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

TRAVIS COHEN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

CARL'S JR. RESTAURANTS, LLC,

Defendant.

Case No. 2:24-cv-2299

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Travis Cohen (“Plaintiff”) brings this action on behalf of himself and  
2 all others similarly situated against Defendant Carl’s Jr. Restaurants, LLC  
3 (“Defendant” or “Carl’s Jr.”). Plaintiff makes the following allegations pursuant to  
4 the investigation of his counsel and based upon information and belief, except as to  
5 allegations specifically pertaining to himself and his counsel, which are based on  
6 personal knowledge.

### 7 **NATURE OF THE ACTION**

8 1. This is a class action lawsuit brought against Carl’s Jr. for aiding,  
9 agreeing with, employing, procuring, or otherwise enabling the wiretapping of the  
10 electronic communications of visitors to its California drive-thru locations that  
11 employ the use of a drive-thru ordering assistant by Presto Automation, Inc.  
12 (“Presto”).

13 2. Specifically, Defendant aids, agrees with, procures, or otherwise enables  
14 Presto to collect information from visitors who use its automated drive-thru assistant  
15 to order food at Carl’s Jr. restaurants.

16 3. Unbeknownst to consumers, their communications are routed through  
17 the servers of, and are used by, Presto to, among other things, assist Defendant with  
18 fulfilling orders and to improve the capabilities of Presto’s technology.

19 4. The nature of Presto’s licensing agreements with Defendant are such  
20 that Defendant “aids, agrees with, employs, or conspires” to permit Presto to read,  
21 attempt to read, learn, and/or use the communications of Carl’s Jr. customers without  
22 prior consent, thus violating the California Invasion of Privacy Act (“CIPA”), Cal.  
23 Penal Code §§ 631(a).

24 5. Plaintiff brings this action on behalf of all persons who ordered at a  
25 Carl’s Jr. in California via the automated drive-thru assistant, and whose  
26 communications were intercepted and recorded by Presto.  
27  
28

**PARTIES**

6. Plaintiff Travis Cohen is a citizen of California residing in Valley Village, CA. In or around February 2024, Plaintiff Cohen ordered via the Drive-Thru at a Carl's Jr. restaurant in Van Nuys, California. During that interaction, Defendant used Presto's automated drive-thru ordering assistant, Presto Voice, to process his order. As Plaintiff gave his order to the automated assistant (*i.e., in real time*), Presto- as aided, agreed with, employed, and procured by Defendant— wiretapped Plaintiff's communication with Defendant. Plaintiff was not on notice of any wiretapping when he gave his order to the automated order assistant, nor did he provide prior consent to the same.

7. Defendant Carl's Jr. Restaurants, LLC is a Delaware Corporation with its principal place of business at 6700 Tower Circle, Suite 1000, Franklin, TN. Defendant operates fast food restaurants, including Carl's Jr. restaurants, throughout California and the United States.

**JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000, exclusive of interest and costs, and at least one member of the proposed class is a citizen of a state different from at least one Defendant.

9. This Court has personal jurisdiction over Defendant because Defendant conducts significant business in California, as there are over 600 Carl's Jr. restaurants in California.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

## FACTUAL ALLEGATIONS

### **Overview of the Wiretaps**

11. Presto Automation, Inc. is a Software as a Service (SaaS) company that provides “enterprise-grade [Artificial Intelligence] solutions for the nation’s largest hospitality brands.”<sup>1</sup> Its products use “automation and voice AI technology improves order accuracy, reduces labor costs, and increases revenue” for restaurants.

12. One way Presto does this is with “Presto Voice,” a voice automation platform that is installed in the drive-thru systems of fast-food restaurants.<sup>2</sup> Presto voice automates the process of taking the drive-thru order by implementing an automated voice assistant capable of taking the order and relaying it to the restaurant team, who prepare the food.

13. In May 2023, Presto announced a plan to partner with CKE Restaurant Holdings, Inc., the parent company of Carl’s Jr. and Hardee’s restaurants, to deploy Presto Voice to Carl’s Jr. and Hardee’s restaurants across the country.<sup>3</sup>

14. Since that time, Presto Voice has been integrated into the drive-thru at hundreds of Carl’s Jr. restaurants, including many in California.

15. Presto Voice is designed in such a way that consumers believe they are only interacting with the specific Carl’s Jr. restaurant where they are placing and picking up their drive-thru order. Customers are not notified prior to placing their order that their communications with specific Carl’s Jr. restaurants are being intercepted by any third party.

<sup>1</sup> Presto and CKE Restaurants Announce Drive-Thru Voice AI Automation Partnership <https://investor.presto.com/news-releases/news-release-details/presto-and-cke-restaurants-announce-drive-thru-voice-ai> (Last accessed March 18, 2024).

<sup>2</sup> Automate your drive-thru with Presto Voice <https://presto.com/drive-thru/> (Last accessed March 18, 2024).

<sup>3</sup> Presto and CKE Restaurants Announce Drive-Thru Voice AI Automation Partnership <https://investor.presto.com/news-releases/news-release-details/presto-and-cke-restaurants-announce-drive-thru-voice-ai> (Last accessed March 18, 2024).

