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 OVERRULING DEFENDANT DIALPAD, INC.'S DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendant Dialpad, Inc.'s demurrer to Plaintiff's second amended complaint came on for hearing on June 26, 2026. Having considered the pleadings and papers on file in the action, and the arguments of counsel presented at the hearing, the demurrer is hereby overruled.

BACKGROUND

On May 1, 2025, Plaintiff Gary Freund filed this putative class action against Defendant Dialpad, Inc. ("Defendant"), 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), adding Jennifer Buelna, Lajanee Turner, and Sheilla Napoletano as named plaintiffs (collectively with Plaintiff Freund, "Plaintiffs"). On December 23, 2025, the Court sustained Defendant's demurrer to the FAC with leave to amend. The Second Amended Complaint ("SAC") alleges as follows.

Dialpad is a "phone system for businesses" that utilizes Voice over Internet Protocol ("VoIP") so that its customers can conduct telephone calls over the internet instead of via traditional phone lines. (SAC ¶¶ 21–22.) Dialpad operates "a variety of distinct products" including the VoIP system and other "products that live on top of" the VoIP that, *inter alia*, assist with incoming customer service and outgoing sales calls by providing "real-time transcription, summaries, context-aware live coaching, training and quality assurance, self-service, analytics, and agentic AI" via a proprietary software called "Dialpad AI." (*Id.* ¶ 1.) When Dialpad customers, such as Warby Parker, Netflix, RE/MAX, and the American Automobile Association (AAA), use Dialpad AI functions, Dialpad's software "listen[s] to consumer phone calls in real time." (*Id.* ¶¶ 33–37.) Plaintiffs allege that "a consumer calling [a Dialpad AI business customer] is not informed that Dialpad is . . . listening to it and performing sophisticated and intrusive analysis" on their phone call with the customer using artificial intelligence." (*Id.* ¶ 39.) In addition to performing these services for Dialpad's customers, Dialpad "uses consumer calls . . . to train and improve its artificial intelligence algorithms for its own use and for use by other business partners." (*Id.* ¶ 40.) Plaintiffs allege various patents held by Defendant for its AI products and describe its integrated functionality with VoIP and its distinct features. (*Id.* ¶¶ 45–57.)

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), and alleges that Dialpad AI was a third-party eavesdropper on their calls. (FAC ¶¶ 58–61.) Plaintiffs allege that they 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.*) 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 now demurs to the SAC on the same grounds upon which it demurred to the FAC. Plaintiffs oppose the demurrer.[1]

[1] Defendant reraises its requests for judicial notice from its demurrer to the FAC to preserve them for appeal. Defendant's requests for judicial notice of Dialpad's November 12, 2024 press release (Kanic Decl. Ex. C), and California Public Utilities Commission ("CPUC") materials (Kanig Decl. Ex. A & B) are granted pursuant to Evidence Code section 452. (See December 23, 2025 Order, 2.) For the reasons described in the prior Order, Defendant's requests for judicial notice of the privacy policies of Dialpad's

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 is "a broad, protective invasion-of-privacy statute" that the Legislature enacted "in response to what it viewed as a serious and increasing threat to the confidentiality of private communications resulting from then recent advances in science and technology that had led to the development of new devices and techniques for eavesdropping upon and recording such private communications." (*Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 96, 115.) 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

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alleged customers and Dialpad's acceptable use policy are denied. (Kanig Decl. Ex. D–L; December 23, 2025 Order, 2–3.)

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. (Pen. Code § 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
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> [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
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> [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
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> [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,
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> is punishable by a fine . . . .[2]

(*Id.* § 631(a).) Thus, section 631 subdivision (a) "broadly prohibits the interception of wire communications and disclosure [or use] 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, [willfully] 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.)

Public utilities and telephone companies "engaged in the business of providing communications services and facilities" are exempted from section 631 liability "where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the service and facilities of the public utility or telephone company." (Pen. Code § 630(b)(1).) The Legislature amended the exemption in 2022 to expressly include telephone companies that are not public utilities but otherwise left

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

the exemption unchanged. (Sen. Bill No. 1272 (2021–2022 Reg. Sess.) § 1.) For ease of discussion, the Court will use "wiretapping" to refer generally to the three types of conduct prohibited by section 631, subdivision (a), "operation" or variations thereon to indicate the full list of potentially allowable conduct—"construction, maintenance, conduct or operation"—and "services" to indicate "services and facilities" as referred to in subdivision (b)(1). (See Pen. Code § 631(b)(1).)

