

1 **KINSELLA HOLLEY ISER KUMP STEINSAPIR LLP**
 2 Nicholas C. Soltman (State Bar No. 277418)
 3 11766 Wilshire Blvd. Suite 750
 4 Los Angeles, CA 90025
 5 Phone:(310) 566-9800
 6 Fax: (310) 566-9886
 7 nsoltman@khiks.com

8 **THE SIMON LAW FIRM, P.C.**
 9 Anthony G. Simon (*pro hac vice forthcoming*)
 10 Jeremiah W. Nixon (*pro hac vice forthcoming*)
 11 800 Market Street, Suite 1700
 12 St. Louis, Missouri 63101
 13 Phone: (314) 241-2929
 14 Fax: (314) 241-2029
 15 asimon@simonlawpc.com
 16 jnixon@simonlawpc.com

17 *Attorneys for Plaintiff and the Class*

18
 19 **IN THE UNITED STATES DISTRICT COURT**
 20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

21 CHRISTOPHER BARULICH,
 22 individually and on behalf of
 23 all others similarly situated,

24 Plaintiffs;

25 v.

26 THE HOME DEPOT, INC.,
 27 a Delaware corporation, and
 28 GOOGLE, LLC.,
 a Delaware limited liability company,

 Defendants.

Case No. 2:24-cv-01253

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT

Plaintiff Christopher Barulich, individually and on behalf of all other similarly situated persons, brings this action against Defendants The Home Depot, Inc., and Google, LLC, for violations of the California Invasion of Privacy Act (“CIPA”), and in support, upon personal knowledge as to the facts pertaining to himself and upon information and belief as to all other matters, and based on the investigation of counsel, states as follows:

NATURE OF THE CASE

1. Plaintiff brings this action on behalf of himself and all other Californians who called Home Depot customer service and had their privacy violated when Home Depot allowed Google to access, record, read, and learn the contents of their calls.

2. Defendant Google developed and operates a service called Cloud Contact Center AI (“CCAI”) that enables it to listen to and analyze customer service calls in real time.

3. Beginning in 2021 or earlier, and without first implementing a practice of obtaining authorization from callers, Home Depot employed Google to use its CCAI technology to monitor and analyze all of its live customer service calls.

4. The California Invasion of Privacy Act prohibits the surreptitious third-party monitoring and recording of phone calls carried out by Home Depot and Google in this case.

5. Defendants violated CIPA each time someone called Home Depot and the contents of that call were disclosed to third-party Google without prior consent from all parties to the call.

6. Plaintiff brings this action seeking remedy for these illegal practices.

PARTIES

1
2 7. Plaintiff Christopher Barulich is an adult citizen of the State of
3 California who resides in Los Angeles, California. On multiple occasions
4 while located in California, Plaintiff Barulich used his cell phone to call
5 Home Depot and spoke with live-agent customer service representatives.
6 Upon information and belief, these calls were secretly wiretapped or
7 eavesdropped upon and recorded by Google.

8 8. Defendant The Home Depot, Inc. is a Delaware corporation
9 with its headquarters located in Atlanta, Georgia. Home Depot has more
10 than 2,300 stores in North America and over 230 stores in California alone.
11 Home Depot owns and operates more stores in California than in any other
12 state in the country.

13 9. Defendant Google, LLC is a Delaware limited liability
14 company with its principal place of business in Mountain View, California.

JURISDICTION AND VENUE

15
16 10. This Court has subject matter jurisdiction under 28 U.S.C. §
17 1332(d) because this case is a class action where the class includes more
18 than 100 members and the aggregate amount in controversy exceeds
19 \$5,000,000, exclusive of interest and costs, and members of the class are
20 citizens of states different from at least one Defendant.

21 11. This Court has personal jurisdiction over Home Depot because
22 Home Depot conducts systematic and continuous business in California,
23 directs advertising to California residents, and maintains a substantial retail
24 store presence across the state.