1           16. Following an investigation by the Security and Exchange Commission  
2 (SEC), Presto admitted in SEC filings that it sends over 70% of customer  
3 communications with Presto Voice to “off-site” agents, meaning employees of Presto  
4 receiving customer communications via Presto’s servers, who help train the AI  
5 system and ensure order accuracy.<sup>4</sup>

6           17. Once Presto intercepts the drive-thru customers’ communications, it has  
7 the ability to use such communications for its own purposes. Presto, in part, uses its  
8 off-site agents to improve its Presto Voice technology. Presto’s stated goal in using  
9 the off-site agents to review intercepted communications “is to continue to reduce  
10 our reliance on human agent intervention, while advancing our AI capabilities and  
11 maintaining our high [rate of non-intervention by staff of customer restaurants].”<sup>5</sup>

12           18. Continued sales of the Presto Voice technology and service is based on  
13 Presto’s ability to improve its software capabilities and reduce the need to employ its  
14 off-site agents to monitor and correct orders so it can “offer a more robust, adaptable  
15 and accurate service” to future customers.<sup>6</sup>

16           19. Information from communications, like Plaintiff’s, is central to Presto’s  
17 ability to successfully market Presto voice to future clients.

18           20. In sum, Presto has the capability to use website communications to (i)  
19 improve its own products and services; (ii) develop new Presto products and  
20

21 <sup>4</sup> AI-Powered Drive-Thru Is Actually Run Almost Fully by Humans  
22 <https://www.bloomberg.com/news/articles/2023-12-07/ai-fast-food-drive-thrus-need-human-workers-70-of-time?accessToken=eyJhbGciOiJIUzI1NiIsInR5cCI6IkpXVCJ9.eyJzbnVzY2UiOiJtdWJzY3JpYmVzR2lmdGVkQXJ0aWNsZSIsImVudCI6MTcxMDU0MzA0OCwiZXhwIjoxNzExMTQ3ODQ4LCJhcnRpY2xlSWQ0IiJTNDRDhBUTBUMEcxS1cwMCIsImJlb25uZWNO0SWQ0IiJDRjI2RDVCNUJCRkQ0MDRDOTQ0MzY2QTJCNTMwNjA3OSJ9.p1TydtsGsXuA4yBKqs7UApXY8vA--dkjMvKFcMuUwhM> (Last  
23  
24  
25

26 <sup>5</sup> The Role of Humans in a Voice AI Drive-Thru <https://presto.com/the-role-of-humans-in-a-voice-ai-drive-thru/> (Last accessed March 19, 2024).  
27

28 <sup>6</sup> *Id.*

1 services; and (iii) analyze drive-thru customers communications to assist with  
2 avoiding the intervention of restaurant staff in the order process.

3 **Defendant Aided, Agreed With, Employed, Procured, Or Otherwise Enabled**  
4 **Presto's Wiretapping of Plaintiff's Communications**

5 21. As described above, Presto collects the communications of visitors to  
6 Defendant's drive-thru windows.

7 22. The purpose of this invasion of privacy is straightforward: Presto  
8 collects the communications to send to its off-site agents.

9 23. This is valuable to Defendant because it saves Defendant money on the  
10 cost of labor to staff the drive-thru ordering service, even when the Presto Voice  
11 system is not processing orders correctly.

12 24. In addition to helping companies like Defendant process their Drive-  
13 thru orders, Presto aggregates this information with the information collected from  
14 all customers employing Presto Voice at their restaurants to improve the  
15 functionality of Presto Voice, which increases the value of Presto's services when  
16 they are offered to other companies.

17 25. Thus, the agreement for Defendant to aid in Presto's wiretapping of  
18 Plaintiff's and Class Members' communications is done for the purpose of  
19 improperly increasing the efficiency of Presto Voice and, by extension, the profits of  
20 both parties.

21 26. Presto does not record the communications for the sole benefit of  
22 Defendant; instead, it uses (or has the capability to use) the information obtained for  
23 its own benefit.

24 **CLASS ALLEGATIONS**

25 27. Plaintiff seeks to represent a class of all California residents all persons  
26 who ordered at a Carl's Jr. in California by using the automated drive-thru assistant  
27 and whose communications were intercepted and recorded by Presto during the  
28 statute of limitations period (the "Class").

1           28. Excluded from the Class are: (i) Defendant and its officers, directors,  
2 employees, principals, affiliated entities, controlling entities, and other affiliates; (ii)  
3 the agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact,  
4 or assignees of such persons or entities described herein; and (iii) the Judge(s)  
5 assigned to this case and any members of their immediate families.

6           29. Members of the Class are so numerous that their individual joinder  
7 herein is impracticable. On information and belief, members of the Class number in  
8 the millions. The precise number of members of the Class and their identities are  
9 unknown to Plaintiff at this time but may be determined through discovery.  
10 Members of the Class may be notified of the pendency of this action by mail and/or  
11 publication through the distribution records of Defendant.

