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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL ESPARZA, individually and on
behalf of all others similarly situated,
Plaintiff,
v.
UAG ESCONDIDO A1 INC., a Delaware
corporation, dba
ACURAOFESCONDIDO.COM, and
DOES 1 through 10, inclusive
Defendants.

Case No.: 23cv0102 DMS(KSC)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

This case comes before the Court on Defendant’s motion to dismiss. Plaintiff filed an opposition to the motion, Defendant filed a reply, and Plaintiff filed two notices of supplemental authority. After reviewing the parties’ briefs, the relevant legal authority, and the record, the motion is granted.

**I.
BACKGROUND**

On November 30, 2022, Plaintiff Miguel Esparza filed the present case against Defendant UAG Escondido A1 Inc. in San Diego Superior Court. In the original Complaint, Plaintiff alleged he used his smart phone to visit Defendant’s website www.acuraofescondido.com. Through the website’s chat feature, Plaintiff had a

1 conversation with Defendant. (Compl. ¶ 18.)¹ Plaintiff alleged Defendant was secretly
2 recording that conversation or “allowing, aiding, and abetting a third party to intercept
3 and eavesdrop on them in real time.” (*Id.* ¶ 20.) Indeed, Plaintiff alleged Defendant
4 “secretly wiretaps the private conversations of everyone who communicates through the
5 chat feature” on Defendant’s website, and “allows at least one third party to eavesdrop on
6 such communications in real time and during transmission to harvest data for financial
7 gain.” (*Id.* at 2.) Plaintiff alleged the wiretapping and eavesdropping was enabled by
8 embedding software code on Defendant’s website. (*Id.* ¶ 12.) Specifically, Plaintiff
9 alleged “Defendant allows at least one independent third-party vendor to use a software
10 device or contrivance to secretly intercept (during transmission and in real time),
11 eavesdrop upon, and store transcripts of Defendant’s chat communications with
12 unsuspecting website visitors – even when such conversations are private and deeply
13 personal.” (*Id.*) Plaintiff further alleged “[t]he data from those transcripts are then used
14 for targeted marketing or other purposes.” (*Id.*)

15 As a result of Defendant’s alleged secret recording of its web chats with Plaintiff
16 and others, Plaintiff filed the present case alleging claims under California’s Invasion of
17 Privacy Act (“CIPA”). Defendant removed the case to this Court alleging jurisdiction
18 under the Class Action Fairness Act (“CAFA”), and then moved to dismiss the Complaint.
19 On July 23, 2023, this Court granted that motion, dismissing with prejudice Plaintiff’s
20 claims under clauses one, two, and three of California Penal Code § 631(a), and
21 dismissing without prejudice Plaintiff’s claim under section 631(a), clause four.

22 Following that ruling, Plaintiff filed a First Amended Complaint (“FAC”). In the
23 FAC, Plaintiff alleges that “[w]ithin the last year and while physically within California,”
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26 ¹ In the original Complaint, Plaintiff alleged he was “a consumer privacy advocate with
27 dual motivations for initiating a conversation with Defendant.” First, Plaintiff was
28 genuinely interested in learning more about the goods and services offered by Defendant.”
(*Id.* ¶ 16.) Second, Plaintiff alleged he “is a ‘tester’ who works to ensure that companies
abide by the privacy obligations imposed by California law.” (*Id.*)

1 he “visited Defendant’s Website using a smartphone and conducted a brief conversation
2 through the Website’s chat feature.” (FAC ¶ 2.) Plaintiff alleges he was not advised that
3 his chat with Defendant “was being monitored, intercepted, or recorded, nor did [he]
4 consent thereto.” (*Id.*)

5 Plaintiff now alleges the interloper in his web chat with Defendant was CarNow.
6 (*Id.* ¶ 9.) According to Plaintiff, Defendant allowed CarNow “to embed its chat
7 technology code into the chat feature” on Defendant’s website. (*Id.*) Through the use of
8 that code, all chats on Defendant’s website are “routed through CarNow’s servers so they
9 may simultaneously collect a transcript of that chat, along with other user data, in real
10 time and save it for later access.” (*Id.*) Plaintiff alleges “CarNow is integrated with social
11 media platforms like Meta/Facebook and can become a ‘lead generation machine.’” (*Id.*
12 ¶ 13.) He further alleges that Defendant, CarNow, and Meta “profit from secretly
13 exploiting the chat data through targeted social media advertising” (*Id.* ¶ 16.) In
14 short, Plaintiff alleges “CarNow uses its record for Website user’s interaction with
15 Defendant’s chat feature for data analytics and marketing/advertising to consumers”
16 (*Id.* ¶ 17.)

