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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CGC-25-624953

GARY FREUND, individually and on behalf of all others similarly situated,

Plaintiff,

v.

DIALPAD, Inc., a Delaware corporation,

Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

Violation of Cal. Penal Code § 631

DEMAND FOR JURY TRIAL

Plaintiff Gary Freund brings this Class Action Complaint and Demand for Jury Trial against Dialpad, Inc. for surreptitiously eavesdropping on California consumers' phone calls. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief.

I. NATURE OF THE ACTION

1. Defendant Dialpad, Inc. is a communication platform that provides phone services and call center software to businesses. Dialpad states that it is the "leading AI-powered communications intelligence platform trusted by tens of thousands of enterprises."

2. Businesses using Dialpad's platform have access to a suite of artificial intelligence features. According to Defendant, its "Dialpad AI can transcribe your meetings in real time, track keywords in conversations, detect customer sentiment, and more!"

3. Customers calling a business that uses Dialpad's call center software (such as Warby Parker) are not informed that an unknown third-party (in this case, Dialpad) is listening in on the

calls and analyzing them using artificial intelligence without the consumer's knowledge and consent.

4. Even worse, Dialpad's monitoring of specific customer calls is not merely part of the service it provides to individual business partners; it actively uses consumer conversations to train its artificial intelligence models for its own business purposes. Indeed, Dialpad touts that its artificial intelligence software was "[b]uilt on a state-of-the-art speech recognition model that's analyzed over 5 billion minutes of voice and message data" and claims it trained its artificial intelligence on "portions of aggregated audio and transcripts from actual calls." Thus, a Warby Parker customer's calls will be used to train AI models for the benefit of Dialpad and Dialpad's *other* customers—not merely to serve Warby Parker.

5. Dialpad eavesdropped on and learned the content of the calls made by Plaintiff and the proposed Class in violation of Cal. Penal Code § 631(a). Neither Plaintiff 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.

II. PARTIES

6. Plaintiff Gary Freund is a natural person who resides in San Francisco, California.

7. Defendant Dialpad, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business located at 2700 Camino Ramon, San Ramon, CA 94583.

III. JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to Article VI, Section 4 of the California Constitution and Code of Civil Procedure Section 410.10.

2. This Court has personal jurisdiction over Defendant because Defendant's principal place of business is in the State of California and Defendant conducts significant business throughout the State of California.

3. Venue is proper pursuant to Code of Civil Procedure § 395.5 because the obligation or liability giving rise to this action arose in this county.

IV. COMMON FACTUAL ALLEGATIONS

A. Overview of Dialpad

4. 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. In other words, Dialpad serves as a telephone provider for businesses allowing them to place and receive phone calls and messages using Dialpad.

5. Dialpad developed its own proprietary artificial intelligence called Dialpad AI. According to Defendant, "Dialpad AI, our artificial intelligence technology, is built right into our sales and customer engagement platform."

6. The Dialpad AI is a suite of features that analyzes conversations in real-time between the consumer and the business. The features that make up Dialpad AI include, among others, (i) real-time voice transcription, (ii) voice analysis, and (iii) automated call summaries.

7. Dialpad explains that its transcription feature "can transcribe your conversations in real-time and show you a running transcript as the meeting is happening." Dialpad touts the benefits of utilizing artificial intelligence to transcribe phone calls because it allows analysis of the contents of a call: "[u]sing artificial intelligence and algorithms, conversation intelligence tools can analyze what is spoken on calls, track how often certain topics come up, and more. AI call intelligence is especially useful for improving team performance in contact centres and call centres, since they have customer interactions every day."

8. The voice analysis feature provides sentiment analysis to determine a consumer's mood while speaking on the call. "Dialpad AI analyzes the sentiment of any current live voice call between agents and callers." Dialpad elaborates: "[s]entiment can range from very positive to very negative, and sentiment analysis tools should be able to identify and classify conversations as they evolve. Dialpad AI highlights the good, the bad, and neutral sentiments to understand the reasons behind customers' frustration or satisfaction."