Plaintiffs allege a single cause of action for violations of the first three clauses of section 631. (SAC ¶¶ 70–71, 75.) As discussed in the Court's prior Order, Plaintiffs have alleged sufficient facts to show Defendant's conduct violated section 631, subdivision (a), absent an exculpatory defense. (See December 23, 2025 Order, 4–8.) To the extent Defendant reasserts its arguments to the contrary (i.e., that Plaintiffs' allegations made "on information and belief" are insufficient to show that Warby Parker, Netflix, and AAA are Dialpad AI customers, that those companies' privacy policies foreclose Plaintiffs' claims by establishing consent, and that the willful intent requirement has not been sufficiently pled), the Court again finds that the arguments lack merit and incorporates the reasoning in its prior Order by reference. (*Id.*; see Opening Brief, 11–14.) Defendant does not re-raise the third-party service provider defense not previously reached by the Court.

The issue presented to the Court on this demurrer is therefore whether Plaintiffs have alleged facts sufficient to separate Defendant's conduct in operating Dialpad AI from the protection of the telephone company exemption. As discussed below, the Court finds that Plaintiffs have met their pleading burden. The exemption protects telephone companies acting for the purpose of operating communications services; Defendant's AI add-on services are separate and distinct from its VoIP communications services, are not themselves communications services, and are not for the purpose of the operation of communications services. Moreover, because the legislative history clearly establishes the meaning of the exemption, the rule of lenity does not apply. Accordingly, because the Court incorporates its prior ruling on the remainder of Defendant's arguments, Defendant's demurrer is overruled.

I. The Telephone Company Exemption Does Not Apply To Dialpad's AI Add-On Features.

Defendant argues on demurrer that the public utility and telephone company exemption protects its conduct because Dialpad AI is an exempted service that it provides to its customers. (Opening Brief, 5, 7–8; Reply, 3–10.) Defendant argues primarily that the statute does not limit the scope of permissible

activity to operating "communications services and facilities" because the word "communications" does not immediately precede "services" in the portion of the exemption that defines permissible conduct. (Reply, 3–7.) In the alternative, Defendant argues that if the exemption is limited to acts performed for the purpose of operating "communications services," their Dialpad AI add-on functions are "communications services" and therefore still permitted by the exemption. (*Id.* at 7–10.) Finally, Defendant argues that if the statute is susceptible to both parties' interpretations, the rule of lenity should apply to prevent Defendants from being held criminally liable based on ambiguous statutory language. (Opening Brief, 10–11; Reply, 9–10.)

Plaintiffs do not dispute that Defendant is a telephone company exempt from CIPA when engaging in exempted conduct such as providing VoIP telephone service. (Opposition, 6.) Instead, they argue that the actions alleged were not conducted for an exempted purpose because Defendant's AI add-on services are not "communications services" as required to fall under the exemption. (Opposition, 8–13; Pen. Code § 631(b)(1).) Plaintiffs admit that the telephone company exemption is broader than conduct *necessary* to operate the telephone system—the ground on which the Court granted Defendant's prior demurrer—but argue that it is not so broad as to allow Defendant to perform prohibited acts "*for all purposes* merely because it *also* provides VoIP services." (Opposition, 10 fn. 3 (emphasis original); compare with Opposition to Demurrer to FAC filed Oct. 31, 2025, 9–10 [arguing exemption is limited to "intrusions related to bona fide service maintenance"].) In support of this argument, Plaintiffs argue that the limitation to "communications services" is implied by the statutory text and the legislative history, and that Dialpad AI is not a "communications service" because the dictionary definition of "communications" is limited to "technology that connects call participants," not software that analyzes the contents of the participants' conversation. (Opposition, 8–10.)

A. The Exemption Applies To Wiretapping For The Purpose Of Operating Communications Services And Facilities Only.

"In construing statutory language [the Court's] objective is to determine and effectuate the Legislature's intent. Such language, however, is construed in the context of the entire law." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543 (cleaned up); see *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1183 ["We construe statutory language in the context of the statutory framework, seeking to

discern the statute's underlying purpose and to harmonize its different components."].) Additionally, "the general rule is that exceptions in a statute are to be narrowly construed." (*Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, 199; *Maracich v. Spears* (2013) 570 U.S.48, 60 ["Unless commanded by the text, however, [] exceptions ought not operate to the farthest reach of their linguistic possibilities if that result would contravene the statutory design."].) Although the Court looks first to the plain language of the statute to discern its meaning, "[i]f the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." (*People v. Reynoza* (2024) 15 Cal.4th 982, 989–990.)

The plain text of the telephone company exemption is ambiguous. It reads,

> This section shall not apply to . . . [a]ny public utility, or telephone company, engaged in the business of providing communications 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 public utility or telephone company.

