrator states that “All user and device  
20 interactions such as mouse movements, zooming, rotating, and bird’s nests<sup>3</sup> are displayed”:

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27 <sup>3</sup> “Bird’s nest behavior refers to when a user rapidly shakes their mouse around, leaving a jumbled  
28 mouse trail that, in session replays, resembles a bird’s nest.” BIRD’S NEST BEHAVIOR,  
<https://decibel.com/digital-experience-glossary/birds-nest-behavior/>.

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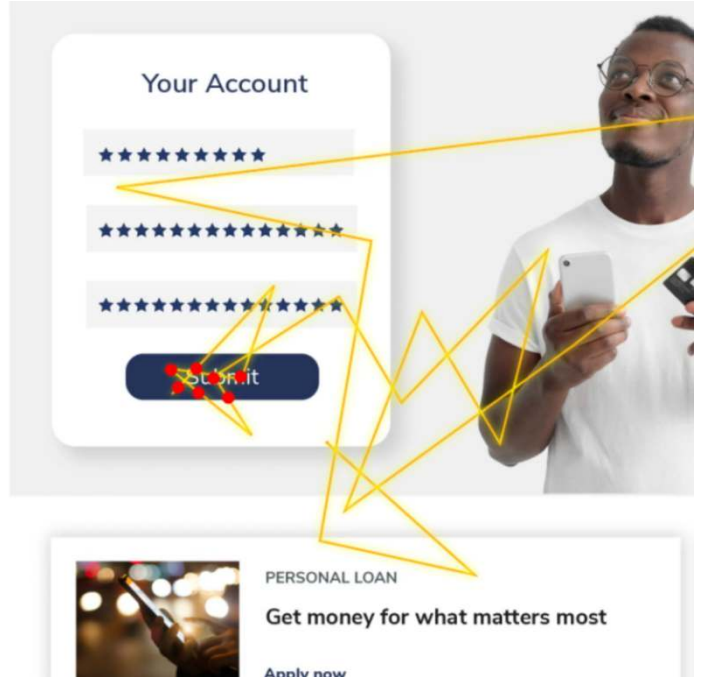
Event stream	
Click (left)	00:01:08
T Text selected	00:01:09
Click (left)	00:01:09
T Text selected	00:01:09
Click (left)	00:01:10
Click (left)	00:01:10
Click (left)	00:01:11
Click (left)	00:01:11
Click (left)	00:01:12
T Text selected	00:01:14
Click (left)	00:01:15
Click (left)	00:01:15
Bird's nest (6.2s)	00:01:16



26. During this portion of the video, the narrator describes the recordings as “video-accurate renderings of real visits to your web properties.”

27. During the final segment of the video, the narrator says companies can “[e]asily share your findings with other stakeholders by favoriting, commenting on, and sharing session replays from directly inside the product”:

Event stream	
Event stream	
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Past sessions	
Errors	
Behaviors	
DXS	
Bot	
Favorite	
Tags	
Comments	
Share	
Download source	
Options	
Click (left)	00:01:59
T Text selected	00:01:59



1 28. Finally, Decibel notes on its website that its “AI already watches back every single  
2 session replay automatically.”

3 29. Decibel’s code is not a cookie at all, much less a run-of-the-mill cookie. Common  
4 cookies that consumers might be familiar with do not engage in session recording or all of the  
5 features described above. Decibel’s code does far more than simply track where a visitor went on  
6 the internet, and its functionality is not limited to aggregate data. Rather, as a 2017 study by  
7 Princeton University researchers—which specifically examined a number of Decibel’s  
8 competitors—noted, “unlike typical analytics services that provide aggregate statistics, these scripts  
9 are intended for the recording and playback of individual browsing sessions, as if someone is  
10 looking over your shoulder.”

11 30. Technology like Decibel’s Session Replay feature is not only highly intrusive, but  
12 dangerous. The 2017 study by Princeton University researchers found that session recording  
13 technologies were collecting sensitive user information such as passwords and credit card numbers.  
14 The research notes that this wasn’t simply the result of a bug, but rather insecure practices. Thus,  
15 session recording technologies such as Decibel’s can leave users vulnerable to data leaks and the  
16 harm resulting therefrom.