9. The Dialpad AI also creates summaries of the call. Dialpad explains, "Dialpad's AI Recaps feature gathers your transcript, action items, highlights, and any manual notes into an easily

digestible call summary, so you can quickly recap important discussion points and follow up with teammates or customers."

10. Dialpad states it currently works with over 70,000 business customers, processed 9 billion minutes of AI-enabled calls, and generated over 414 million AI recaps of consumer calls. Dialpad further highlights that "[e]nterprise customers such as Randstad, Remax, Mizuho, Cigna, T-Mobile, Johns Hopkins, Motorola, Warby Parker, Panera Bread, and Netflix, use Dialpad and its AI capabilities to deliver amazing customer experiences."

B. Dialpad Eavesdrops on Consumer Calls and Uses Consumer Calls for Its Own Purposes

11. Unbeknownst to consumers calling a business that partners with Dialpad, an unknown third party—Dialpad—is monitoring and analyzing consumer calls with its proprietary artificial intelligence algorithms in real-time. Dialpad is an entirely separate entity from the business the customer wishes to communicate with. It acts as an unannounced listener and auditor of consumers' phone calls.

12. A consumer calling a business like Warby Parker or Remax, for example, is not informed that Dialpad is not only providing a platform for the call, but also listening to it and performing sophisticated analysis, as described above, using artificial intelligence such as sentiment analysis to reveal the caller's mood, among other technologies.

13. But Dialpad does not only listen to and analyze 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.

14. Dialpad's privacy policy governs its relationship with its business partners. It specifically states that Dialpad will use consumer calls to improve its own product: "If you use Dialpad Ai, Personal data used for improving the services may include segments of call audio, video, or transcriptions. Training data saved by Dialpad is used only for improving Dialpad's language models, and is processed primarily by automated systems."

15. Dialpad not only has the capability to use consumer calls for its own purpose—it also touts the accuracy of its product because it uses consumer call data to build and constantly improve its artificial intelligence. Indeed, Dialpad announced that it used four billion minutes of consumer calls to train its artificial intelligence algorithm: "We recently announced that we're committed to investing over $50M into Dialpad's AI Labs, and Dialpad Ai has analyzed almost four billion minutes—or over 65 million hours or over 7,000 years—of proprietary voice and messaging data. It's an incredibly large data set that's completely made up of business conversations (thanks to Dialpad's TrueCaaS unified communications product), which means Dialpad Ai is trained specifically on business communications and contact center operations—essentially, our customers' needs."

16. Dialpad, by default, uses consumer communications including calls and messages to train its artificial intelligence.

17. 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.

V. FACTS SPECIFIC TO PLAINTIFF

18. Plaintiff Gary Freund called Warby Parker's customer support line several times within the last year. Dialpad touts Warby Parker as one business that uses Dialpad Ai for its customer service operations. Given the nature of the Dialpad Ai product, on information and belief, Dialpad eavesdropped on Mr. Freund's call and analyzed it using artificial intelligence in real-time for purposes other than supporting Warby Parker, such as improving its own AI models and benefiting its other business partners. Mr. Freund was not informed, nor did he reasonably have a reason to believe, that Dialpad surreptitiously eavesdropped and analyzed his call, let alone for purposes other than facilitating his conversations with Warby Parker. Plaintiff did not give consent or permission for Dialpad to eavesdrop and analyze his call, and then subsequently train or endeavor to train its artificial intelligence algorithm using that call.

VI. CLASS ACTION ALLEGATIONS

19. **Class Definition**: Plaintiff Gary Freund brings this proposed class action pursuant to

California Code of Civil Procedure § 382 on behalf of himself and a Class of others similarly situated, defined as follows:

> All California residents who made or received a phone call to or from any Dialpad business partner that was recorded, analyzed, or processed by Dialpad.

Excluded from the Class are: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and its officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

20. **Numerosity**: The exact number of Class members is unknown and not available to Plaintiff at this time, but upon information and belief it is at least several thousand. Individual joinder is impracticable. On information and belief, Defendant has surreptitiously eavesdropped on and analyzed Class members' phone calls. Class members can be identified through Defendant's records.

