

1 PACIFIC TRIAL ATTORNEYS
A Professional Corporation
2 Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
3 4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
4 Tel: (949) 706-6464
Fax: (949) 706-6469

5 Attorneys for Plaintiff
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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 JOSE LICEA, individually and on behalf
of all others similarly situated,

12 Plaintiff,

13 v.

14 LOGITECH INC., a California corporation
15 and DOES 1 through 25, inclusive,

16 Defendants.
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Case No. '22CV1490 BEN MDD

CLASS ACTION COMPLAINT

1 **INTRODUCTION**

2 **Defendant (1) secretly wiretaps the private conversations of everyone who**
3 **communicates through the chat feature at www.logitech.com (the “Website”); and**
4 **(2) allows at least one third party to eavesdrop on such communications in real**
5 **time to harvest data for financial gain.**

6 **Defendant does not obtain visitors’ consent to either the wiretapping or the**
7 **eavesdropping. As a result, Defendant has violated the California Invasion of**
8 **Privacy Act (“CIPA”) in numerous ways.**

9 **JURISDICTION AND VENUE**

10 1. This Court has subject matter jurisdiction of this action pursuant to 28
11 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100
12 or more class members, (ii) there is an aggregate amount in controversy exceeding
13 \$5,000,000, exclusive of interest and costs, and (iii) there is at least minimal diversity
14 because at least one Plaintiff and Defendant are citizens of different states.

15 2. Pursuant to 28 U.S.C. Section 1391, venue is proper because a substantial
16 part of the acts and events giving rise to the claims occurred in this District.

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

19 **PARTIES**

20 4. Plaintiff is a resident and citizen of California.

21 5. Defendant is a California corporation that owns, operates, and/or controls
22 the above-referenced website.

23 6. The above-named Defendant, along with its affiliates and agents, are
24 collectively referred to as “Defendants.” The true names and capacities of the
25 Defendants sued herein as DOE DEFENDANTS 1 through 25, inclusive, are currently
26 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of
27 the Defendants designated herein as a DOE is legally responsible for the unlawful acts
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1 alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the
2 true names and capacities of the DOE Defendants when such identities become known.

3 7. Plaintiff is informed and believes that at all relevant times, every
4 Defendant was acting as an agent and/or employee of each of the other Defendants and
5 was acting within the course and scope of said agency and/or employment with the full
6 knowledge and consent of each of the other Defendants, and that each of the acts and/or
7 omissions complained of herein was ratified by each of the other Defendants.

8 FACTUAL ALLEGATIONS

9 8. The California Invasion of Privacy Act (“CIPA”) prohibits both
10 wiretapping and eavesdropping of electronic communications without the consent of all
11 parties to the communication. Compliance with CIPA is easy, and the vast majority of
12 website operators comply by conspicuously warning visitors if their conversations are
13 being recorded or if third parties are eavesdropping on them. See www.
14 leechtishman.com/insights/blog (“*CIPA Compliance is not difficult. A business must*
15 *take certain steps. . .with a chat feature. . .to ensure that it obtains valid consent*
16 *consistent with the holdings of courts interpreting CIPA.*”) (last downloaded October
17 2022).

18 9. Unlike most companies, Defendant *ignores* CIPA. Instead, Defendant both
19 *wiretaps* the conversations of all website visitors and allows a third party to *eavesdrop*
20 on the conversations. Why? Because, as one industry expert notes, “*Live chat*
21 *transcripts are the gold mines of customer service. At your fingertips, you have*
22 *valuable customer insight to make informed business decisions. . .When people are*
23 *chatting, you have direct access to their exact pain points.*”). See
24 <https://www.ravience.co/post/improve-marketing-roi-live-chat-transcripts> (last
25 downloaded October 2022).

26 10. Defendant’s actions are not incidental to the act of facilitating e-commerce,
27 nor are they undertaken in the ordinary course of business. To the contrary, as noted
28

1 above, Defendant’s actions are contrary to industry norms and the legitimate
2 expectations of consumers.

3 11. To enable the *wiretapping*, Defendant has covertly embedded code into its
4 chat feature that automatically records and creates transcripts of all such conversations.
5 To enable the *eavesdropping*, Defendant allows at least one independent third-party (on
6 information and belief, “Zendesk”) to secretly intercept in real time, eavesdrop upon,
7 and store transcripts of Defendant’s chat communications with unsuspecting website
8 visitors – even when such conversations are private and deeply personal.

