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

10
11 MIGUEL A. LICEA, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 GAMESTOP, INC., a Minnesota
15 corporation, and DOES 1 through 25,
inclusive,

16 Defendants.
17

Case No. 5:22-cv-01562

**CLASS ACTION COMPLAINT FOR
VIOLATION OF PENAL CODE § 631**

1 **INTRODUCTION**

2 Defendant (1) covertly wiretaps the communications of all visitors who
3 utilize the chat feature at www.gamestop.com; and (2) shares the secret transcripts
4 of those wiretaps with a third party that boasts of its ability to harvest personal
5 data from the transcripts for marketing and other purposes. Defendant neither
6 informs visitors nor obtains their prior, express consent to these intrusions. As a
7 result, Defendant has violated the California Invasion of Privacy Act (“CIPA”),
8 California Penal Code § 631.

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, this Court is the proper venue for this
16 action because a substantial part of the events, omissions, and acts giving rise to the
17 claims herein occurred in this District: Plaintiff is a citizen of California who resides in
18 this District and Defendant conducted a substantial portion of the unlawful activity in
19 this District.

20 3. Defendant is subject to personal jurisdiction in California based upon
21 sufficient minimum contacts which exist between Defendant and California. Defendant
22 also does business with California residents.

23 **PARTIES**

24 4. Plaintiff is a citizen of California residing within the Central District of
25 California.

26 5. Defendant is a Minnesota corporation that owns, operates, and/or controls
27 the above-referenced website.

28

1 providing a software service, Defendant allows Zendesk to intercept and use the secret
2 transcripts.

3 12. Given the nature of Defendant’s business, website visitors typically share
4 highly personal and sensitive data with Defendant when using the website chat feature.
5 Consumers would be shocked and appalled to know that Defendant secretly creates
6 transcripts of those conversations and shares them with a third party.

7 13. Defendant’s conduct is both illegal and offensive: indeed, a recent study
8 conducted by the Electronic Privacy Information Center, a respected thought leader
9 regarding digital privacy, found that: (1) nearly 9 in 10 adults are “very concerned”
10 about data privacy, and (2) 75% of adults are unaware of the extent to which companies
11 gather, store, and exploit their personal data. *See*
12 <https://archive.epic.org/privacy/survey/> (last downloaded September 2022).

13 14. Within the statute of limitations period, Plaintiff visited Defendant’s
14 Website and communicated with an employee of Defendant through the website chat
15 feature. Unbeknownst to website visitors, Defendant creates exact transcripts of all
16 such communications and shares the transcripts with at least one third party using
17 secretly embedded wiretapping technology.

18 **15. Simplified to common parlance, Defendant: (1) encourages website**
19 **visitors to share personal information through the website chat feature; (2)**
20 **secretly creates a transcript of all such conversations without warning website**
21 **visitors or obtaining their consent; and (3) shares the secret transcripts with a**
22 **third party that boasts of its ability to harvest personal data from the transcripts**
23 **for sales and marketing purposes.**

24 16. Defendant did not inform Plaintiff, or any of the Class Members, that
25 Defendant was secretly monitoring, recording, and sharing their communications.

26 17. Defendant did not obtain Plaintiff’s or the Class Members’ consent to
27 intercepting, monitoring, recording, and sharing the electronic communications with the
28 Website.

1 18. Plaintiff and Class Members did not know at the time of the
2 communications that Defendant was secretly intercepting, monitoring, recording, and
3 sharing the electronic communications.

4
5 **CLASS ALLEGATIONS**

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

8 **All persons within California who: (1) visited Defendant’s**
9 **website, and (2) whose electronic communications were**
10 **recorded, stored, and/or shared by Defendant without prior**
11 **express consent within the statute of limitations period.**

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

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

20 a. Whether Defendant caused Plaintiff’s and the Class’s electronic
21 communications with the Website to be recorded, intercepted and/or monitored;

22 b. Whether Defendant violated CIPA based thereon;

23 c. Whether Plaintiff and Class Members are entitled to statutory damages
24 pursuant to Cal. Penal Code § 631(a);

25 d. Whether Plaintiff and Class Members are entitled to punitive damages
26 pursuant to Cal. Civil Code § 3294; and

27 e. Whether Plaintiff and Class Members are entitled to injunctive relief.
28

1 to unlawfully do, or permit, or cause to be done any of the acts or things mentioned
2 above in this section”.

3 26. Section 631 of the California Penal Code applies to internet
4 communications and thus applies to Plaintiff’s and the Class’s electronic
5 communications with Defendant’s Website. (“Though written in terms of wiretapping,
6 Section 631(a) applies to Internet communications. It makes liable anyone who ‘reads,
7 or attempts to read, or to learn the contents’ of a communication ‘without the consent of
8 all parties to the communication.’ Cal. Penal Code § 631(a).” *Javier v. Assurance IQ,*
9 *LLC*, 21-16351, 2022 WL 1744107, at *1 (9th Cir. May 31, 2022).

10 27. The software employed by Defendant on its Website to record Plaintiff’s
11 and the Class’s electronic communications qualifies as a “machine, instrument,
12 contrivance, or ... other manner” used to engage in the prohibited conduct alleged
13 herein.

14 28. At all relevant times, Defendant intentionally caused the internet
15 communication between Plaintiff and Class Members with Defendant’s website to be
16 intercepted, recorded, stored, and transmitted to a third party.

17 29. At all relevant times, Defendant willfully, and without the consent of all
18 parties to the communication, allowed the contents of electronic communications of
19 visitors to its website to be accessed by third parties.

20 30. Plaintiff and Class Members did not consent to any of Defendant’s actions
21 in implementing wiretaps on its Website, nor did Plaintiff or Class Members consent to
22 Defendant’s intentional access, interception, recording, monitoring, reading, learning
23 and collection of Plaintiff and Class Members’ electronic communications with the
24 Website.

25 31. Defendant’s conduct constitutes numerous independent and discreet
26 violations of Cal. Penal Code § 631(a), entitling Plaintiff and Class Members to
27 injunctive relief and statutory damages of at least \$2,500.00 per violation.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendant:

1. An order certifying the Class, naming Plaintiff as the representative of the Class and Plaintiff’s attorneys as Class counsel;
2. An order declaring Defendant’s conduct violates CIPA;
3. An order of judgment in favor of Plaintiff and the Class and against Defendant on the cause of action asserted herein;
4. An order enjoining Defendant’s conduct as alleged herein and any other injunctive relief that the Court finds proper;
5. Statutory damages to Plaintiff and the Class pursuant to Cal. Penal Code § 631(a);
6. Punitive damages to Plaintiff and the Class pursuant to Cal. Civil Code § 3294;
7. Prejudgment interest;
8. Reasonable attorneys’ fees and costs; and
9. All other relief that would be just and proper as a matter of law or equity, as determined by the Court.

Dated: September 6, 2022

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott. J. Ferrell
Attorneys for Plaintiff