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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

GARY FREUND, JENNIFER BUELNA, LAJANEE TURNER, AND SHEILLA NAPOLETANO, on behalf of themselves and all others similarly situated;

Plaintiff,

v.

DIALPAD, INC., a Delaware corporation;

Defendant.

Case No. CGC-25-624953

ORDER ON DEFENDANT DIALPAD, INC.'S DEMURRER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant Dialpad, Inc.'s demurrer to Plaintiff's amended complaint came on for hearing on December 11, 2025. Having considered the pleadings and papers on file in the action, and the arguments of counsel presented at the hearing, the demurrer is hereby sustained with leave to amend.

BACKGROUND

On May 1, 2025, Plaintiff Gary Freund filed this putative class action against Defendant Dialpad, Inc., seeking to allege one cause of action for violation of the California Invasion of Privacy Act (CIPA), Pen. Code §§ 630-638.55. On July 18, 2025, Plaintiff Freund filed a First Amended Complaint (FAC), which is the operative complaint, adding Jennifer Buelna, Lajanee Turner, and Sheilla Napoletano as named plaintiffs. (FAC ¶¶ 7–9.) Plaintiffs allege as follows.

The operative complaint alleges that each named plaintiff called telephone numbers associated with various companies who are listed as corporate customers of Dialpad's "Dialpad AI" service,

including Warby Parker, Netflix, RE/MAX, and the American Automobile Association (AAA). (FAC ¶¶ 20–21, 29–32.) Dialpad AI is a separate service from Dialpad's phone, messaging, and call center functionality that transcribes phone calls in real-time, provides a "sentiment analysis" that determines customer satisfaction during a call, and summarizes the contents of a call. (*Id.* ¶¶ 14–19.) Dialpad also uses the "voice and messaging data" obtained during the calls analyzed with Dialpad AI to train its artificial intelligence (AI) algorithm. (*Id.* ¶¶ 24–27.) Plaintiffs were not aware of and did not give consent to Dialpad for the monitoring and analysis of their phone calls, nor the use of their calls' contents to train the Dialpad AI algorithm. (*Id.* ¶¶ 29–32.) Plaintiffs seek to certify a class of "[a]ll California residents who made or received a phone call to or from any Dialpad business partner that was recorded, analyzed, or processed by Dialpad." (*Id.* ¶ 33.)

Defendant demurs to Plaintiffs' FAC on the grounds that it does not state facts sufficient to constitute a cause of action. (Opening Brief, 1–3.) Plaintiffs oppose the demurrer.

REQUESTS FOR JUDICIAL NOTICE

Defendant's unopposed requests for judicial notice as to Exhibit A, Dialpad's November 12, 2024 press release, which is incorporated by reference into the complaint, and Exhibit B, CPUC Decision 24-11-003, are granted pursuant to Evidence Code section 452. (*Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 486 [incorporation by reference sufficient to permit judicial notice]; *Citizens Utilities Co. v. Superior Court* (1976) 56 Cal.App.3d 399, 410 [the courts "may take judicial notice of the decisions of the [California Public Utilities] Commission"].)

Defendant's requests for judicial notice as to Exhibits C–I, the privacy policies of Dialpad's alleged customers, are denied as not judicially noticeable under Evidence Code section 452. "The contents of . . . Web sites . . . are plainly subject to interpretation and for that reason not subject to judicial notice." (*Al Shikha v. Lyft, Inc.* (2024) 102 Cal.App.5th 14, 21.) Further, a court "may not take judicial notice of the truth of the contents of a website." (*LG Chem, Ltd. v. Superior Court* (2022) 80 Cal.App.5th 348, 362 fn. 7, citing *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194.)

For similar reasons, Defendant's requests for judicial notice as to Exhibits L–N, Dialpad's Privacy Policies effective May 1, 2024 until the present, and Exhibit P, the Dialpad AI Training Preferences, are

denied. These factual materials are not incorporated into the FAC and are not properly before the Court at the pleading stage. Likewise, the Court declines to consider the declaration of Plaintiffs' counsel, which is not properly before the Court on demurrer.