9 12. Defendant neither informs visitors of this conduct nor obtains their consent
10 to these intrusions. By contrast, Zendesk boasts that it harvests data from the chat
11 transcripts it intercepts, eavesdrops upon, and stores. *See*
12 [https://support.zendesk.com/hc/en-us/articles/4408893866778-Reviewing-and-](https://support.zendesk.com/hc/en-us/articles/4408893866778-Reviewing-and-exporting-past-chats-in-History)
13 [exporting-past-chats-in-History](https://support.zendesk.com/hc/en-us/articles/4408893866778-Reviewing-and-exporting-past-chats-in-History) (“*All chats are listed on the History page [and include]*
14 *Visitor name, email, and phone number, Visitor notes (optional), Number of past visits*
15 *and past chats by this visitor, Visitor path (actions the visitor has taken leading prior to*
16 *the chat), Visitor metadata, including location, browser and device information, and IP*
17 *address. For Lite plans, only chats from the past 30 days are available. For all other*
18 *plans, chats are saved indefinitely, or until they are manually deleted.”). (last*
19 *downloaded October 2022).*

20 13. Given the nature of Defendant’s business, visitors often share highly
21 sensitive personal data with Defendant via the website chat feature. Visitors would be
22 shocked and appalled to know that Defendant secretly records those conversations and
23 allows a third party to eavesdrop on them in real time under the guise of “data
24 analytics.”

25 14. Defendant’s conduct is illegal, offensive, and contrary to visitor
26 expectations: indeed, a recent study conducted by the Electronic Privacy Information
27 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in
28

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

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

9 16. By definition, Defendant’s chat communications from its website are
10 transmitted to website visitors by either cellular telephony or landline telephony. *See*
11 <https://www.britannica.com/technology/Internet> (“*The Internet works through a series*
12 *of networks that connect devices around the world through telephone lines.*”) (last
13 downloaded October 2022).

14 17. Defendant did not inform Class Members that Defendant was secretly
15 recording their conversations or allowing, aiding, and abetting a third party to intercept
16 and eavesdrop on them in real time.

17 18. Defendant did not obtain Class Members’ express or implied consent to
18 wiretap or allow third parties to eavesdrop on visitor conversations, nor did Class
19 Members know at the time of the conversations that Defendant was secretly wiretapping
20 them and allowing third parties to eavesdrop on them.

21 **CLASS ALLEGATIONS**

22 19. Plaintiff brings this action individually and on behalf of all others similarly
23 situated (the “Class”) defined as follows:

24 **All persons within the United States who within the statute of**
25 **limitations period: (1) communicated with Defendant via the**
26 **chat feature on Defendant’s Website using telephony subject to**
27 **Penal Code Section 632.7, and (2) whose communications were**
28 **recorded and/or eavesdropped upon without prior consent.**

1 20. NUMEROSITY: Plaintiff does not know the number of Class Members
2 but believes the number to be in the thousands, if not more. The exact identities of Class
3 Members may be ascertained by the records maintained by Defendant.

4 21. COMMONALITY: Common questions of fact and law exist as to all Class
5 Members, and predominate over any questions affecting only individual members of the
6 Class. Such common legal and factual questions, which do not vary between Class
7 members, and which may be determined without reference to the individual
8 circumstances of any Class Member, include but are not limited to the following:

9 a. Whether Defendant caused electronic communications from class members
10 with the Website to be recorded, intercepted, and/or monitored;

11 b. Whether Defendant aided and abetted a third party in eavesdropping on
12 such communications;

13 c. Whether Plaintiff and Class Members are entitled to statutory penalties;
14 and

15 d. Whether Class Members are entitled to injunctive relief.

16 22. TYPICALITY: As a person who visited Defendant's Website and whose
17 electronic communication was recorded, intercepted and eavesdropped upon, Plaintiff is
18 asserting claims that are typical of the Class.

19 23. ADEQUACY: Plaintiff will fairly and adequately protect the interests of
20 the members of The Class. Plaintiff has retained attorneys experienced in the class
21 action litigation. All individuals with interests that are actually or potentially adverse to
22 or in conflict with the class or whose inclusion would otherwise be improper are
23 excluded.

