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

10  
11 ARISHA BYARS, individually and on  
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 STERLING JEWELERS, INC., an Ohio  
15 Corporation; and DOES 1 through 25,  
inclusive,

16 Defendants.  
17

Case No. 5:22-cv-1456

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

1 **INTRODUCTION**

2 1. Plaintiff brings this action individually and on behalf of all other  
3 Californians similarly situated against Defendant for illegal wiretapping of  
4 communications through the website [www.banter.com](http://www.banter.com) (the “Website”).

5 2. Unbeknownst to visitors to the Website, Defendant has secretly deployed  
6 “keystroke monitoring” software that Defendant uses to surreptitiously intercept,  
7 monitor, and record communications made through the chat feature on the Website.  
8 Defendant neither informs visitors nor obtains their express consent prior to this  
9 wiretapping. Defendant then shares the intercepted communications with at least one  
10 third party and harvests personal data from the secret transcripts.

11 3. Defendant has violated the California Invasion of Privacy Act (“CIPA”),  
12 California Penal Code § 631, entitling Plaintiff and Class Members to relief.

13 **JURISDICTION AND VENUE**

14 1. This Court has subject matter jurisdiction of this action pursuant to 28  
15 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100  
16 or more class members, (ii) there is an aggregate amount in controversy exceeding  
17 \$5,000,000, exclusive of interest and costs, and (iii) there is at least minimal diversity  
18 because at least one Plaintiff and Defendant are citizens of different states.

19 2. Pursuant to 28 U.S.C. Section 1391, this Court is the proper venue for this  
20 action because a substantial part of the events, omissions, and acts giving rise to the  
21 claims herein occurred in this District: Plaintiff is a citizen of California who resides in  
22 this District and Defendant conducted a substantial portion of the unlawful activity in  
23 this District.

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

**PARTIES**

1  
2 4. Plaintiff is a citizen of California residing within the Central District of  
3 California.

4 5. Defendant is an Ohio Corporation.

5 6. The above-named Defendant, along with its affiliates and agents, are  
6 collectively referred to as “Defendants.” The true names and capacities of the  
7 Defendants sued herein as DOE DEFENDANTS 1 through 25, inclusive, are currently  
8 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of  
9 the Defendants designated herein as a DOE is legally responsible for the unlawful acts  
10 alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the  
11 true names and capacities of the DOE Defendants when such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, every  
13 Defendant was acting as an agent and/or employee of each of the other Defendants and  
14 was acting within the course and scope of said agency and/or employment with the full  
15 knowledge and consent of each of the other Defendants.

16 8. Plaintiff is informed and believe that each of the acts and/or omissions  
17 complained of herein was made known to, and ratified by, each of the other Defendants.

18 **FACTUAL ALLEGATIONS**

19 9. Without warning visitors or obtaining their consent, Defendant has secretly  
20 deployed wiretapping software on the Website. This software allows Defendant to  
21 surreptitiously monitor, track, record and share with third parties all visitor  
22 communication through the chat feature on Defendant’s website.

23 10. Defendant’s actions amount to the intrusive digital trifecta of looking over  
24 consumers’ shoulders, eavesdropping on their conversations, and reading their journals.  
25 Defendant’s conduct is both illegal and offensive: indeed, a recent study conducted by  
26 the Electronic Privacy Information Center, a respected thought leader regarding digital  
27 privacy, found that: (1) nearly 9 in 10 adults are “very concerned” about data privacy,  
28 and (2) 75% of adults are unaware of the extent to which companies gather, store, and

1 exploit their personal data. See <https://archive.epic.org/privacy/survey/> (last  
2 downloaded August 2022).

3 11. Within the past year, Plaintiff visited Defendant’s Website and  
4 communicated with someone that presented as a human customer service  
5 representative. In reality, Defendant’s website uses an AI “chatbot” (a rules-based  
6 program that provides automatic responses to particular scenarios). The chatbot was  
7 created by and licensed from LivePerson, a company that boasts that its AI chatbot can  
8 deceive visitors with a “Curiously Human™ AI-powered experience.”

9 12. Unbeknownst to website visitors, Defendant deploys the LivePerson AI  
10 chatbot to encourage visitors to share personal information with Defendant. Then,  
11 Defendant creates, stores, and transmits to LivePerson an exact transcript of every  
12 visitor’s chat conversation using secretly embedded wiretapping technology. According  
13 to LivePerson, such Transcript are then immediately available to any credentialed user  
14 for purposes such as “data harvesting” (the process of extracting personal data for  
15 business and marketing purposes). See [https://knowledge.liveperson.com/agent-  
16 manager-workspace-manager-tools-for-live-chat-web-history.html/](https://knowledge.liveperson.com/agent-manager-workspace-manager-tools-for-live-chat-web-history.html/).