LEGAL STANDARD

"A demurrer tests the legal sufficiency of the factual allegations in a complaint." (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190; see Code Civ. Proc. § 430.10.) A demurrer admits "all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The complaint is given a reasonable interpretation, reading it as a whole and its parts in their context. (*Id.*) The Court accepts as true, and liberally construes, all properly pleaded allegations of material fact, as well as those facts which may be implied or reasonably inferred from those allegations; its sole consideration is whether the plaintiff's complaint is sufficient to state a cause of action under any legal theory. (*O'Grady v. Merchant Exchange Prods., Inc.* (2019) 41 Cal.App.5th 771, 776–777.) "A demurrer may be sustained not only when the complaint fails to plead facts sufficient to state a cause of action, but also when the complaint includes allegations that clearly disclose some defense or bar to recovery." (*Rossi v. Sequoia Union Elementary School* (2023) 94 Cal.App.5th 974, 985 (cleaned up).)

DISCUSSION

The California Invasion of Privacy Act (CIPA) was enacted in 1967, "replacing prior laws that permitted the recording of telephone conversations with the consent of one party to the communication. The purpose of the act was to protect the right of privacy by, among other things, requiring that all parties consent to a recording of their conversation." (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 768-769; see Pen. Code § 630 ["The Legislature by this chapter intends to protect the right of privacy of the people of this state."].) CIPA criminalizes various wiretapping and eavesdropping activities and provides certain exemptions for telephone companies and law enforcement. CIPA also authorizes "any person who has been injured by a violation of this chapter" to bring a civil action against the violator for the greater of $5,000 per violation or three times the amount of actual damages, if any, sustained by the plaintiff. (*Id.* § 637.2(a).)

Here, Plaintiffs bring a single cause of action under Penal Code section 631, subdivision (a), which reads in pertinent part as follows:

> Any person who, by means of any machine, instrument, or contrivance, or in any other manner, [1] 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
>
> [2] 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
>
> [3] who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or
>
> [4] 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 . . . .[1]

Thus, section 631(a) "broadly prohibits the interception of wire communications and disclosure of the contents of such intercepted communications." (*Tavernetti v. Superior Court* (1978) 22 Cal.3d 187, 190.) It covers "three distinct and mutually independent patterns of conduct: intentional wiretapping, wilfully attempting to learn the contents or meaning of a communication in transit over a wire, and attempting to use or communicate information obtained as a result of engaging in either of the previous two activities." (*Id.* at 192.) Plaintiffs allege violations of the second and third clauses of section 631. (FAC ¶¶ 40–50.)

Defendant asserts that Plaintiffs have not pled a cause of action for violation of CIPA, and that certain exemptions or exceptions in the statute protect Defendant from liability. (Opening Brief, 1–3.) The Court addresses each set of arguments in turn.

I. Plaintiffs' First Amended Complaint Adequately Pleads A Violation Of Section 631(a).

Defendant challenges the FAC on three grounds: first, that the pleadings are insufficient to show that Warby Parker, Netflix, and AAA are Dialpad AI customers; second, that Plaintiffs have not alleged the requisite intent and lack of consent; and third, that Plaintiffs have not alleged that the interception was

[1] For ease of reference, the Court has inserted bracketed numbers and added paragraphs to separate the different clauses of section 631(a).

"in transit." (Opening Brief, 1–3.) As discussed below, these three grounds for demurrer lack merit.

A. Plaintiff May Allege The Identity Of Dialpad AI Customers On Information And Belief.

California's pleading standard requires plaintiffs to allege the ultimate facts supporting their claim for relief. (Code Civ. Proc. § 425.10.) ["[T]he complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) In general, "a plaintiff is required only to set forth the essential facts sufficient to acquaint a defendant with the nature, source and extent of the plaintiff's cause of action." (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611 (cleaned up).) "The particularity of pleading required depends upon the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff, and . . . less particularity is required where the defendant may be assumed to possess knowledge of the facts as least equal, if not superior, to that possessed by the plaintiff." (*Burks v. Poppy Construction Co.* (1962) 52 Cal.2d 463, 474.) "Under this doctrine of less particularity, less specificity is required in pleading matters of which the defendant has superior knowledge. A plaintiff need not particularize matters presumptively within the knowledge of the demurrer defendant. This includes matters such as a defendant's knowledge or notice or intent." (*Thomas*, 97 Cal.App.5th at 611 (cleaned up).) Allegations made "on information and belief are appropriate where the information is not within a plaintiff's personal knowledge, if he has information leading him to believe that the allegations are true." (*Doe*, 42 Cal.4th at 550 (cleaned up).)