21. **Commonality and Predominance**: There are many questions of law and fact common to the claims of Plaintiff and the proposed Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to, the following:

A. Whether Defendant read, attempted to read, or learned the content or meaning of the communications made by Plaintiff and the Class;

B. Whether Defendant's actions were willful;

C. Whether Defendant used or attempted to use Plaintiff's and the Class's communications;

D. Whether Defendant had the capability to use Plaintiff's and the Class's communications for its own purposes;

E. Whether Defendant communicated any information obtained from Plaintiff or the class's communications;

F. Whether Defendant obtained consent from Plaintiff and the Class; and,

G. Whether Plaintiff and the Class were injured by Defendant's conduct.

22. **Typicality**: Plaintiff's claims are typical of the claims of the Class members in that Plaintiff, like all Class members, has been injured by Defendant's conduct.

23. **Adequate Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff's claims are representative of the claims of the other members of the Class. Plaintiff and the Class members sustained damages as a result of Defendant's conduct. Plaintiff also has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Class.

24. **Superiority**: Class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, as joinder of all members of the Class is impracticable. Individual litigation would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

25. Plaintiff reserves the right to revise the foregoing "Class Allegations" and "Class Definition" based on facts learned through additional investigation and in discovery.

CAUSE OF ACTION
Violation of Cal. Penal Code § 631
(<u>On behalf of Plaintiff and the Class</u>)

8. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

9. To establish liability under the California Invasion of Privacy Act § 631(a), a

plaintiff need only establish that a defendant, "by means of any machine, instrument, contrivance, or in any other manner," does any of the following:

> 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*
>
> Willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads or attempts to read or 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*
>
> Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained,
>
> *Or*
>
> 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.

10. Defendant Dialpad used a "machine, instrument, contrivance . . . or . . . any other manner" to eavesdrop on Plaintiff's and the Class members' telephone calls.

11. Defendant read, attempted to read, or otherwise learned the content of the phone calls made by Plaintiff and the Class through its use of Dialpad and the Dialpad Ai product. As described above, Defendant's artificial intelligence product created transcripts of calls, created call summaries, and determined the content of calls between Plaintiff and the Class and businesses. Therefore, Defendant read and/or learned the contents of phone calls made by Plaintiff and the Class, attempted to do so, and/or communicated the information so obtained.

12. Furthermore, Defendant Dialpad intercepted phone calls sent from or received within the State of California in real time. Plaintiff and the Class intended their communications to be between them and the business they called, not an unknown third party.

13. Defendant Dialpad acted as an unannounced auditor of Plaintiff's and the

Class members' phone calls and used the content of the call for its own purposes, as described above, not simply to facilitate communications between consumers and specific businesses.

14. Defendant Dialpad also used or attempted to use communications between the Plaintiff and the Class and its business partners by analyzing their communications and subsequently using the communications to train its artificial intelligence algorithm, as described above.

15. Defendant never obtained consent from Plaintiff and the Class to read or learn the content of their phone calls. Defendant also never obtained consent from Plaintiff and the Class to use the content of the phone calls in any manner whatsoever, let alone to train its artificial intelligence algorithms.

16. Plaintiff and the Class seek $5,000 per violation (*i.e.*, for each phone call processed through Dialpad Ai) pursuant to Cal. Pen. Code § 637.2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Gary Freund individually and on behalf of the Class, prays for the following relief:

(a) An order certifying the Class as defined above, appointing him as the representative of the Class, and appointing his counsel as Class Counsel;

(b) An order declaring that Defendant's actions, as set out above, violate Cal. Penal Code § 631(a);

(c) An injunction requiring Defendant to cease all unlawful activities;

(d) An award of statutory damages, disgorgement of profits, punitive damages, costs, and attorneys' fees; and,

(e) Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

GARY FREUND, individually and on behalf of all others similarly situated,

Dated: May 1, 2025

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