12           30. There is a well-defined community of interest in the common questions  
13 of law and fact affecting Class members. Common questions of law and fact exist as  
14 to all members of the Class and predominate over questions affecting only individual  
15 members of the Class. Common legal and factual questions include, but are not  
16 limited to, whether Defendant has violated the CIPA and whether members of the  
17 Class are entitled to actual and/or statutory damages for the aforementioned  
18 violations.

19           31. The claims of Plaintiff are typical of the claims of the Class because the  
20 Plaintiff, like all other class members, visited Defendant's drive-through and had his  
21 electronic communications intercepted and disclosed to Presto.

22           32. Plaintiff is an adequate representative of the Class because his interests  
23 do not conflict with the interests of the Class he seeks to represent, he has retained  
24 competent counsel experienced in prosecuting class actions, and he intends to  
25 prosecute this action vigorously. The interests of the Class will be fairly and  
26 adequately protected by Plaintiff and his counsel.

27           33. The class mechanism is superior to other available means for the fair  
28 and efficient adjudication of the claims of Class. Each individual member of the

Class may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

34. Finally, Defendant has acted or refused to act on grounds generally applicable to the entire Class, thereby making it appropriate for this Court to grant final injunctive relief and declaratory relief with respect to the Class as a whole.

### **COUNT I**

#### **VIOLATION OF CIPA § 631**

35. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

36. Plaintiff brings this claim against Defendant individually and on behalf of the Class.

37. CIPA § 631(a) imposes liability for "distinct and mutually independent patterns of conduct." *Tavernetti v. Superior Ct.*, 22 Cal. 3d 187, 192-93 (1978). Thus, to establish liability under CIPA § 631(a), a plaintiff need only establish that the 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



1 or telephone wire, line, cable, or instrument, including  
2 the wire, line, cable, or instrument of any internal  
3 telephonic communication system,

4 *Or*

5 Willfully and without the consent of all parties to the  
6 communication, or in any unauthorized manner, reads or  
7 attempts to read or learn the contents or meaning of any  
8 message, report, or communication while the same is in  
9 transit or passing over any wire, line or cable or is being  
sent from or received at any place within this state,

10 *Or*

11 Uses, or attempts to use, in any manner, or for any  
12 purpose, or to communicate in any way, any information  
13 so obtained,

14 *Or*

15 Aids, agrees with, employs, or conspires with any person  
16 or persons to unlawfully do, or permit, or cause to be  
17 done any of the acts or things mentioned above in this  
section.

18  
19 38. CIPA § 631(a) is not limited to phone lines, but also applies to “new  
20 technologies” such as computers, the internet, and email. *See Matera v. Google Inc.*,  
21 2016 WL 8200619, at \*21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new  
22 technologies” and must be construed broadly to effectuate its remedial purpose of  
23 protecting privacy); *see also Javier v. Assurance IQ, LLC*, 2022 WL 1744107, at \*1  
24 (“Though written in terms of wiretapping, Section 631(a) applies to Internet  
25 communications”).

26 39. Presto Voice is a “machine, instrument, contrivance, or ... other  
27 manner” used to engage in the prohibited conduct at issue here.  
28

1           40. Presto is a “separate legal entity that offer[] [a] ‘software-as-a-service’  
2 and not merely [] passive device[s].” *Saleh v. Nike, Inc.*, 562 F. Supp. 3d 503, 520  
3 (C.D. Cal. 2021). Further, Presto had the capability to use the wiretapped  
4 information for its own purposes. Accordingly, Presto was a third party to any  
5 communication between Plaintiff and Class Members on the one hand, and  
6 Defendant, on the other. *Id.* at 521; *see also Javier v. Assurance IQ, LLC*, 649 F.  
7 Supp. 3d 891, 900 (N.D. Cal. 2023).

8           41. At all relevant times, by using the network, Presto willfully and without  
9 the consent of all parties to the communication, or in any unauthorized manner, read,  
10 attempted to read, and/or learned the contents or meaning of electronic  
11 communications of Plaintiff and Class Members, on the one hand, and Defendant, on  
12 the other, while the electronic communications were in transit or were being sent  
13 from or received at any place within California.

14           42. At all relevant times, Presto used or attempted to use the  
15 communications intercepted by Presto Voice to improve its products and services  
16 and generate revenue for itself and its clients.

17           43. At all relevant times, Defendant aided, agreed with, employed, or  
18 otherwise enabled Presto to wiretap consumers using Presto Voice and to accomplish  
19 the wrongful conduct at issue here.

20           44. Plaintiff and Class Members did not provide their prior consent to  
21 Presto’s intentional access, interception, reading, learning, recording, collection, and  
22 usage of Plaintiff and Class Members’ communications. Nor did Plaintiff and Class  
23 Members provide their prior consent to Defendant aiding, agreeing with, employing,  
24 or otherwise enabling the Presto’s conduct.

25           45. The wiretapping of Plaintiff and Class Members occurred in California,  
26 where Plaintiff and Class Members ordered from Carl’s Jr. drive-thru locations and  
27 where Presto, as enabled by Defendant, routed Plaintiff’s and Class Members’  
28 communications to Presto’s servers.



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