Here, Plaintiffs reasonably allege based on available information from Defendant that the companies they called use Dialpad AI for their customer service, and those allegations are sufficient to inform Defendant of the claim against it so that it may prepare a defense. Defendant, as the Dialpad AI provider, has superior access to the facts of who Defendant's customers are and which AI services they use than Plaintiffs do. In their complaint, Plaintiffs allege, based on a press release published by Defendant and Defendant's own website, that Warby Parker, Netflix, RE/MAX, and AAA are Dialpad customers who use Dialpad AI. (FAC ¶¶ 20–21.) A person could reasonably infer based on Dialpad's statement of the companies that "use Dialpad and its AI capabilities" and Dialpad's public descriptions of the functionality and algorithm training methods of Dialpad AI, that those companies use Dialpad AI during telephone-based customer service conversations and subject callers to those functionalities and

algorithm training. (*Id.*; Kanig Decl. Ex. A; compare *Doe I v. Google LLC* (N.D. Cal. 2024) 741 F.Supp.3d 828, 839 [plaintiffs failed to allege sufficient facts where "instead of offering factual allegations about how the plaintiffs' various providers are *actually* using Google's products, the plaintiffs allege hypothetical examples—based on the generic product descriptions—of how various product features could be used in ways that could result in privacy violations" (emphasis original)].)[2] Plaintiffs have alleged who they believe Dialpad AI's customers are, and the source of that belief. That is sufficient to survive demurrer. (See *Doe*, 42 Cal.4th at 550.)

B. Defendant's Arguments Regarding Lack Of Consent And Willful Interception Raise Factual Issues That Cannot Be Determined On Demurrer.

The second clause of section 631 prohibits a party from monitoring the contents of communications "willfully and without the consent of all parties to the communication, or in any unauthorized manner." (Pen. Code § 631(a).) Plaintiffs allege that neither they nor any member of the proposed class "has ever agreed to allow Dialpad to listen to their calls or use them to train the Dialpad AI—or for any other purpose—for the benefit of Dialpad or its other clients." (FAC ¶ 5; see also *id.* ¶¶ 28 ["Dialpad did not obtain any consent from consumers to eavesdrop on their conversations, analyze their calls with artificial intelligence, and ultimately train artificial intelligence models on the data it obtained from consumer conversations."], 29-32 [similar allegations by named Plaintiffs].) Defendant nevertheless argues that Plaintiffs did consent to its use of Dialpad AI, for two reasons: (1) because its customer companies disclose that they record and share customer service calls with third-party service providers like Dialpad (Opening Brief, 9-10); and (2) because Dialpad itself instructs its customers that they are required to obtain consent from all parties to record or transcribe a conversation. (Opening Brief, 10-12.)[3]

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[2] Moreover, the various published and unpublished federal court decisions on motions to dismiss cited by the parties were decided under a more stringent pleading standard. In contrast to federal courts, California courts do not assess the plausibility of a pleading's factual allegations on demurrer. (See, e.g., *Franceschi v. Franchise Tax Board* (2016) 1 Cal.App.5th 247, 256 ["It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. Accordingly, in considering the merits of a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be." (cleaned up)].)

[3] Defendants also argue that the Complaint is deficient because it does not utilize the term "willfully." (Opening Brief, 11.) The Court is unpersuaded that the use of that specific term is required to state a cause of action. (See, e.g., *Cortese v. Sherwood* (2005) 26 Cal.App.5th 445, 455 [demurrer to civil conspiracy claim could properly be decided "without regard to the labels attached to the causes of action or whether the word 'conspiracy'—having no talismanic significance—appears in them"].)