17 31. The 2017 study by Princeton University researchers also recognized that “the extent  
18 of data collected by these services **far exceeds user expectations** [1]; text typed into forms is  
19 collected before the user submits the form, and precise mouse movements are saved, all without any  
20 visual indication to the user. This data can’t reasonably be expected to be kept anonymous.”

21 32. Indeed, Decibel itself recognizes the perils of Session Replay, stating on its website  
22 that “any tool used to record user interactions and behaviors will bring a privacy concern. The  
23 biggest worries come up surrounding the potential compromise of site visitors’ personal initiable  
24 information (PII) – like names, phone numbers, emails, and more.”

25 33. Decibel’s business model involves entering into voluntary partnerships with various  
26 companies and providing their software to their partners.

27 34. One of Decibel’s partners is Defendant GM.

28 35. GM utilizes Decibel’s software on the Websites.



1 36. GM knows that Decibel’s software captures the keystrokes, mouse clicks and other  
2 communications of visitors to its website, and pays Decibel to supply that information.

3 37. Pursuant to an agreement with Decibel, GM enabled Decibel’s software by  
4 voluntarily embedding Decibel’s software code on the Websites.

5 38. As currently deployed, Decibel’s software, as employed by GM, functions as a  
6 wiretap.

7 **II. Defendants Wiretapped Plaintiffs’ Electronic Communications**

8 39. In August 2020 and September 2020, Mr. Massie visited Chevrolet.com and  
9 browsed the vehicle selections. Mr. Massie did not purchase anything.

10 40. Likewise, in September 2020, Mr. Manglani visited Chevrolet.com and browsed the  
11 vehicle selections. Mr. Manglani did not purchase anything.

12 41. During those visits, the Session Replay feature in Decibel’s software captured each  
13 of Plaintiffs’ keystrokes and mouse clicks on the Websites. The Decibel wiretap also captured the  
14 date and time of the visits, the duration of their visits, Plaintiffs’ IP addresses, their location at the  
15 time of the visits, their browser types, and the operating system on their devices.

16 42. Decibel’s recording of keystrokes, mouse clicks, data entry, and other electronic  
17 communications begins the moment a user accesses or interacts with the Websites.

18 43. When users access the Websites and make a purchase, they enter their PII.  
19 Decibel’s software captures these electronic communications throughout each step of the process.

20 44. Decibel’s software captures, among other things:

- 21 (a) The user’s mouse clicks;
- 22 (b) The user’s keystrokes;
- 23 (c) The user’s name;
- 24 (d) The user’s zip code;
- 25 (e) The user’s phone number;
- 26 (f) The user’s e-mail address;
- 27 (g) The user’s IP address; and
- 28 (h) The user’s their location at the time of the visit.

1 45. Decibel claims that it “encrypts” certain information. But those claims are dubious.  
2 As the 2017 study by Princeton University researchers notes, “[a]utomated redaction is imperfect;  
3 fields are redacted by input element type or heuristics, which may not always match the  
4 implementation used by publishers.”

5 46. For example, one of Decibel’s competitors “redacts credit card fields with the  
6 ‘autocomplete’ attribute set to ‘cc-number,’ but will collect any credit card numbers included in  
7 forms without this attribute.”

8 47. Further, to properly redact any sensitive information, “a publisher will need to  
9 actively audit every input element to determine if it contains personal data. This is complicated,  
10 error prone and costly, especially as a site or the underlying web application code changes over  
11 time.”

12 48. In addition, “session recording companies expect sites to manually label all  
13 personally identifying information included in a rendered page. Sensitive user data has a number of  
14 avenues to end up in recordings, and small leaks over several pages can lead to a large  
15 accumulation of personal data in a single session recording.”

16 49. Crucially, Defendant GM does not ask users, including Plaintiffs, whether they  
17 consent to being wiretapped by Decibel. Users are never actively told that their electronic  
18 communications are being wiretapped by Decibel.

19 **CLASS ACTION ALLEGATIONS**

20 50. Plaintiffs seek to represent a class of all residents of the United States who visited the  
21 Website, and whose electronic communications were intercepted or recorded by Decibel (the  
22 “Class”). Plaintiffs reserve the right to modify the class definition as appropriate based on further  
23 investigation and discovery obtained in the case.