25 12. This Court has personal jurisdiction over Google because its
26 principal place of business is in California.

27 13. Venue is proper in this District under 28 U.S.C. § 1391 because
28 this is a District in which Plaintiff resides and a substantial part of the events

1 or omissions giving rise to the claims occurred, and because Defendants are
2 subject to personal jurisdiction in this district.

3 **FACTUAL ALLEGATIONS**

4 **A. California Invasion of Privacy Act (“CIPA”), Cal. Penal Code §** 5 **630, et seq.**

6 14. In 1967, the California Legislature enacted the California
7 Invasion of Privacy Act. The Legislature has updated and amended CIPA
8 numerous times. *See* Cal. Penal Code § 630, *et seq.*

9 15. The Legislature passed CIPA “in response to what it viewed as
10 a serious and increasing threat to the confidentiality of private
11 communications resulting from then recent advances in science and
12 technology that had led to the development of new devices and techniques
13 for eavesdropping upon and recording such private communications.”
14 *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 115 (2006) (citations
15 omitted).

16 16. The Legislature and subsequent California Supreme Court
17 decisions have highlighted the distinction between the mundane
18 “secondhand repetition” of a conversation and the much more dangerous
19 “simultaneous dissemination to an unannounced second auditor, whether
20 that auditor be a person or mechanical device.” *Ribas v. Clark*, 38 Cal. 3d
21 355, 360–61 (1985).

22 17. Section 631(a) of CIPA prohibits (i) intentional wiretapping,
23 (ii) willfully attempting to the learn the contents or meaning of a
24 communication in transit over a wire, and (iii) attempting to use or
25 communicate information obtained under (i) or (ii). Cal. Penal Code §
26 631(a).

27 18. Further, this section also imposes liability upon any party who
28 “aids, agrees with, employs, or conspires with any person or persons” who

1 violate provisions (i)-(iii) of § 631(a).

2 19. CIPA grants Plaintiff and class members the power to bring a
3 private right of action to remedy these privacy violations for \$5,000 per
4 violation. *See* Cal. Penal Code § 637.2.

5 **B. Plaintiff’s communications with Home Depot**

6 20. Plaintiff Barulich placed multiple calls to Home Depot
7 customer service, including most recently in or about October 2023.

8 21. During these conversations with Home Depot, Plaintiff first
9 spoke with a Home Depot “virtual agent” and then was transferred to a
10 human Home Depot customer representative.

11 22. Plaintiff reasonably believed that all communications on these
12 calls were only between himself and Home Depot.

13 23. Plaintiff was not aware, and had no reason to believe, that his
14 communications were simultaneously being disclosed to a third party:
15 Google. Plaintiff was not informed at the beginning of his calls that Google
16 would be monitoring and recording the calls.

17 24. When Plaintiff spoke with human Home Depot customer
18 service representatives, he had a reasonable expectation that the
19 conversation was only between himself and Home Depot.

20 25. Plaintiff did not expect, or have any reason to believe, that
21 Google was listening to the contents of his conversations and, without prior
22 authorization, reading, attempting to read, or learning the contents or
23 meaning of Plaintiff’s communications.

24 26. But, upon information and belief, Google, through its Cloud
25 Contact Center AI, surreptitiously listened in and monitored Plaintiff’s
26 communications with Home Depot. Google used this CCAI technology to
27 transcribe Plaintiff’s conversations in real time, analyze the contents of
28 Plaintiff’s communications, and suggest possible replies to the live Home

1 Depot agent on the phone.

2 27. Throughout this process, Google read, attempted to read, or
3 learned the contents of Plaintiff’s communications with Home Depot.