In response, Plaintiffs argue that they "do not allege they were bound by or ever saw of those businesses' privacy policies; they do not even allege they were in ongoing relationships with them." (Opposition, 12.) The Court agrees.

Defendants' arguments ultimately may be dispositive of Plaintiffs' claims, if presented on a proper factual record. At this stage, however, they depend upon extrinsic materials, such as Dialpad's and third parties' privacy policies and terms of service, that are not proper subjects of judicial notice for this purpose. (*Al Shikha*, 102 Cal.App.5th at 21 [holding that a court may not take judicial notice of the terms of service posted on a website to establish that the website host obtained customer consent]; see also *Turner v. Nuance Communications, Inc.* (N.D. Cal. 2024) 735 F.Supp.3d 1169, 1178-1181 [denying motion to dismiss on ground that plaintiff consented to defendant's use of artificial intelligence voice recognition software, where issue of whether deposit account agreement sufficiently informed consumers of company's conduct "is a factual dispute which is not appropriate for resolution at the pleadings stage"].)[4] Accordingly, Defendant's demurrer must be overruled on this ground.

C. Plaintiffs Sufficiently Allege The Interception Took Place "In Transit."

The second clause of Penal Code section 631(a) requires that the communication at issue be intercepted when it is "in transit or passing over any wire, line, or cable, or is being sent from, or received [in California.]" (Pen. Code § 631(a).) The California Supreme Court in *Ribas v. Clark* expressly included in this timing requirement a communication that is intercepted simultaneously with the intended recipient's receipt of the communication. (*Ribas v. Clark* (1985) 38 Cal.3d 355, 359 [real-time eavesdropper on telephone extension from recipient's phone line did not avoid liability under "in transit" requirement].) Defendant misstates the standard by seeking to exclude from the purview of the statute communications intercepted at the same time they are received, and selectively quotes and cites non-binding federal authority to support this argument. (See, e.g., *Mastel v. Miniclip SA* (E.D. Cal. 2021) 549 F.Supp.1129, 1136 [text copied to a phone's digital "clipboard" had no sender or recipient and was not a

[4] Compare *Garcia v. Enter. Holdings, Inc.* (N.D. Cal. 2015) 78 F.Supp.3d 1125, 1136 ["given the procedural posture of this case and the limited record presented, the Court does not purport to determine whether Plaintiff, in fact, consented to the Privacy Policy or to the disclosure of his personal information to Mixpanel. However, given the express provisions of the Privacy Policy and TOS, which ostensibly contradict his bare allegation that he did not consent, Plaintiff must allege additional facts to support his claim" under section 637.6].)

communication, and text copied from a previously-received communication already received was not intercepted "in transit, or in the process of being sent or received."]; *Konop v. Hawaiian Airlines, Inc.* (9th Cir. 2002) 302 F.3d 868, 876, 878 [interpreting "intercept" under the Federal Wiretap Act, 18 U.S.C. § 2511(1)(a), which does not include communications when they are "sent" or "received" like section 631(a) does].) The Court is not convinced. Plaintiff's allegations regarding Dialpad AI's functions, at least one of which applies explicitly to conversations between "agents and callers" and performs its analysis during a "current live voice call," sufficiently allege both the machine or instrumentality intercepting the call—Dialpad AI—and that the interception and reading of the contents of the communication occurs simultaneously with the Dialpad AI customer's receipt of the call. (FAC ¶¶ 18, 44; see *R.C. v. Sussex Publishers, LLC* (N.D. Cal. June 23, 2025) 2025 WL 1735994, *2-*3 [where plaintiffs alleged defendant's website uses Google Analytics Javascript, which "concurrently and in real time" intercepts, reads, and analyzes user communications, they plausibly alleged defendant intercepted communications while they were in transit to defendant]; *Ambriz v. Google, LLC* (Feb. 10, 2025) 2025 WL 830450, *4 ["Plaintiffs have adequately alleged that Google learned the content of their communications while they were in transit, either before or simultaneously with the intended recipient"].)