(Pen. Code § 631(b)(1).) Read in isolation, it is susceptible to Defendant's interpretation. "*[T]he* services and facilities" offers no express limitation to particular services which a telephone company is allowed to wiretap to provide. (*Id.* (emphasis added).) But three contextual factors—the parallel usage of "services and facilities" twice within the same sentence, the provision's status as an exception that should be narrowly construed, and the plainly stated overarching purpose of the statute—establish that Plaintiffs' interpretation is reasonable as well. (*Id.*; see *id.* § 630 [legislative declaration and intent].) Therefore, the Court considers the legislative history to resolve the ambiguity.

The legislative history associated with the 2022 amendment to the CIPA exception, Senate Bill number 1272 ("SB 1272"), supports Plaintiffs' interpretation. The Legislative Counsel's Digest of the bill stated,

> Existing law prohibits tapping any communication wire or intercepting or recording any telephone conversation, as specified, without the consent of all parties. Existing law exempts specified communication intercepts including those made by a public utility if required for utility maintenance purposes. A violation of these provisions is punishable as either a misdemeanor or a felony.
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> This bill would exempt from these provisions any telephone company engaged in the business of providing communications services and facilities, as specified.

(SB 1272, Stats. 2021-2022, ch. 27.) The change to the text was minimal in that it inserted the phrase "or

telephone company" twice into the exception and defined "telephone company" by incorporating the definition of "telephone corporation" from the Public Utilities Code. (Compare *id.* at § 631(b)(1) & (c) with Stats. 2011, ch. 15, § 428 [former version of statute].) The Assembly Committee on Public Safety analysis stated that the bill would "exempt[] telephone companies, when engaged in constructing, maintaining or operating *communications services*, from prohibitions on electronic surveillance." (Assem. Comm. On Pub. Safety, Analysis of Sen. Bill No. 1272 (2021–2022 Reg. Sess.) ["Assem. Safety Comm. SB1272 Analysis"], 1 (emphasis added).) The Committee quoted the bill's author's statement regarding the purpose of the amendment in its analysis:

> SB 1272 is a very simple technical fix to modernize an area of the Penal Code that is outdated and doesn't encompass the full scope of the types of services telecommunication companies can provide in the modern age, *specifically Voice over Internet Protocol (VoIP) calling*. As a result of this outdated definition, firms that provide telecommunications services by modern means find themselves subject to legal uncertainty for violation of a law that plainly intended to exempt the types of services they provide, if not the means by which they provide them, since the current technologies did not yet exist at the time the exemption was drafted. This bill simply recognizes that as technology changes, so too must our codes.

(*Id.* at 2 (emphasis added).)[3] The argument in support of SB 1272 further stated,

> Given that [CIPA was] adopted in a pre/nascent-internet environment, this update is warranted to ensure that the legislature's original intent is preserved in the internet age. . . . This bill does not change the consent requirement in any way. Nor does the bill abridge any privacy rights in any way. [¶] The existing eavesdropping law requires someone be listening or recording or reading the communication for liability to accrue [and] ensure that telephone companies will not [violate] these laws through the normal course of their *provision of communications services* or facilities. In other words, if no one is listening, it[']s not eavesdropping. [¶] Senate Bill 1272 updates the language of the statute to incorporate modern *forms of communications, such as communications via internet protocol (VoIP)*, satellite, and broadband.

(*Id.* (emphasis added).) There were no arguments in opposition and no registered opponents to the bill. (*Id.* at 3.)

This legislative history demonstrates that the Legislature understood the original exemption to

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[3] "A legislator's statement is evidence of legislative intent only if it provides the history of the legislation—events which occurred or arguments made during its passage." (*Pacific Fertility Cases* (2022) 78 Cal.App.5th 568, 583.) Here, the author's statement was incorporated into the Committee's bill analysis, which provides persuasive evidence of legislative intent. (See, e.g., *People v. Olay* (2023) 98 Cal.App.5th 60, 67 [quoting bill analysis by Assembly Committee on Public Safety: "A more unambiguous statement of the Legislature's intent . . . can hardly be imagined."].)

apply when public utilities wiretapped for the purpose of operating their communications services, and that the amendment did not expand the scope of the exemption, only the types of communications technology to which it applied, including VoIP. The legislative history repeatedly refers to the exempted activity as being related to the operation of *communications* services, not the expansive *any* services that Defendant suggests. The Court is similarly unpersuaded by Defendant's attempts to ignore the multiple references to "communications services" in the bill analysis by its attack on Plaintiffs' decision to quote the single use of "communications *system*" instead. (Reply, 7.)