4 28. Home Depot and Google worked together, employing the CCAI
5 technology, to invade the privacy of Plaintiff and all other similarly situated
6 callers in violation of CIPA. *See* Cal. Penal Code § 630, *et seq.*

7 **C. Google Cloud Contact Center AI (“CCAI”)**

8 29. Google has developed an “artificial intelligence” product
9 designed to handle customer service that it has named Cloud Contact Center
10 AI or CCAI. On information and belief, Home Depot works with Google
11 and has used Google’s CCAI since at least 2021.

12 30. Google profits from its deployment of CCAI by charging users,
13 such as Home Depot, to use Google’s CCAI services.

14 31. Further, Google has the capability to use the contents of
15 communications it intercepts for purposes beyond the scope of individual
16 customer service calls. For example, Google can use information and data
17 gleaned from customer service calls to Home Depot to further train or
18 develop its AI models. On information and belief, Google uses customer
19 service calls to train and refine its AI models.

20 32. When Plaintiff and class members called Home Depot customer
21 service, Google’s CCAI did not act as a mere passive tool. Google CCAI is
22 an ongoing and ever-evolving arm of Google—a third party to conversations
23 between callers and Home Depot.

24 33. Instead of functioning like a tape recorder purchased by Home
25 Depot, the use of CCAI allows Google itself to eavesdrop or wiretap into
26 live conversations between callers and Home Depot.

27 34. Google intercepts and analyzes the real-time content of
28 communications between class members and Home Depot.

1 questions that will determine the outcome of this class action include:

- 2 a. Whether Google violated CIPA § 631;
- 3 b. Whether Home Depot aided, agreed with, employed, or
- 4 conspired with Google to facilitate violations of CIPA §
- 5 631;
- 6 c. Whether Google was a third party to calls or merely
- 7 provided a tool to Home Depot as an end user;
- 8 d. Whether Plaintiff and members of the class are entitled to
- 9 damages for Defendants' CIPA violations;
- 10 e. Whether Home Depot or Google obtained prior consent
- 11 from Plaintiff and members of the class before allowing a
- 12 third party, Google, to access live communications; and
- 13 f. Whether Home Depot or Google claim to have obtained
- 14 retroactive consent from Plaintiff and members of the class.

15 40. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are
16 typical of those of the class because Plaintiff, like all members of the class,
17 called Home Depot and spoke to customer service, but was not informed,
18 and did not provide authorization, regarding the third-party Google's access
19 to communications.

20 41. **Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiff will fairly and
21 adequately protect the interests of the class because Plaintiff and his
22 experienced counsel are free of any conflicts of interest and are prepared to
23 vigorously litigate this action on behalf of the class. Plaintiff has retained
24 and is represented by qualified and competent counsel who are highly
25 experienced in complex class action litigation and are committed to
26 vigorously prosecuting this class action.

27 42. **Superiority (Fed. R. Civ. P. 23(b)(3)):** Class treatment is the
28 superior method for a fair and efficient adjudication of this controversy as

1 individualized litigation of the claims of class members is impractical. Class
2 treatment will permit thousands of similarly situated person to prosecute
3 their common claims in a single forum simultaneously, efficiently, and
4 without the unnecessary duplication of evidence, effort, or expense that
5 individual lawsuits would entail. The benefits of proceeding through the
6 class mechanism, including providing injured persons a method for
7 obtaining redress on claims that could not practicably be pursued
8 individually, substantially outweigh potential difficulties in management of
9 this class action.

10 43. The complex nature of the litigation, along with the expenses
11 associated with vigorous prosecution of these claims, renders individual
12 lawsuits irrational and not economically viable.

13 44. Class certification is also appropriate for equitable or injunctive
14 relief because Defendant has acted or refused to act on grounds that apply
15 generally to the class such that final injunctive relief is appropriate for the
16 class as a whole.

17 **CAUSES OF ACTION**

18 **COUNT I**

19 **(Against Google)**

20 **Violation of the California Invasion of Privacy Act,**

21 **Cal. Penal Code § 631**

22 45. Plaintiff incorporates all foregoing paragraphs as though fully
23 set forth herein.