17 II.

18 DISCUSSION

19 Given the Court’s ruling on Defendant’s previous motion to dismiss, the only claim
20 that remains is Plaintiff’s claim under section 631(a), clause four. This clause imposes
21 liability on those who “who aid[], agree[] with, employ[], or conspire[]” with any person
22 who violates clauses one through three. Cal. Penal Code § 631(a). Defendant argues
23 Plaintiff has failed to state a claim under clause four, and thus the case should be dismissed
24 with prejudice and without further leave to amend.

25 A. Legal Standard

26 To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain
27 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
28 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*,

1 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual
2 content that allows the court to draw the reasonable inference that the defendant is liable
3 for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

4 “Determining whether a complaint states a plausible claim for relief will ... be a
5 context-specific task that requires the reviewing court to draw on its judicial experience
6 and common sense.” *Id.* at 679 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007)).
7 In *Iqbal*, the Court began this task “by identifying the allegations in the complaint that are
8 not entitled to the assumption of truth.” *Id.* at 680. It then considered “the factual
9 allegations in respondent’s complaint to determine if they plausibly suggest an entitlement
10 to relief.” *Id.* at 681.

11 As stated above, the only claim that remains here is Plaintiff’s claim under clause
12 four of section 631(a). To state a claim under this clause, Plaintiff must allege that a person
13 or entity has violated one of the first three clauses of section 631(a), and that Defendant
14 aided, agreed with, employed, or conspired with that person or entity to commit those
15 unlawful acts.

16 **B. Section 631(a), Clause One**

17 As stated above, Plaintiff alleges the underlying wrongdoer in this case is CarNow.
18 To show that CarNow violated section 631(a), clause one, Plaintiff must allege CarNow
19 intentionally tapped or made an unauthorized connection “with any telegraph or telephone
20 wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal
21 telephonic communication system[.]” Cal. Penal Code § 631(a). Defendant argues the use
22 of a chat feature on a website does not meet the “telegraph or telephone” element of this
23 claim, therefore Plaintiff cannot show a violation of clause one. Plaintiff disagrees, and
24 asserts that clause one applies to communications via a smartphone.

25 In *Valenzuela v. Keurig Green Mountain, Inc.*, ___ F.Supp.3d ___, No. 22-CV-
26 09042-JSC, 2023 WL 3707181, at *2 (N.D. Cal. May 24, 2023), a case based on similar
27 facts and filed by Plaintiff’s counsel in this case, the court addressed the same arguments
28 raised here, and concluded, based on the plain language of the statute, that the statute did

1 not apply “to technologies other than telegraphs and telephones.” Other courts are in
2 accord. *See D'Angelo v. Penny OpCo, LLC*, No. 23-CV-0981-BAS-DDL, 2023 WL
3 7006793, at *6 (S.D. Cal. Oct. 24, 2023) (“Because Clause One does not apply to internet
4 connections, prospective plaintiffs who allege their communications were intercepted
5 when using their smartphones as computers (for example, to access and browse the
6 internet) are foreclosed from stating a claim under Clause One of Section 631.”); *Licea v.*
7 *Cinmar, LLC*, 659 F.Supp.3d 1096, 1104 (C.D. Cal. 2023) (stating courts “have
8 consistently interpreted this clause as applying only to communications over telephones
9 and not through the internet.”). This Court finds the reasoning of those cases persuasive,
10 and adopts the same conclusion here, namely, that clause one does not apply to internet
11 connections. Accordingly, Plaintiff has failed to state a claim against CarNow under clause
12 one.

13 **C. Section 631(a), Clause Two**

14 To state a claim under clause two, Plaintiff must allege facts demonstrating that
15 CarNow:

16 willfully and without the consent of all parties to the communication, or in
17 any unauthorized manner, read[], or attempt[ed] to read, or to learn the
18 contents or meaning of any message, report, or communication while the same
19 [was] in transit or passing over any wire, line, or cable, or [was] being sent
from, or received at any place within this state[.]