By contrast, the legislative history of the amendment undermines Defendant's expansive interpretation. Defendant selectively quotes the legislative history to imply that, by stating that because existing law did not accommodate the "full scope of the types of services telecommunication companies can provide in the modern age," the Legislature intended to broaden the exemption beyond the provision of communications services so long as they are provided by a telephone company. (Reply, 7, quoting Assem. Safety Comm. SB 1272 Analysis, 2.) At the hearing, similarly, Defendant argued that because some AI technologies, such as visual voicemail, speech-to-text, and language translation, existed at the time of the amendment, the Legislature must have intended, by referencing the "full scope" and "enhanced functionality" of modern services, to exempt such technologies from the ban on unauthorized wiretapping when provided by telephone companies. However, there is no mention of those other technologies in the amendment or its legislative history. To the contrary, the legislative history not only does *not* mention AI, but explains that by the "full scope" of modern technology it means VoIP specifically, and that the amendment is a "simple technical fix" that was only intended to update the permissible *means* of providing communications services that the original law "plainly intended to exempt." (Assem. Safety Comm. SB 1272 Analysis, 2.)[4]

[4] Defendant makes three additional arguments that the Court finds unpersuasive. First, Defendant argues that Plaintiffs contend that "telephone company" implies "communications services" which renders the phrase "communications services and facilities" redundant in contravention of statutory construction rules. (Reply, 4.) Not only do Plaintiffs not make this argument on the cited page of their Opposition, or at all, but Defendant ignores that "communications services and facilities" modifies "public utilities" which provide many non-communications services, such as water and electricity, but are not permitted to wiretap under the statute. (Pen. Code § 631(b)(1).) Second, Defendant argues that because subdivision (b)(3), regarding correctional facilities, is limited to "communications systems used for communication," the failure to repeat the word "communications" in the telephone company exemption is intentional and demonstrates that exemption's broader scope. (Reply, 6.) But the exemption covers "communications systems used for communication *exclusively within a . . . correctional facility*." (Pen. Code § 631(b)(3)

More broadly, it would be inconsistent with the "Legislative declaration and intent" in enacting CIPA for the Court to read subdivision (b)(1) as a blanket exemption authorizing a telephone company to engage in wiretapping to operate *any* service merely because it is a telephone company. (Pen. Code § 630.) The Legislature enacted CIPA "to protect the privacy of the people of this state" from the "development of new devices and techniques for the purpose of eavesdropping upon private communications and [] the invasion of privacy resulting from the continual and increasing use of such devices and techniques" which "threat[en] the free exercise of personal liberties and cannot be tolerated in a free and civilized society." (*Id.*) Indeed, as the Supreme Court observed in *Tavernetti*,

> [t]he California Constitution has been amended to include among the inalienable rights of all people the right to pursue and obtain privacy. This forceful expression of the constitutional stature of privacy rights reflects a concern previously evinced by the Legislature in enacting the invasion of privacy provisions of the Penal Code. . . Justice Brennan has warned that we must be alert to prevent "electronic surveillance from becoming the abhorred general warrant which historically had destroyed the cherished expectation of privacy in the home." . . . We cannot adopt the strained interpretation of subdivision (b)(1) urged by the People in the face of the Legislature's forcefully expressed intent and the constitutional significance in California of the right to privacy.

(*Tavernetti*, 22 Cal.3d at 194–195 (cleaned up).) The Court is similarly attuned to the Legislature's "forcefully expressed intent" here. (*Id.*) A reading of the exemption that allows providers of communications services to engage in wiretapping for the purpose of operating only those services is consistent with the purpose, text, and history of CIPA and conforms to the rule that a statutory exception should be narrowly construed. (See *Tavernetti*, 22 Cal.3d. at 193 [the "exemptive provisions of subdivision (b)" are "carefully limited" to effectuate the legislative intent].)

It is undisputed that Defendant's VoIP services are communications services.[5] The question that

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(emphasis added).) Truncating the correctional facility exemption into a circular statement which misconstrues the full exemption does not support the argument that the Court must read the failure to repeat "communications" as a purposeful omission or that the Legislature intended to create a blanket exemption for telephone companies. Finally, Defendant implies that the "enhanced functionality" of VoIP as described in the Public Utilities Code includes add-on AI features. (Reply, 8.) But again, the full quotation shows that the "enhanced functionality" is specific to the use of VoIP. "(Pub. Util. Code § 239(a)(2) ["enhanced functionality [provided] to end users *due to the provider's use of Internet Protocol technology*." (emphasis added)].)