24 24. SUPERIORITY: A class action is superior to other available methods of
25 adjudication because individual litigation of the claims of all Class Members is
26 impracticable and inefficient. Even if every Class Member could afford individual
27 litigation, the court system could not. It would be unduly burdensome to the courts in
28 which individual litigation of numerous cases would proceed.

FIRST CAUSE OF ACTION

Violations of the California Invasion of Privacy Act

Cal. Penal Code § 631

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4 25. Section 631(a) of California’s Penal Code imposes liability upon any entity
5 that “by means of any machine, instrument, contrivance, or in any other manner,” (1)
6 “intentionally taps, or makes any unauthorized connection, whether physically,
7 electrically, acoustically, inductively, or otherwise, with any telegraph or telephone
8 wire, line, cable, or instrument, including the wire, line, cable, or instrument of any
9 internal telephonic communication system,” or (2) “willfully and without the consent of
10 all parties to the communication, or in any unauthorized manner, reads, or attempts to
11 read, or to learn the contents or meaning of any message, report, or communication
12 while the same is in transit or passing over any wire, line, or cable, or is being sent
13 from, or received at any place within this state” or (3) “uses, or attempts to use, in any
14 manner, or for any purpose, or to communicate in any way, any information so
15 obtained, or who aids, agrees with, employs, or conspires with any person or persons to
16 unlawfully do, or permit, or cause to be done any of the acts or things mentioned above
17 in this section”. Here, Defendant does all three.

18 26. Section 631 of the California Penal Code applies to internet
19 communications and thus applies to Plaintiff’s and the Class’s electronic
20 communications with Defendant’s Website. “Though written in terms of wiretapping,
21 Section 631(a) applies to Internet communications. It makes liable anyone who ‘reads,
22 or attempts to read, or to learn the contents’ of a communication ‘without the consent of
23 all parties to the communication.’ Cal. Penal Code § 631(a).” *Javier v. Assurance IQ,*
24 *LLC*, No. 21-16351, 2022 WL 1744107, at *1 (9th Cir. May 31, 2022).

25 27. The software embedded on Defendant’s Website to record and eavesdrop
26 upon the Class’s communications qualifies as a “machine, instrument, contrivance, or
27 ... other manner” used to engage in the prohibited conduct alleged herein.

1 28. At all relevant times, Defendant intentionally caused the internet
2 communication between Plaintiff and Class Members with Defendant’s Website to be
3 recorded. Defendant also aided, abetted at least one third party to eavesdrop upon such
4 conversations.

5 29. Plaintiff and Class Members did not expressly or impliedly consent to any
6 of Defendant’s actions.

7 30. Defendant’s conduct constitutes numerous independent and discreet
8 violations of Cal. Penal Code § 631(a), entitling Plaintiff and Class Members to
9 injunctive relief and statutory damages.

10 **SECOND CAUSE OF ACTION**

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

12 **Cal. Penal Code § 632.7**

13 31. 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 and
15 intentionally records, or assists in the interception or reception and intentional
16 recordation of, a communication transmitted between two cellular radio telephones, a
17 cellular radio telephone and a landline telephone, two cordless telephones, a cordless
18 telephone and a landline telephone, or a cordless telephone and a cellular radio
19 telephone.”

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

22 33. 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 34. As set forth above, Defendant recorded telephony communication without
25 the consent of all parties to the communication in violation of Section 632.7.

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

1 36. Defendant’s conduct constitutes numerous independent and discreet
2 violations of Cal. Penal Code § 632.7, entitling Plaintiff and Class Members to
3 injunctive relief and statutory damages.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 6 1. An order certifying the Class, naming Plaintiff as the representative of the
- 7 Class and Plaintiff’s attorneys as Class counsel;
- 8 2. An order declaring Defendant’s conduct violates CIPA;
- 9 3. An order of judgment in favor of Plaintiff and the Class and against
- 10 Defendant on the causes of action asserted herein;
- 11 4. An order enjoining Defendant’s conduct as alleged herein and any other
- 12 injunctive relief that the Court finds proper;
- 13 5. Statutory damages pursuant to CIPA;
- 14 6. Punitive damages;
- 15 7. Prejudgment interest;
- 16 8. Reasonable attorneys’ fees and costs; and
- 17 9. All other relief that would be just and proper as a matter of law or equity,
- 18 as determined by the Court.

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20 Dated: October 2, 2022

PACIFIC TRIAL ATTORNEYS, APC

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22 By: 
23 Scott. J. Ferrell
24 Attorneys for Plaintiff
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