20 Cal. Penal Code § 631(a). Defendant argues Plaintiff has failed to allege facts to support
21 the “in transit” requirement of clause two, and that Plaintiff cannot state a claim under
22 clause two because he consented to the recording of his web chat with Defendant. Plaintiff
23 responds that he has alleged sufficient facts to support the “in transit” requirement, and that
24 he alleged his communications were sent from California, which also satisfies this element.
25 Plaintiff also asserts he did not give consent to CarNow’s recording of his conversation
26 with Defendant.

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1 1. In Transit

2 In the FAC, Plaintiff alleges webchat communications on Defendant’s website are
3 “routed through CarNow’s servers so they may simultaneously collect a transcript of that
4 chat, along with other user data, in real time and save it for later access.” (FAC ¶ 9.)
5 Plaintiff further alleges that CarNow’s code enables it “to secretly intercept in real time,
6 eavesdrop upon, and store transcripts of consumers’ chat communications they think they
7 are having with Defendant, even when such conversations are private and contain
8 personally identifiable information (‘PII’) – as Plaintiff’s did.” (*Id.* ¶ 10.)

9 Courts have split on whether these kinds of allegations are sufficient to satisfy the
10 “in transit” requirement. *Compare Heiting v. Taro Pharms. USA, Inc.*, No. 2:23-CV-
11 08002-SPG-E, 2023 WL 9319049, at *6 (C.D. Cal. Dec. 26, 2023) (finding allegations that
12 webchats were intercepted in real time through the use of computer code insufficient);
13 *Keurig Green Mountain*, 2023 WL 3707181, at *6 (same); *Cinmar*, 659 F.Supp.3d at 1110
14 (same) *with Valenzuela v. Nationwide Mut. Ins. Co.*, ___ F.Supp.3d ___, No. 2:22-cv-
15 06177-MEM-SK, 2023 WL 5266033, at *5 (C.D. Cal. Aug. 14, 2023) (concluding “in
16 transit” requirement was satisfied where plaintiff pleaded third party intercepted chat
17 communications in real time and explained how that occurred); *Licea v. Old Navy, LLC*,
18 ___ F.Supp.3d ___, No. 5:22-cv-01413-SSS-SPx, 2023 WL 3012527, at *2 (C.D. Cal. Apr.
19 19, 2023) (finding “in transit” requirement met where plaintiff alleged webchat
20 communications were intercepted in real time through the use of computer code). This
21 Court agrees with the latter line of cases.

22 As stated therein, allegations that webchats are intercepted in real time through the
23 use of computer code provides sufficient factual detail to support the “in transit”
24 requirement. In *D’Angelo*, 2023 WL 7006793, at *8, this court affirmed that conclusion,
25 reasoning that “a pleading standard to the contrary would require the CIPA plaintiff to
26 engage in a one-sided guessing game because the relevant information about data capture
27 typically resides uniquely in the custody and control of the CIPA defendant and its third-
28 party recorder.” Here, Plaintiff alleges CarNow’s chat technology code is embedded in

1 Defendant’s website, and that “whenever a consumer chats via Defendant’s Website, the
2 chat is routed *through* CarNow’s servers so they may simultaneously collect a transcript of
3 that chat, along with other user data, in real time and save it for later access.” (FAC ¶ 9.)
4 These allegations are sufficient to plead the “in transit” requirement. *See Garcia v. Yeti*
5 *Coolers, LLC*, No. 2:23-cv-02643-RGK-RAO, 2023 WL 5736006, at *4 (C.D. Cal. Sept.
6 5, 2023) (finding substantially similar allegations sufficient because they “allow[ed] the
7 court to reasonably infer that the alleged reading of [plaintiff’s chat] message occurred
8 while the message was in transit.”)²