Defendant's further argument that *Ribas* does not apply because there is no "active listener" present when Dialpad AI analyzes conversations is plainly contradicted by *Ribas* itself, which includes both a "person or mechanical device" among prohibited "unannounced second auditor[s]." (*Ribas*, 38 Cal.3d at 360–361.) Dialpad AI is itself the active listener, even though it is not a human listener. (See *R.C. v. Sussex Publishers, LLC,* 2025 WL 1735994 at *5 [rejecting argument that Google Analytics "cannot read communications because it 'does not have a brain of its own'"; "courts have regularly held use of software to eavesdrop into communications is a basis for § 631 claims."]; *Ambriz*, 2025 WL 8304590 at *4 [rejecting argument that Google's AI service is not a person under the statute].)

Therefore, Defendant's demurrer cannot be sustained on these grounds.

II. On The Face Of The Complaint, Dialpad Is Exempt From CIPA.

The Court may sustain a demurrer based on a defense "when the complaint includes allegations that clearly disclose some defense or bar to recovery." (*Rossi*, 94 Cal.App.5th at 985.) Defendant raises two such potential defenses: (1) the exemption for telephone companies found in Penal Code section

631(b) and (2) the party-exception rule for third-party service providers. (Opening Brief, 7-9, 12-14.) The Court finds the former is dispositive, and therefore need not reach the latter.

A. Dialpad Falls Squarely Within The Telephone Company Exemption.

Penal Code section 631 exempts from CIPA telephone companies and their agents. That section provides that Section 631 shall not apply to any "telephone company, engaged in the business of providing communication services and facilities, . . . , where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the . . . telephone company." (Pen. Code § 613(b)(1).) For purposes of this section, telephone company is defined in section 638(c)(3), which in turn incorporates the definition of a telephone corporation in the Public Utilities Code, as well as "any other person that provides residential or commercial telephone service to a subscriber utilizing any of the technologies or methods enumerated in paragraph (2)." (*Id.* § 638(c)(3).) Those technologies include "a telephony device operating over the Internet utilizing voice over Internet protocol [VoIP]." (*Id.* § 638(c)(2).)

There is no dispute that Defendant is a telephone company within the meaning of this broad definition. That is apparent on the face of Plaintiffs' complaint, which alleges that "Dialpad provides a communications platform combining phone, messaging, and call center functionality for businesses. Businesses can replace their telephone and messaging providers with Dialpad's service." (FAC ¶ 14; see also *id.* ¶ 1 [Dialpad is "a communication platform that provides phone services and call center software to businesses."].) Further, the California Public Utilities Commission's November 7, 2024 Decision establishing a regulatory framework for telephone corporations providing interconnected VoIP service, of which the Court has taken judicial notice, makes clear that such service providers are telephone corporations. (Kanig Decl. Ex. B, 15-19.) That Decision specifically lists Dialpad as one such VoIP provider. (*Id.* App'x D, 3.) Thus, Defendant is exempt from CIPA if the complained of acts are "for the purpose of construction, maintenance, conduct or operation of the services and facilities of the . . . telephone company."

The parties disagree as to the meaning and scope of this language. Defendant asserts that the use of Dialpad AI to "transcrib[e] and analyz[e] customer service calls" are activities performed "for the purpose of maintaining, conducting, and operating telephone services and facilities." (Opening Brief, 8.)

By contrast, Plaintiffs assert that the section 631(b) exception has "a narrow application to limited intrusions related to bona fide service maintenance," and does not apply to the conduct alleged here. (Opposition, 10.) On further consideration, the Court concludes that Defendant has the better argument.

There are only two reported cases that have addressed the scope and application of the telephone company exemption. In *Tavernetti v. Superior Court* (1978) 22 Cal.3d 187, a lineman, while testing a telephone line for malfunction, twice overheard the calling party offering to engage in a narcotics transaction, and reported his suspicions to law enforcement. The California Supreme Court held that although the original interception was intentional and lawful, the employee's "disclosure of the contents of private telephone conversations simply was not for the purpose of protecting the telephone company or promoting its interests." (*Id.* at 194.) Thus, regardless of the original legality of the interception, the disclosure did not fall within the "carefully limited exemptive provisions of subdivision (b)," particularly in light of the public policy favoring protection of privacy rights. (*Id.* at 193-195.) Thus, *Tavernetti* stands for the proposition that a telephone company may lawfully conduct an intentional wiretap for the purpose of promoting its own interests, but may not disclose the intercepted communication to third parties for other, unrelated purposes.

