

1 TROUTMAN AMIN, LLP
Eric J. Troutman (State Bar # 229263)
2 Puja Amin (State Bar # 299547)
3 Brittany A. Andres (State Bar # 340856)
400 Spectrum Center Drive, Suite 1550
4 Irvine, California 92618
5 Telephone: +1 949 350 3663
6 Facsimile: +1 949 203 8689
7 troutman@troutmanamin.com
8 amin@troutmanamin.com
9 brittany@troutmanamin.com

Attorneys for Defendant
ALLEVIATE TAX, LLC

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 FARBOD HADIZADEH MOGHADAM
14 AND NIGEL LUCOMBE, individually
and on behalf of themselves and others
15 similarly situated,

16 Plaintiffs,

17 VS.

18 ALLEVIATE TAX, LLC

19 Defendant.

Case No. 8:24-cv-01810-MWC-DFM

**DEFENDANT ALLEVIATE TAX,
LLC’S NOTICE OF MOTION
AND MOTION TO DISMISS**

Date: January 24, 2025

Time: 1:30 p.m.

Courtroom: 6A

Hon. Judge Michelle Williams Court

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23 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR**
24 **ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that on January 24, 2025, at 1:30 p.m., or at such
26 other date and time set by and before Honorable Michelle Williams Court,
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TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 Defendant Alleviate Tax, LLC will and hereby does moves this Court to dismiss
2 Count II of Plaintiffs’ First Amended Complaint.

3 This Motion is made following the conference of counsel pursuant to L.R. 7-
4 3, which took place on December 27, 2024¹.

6 This Motion is based upon this Notice of Motion and Motion, the
7 accompanying Memorandum of Points and Authorities, the pleadings and the
8 records on file herein, and on any oral argument or evidence that may be presented
9 at the hearing on this Motion.
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12 Dated: December 27, 2024

TROUTMAN AMIN, LLP

14 By: /s/Brittany A. Andres
Eric J. Troutman
Puja J. Amin
Brittany A. Andres

16 *Attorneys for Defendant Alleviate Tax, LLC*

27 ¹ loanDepot’s counsel first reached out to Plaintiff’s counsel via email on December 20, 2024. But did not receive a
28 response. loanDepot’s counsel follow up again on December 26, 2024. Ultimately, counsel for the parties met and
conferred on December 27, 2024.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Alleviate Tax, LLC (“Alleviate”) respectfully requests the Court dismiss Count II of Plaintiffs Farbod Hadizadeh Moghadam and Nigel Lucombe (“Plaintiffs”) First Amended Complaint (“FAC”) for failure to state a claim under Federal Rule of Civil Procedure (“Rule”) 12(b)(6). Count II of the FAC purports to allege a claim under Section 632.7 of the California Invasion of Privacy Act (“CIPA”). However, Plaintiff Moghadam is not a California resident, so the statute does not protect him. As such, the Court should dismiss Count II of Plaintiffs’ FAC under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

II. PLAINTIFFS’ ALLEGATIONS

Plaintiff Moghadam is a resident of the State of New Jersey, County of Essex. See Plaintiffs’ FAC (“FAC”), at ¶ 14. He is not a resident of California. Nor does Plaintiff Moghadam allege he was injured in the State of California. For the reasons set forth below, these facts are not sufficient to state a viable claim under the CIPA.

III. LEGAL STANDARD

To survive a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content

1 that allows the court to draw the reasonable inference that the defendant is liable for
2 the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Thus, the Court “accept[s] factual
3 allegations in the complaint as true and construe[s] the pleadings in the light most
4 favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*,
5 519 F.3d 1025, 1031 (9th Cir. 2008).

7 On the other hand, the Court is “not bound to accept as true a legal conclusion
8 couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.
9 at 555). Nor is the Court “required to accept as true ...allegations that are merely
10 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-*
11 *Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). In other words, the
12 complaint must contain “more than ‘an unadorned, the- defendant-unlawfully-
13 harmed-me accusation’” to suffice. *Id.* (quoting *Iqbal*, 556 U.S. at 681). “In sum,
14 for a complaint to survive a motion to dismiss, the non-conclusory factual content,
15 and reasonable inferences from that content, must be plausibly suggestive of a claim
16 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
17 2009) (quotation marks omitted).

22 “The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the
23 legal sufficiency of the complaint.” *Brandt v. Ocwen Loan Servicing, LLC*, No.
24 117CV00643DADEPG, 2017 WL 5878581, at *5 (E.D. Cal. Nov. 29, 2017) citing
25 *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). “Dismissal
26 can be based on the lack of a cognizable legal theory or the absence of sufficient
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1 facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*,
2 901 F.2d 696, 699 (9th Cir. 1990). Therefore, a plaintiff is required to allege “enough
3 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp.*, 550 U.S.
4 at 570 (emphasis added).