9 2. Consent

10 Turning to the issue of consent, Defendant argues Plaintiff consented to the
11 recording of his web chats due to the nature of the communication, i.e., written messaging,
12 and his “tester” status. However, whether Plaintiff consented to the recording of his web
13 chats with Defendant is not the issue under clause two. The issue under clause two is
14 whether Plaintiff consented to CarNow *eavesdropping* on his conversation with Defendant.
15 *See id.* at *3 (stating section 631(a), clause two “prohibits *eavesdropping* ‘without consent
16 of all parties to the communication.’”) (emphasis added). The written nature of web chats
17 and Plaintiff’s “tester” status do not speak to that issue, and do not show Plaintiff consented
18 to CarNow’s alleged eavesdropping.³

21 ² Plaintiff argues, in the alternative, that he need not plead CarNow read his
22 communications with Defendant while they were “in transit” because he has also alleged
23 those communications took place while he was in California. In light of the Court’s holding
24 above that the “in transit” requirement is sufficiently pleaded, the Court declines to address
25 that argument here. The Court notes, however, that at least one court has rejected this
26 argument. *See Keurig Green Mountain*, 2023 WL 3707181, at *6 (stating plaintiff cannot
27 avoid “in transit” requirement “merely because she sends or receives a message in
28 California.”)

³ Even if Plaintiff consented to the recording of his web chats, consent to that recording
would not translate to consent to a third party eavesdropping on those conversations. *See*
Javier v. Assurance IQ, LLC, No. 4:20-CV-02860-JSW, 2021 WL 940319, at *2 (N.D. Cal.

1 3. Party Exemption

2 Defendant’s next argument is based on the party exemption rule. Under this rule, a
3 party to a communication cannot be held liable under section 631(a) for eavesdropping on
4 its own conversation. *See In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 607
5 (9th Cir. 2020) (stating CIPA contains “an exemption from liability for a person who is a
6 ‘party’ to the communication”). District courts in California are split on whether this
7 exemption extends to third parties, particularly, third party software providers. *See Javier*
8 *v. Assurance IQ, LLC*, 649 F. Supp. 3d 891, 899-901 (N.D. Cal. 2023) (discussing two
9 lines of cases). Some courts hold that software providers who embed code onto a party’s
10 website do not fall within the party exemption. *Id.* at 899 (citing cases). Other courts hold
11 these kinds of software providers are simply extensions of the website owner, bringing
12 them within the party exemption. *Id.* (citing cases).

13 In this case, Defendant asserts CarNow acted simply as an extension of Defendant,
14 therefore CarNow is entitled to the party exemption. Plaintiff argues the decisions
15 extending the party exemption to third parties “were wrongly decided,” (Mem. of P. & A.
16 in Supp. of Opp’n to Mot. at 4), and urges the Court to disregard those cases.

17 The Court has reviewed both lines of cases on this issue and is inclined to agree with
18 those courts that have declined to extend the party exemption to third parties. *See*
19 *D’Angelo*, 2023 WL 7006793, at *7 (S.D. Cal. Oct. 24, 2023); *Nationwide*, 2023 WL
20 5266033, at *7; *Javier*, 649 F.Supp.3d at 900; *Saleh v. Nike, Inc.*, 562 F.Supp.3d 503 (C.D.
21 Cal. 2021); *Revitch v. New Moosejaw, LLC*, No. 18-cv-06827-VC, 2019 WL 5485330
22 (N.D. Cal. Oct. 23, 2019). In *Saleh*, the court found the third party “did not become a
23 ‘party’ to the communication simply because it was providing recording and transmission
24 services for” a party. 562 F.Supp.3d at 521. The court reasoned, “[t]he text of section
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28 Mar. 9, 2021) (quoting *In re Google*, No. 13-MD-02430-LHK, 2013 WL 5423918, at *12
(N.D. Cal. Sept. 26, 2013) (stating “consent ‘is not an all-or-nothing proposition.’”)

1 631(a) ... does not contain any such exception, and indeed,” an interpretation that extends
2 the party exemption to third parties “would vitiate the statute’s protections.” *Id.* at 520.

3 The *Javier* court also declined to extend the party exemption to third parties for two
4 different reasons:

5 The first [reason] is that it interprets the second prong of the statute—
6 “willfully and without the consent of all parties to the communication, or in
7 any unauthorized manner, reads, or attempts to read, or to learn the contents
8 or meaning of any message, report, or communication while the same is in
transit”—based on the intentions and usage of the prospective third party.