[5] To be sure, Defendant is correct that Plaintiffs allege that "collecting and reading telephone calls is 'inherent' to the process of digitizing that data using a software protocol to transmit it over the internet," and therefore that "all VoIP telephone companies must collect and read caller voice data to provide VoIP telephone services." (Opening Brief, 6.) That is definitional. What Plaintiffs challenge, however, is "*[s]eparate and distinct* from its VoIP system" (SAC ¶ 25): i.e., the transcription, summarization, analysis, and use of customer communications for other purposes.

remains is whether Dialpad AI is a communications service or supports the operation of Dialpad's communications services. As discussed below, the Court finds neither to be true.

B. Dialpad's Add-On AI Feature Is Not A Communications Service or Facility.

CIPA does not define the phrase *communications services and facilities* in section 631 or elsewhere.[6] As both parties acknowledge, "[a]bsent a specific statutory definition of [a] phrase, [the Court] may look to its plain meaning as understood by the ordinary person, which would typically be a dictionary definition." (*People v. Walker* (2024) 16 Cal.5th 1024, 1035 (cleaned up).) The Court is not required to consider every dictionary definition as a relevant and acceptable interpretation, divorced from their statutory context, when giving the words of the statute their ordinary meaning. To the contrary, the Court must "construe statutory language in the context of the statutory framework, seeking to discern the statute's underlying purpose and to harmonize its different components." (*Ardon*, 62 Cal.4th at 1183.) Accordingly, the Court reviews the potential definitions and determines which properly defines the terms at issue based on the context provided by the statute. Because there are no publicly-available dictionary definitions of the phrase *communications services and facilities*, the Court examines each word separately and attempts to harmonize them to understand the phrase. At the outset, it is clear that "communications" is an adjective that modifies the two-item plural noun list, "services and facilities," that follows.

Merriam-Webster and Cambridge Dictionary together provide nine definitions of "communications" depending on the context in which the word is used, as illustrated by an example using the word in an example sentence. (See Merriam-Webster Dict. Online (2026) <https://www.merriam-webster.com/dictionary/communication> [as of May 27, 2026] ("*Communications*, Merriam-Webster"); Cambridge Dict. (2026) <https://dictionary.cambridge.org/us/dictionary/english/communications> [as of May 27, 2026] ("*Communications*, Cambridge").) The following definitions are most pertinent here: (1) "the technology of the transmission of information (as by print or telecommunication)" (*Communications*, Merriam-Webster); (2) "a system (as of telephones or computers) for transmitting or exchanging

[6] It does, however, define *communication* (singular) as used in the phrase "the consent of all of the parties to a communication" in section 632.7, subdivision (a), to include "communications transmitted by voice, data, or image, including facsimile." (Pen. Code. 632.7(d)(3).) While subdivision (d) specifies that it defines words "as used in [section 632.7]," the identical phrase regarding consent of the parties to a communication, and the public utility and telephone company exemption are used in section 631 and throughout. Thus, the definition provided informs, but does not decide, the definition of *communications services and facilities* at issue here.

information" (*id.*); (3) the various methods of sending information between people and places, especially phones, computers, radio, etc. (*Communications*, Cambridge); (4) "the various systems used for sending esp. electronic information, such as radio, television, telephone, and computer networks" (*id.*); and (5) "methods, or the activity, of communicating and sending messages." (*Id.*)

Plaintiffs and Defendant quote the first and second definitions reproduced here, and Defendant also quotes Merriam-Webster's "a technique for expressing ideas effectively (as in speech)." (Opposition, 9; Reply, 8.) The last definition quoted by Defendant is unlike the others, and based on the examples Merriam-Webster provides ("director of *communications*" and "a *communications* major[,] he had dreamed of becoming a sportscaster"), is not applicable to the types of services and facilities a telephone company or public utility might provide. By contrast, the five definitions quoted above—a majority of the definitions found in both sources—directly relate "communications" to the technology, ways, or methods of transmitting messages and information without reference to their contents, and four include the words "telephone" or "telecommunication." Based on these definitions, and CIPA's purpose to protect Californians from wiretapping and eavesdropping on their private communications, the Court concludes that "communications" in the statute refers to the transmission of messages and information between parties.