More recently, in *Ambriz v. Google, LLC* (N.D. Cal. June 20, 2024), 2024 WL 3282521, a federal district court dismissed a case involving allegations closely similar to those presented here, holding that the telephone company exemption applied. In *Ambriz*, plaintiff alleged that defendant Google used its Cloud Contact Center AI software-as-a-service to wiretap, eavesdrop on, and record his call to Verizon's customer service center. First, Plaintiff conceded that Verizon is a telephone company within the meaning of section 631(b). (*Id.* at *1.) Second, the court concluded that the facts pleaded in the complaint showed that Google acted as Verizon's agent under section 631(b)(1). Plaintiff alleged that Google's Cloud Contact Center AI provides a "virtual agent" to interact with Verizon customers on its behalf, and specifically that it "acted as a 'session manager' who 'monitor[s]' conversations between Verizon and its customers, to assist Verizon's customer service representatives." (*Id.*) Third, the complaint's factual allegations "demonstrate that Google's alleged wiretapping conduct was 'for the purpose of . . . operation of the services and facilities of' Verizon." (*Id.* at 2.) For example,

> Among other things, the Cloud Contact Center AI empowers human agents with continuous

> support during their calls and chats by identifying intent and providing real-time, step-by-step assistance and uses natural language processing to identify call drivers and sentiment that helps contact center managers learn about customer interactions to improve call outcomes. Using this Cloud Contact Center AI software-as-a-service, Google is alleged to have wiretapped, eavesdropped on, and recorded conversations to assist Verizon in providing customer service support to its consumers.

(*Id.* (cleaned up); see also *id.* [quoting allegations that Google "grabs the context of the conversation to suggest articles and real-time, step-by-step guidance to the agent, actively analyzing the real-time contents of conversations between Verizon and their customers," and "needs access to the data in order to service Verizon, such as through providing recommendations, analyzing customer intent, and transcribing conversations in real time" (cleaned up).) The court rejected plaintiff's argument that "only wiretapping that is 'necessary' to a telephone company's services is exempted under § 631(b)(1)," concluding that "the plain language of the statute forecloses his argument. By its own terms, the statute does not impose a necessity requirement, imposing only a requirement that the wiretapping be 'for the purpose of . . . operation of the services and facilities of the . . . telephone company.'" (*Id.*) "Given the statute's clear text, the Court must apply the statute as it is written." (*Id.* (cleaned up).)

The Court finds *Ambriz* persuasive.[5] Here, just as in that case, Plaintiffs concede that Dialpad is a telephone company. Plaintiffs' own allegations make clear that, just as in *Ambriz*, Defendant's use of the capabilities of Dialpad AI was for the purpose of the "conduct or operation of [its] services and facilities."[6] Plaintiffs allege that Dialpad AI, exactly like Google's Cloud Contact Center AI, "analyzes conversations in real-time between the consumer and the business," and offers features including real-time voice transcription, voice analysis, and automated call summaries. (FAC ¶ 16; see also *id.* ¶¶ 17-19.) These features are intended to assist Dialpad's customers with customer service inquiries, and thus are part and parcel of the conduct or operation of its services. (*Id.*) Plaintiffs' attempt to distinguish *Ambriz* on the basis that, in that case, a telephone provider hired a third-party service provider to analyze its own

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[5] It is true, as Plaintiffs point out, that *Ambriz* did not cite *Tavernetti*. However, that is hardly surprising, given the substantial factual and procedural distinctions between the two cases. There is no inconsistency between the two decisions.