17 13. Indeed, LivePerson has acknowledged in a filing with the Securities  
18 Exchange Commission admits “some states in the United States have enacted legislation  
19 designed to protect consumer privacy by prohibiting the distribution of “spyware” over  
20 the Internet. . .” and that such laws “could apply to the technology we use and  
21 potentially restrict our ability to conduct our business” if defined to include web  
22 analytics. See [https://ir.liveperson.com/static-files/0e3e0971-169d-404f-8453-  
23 78f0c809f89a](https://ir.liveperson.com/static-files/0e3e0971-169d-404f-8453-78f0c809f89a).

24 **14. Simplified to common parlance, Defendant: (1) uses a software**  
25 **program that convincingly impersonates an actual human to encourage website**  
26 **visitors to share personal information; (2) secretly creates a transcript of all such**  
27 **conversations without warning website visitors or obtaining their consent; (3)**  
28 **shares those transcripts with a spyware company; and (4) extracts data from the**

1 **secret transcripts for marketing purposes. This conduct clearly violates California**  
2 **law.**

3 15. Defendant did not inform Plaintiff, or any of the Class Members, that  
4 Defendant was secretly monitoring, recording, and sharing their communications.

5 16. Defendant did not obtain Plaintiff's or the Class Members' consent to  
6 intercepting, monitoring, recording, and sharing the electronic communications with the  
7 Website.

8 17. Plaintiff and Class Members did not know at the time of the  
9 communications that Defendant was secretly intercepting, monitoring, recording, and  
10 sharing the electronic communications.

11 **CLASS ALLEGATIONS**

12 18. Plaintiff brings this action individually and on behalf of all others similarly  
13 situated (the "Class") defined as follows:

14 **All persons within California who within one year of the filing of this**  
15 **Complaint: (1) visited Defendant's website, and (2) whose electronic**  
16 **communications were intercepted, recorded, monitored, and/or shared**  
17 **by Defendant without prior express consent.**

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

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

- 26 a. Whether Defendant caused Plaintiff's and the Class's electronic  
27 communications with the Website to be recorded, intercepted and/or  
28 monitored;

- b. Whether Defendant violated CIPA based thereon;
- c. Whether Plaintiff and Class Members are entitled to statutory damages pursuant to Cal. Penal Code § 631(a);
- d. Whether Plaintiff and Class Members are entitled to punitive damages pursuant to Cal. Civil Code § 3294; and
- e. Whether Plaintiff and Class Members are entitled to injunctive relief.

21. TYPICALITY: As a person who visited Defendant’s Website and had her electronic communications recorded, intercepted and monitored, Plaintiff is asserting claims that are typical to the Class.

22. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion would otherwise be improper are excluded.

23. SUPERIORITY: A class action is superior to other available methods of adjudication because individual litigation of the claims of all Class Members is impracticable and inefficient. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

**CAUSE OF ACTION**

**Violations of the California Invasion of Privacy Act**

**Cal. Penal Code § 631**

24. Section 631(a) of California’s Penal Code prohibits and imposes liability upon any entity that “by means of any machine, instrument, 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) “willfully and without the

1 consent of all parties to the communication, or in any unauthorized manner, reads, or  
2 attempts to read, or to learn the contents or meaning of any message, report, or  
3 communication while the same is in transit or passing over any wire, line, or cable, or is  
4 being sent from, or received at any place within this state” or (3) “uses, or attempts to  
5 use, in any manner, or for any purpose, or to communicate in any way, any information  
6 so obtained, or who aids, agrees with, employs, or conspires with any person or persons  
7 to unlawfully do, or permit, or cause to be done any of the acts or things mentioned  
8 above in this section”.

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

16 26. The software employed by Defendant on its Website to record Plaintiff’s  
17 and the Class’s electronic communications qualifies as a “machine, instrument,  
18 contrivance, or ... other manner” used to engage in the prohibited conduct alleged  
19 herein.

20 27. At all relevant times, Defendant intentionally caused the internet  
21 communication between Plaintiff and Class Members with Defendant’s website to be  
22 intercepted, recorded, stored, and transmitted to a third party.

23 28. At all relevant times, Defendant willfully, and without the consent of all  
24 parties to the communication, allowed the contents of electronic communications of  
25 visitors to its website to be accessed by third parties.

26 29. Plaintiff and Class Members did not consent to any of Defendant’s actions  
27 in implementing wiretaps on its Website, nor did Plaintiff or Class Members consent to  
28 Defendant’s intentional access, interception, recording, monitoring, reading, learning

1 and collection of Plaintiff and Class Members' electronic communications with the  
2 Website.

3 30. Defendant's conduct constitutes numerous independent and discreet  
4 violations of Cal. Penal Code § 631(a), entitling Plaintiff and Class Members to  
5 injunctive relief and statutory damages of at least \$2,500.00 per violation.


6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for the following relief against Defendant:

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

24 Dated: August 18, 2022

PACIFIC TRIAL ATTORNEYS, APC

25  
26 By:   
27 Scott J. Ferrell  
28 Attorneys for Plaintiff