Defendant further defines "services" as: (1) the "action of helping or doing work for someone," (2) "assistance or advice given to customers," (3) "a piece of work done for a client or customer that does not involve manufacturing goods," and (4) "a system supplying a public need such as . . . communications." (Reply, 8, quoting New Oxford American Dictionary (2010); see also Merriam-Webster Dict. Online (2026) <https://www.merriam-webster.com/dictionary/service> [as of May 27, 2026] ("*Service*, Merriam-Webster") ["a facility supplying some public demand [e.g.] telephone service" or "useful labor that does not produce a tangible commodity [e.g.] charge for professional services"].) From these definitions, two directly reference communications and telephones, the subject matter at issue here. The Court considers those to be the relevant definitions. Additionally, *services* should be read in context of the other term, *facilities*. "Services and facilities" as modified by *communications* implies the act of facilitating the transmission of communications—the *service*—and the physical (or digital) infrastructure—the *facility*—that enables the public utility or telephone company to perform such transmission. (See Pen. Code

§ 631(b)(1).) The statute offers no indication that the Legislature intended to include "advice given to customers" in the meaning of *services*, especially to the extent that it would modify the meaning of *communications* or diverge from the meaning of *facilities*.

Communications services and facilities in section 631, subdivision (b)(1), therefore means the act of transmitting information between parties and the physical and digital infrastructure that enables that transmission. This correlates with an understanding that public utilities and telephone companies, which provide the services that CIPA seeks to protect from unwanted wiretapping and eavesdropping, may occasionally wiretap or eavesdrop in order to support the continued operation of those services. The exemption simply protects the service providers from liability when they act for the purpose of providing the communications services. (See *Tavernetti*, 22 Cal.3d at 191–192 [permissible for telephone company employee to tap into and "attempt[] to learn the contents of the conversations intercepted" where purpose of the interception was "only to determine whether there was a malfunction in the line," after which the interception was "terminated"].) This definition and understanding are roughly consistent with Plaintiff's proposed interpretation, that *communications services* "refers only to the technology that connects call participants." (Opposition, 9.) The Court rejects the portions of Defendant's proposed definition of *communications services* that incorporate two dictionary definitions—"assistance or advice given to customers" with "expressing ideas effectively (as in speech)"—that do not reasonably apply to the phrase *communications services and facilities* as used by CIPA. (Reply, 8.) What remains of Defendant's definition, "a 'system' . . . in 'telecommunication' that 'help[s] or do[es] work' . . . [and] that 'does not involve manufacturing," is vague, but also comports with the Court's interpretation.

Having determined the appropriate meaning of *communications services and facilities*, the Court finds that Dialpad AI is not a communications service, and the surveillance it performs is not "for the purpose of construction, maintenance, conduct or operation" of a communications service and therefore falls outside the telephone company exemption. *First*, Dialpad AI does not transmit messages or information between parties; it is instead a "collateral" add-on to VoIP that Defendant offers separately for purchase to its business customers that opens the communications being transported and interacts with them. (SAC ¶¶ 25, 47.) It is therefore not a communications service as contemplated by the CIPA exemption.

Second, Dialpad AI does not assist the conduct or operation of Dialpad's VoIP communications service. It is "a separate AI-driven software layer" that "intercept[s]" the VoIP "data packets" and performs "additional, advanced analysis and new functionalities" on the contents, which is "not traditionally [done] by telephones or VoIP phones." (*Id.* ¶ 47.) The AI is dependent on the VoIP data packets to function, but does not perform a reciprocal supportive service to the operation of the VoIP. (*Id.* at ¶ 48.) As the proponent of the 2022 amendment said, "if no one is listening, [it's] not eavesdropping." (Assem. Safety Comm. SB 1272 Analysis, 2.) But here, Dialpad AI is not only "listening" to the contents of telephone conversations, but performing "sentiment analysis," writing transcripts and summaries, and providing "real-time assistance" to customer service agents by suggesting script language and other coaching based on what the customer says. (SAC ¶¶ 26–30.) And, after the interception has occurred, Defendant uses the contents for the independent purpose of improving the AI through applying "machine learning techniques" to train it to better perform its analysis and advisory functions. (*Id.* ¶ 49.) Neither the interception and real-time analysis nor the later use to train the AI software are performed for the purpose of operating Dialpad's communications service, VoIP calling. Therefore, this conduct is not protected by the telephone company exemption.

This holding is consistent with *Tavernetti*. In that case, it was permissible for a telephone company employee to tap into a physical telephone wire and briefly listen to conversations passing through it to determine whether the line was functional. (*Tavernetti*, 22 Cal.3d at 191–192.) The wiretapping was done for the purpose of maintenance of the telephone wire, which performed the transmission of the conversations. But it was *not* permissible for the employee to disclose to police what he had heard based on his perceived "independent obligation to bring to the attention of law enforcement authorities suspicious conversations of which he had become aware," because such an "independent obligation" is *not* an exempted purpose. (*Id.* at 194.) The Supreme Court stated that the employee's actions were not "for the purpose of protecting the telephone company or promoting its interests," but this Court does not broadly interpret "promoting [a telephone company's] interest" to expand the "carefully limited exemptive provisions of subdivision (b)" beyond the interests stated in the statute, which are the "construction, maintenance, conduct or operation" of the relevant services and facilities. (*Id.* at 193–194; Pen. Code. § 631(b)(1).)