9 649 F.Supp.3d at 900. This interpretation would subsume the third prong of the statute,
10 which “already penalizes ‘use’—‘us[ing], or attempt[ing] to use, in any manner, or for any
11 purpose, or to communicate in any way, any information so obtained.’” *Id.* (quoting Cal.
12 Penal Code § 631(a)). In other words, “reading a use requirement into the second prong
13 would add requirements that are not present (and swallow the third prong in the process).”

14 *Id.* The *Javier* court continued:

15 The second problem with this view is that it was not the California Supreme
16 Court’s stated rationale in *Ribas*⁴: The *Ribas* Court did not consider the
17 wife’s friend’s intention or the use to which they put the information they
18 obtained. Instead, it emphasized the privacy concerns at issue with having an
19 “unannounced second auditor” listening in on the call, when Section 631
concerns “the right to control the nature and extent of the firsthand
dissemination of [their] statements.”

20 *Id.* (quoting *Ribas*, 38 Cal. 3d at 360-61).⁵ This Court finds the reasoning of *Saleh* and
21 *Javier* persuasive, and is inclined to find that the party exemption does not extend to third
22 parties.

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25 ⁴ In *Ribas v. Clark*, 38 Cal. 3d 355 (1985), the California Supreme Court addressed whether
26 a wife could be held liable under CIPA for allowing her friend to eavesdrop on a telephone
conversation between herself and her husband.

27 ⁵ The *Javier* court also rejected the defendant’s argument “that the ubiquity of third-party
28 tools like ActiveProspect’s software ‘would force websites to either expressly disclose’ the

1 Nevertheless, the Court need not reach that conclusion here because even if the Court
2 were to find the party exemption applied to third parties, Plaintiff has alleged sufficient
3 facts to avoid application of that exemption to CarNow on the present motion. As
4 Defendant explains it, the party exemption applies only where the third party simply
5 records information and makes it available to the defendant. (Mem. of P. & A. in Supp. of
6 Mot. at 12-13.) If the third party uses the information for its own purposes, it is no longer
7 simply an extension of the party, and hence not entitled to the party exemption. (*Id.*) Here,
8 Plaintiff alleges sufficient facts to bring CarNow outside the exemption. Specifically, he
9 alleges CarNow “exploits and monetizes” the data collected through the code embedded
10 on Defendant’s website “by sharing it with other third parties who use the private chat data
11 to bombard unsuspecting visitor[s] with targeted marketing.” (FAC at 2; *see also id.* ¶ 15
12 (stating “chat transcripts intercepted by CarNow are provided to Meta through
13 ‘integration’” and “Meta brands like Facebook and WhatsApp bombard the unsuspecting
14 Website visitors with targeted advertising based upon the user’s Website visits and
15 interactions.”) He also alleges “CarNow uses its record of Website user’s interaction with
16 Defendant’s chat feature for data analytics and marketing/advertising to consumers –
17 indeed, that is why Defendant pays CarNow for its software.” (*Id.* ¶ 17.)

18 Defendant argues these allegations are too vague and conclusory to withstand the
19 present motion, but the Court disagrees. They are specific, factual allegations, which are
20 entitled to a presumption of truth on the present motion. As so construed, Plaintiff has
21 alleged sufficient facts to withstand Defendant’s motion to dismiss based on the party
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25 presence of those tools, or ‘create those tools in-house.’” *Id.* The defendant argued that
26 mandating disclosure would be “technologically impractical and far from user-friendly”
27 and that creating the tools in-house would be “wildly inefficient.” *Id.* The court was not
28 persuaded. It stated “[t]he acquisition of consent when visiting websites (for the collection
of cookies, for example) is a regular occurrence and hardly particularly ‘technologically
impractical.’” *Id.*

1 exemption. *Garcia*, 2023 WL 5736006, at *4 (finding similar allegations sufficient to
2 overcome party exemption).⁶

3 **D. State of Mind**

4 Defendant’s final argument for dismissal is that Plaintiff has failed to allege the
5 requisite scienter to support a claim for aiding and abetting. Defendant argues Plaintiff
6 must allege it acted with (1) knowledge that CarNow intended to violate CIPA and (2)
7 intent to commit, encourage, or facilitate CarNow’s commission of the offense. (Mem. of
8 P. & A. in Supp. of Mot. at 14.) Plaintiff disputes Defendant’s statement of the law, and
9 asserts he has alleged sufficient facts to support his aiding and abetting claim.