[6] The FAC alleges that Dialpad's "deployment of artificial intelligence technology to eavesdrop on a conversation" was not "undertaken for the purpose of construction, maintenance, conduct or operation of the services and facilities of a public utility or telephone company," but this is a legal conclusion rather than a properly pleaded fact, and therefore is not admitted on demurrer. (FAC ¶ 49; see *Wexler v. California FAIR Plan Assn.* (2021) 63 Cal.App.5th 55, 70 ["We disregard legal conclusions in a complaint; they are just a lawyer's arguments."].)

customer service calls, whereas here the telephone company analyzes the customer service calls received by third parties, is a distinction that cuts against Plaintiffs' argument. (Opposition, 11.)

Plaintiffs contend that Dialpad falls outside the exemption because in addition to analyzing consumer calls to facilitate a particular business's customer service operations, "it also uses consumer calls for its own purpose: to train and improve its artificial intelligence algorithms for its own use and for use by other business partners." (*Id.* ¶ 24; see also *id.* ¶¶ 25-27.) By definition, however, such use of data is for the purpose of the conduct or operation of Dialpad's telephone company operations, which include the use of Dialpad AI to provide customer service support. It therefore falls squarely within the telephone-company exemption in section 631(b)(1).

B. The Court Need Not Decide The Third-Party Exception Issue.

A person cannot intercept communications to which the person is already a party. Accordingly, to plead a section 631(a) violation, plaintiff must allege that the intercepting party was a third party, i.e., not a party to the intercepted communication. (*Ribas v. Clark* (1985) 38 Cal.3d 355, 359 ["Section 631 was aimed at one aspect of the privacy problem—eavesdropping, or the secret monitoring of conversations by third parties"]; *Warden v. Kahn* (1979) 99 Cal.App.3d 805, 811 [section 631 "has been held to apply only to eavesdropping by a third party and not to recording by a participant to a conversation"], citing *Rogers v. Ulrich* (1975) 52 Cal.App.3d 894, 899 ["only a third party can listen secretly to a private conversation."].) Defendant argues that it was a mere extension of the intended recipient of Plaintiffs' communications because it is "a third-party service provider that receives a customer's end users' communications," and is therefore exempt from liability under section 631(a). (Opening Brief, 12–15.) Plaintiffs respond that an interceptor's capacity to use the communications it accesses is the determinative factor, and describe an inconsistent federal landscape with regard to how to analyze the party exception. (Opposition, 16–17.) There is no on-point binding California authority, while federal courts have taken differing approaches to the issues presented here.[7] Because the Court concludes that the telephone-

[7] See, e.g., *Tate v. VITAS Healthcare Corporation* (E.D. Cal. 2025) 762 F.Supp.3d 949, 954 ["there is a split amongst district courts as to whether a third-party entity must actually use the data it obtains for its own purposes or if it merely needs to have the *capability* to do so to act as a third party in violation of section 631(a)"]; *Javier v. Assurance IQ, LLC* (N.D. Cal. 2023) 649 F.Supp.3d 891, 898-901 [describing and summarizing "two general avenues of decision" regarding third-party exception].) Moreover, there is a split of authority among federal courts regarding whether the third-party requirement extends to third-party software providers. (See, e.g., *Javier v. Assurance IQ, LLC* (N.D. Cal. 2023) 649 F.Supp.3d 891,

company exemption is dispositive, it need not reach these issues to rule on Defendant's demurrer.

CONCLUSION

Defendant's demurrer to Plaintiff's amended complaint is sustained with leave to amend.

IT IS SO ORDERED.

Dated: December 23, 2025

Ethan P. Schulman
Judge of the Superior Court

897-901 [concluding that third-party software providers do not fall within party exception to section 631]; compare, e.g., *Graham v. Noon* (N.D. Cal. 2021) 533 F.Supp.3d 823, 832-833 [finding software vendor merely an extension of website which employed it that provided a tool that allows website to record and analyze its own data, not a third-party eavesdropper].)

CERTIFICATE OF ELECTRONIC SERVICE

(CCP 1010.6, and CRC 2.251)

I, Edward Santos, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On December 23, 2025, I electronically served:

ORDER ON DEFENDANT DIALPAD, INC.'S DEMURRER TO PLAINTIFF'S AMENDED COMPLAINT

via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Date: DEC 23 2025

Brandon E. Riley, Court Executive Officer

By: Edward J. S

Edward Santos, Deputy Clerk