This holding is also consistent with the Northern District of California's unpublished decision in *Ambriz*. There, Verizon, a telephone company, hired Google to act as its agent in performing AI analysis and advisory services on Verizon's incoming customer service calls. (*Ambriz v. Google, LLC* (N.D. Cal. Jun. 20, 2024) 2024 WL 3282521, *1.) Once the court decided that Google was Verizon's agent, it resolved the parties' dispute regarding the meaning of "for the purpose of construction, maintenance, conduct or operation" of Verizon's services in the defendant's favor. (*Id.* at *2.) The court held that the exemption's use of "for the purpose of" instead of "where necessary for" foreclosed the plaintiff's proposed necessity requirement. (*Id.*) The *Ambriz* court therefore held that, although the wiretapping in question was not *necessary* to the operation of Verizon's services, it did not need to be; it only had to be for the purpose of constructing, maintaining, conducting, or operating those services. (*Ambriz,* 2024 WL 3282521 at *2.)

The *Ambriz* decision's refusal to impose a necessity requirement on the telephone company exemption formed the basis for this Court's December 2025 Order sustaining Defendant's demurrer to the first amended complaint. (See December 23, 2025 Order, 10–11.) But the issue central to this demurrer is not a necessity requirement or "bona fide service maintenance" exemption—it is whether Dialpad AI's service is exempt. The Court finds that it is not. *Ambriz* did not hold, in its passing and undisputed reference to "'the services and facilities' of Verizon," that *all* services provided by telephone companies are exempt based on their status as telephone companies alone, because "it is axiomatic that a decision does not stand for a proposition not considered by the court." (*People v. Barker* (2004) 34 Cal.4th 345, 354; *Ambriz,* 2024 WL 3282521 at *2.) It is therefore immaterial that Google's AI performed the same general tasks as Dialpad's AI, because the service Google AI supported was an exempt service under the statute and the services Dialpad's AI supports are not. (See *Ambriz*, 2024 WL 3282521 at *2 [describing AI services].)

C. AI Customer Service Software That Performs Substantially Identical Functions Is Subject To CIPA.

The conclusion that Dialpad AI is not exempt from suit under CIPA is consistent with a body of authority holding that nearly identical AI customer service software may violate section 631(a) of CIPA, particularly where (as here) the software provider is alleged to use the recorded calls for its own

independent purposes. For example, in *Valencia v. Invoca, Inc.* (C.D. Cal. Nov. 17, 2025) 2025 WL 3691970, exactly as here, plaintiff alleged that the defendant's conversation artificial intelligence software-as-a-service "recorded the conversations of AT&T's callers, transcribes the dialogue, feeds the content to its internal artificial intelligence ('AI') algorithm, and returns the processed data to AT&T in the form of dashboards, reports, and searchable transcripts," and that defendant used recordings and other data to "improve, operate, maintain, and, in some cases, market [its] Platform and conduct internal research" in order to enhance its services. (*Id.* at *3–*7.) The court, following two recent district court decisions, held that the allegations regarding the defendant's software were sufficient to state a claim under section 631(a) of CIPA. (*Id.* at *1-*5; accord, *Taylor v. ConverseNow Technologies, Inc.* (N.D. Cal. Aug. 11, 2025) 2025 WL 2308483, *2–*6 [denying defendant's motion to dismiss where complaint "plausibly alleges that defendant's voice AI software violates at least the second clause of section 631"]; *Tate v. VITAS Healthcare Corporation* (E.D. Cal. 2025) 762 F.Supp.3d 949, 955 ["Because [defendant's] software effectively 'listen[s] in' on user calls, independently analyzes that data, and the company reserves the capability to then use that data for its own purposes, [defendant's] software may be in violation of 631(a)."].)[7]

While none of these cases involved the telephone company exemption, it would be anomalous to construe CIPA to subject a provider of AI customer service software-as-a-service to liability under CIPA, but exempt a competitor providing an identical product based on the unrelated fortuity that it also provides its customers with VoIP services. CIPA should be construed "to ensure a coherent statutory scheme." (*R.C. v. Sussex Publishers, LLC* (N.D. Cal. Feb. 2, 2026) 2026 WL 266450, *4 (cleaned up) [refusing to interpret "person" under section 631 to exclude LLCs, which "would create a statutory scheme in which LLCs cannot be liable for wiretapping but can be liable for eavesdropping or recording confidential communications"].) Defendant offers no response.