24 51. Plaintiffs also seek to represent a subclass of all California residents who visited the  
25 Website, and whose electronic communications were intercepted or recorded by QM (the  
26 “Subclass”). Plaintiffs reserve the right to modify the class definition as appropriate based on  
27 further investigation and discovery obtained in the case.

28 52. The Class and Subclass shall collectively be referred to as the “Classes.”

1           53.     Members of the Classes are so numerous that their individual joinder herein is  
2 impracticable. On information and belief, members of the Classes number in the thousands. The  
3 precise number of Class members and their identities are unknown to Plaintiffs at this time but may  
4 be determined through discovery. Members of the Classes may be notified of the pendency of this  
5 action by mail and/or publication through the distribution records of Defendants.

6           54.     Common questions of law and fact exist as to all members of the Classes and  
7 predominate over questions affecting only individual Classes members. Common legal and factual  
8 questions include, but are not limited to, whether Defendants have violated the California Invasion  
9 of Privacy Act (“CIPA”), Cal. Penal Code §§ 631 635, invaded Plaintiffs’ privacy rights in violation  
10 of the California Constitution, and violated certain provisions of the Federal Wiretap Act  
11 (specifically 18 U.S.C. § 2512); and whether members of the Classes are entitled to actual and/or  
12 statutory damages for the aforementioned violations.

13           55.     The claims of the named Plaintiffs are typical of the claims of the Classes because  
14 the named Plaintiffs, like all other members of the Classes, visited the Websites and had their  
15 electronic communications intercepted and disclosed to Decibel through the use of Decibel’s  
16 wiretaps.

17           56.     Plaintiffs are adequate representatives of the Classes because their interests do not  
18 conflict with the interests of the members of the Classes they seek to represent, they have retained  
19 competent counsel experienced in prosecuting class actions, and they intend to prosecute this action  
20 vigorously. The interests of members of the Classes will be fairly and adequately protected by  
21 Plaintiffs and their counsel.

22           57.     The class mechanism is superior to other available means for the fair and efficient  
23 adjudication of the claims of members of the Classes. Each individual member of the Classes may  
24 lack the resources to undergo the burden and expense of individual prosecution of the complex and  
25 extensive litigation necessary to establish Defendants’ liability. Individualized litigation increases  
26 the delay and expense to all parties and multiplies the burden on the judicial system presented by  
27 the complex legal and factual issues of this case. Individualized litigation also presents a potential  
28 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer

1 management difficulties and provides the benefits of single adjudication, economy of scale, and  
2 comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment  
3 of the liability issues will ensure that all claims and claimants are before this Court for consistent  
4 adjudication of the liability issues.

5 58. Plaintiffs bring all claims in this action individually and on behalf of members of the  
6 Classes against Defendants.

7 **COUNT I**  
8 **Violation Of The California Invasion Of Privacy Act,**  
9 **Cal. Penal Code § 631**

10 59. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set  
11 forth herein.

12 60. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
13 Subclass against Defendants.

14 61. To establish liability under section 631(a), Plaintiffs need only establish that  
15 Defendants, "by means of any machine, instrument, contrivance, or in any other manner," did any  
16 of the following:

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

22 *Or*

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

28 *Or*

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

*Or*

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

3 62. Section 631(a) is not limited to phone lines, but also applies to “new technologies”  
4 such as computers, the Internet, and email. *See Matera v. Google Inc.*, 2016 WL 8200619, at \*21  
5 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to  
6 effectuate its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, 2006 WL 3798134,  
7 at \*5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs “electronic communications”); *In re Facebook,*  
8 *Inc. Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020) (reversing dismissal of CIPA and  
9 common law privacy claims based on Facebook’s collection of consumers’ Internet browsing  
10 history).

11 63. Decibel’s software, including the Session Replay feature, is a “machine, instrument,  
12 contrivance, or ... other manner” used to engage in the prohibited conduct at issue here.

13 64. At all relevant times, by using Decibel’s technology, Defendants intentionally  
14 tapped, electrically or otherwise, the lines of internet communication between Plaintiffs and  
15 Subclass members on the one hand, and the Websites on the other hand.