24 46. Plaintiff brings this claim individually and on behalf of the
25 members of the proposed class against Defendant Google for privacy
26 violations under CIPA.

27 47. Section 631(a) imposes liability for four distinct patterns of
28 conduct. Liability under § 631(a) attaches to any person:

1 (i) Who, by means of any machine instrument, or contrivance, or in
2 any other manner, intentionally taps, or makes any unauthorized
3 connection, whether physically, electrically, acoustically, inductively,
4 or otherwise, with any telegraph or telephone wire, line, cable, or
5 instrument, including the wire, line, cable, or instrument of any
6 internal telephonic communication system,

7 OR

8 (ii) Who willfully and without the consent of all parties to the
9 communication, or in any unauthorized manner, reads, or attempts to
10 read, or learn the contents or meaning of any message, report, or
11 communication while the same is in transit or passing over any wire,
12 line, or cable, or is being sent from, or received at any place within
13 this state,

14 OR

15 (iii) Who uses, or attempts to use, in any manner, or for any purpose,
16 or to communicate in any way, any information so obtained,

17 OR

18 (iv) Who aids, agrees with, employs, or conspires with any person or
19 persons to unlawfully do, or permit, or cause to be done any of the
20 acts or things mentioned above in this section.

21 (Numbering added for clarity)

22 48. Google’s CCAI is a “machine, instrument, contrivance, or . . .
23 other manner” used to engage in conduct prohibited under CIPA.

24 49. Google, through CCAI, intentionally tapped, or made an
25 unauthorized connection, electronically or otherwise, the telephone lines of
26 communications between callers—i.e., Plaintiff and class members—and
27 Home Depot.

28 50. Google, through CCAI, willfully and without the consent of all

1 parties to the communication, or in any unauthorized manner, read, or
2 attempted to read, or learn the contents or meaning of electronic
3 communications of Plaintiff and class members while the electronic
4 communications were in transit or passing over any wire, line, or cable, or
5 were being sent from or received at any place in California.

6 51. Plaintiff and class members did not consent to any of Google’s
7 actions with regard to the conduct discussed herein. Moreover, Plaintiff and
8 class members could not have consented to Google’s actions because callers
9 reasonably believed that their communications were between themselves and
10 Home Depot.

11 52. Defendant Google invaded the privacy of Plaintiff and class
12 members by secretly listening in, recording, and analyzing live
13 communications between callers and Home Depot.

14 53. Cal. Penal Code § 637.2 grants Plaintiff and class members the
15 power to bring a private action to remedy a violation of § 631 and fixes the
16 amount of damages recoverable at \$5,000 per violation.

17 54. Cal. Penal Code § 637.2 further entitles Plaintiff to bring an
18 action to enjoin and restrain any violation of Cal. Penal Code § 630 *et seq.*

19 **COUNT II**

20 **(Against Home Depot)**

21 **Violation of the California Invasion of Privacy Act,**

22 **Cal. Penal Code § 631**

23 55. Plaintiff incorporates all foregoing paragraphs as though fully
24 set forth herein.

25 56. As discussed above, CIPA imposes liability on any party who
26 “aids, agrees with, employs, or conspires with any person or persons to
27 unlawfully do, or permit, or cause to be done any of the acts or things
28 mentioned above in this section.” Cal. Penal Code § 631(a).

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- f. Award pre- and post-judgment interest; and
- g. Grant such other relief as the Court deems just and equitable under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable. Fed. R. Civ. P. 38.

Dated: February 14, 2024

Respectfully submitted,



**KINSELLA HOLLEY ISER
KUMP STEINSAPIR LLP**
 Nicholas C. Soltman (State Bar No. 277418)
 11766 Wilshire Blvd. Suite 750
 Los Angeles, CA 90025
 Phone:(310) 566-9800
 Fax: (310) 566-9886
 nsoltman@khiks.com

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Attorneys for Plaintiff and the Class