10 Neither side has cited any cases addressing the scienter requirement for aiding and
11 abetting claims under section 631(a), clause four. The plain text of the statute imposes
12 liability on any person “who aids, agrees with, employs, or conspires with any person or
13 persons to unlawfully do, or permit, or cause to be done any of the acts or things
14 mentioned” in clauses one through three. Cal. Penal Code § 631(a). However, the statute
15 does not define these terms or the broader concept of “aiding and abetting.” Under these
16 circumstances, the court considers “the common law definition of aiding and abetting.”
17 *Fiol v. Doellstedt*, 50 Cal. App. 4th 1318, 1325 (1996). Under this definition, a person may
18 be held liable as an aider and abettor if they:

- 19 (a) know[] the other’s conduct constitute[s] a breach of duty and give[]
20 substantial assistance or encouragement to the other to so act or (b) give[]
21 substantial assistance to the other in accomplishing a tortious result and the
22 person’s own conduct, separately considered, constitutes a breach of duty to
23 the third person.

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25 ⁶ In light of the Court’s finding that Plaintiff has alleged sufficient facts to support a
26 predicate claim against CarNow under clause two, the Court rejects Defendant’s argument
27 that Plaintiff has failed to state a predicate claim against CarNow under clause three. *See*
28 *Martin v. Sephora USA, Inc.*, No. 1:22-cv-01355-JLT-SAB, 2023 WL 2717636, at *11
(E.D. Cal. Mar. 30, 2023) (“A finding of a violation under the third clause of § 631(a) is
contingent on a finding of a violation of the first or second clause of § 631(a).”)

1 *Saunders v. Superior Court*, 27 Cal. App. 4th 832 845 (1994) (citations omitted); *see Fiol*,
2 50 Cal. App. 4th at 1325–26 (applying common-law civil aiding-abetting principles where
3 California’s Fair Employment and Housing Act allowed for civil aiding-abetting liability
4 for employment discrimination claim but provided no statutory standard); *cf. Twitter, Inc.*
5 *v. Taamneh*, 598 U.S. 471, 483–85 (2023) (quoting 18 U.S.C. § 2333(d)(2)) (concluding
6 the “common-law tradition” supplies the “proper legal framework” for “civil aiding and
7 abetting” liability where a federal statute imposes civil liability upon a person “who aids
8 and abets, by knowingly providing substantial assistance, or who conspires with the person
9 who committed such an act of international terrorism” but does not define the term “aids
10 and abets”).

11 Here, Plaintiff asserts facts to support the substantial assistance prong of his aiding
12 and abetting claim by alleging that Defendant embedded CarNow’s software code into its
13 website. On the knowledge prong, Plaintiff argues the Court can infer Defendant’s
14 knowledge based on CarNow’s “wiretapping and eavesdropping” in violation of CIPA.
15 (Mem. of P. & A. in Supp. of Opp’n to Mot. at 18.) However, at this stage of the case,
16 there has been no finding that CarNow was engaged in wiretapping or eavesdropping, and
17 even if there was such a finding, that would not speak to Defendant’s knowledge. Absent
18 factual allegations on that specific issue, Plaintiff has failed to state an aiding and abetting
19 claim against Defendant.

20 III.

21 CONCLUSION AND ORDER

22 For the reasons set out above, the Court grants Defendant’s motion to dismiss.
23 Consistent with Plaintiff’s request, the Court grants Plaintiff leave to file a Second
24 Amended Complaint that cures the pleading deficiency related to the knowledge element
25 of his aiding and abetting claim only. Plaintiff is cautioned that if his Second Amended

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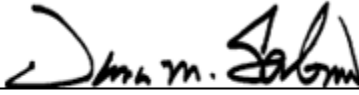
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1 Complaint does not cure this deficiency, his case will be dismissed with prejudice and
2 without further leave to amend. If Plaintiff elects to file a Second Amended Complaint,
3 he shall do so on or before **February 20, 2024**.

4 **IT IS SO ORDERED.**

5 Dated: February 12, 2024

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8 Hon. Dana M. Sabraw, Chief Judge
9 United States District Court
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