16 65. At all relevant times, by using Decibel’s technology, Defendants willfully and  
17 without the consent of all parties to the communication, or in any unauthorized manner, read or  
18 attempted to read or learn the contents or meaning of electronic communications of Plaintiffs and  
19 putative Subclass members, while the electronic communications were in transit or passing over any  
20 wire, line or cable or were being sent from or received at any place within California.

21 66. Defendants aided, agreed with, and conspired with each other to implement  
22 Decibel’s technology and to accomplish the wrongful conduct at issue here. In addition, GM  
23 employed Decibel to accomplish the wrongful conduct at issue here.

24 67. Plaintiffs and Subclass members did not consent to any of Defendants’ actions in  
25 implementing Decibel’s wiretaps on the Websites. Nor have Plaintiffs nor Subclass members  
26 consented to Defendants’ intentional access, interception, reading, learning, recording, and  
27 collection of Plaintiffs and Subclass members’ electronic communications.  
28

1 68. The violation of section 631(a) constitutes an invasion of privacy sufficient to confer  
2 Article III standing.

3 69. Unless enjoined, Defendants will continue to commit the illegal acts alleged here.  
4 Plaintiffs continue to be at risk because they frequently use the internet for shopping, and they  
5 continue to desire to use the internet for that purpose, including for the purpose of shopping for  
6 vehicles. Defendant Decibel provides its software, including the Session Replay feature, to many  
7 other website operators who offer a wide array of services. For many websites that Plaintiffs may  
8 or are likely to visit in the future, they have no practical way to know if their website  
9 communications will be monitored or recorded by Decibel.

10 70. Plaintiffs and Class members seek all relief available under Cal. Penal Code § 637.2,  
11 including injunctive relief and statutory damages of \$5,000 per violation.

12 **COUNT II**  
13 **Violation Of The California Invasion Of Privacy Act,**  
14 **Cal. Penal Code § 635**

15 71. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set  
16 forth herein.

17 72. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
18 Subclass against Defendants.

19 73. California Penal Code § 635 provides, in pertinent part:

20 Every person who manufactures, assembles, sells, offers for sale,  
21 advertises for sale, possesses, transports, imports, or furnishes to  
22 another any device which is primarily or exclusively designed or  
23 intended for eavesdropping upon the communication of another, or any  
24 device which is primarily or exclusively designed or intended for the  
25 unauthorized interception or reception of communications between  
26 cellular radio telephones or between a cellular radio telephone and  
27 a landline telephone in violation of Section 632.5, or communications  
28 between cordless telephones or between a cordless telephone and  
a landline telephone in violation of Section 632.6, shall be punished by  
a fine not exceeding two thousand five hundred dollars.

74. At all relevant times, by implementing Decibel's wiretaps, each Defendant  
intentionally manufactured, assembled, sold, offered for sale, advertised for sale, possessed,

1 transported, imported, and/or furnished a wiretap device that is primarily or exclusively designed or  
2 intended for eavesdropping upon the communication of another.

3 75. Decibel's code is a "device" that is "primarily or exclusively designed" for  
4 eavesdropping. That is, the Decibel's code is designed to gather PII, including keystrokes, mouse  
5 clicks, and other electronic communications.

6 76. Plaintiffs and Subclass members did not consent to any of Defendants' actions in  
7 implementing Decibel's wiretaps.

8 77. Plaintiffs and Subclass members seek all relief available under Cal. Penal Code §  
9 637.2, including injunctive relief and statutory damages of \$5,000 per violation.

10 **COUNT III**

11 **Invasion Of Privacy Under California's Constitution**

12 78. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set  
13 forth herein.

14 79. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
15 Subclass against Defendants.

16 80. Plaintiffs and Subclass members have an interest in: (1) precluding the dissemination  
17 and/or misuse of their sensitive, confidential PII; and (2) making personal decisions and/or  
18 conducting personal activities without observation, intrusion or interference, including, but not  
19 limited to, the right to visit and interact with various Internet sites without being subjected to  
20 wiretaps without Plaintiffs' and Subclass members' knowledge or consent.

21 81. At all relevant times, by implementing Decibel's wiretaps on GM's Websites, each  
22 Defendant intentionally invaded Plaintiffs' and Subclass members' privacy rights under the  
23 California Constitution, and procured the other Defendant to do so.