For the foregoing reasons, the telephone company exemption does not apply to Defendant's alleged conduct in using Dialpad AI to intercept the VoIP calls it transmitted, learning and analyzing the contents thereof, and subsequently using those contents to train the AI software.

[7] At the hearing, Defendant objected that such an interpretation of CIPA would criminalize a "large swath" of conduct. If that is so, that is an issue is for the Legislature to address, not an argument for courts to give a strained interpretation to statutory language.

D. The Rule Of Lenity Does Not Apply When Legislative Intent Can Be Discerned.

Defendant argues that if there is any ambiguity in the statute, the Court should resolve the ambiguity in Defendant's favor under the rule of lenity, and therefore should sustain the demurrer. (Opening Brief, 10; Reply, 9.) Plaintiffs argue that the rule of lenity does not apply because the statute is not ambiguous. (Opposition, 14–15.)

The rule of lenity, requiring "true ambiguities [to be] resolved in a defendant's favor" (*People v. Avery* (2002) 27 Cal.4th 49, 58) applies only where a court "can do no more than simply venture a guess as to what the legislature intended." (*People v. Reynoza* (2024) 15 Cal.5th 982, 1013.) True ambiguity exists where, "[h]aving consulted the usual aids to eliminating ambiguity in statutory construction—text, context and structure, overall purpose, relevant case law, legislative history," the court can find "a satisfactory answer in none of them" and the ambiguity remains unresolved. (*People v. Reyes* (2020) 56 Cal.App.5th 972, 989.) But a court "should not strain to interpret a penal statute in defendant's favor if it can fairly discern a contrary legislative intent." (*People v. Avery*, 27 Cal.4th at 58; *R.C.* v. *Sussex Publishers, LLC*, 2026 WL 266450, at *6–*7 ["CIPA's language and purpose, as well as public policy and logic 'all favor' the Court's interpretation, so there is insufficient uncertainty to justify applying the rule of lenity"].) A defendant receives due process and fair warning where "clarity at the requisite level [is effected through] judicial gloss on an otherwise uncertain statute," so long as the court's construction is not so novel that "neither the statute nor any prior judicial decision has fairly disclosed [that construction of prohibited behavior] to be within its scope." (*United States v. Lanier* (1997) 520 U.S. 259, 266–267 [describing due process aspect of fair warning requirement for criminal statutes]; *Reyes*, 56 Cal.App.5th at 987 fn. 9 [citing *Lanier* but holding that constitutional due process is not implicated where proposed interpretation "is not so untethered to the statute that, if adopted, it would come as a bolt from the blue."].)

As described above, there is no true ambiguity here. Alhough the plain text of the statute is indefinite at first glance, looking to the plain text of a statute is just the first step in statutory interpretation, and the Court may apply the rule of lenity only after exhausting all available statutory interpretation aids and still concluding that statute is ambiguous. (*Reyes*, 56 Cal.App.5th at 989.) Here, the meaning and purpose of the telephone company exemption are rendered certain by reference to the

legislative history, a well-established statutory interpretation practice and source of "judicial gloss." (*Lanier*, 520 U.S. at 266–267; *Reyes*, 56 Cal.App.5th at 982 [legislative history].) Thus, the rule of lenity does not immunize the unlawful conduct alleged.

GROUNDS FOR INTERLOCUTORY APPELLATE REVIEW

On its own motion, the Court hereby determines, pursuant to Code of Civil Procedure section 166.1, that appellate resolution of the controlling question of law discussed above will materially advance the conclusion of the litigation. There are substantial grounds for difference of opinion as to the telephone company exemption's applicability to Defendant's AI products, particularly given the paucity of reported authority regarding the meaning and scope of the exemption, and the novel questions posed by its potential application to new and emerging technologies. Further, in light of the recent upsurge in filings of class actions brought under CIPA, numerous trial courts would benefit from appellate guidance regarding the issues raised here.

CONCLUSION

Defendant's demurrer to Plaintiffs' second amended complaint is overruled.

IT IS SO ORDERED.

Dated: June 30, 2026

Ethan P. Schulman
Judge of the Superior Court

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 June 30, 2026, I electronically served:

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

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

Date:
JUN 3 0 2026

Brandon E. Riley, Court Executive Officer

By: Edward J. SL

Edward Santos, Deputy Clerk