24 82. Plaintiffs and Subclass members had a reasonable expectation that their PII and other  
25 data would remain confidential and that Defendants would not install wiretaps on the Websites.

26 83. Plaintiffs and Subclass members did not consent to any of Defendants' actions in  
27 implementing Decibel's wiretaps on the Websites.

28 84. This invasion of privacy is serious in nature, scope and impact.

1 85. This invasion of privacy alleged here constitutes an egregious breach of the social  
2 norms underlying the privacy right.

3 86. Plaintiffs and Subclass members seek all relief available for invasion of privacy  
4 claims under California’s Constitution.

5 **COUNT IV**  
6 **For The Manufacture, Distribution, Possession, And Advertising of Wire, Oral, Or Electronic**  
7 **Communication Interception Devices In Violation Of The Federal Wiretap Act,**  
8 **18 U.S.C. § 2512**

9 87. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set  
10 forth herein.

11 88. Plaintiffs bring this claim individually and on behalf of the members of the proposed  
12 Classes against Defendant Decibel only.

13 89. 18 U.S.C. § 2512, in pertinent part, holds “any person” liable “who intentionally”:

14 manufactures, assembles, possesses, or sells any electronic, mechanical,  
15 or other device, knowing or having reason to know that the design of  
16 such device renders it primarily useful for the purpose of the  
17 surreptitious interception of wire, oral, or electronic communications,  
18 and that such device or any component thereof has been or will be sent  
19 through the mail or transported in interstate or foreign commerce.

20 18 U.S.C. § 2512(1)(b).

21 90. Defendant Decibel’s “Session Replay” feature is an “electronic, mechanical, or other  
22 device” as defined by 18 U.S.C. § 2510(5), and is primarily useful for the purpose of the  
23 surreptitious interception of electronic communications.

24 91. Defendant Decibel intentionally manufactured, marketed, and sold its software,  
25 including the Session Replay feature, with knowledge that it would primarily be used to illegally  
26 intercept electronic communications.

27 92. Defendant Decibel played an active role in using its Session Replay feature to  
28 intercept, disclose, and intentionally use the electronic communications of Plaintiffs and members  
of the Classes. Specifically, Decibel installed its software on GM’s Websites, monitored and  
recorded electronic communications on the Website, compiled the communications into a video  
recording, and provided the surreptitious recordings to GM without user consent.



1 93. At all relevant times, by using the Session Replay feature, Defendant Decibel  
2 intentionally manufactured, assembled, and/or possessed a device that is primarily useful for the  
3 purpose of surreptitious interception of electronic communications.

4 94. Plaintiffs and members did of the Classes did not consent to any of Defendant  
5 Decibel's actions.

6 95. Defendant Decibel's conduct violated 18 U.S.C. § 2512 and therefore gives rise to a  
7 claim under 18 U.S.C. § 2520. *See Luis v. Zang*, 833 F.3d 619 (6th Cir. 2016).

8 96. Pursuant to 18 U.S.C. § 2520, Plaintiffs and the Classes are entitled to the greater of  
9 actual damages or statutory damages or not less than \$100 a day for each day of violation or  
10 \$10,000, whichever is greater.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek  
13 judgment against Defendants, as follows:

- 14 (a) For an order certifying the Classes under Rule 23 and naming Plaintiffs as  
15 the representatives of the Classes and Plaintiffs' attorneys as Class  
16 Counsel to represent the Classes;
- 17 (b) For an order declaring that the Defendants' conduct violates the statutes  
18 referenced herein;
- 19 (c) For an order finding in favor of Plaintiffs and the Classes on all counts  
20 asserted herein;
- 21 (d) For compensatory, punitive, and statutory damages in amounts to be  
22 determined by the Court and/or jury;
- 23 (e) For prejudgment interest on all amounts awarded;
- 24 (f) For an order of restitution and all other forms of equitable monetary relief;
- 25 (g) For injunctive relief as pleaded or as the Court may deem proper; and
- 26 (h) For an order awarding Plaintiffs and the Classes their reasonable  
27 attorneys' fees and expenses and costs of suit.  
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**DEMAND FOR TRIAL BY JURY**

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues so triable.

Dated: February 26, 2021

Respectfully submitted,

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

By:     /s/ L. Timothy Fisher      
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