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6 A court “will dismiss any claim that, even when construed in the light most
7 favorable to plaintiff, fails to plead sufficiently all required elements of a cause of
8 action.” *Student Loan Marketing Ass’n v. Hanes*, 181 F.R.D. 629, 634
9 (S.D.Cal.1998). In practice, “a complaint ... must contain either direct or inferential
10 allegations respecting all the material elements necessary to sustain recovery under
11 some viable legal theory.” *Twombly*, 550 U.S. at 562, 127 S.Ct. at 1969
12 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir.1984)).

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15 **IV. ARGUMENT—PLAINTIFF MOGHADAM’S COUNT II UNDER**
16 **CALIFORNIA LAW MUST BE DISMISSED BECAUSE PLAINTIFF**
17 **MOGHADAM IS NOT A CALIFORNIA RESIDENT**

18 Under binding California Supreme Court precedent in *Kearney v. Salomon*
19 *Smith Barney, Inc.*, 39 Cal. 4th 95, 119-20 (2006), note that Penal Code § 632 and
20 the California Invasion of Privacy Act (“CIPA”) generally only applies to California
21 residents unlawfully recorded while in California. “[A]pplication of California law
22 would be limited to the defendant’s surreptitious or undisclosed recording of words
23 spoken over the telephone by California residents while they are in California.”
24 *Kearney*, 39 Cal. 4th at 104. The express purpose of CIPA is to protect California
25 residents: “The Legislature by this chapter intends to protect the right of privacy of
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1 *the people of this state.*” Cal. Penal Code § 630 (emphasis added); *Gruber v. Yelp*
2 *Inc.*, 55 Cal. App. 5th 591, 610 (2020) (“it is beyond question that sections 632 and
3 637.2 are primarily intended to protect the privacy of the communications of
4 California residents”); *Zephyr v. Saxon Mortg. Servs., Inc.*, 873 F. Supp. 2d 1223,
5 1231 (E.D. Cal. 2012) (finding that CIPA is intended “to protect California residents
6 from having their conversations recorded by either in-state or out-of-state callers
7 without all parties’ consent.”). Under California law, “a presumption exists against
8 the extraterritorial application [of] state law.” *O’Connor v. Uber Techs., Inc.*, 58 F.
9 Supp. 3d 989, 1004 (N.D. Cal. 2014). Courts must “presume the Legislature did not
10 intend a statute to be operative, with respect to occurrences outside the state, . . .
11 unless such intention is clearly expressed or reasonably to be inferred from the
12 language of the act or from its purpose, subject matter or history.” *Sullivan v. Oracle*
13 *Corp.*, 51 Cal. 4th 1191, 1207 (2011) (internal quotation marks omitted). Nothing
14 in CIPA displaces this presumption.

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19 And for conduct that occurred outside of California, California law simply
20 cannot apply. *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207 (2011) (“we presume
21 the Legislature did not intend a statute to be operative, with respect to occurrences
22 outside the state”) (quotations and citations omitted); *Norwest Mortgage, Inc. v.*
23 *Superior Court*, 72 Cal. App. 4th 214, 222 (1999) (California law could not be
24 applied to non-California residents for conduct outside the state). Indeed, “[e]ach
25 state has ‘an interest in being able to delineate the appropriate standard of liability
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1 and the scope of recovery based on its understanding of the balance between the
2 interests of individuals and corporate entities operating within its territory.” *In re*
3 *Yahoo Mail Litig.*, 308 F.R.D. at 603 (quoting *Frezza v. Google Inc.*, No. 12–237,
4 2013 WL 1736788, at *7 (N.D. Cal. Apr. 22, 2013).

6 Plaintiff Moghadam is a resident of New Jersey and has not plead, and cannot
7 plead, that he is a citizen of California. He is a resident of the State of New Jersey,
8 County of Essex. *See* FAC, at ¶ 15. As such, Count II must be dismissed because
9 California law does not extend its jurisdiction to nonresidents. *See Norwest*
10 *Mortgage, Inc. v. Superior Court*, 72 Cal.App.4th 214, 222, (1999) (California has
11 no interest in extending its laws to noncitizens and to actions that occurred outside
12 of California borders); *Ahringer v. LoanDepot, Inc.*, 715 F. Supp. 3d 1274, 1285
13 (C.D. Cal. 2024) (stating “Plaintiffs may only bring a CIPA claim on behalf of
14 California residents or people who were in California when the alleged wrong
15 occurred.”); *see also Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 591 (9th Cir.
16 2012) (district court erred in applying California law nationwide even though the
17 defendant’s headquarters and the advertising agency responsible for the alleged
18 misrepresentations were located in the state), *overruled in part by Olean Wholesale*
19 *Grocery Cooperative, Inc. v. Bumble Bee Foods LLC* (9th Cir. Apr. 8, 2022).

24 **V. CONCLUSION**

26 For the foregoing reasons, Alleviate respectfully requests that the Court
27 dismiss Count II of Plaintiffs’ FAC.
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1 Dated: December 27, 2024

TROUTMAN AMIN, LLP

2 By: /s/Brittany A. Andres

Eric J. Troutman

3 Puja J. Amin

Brittany A. Andres

4 *Attorneys for Defendant Alleviate Tax, LLC*

5
6 **CERTIFICATE OF COMPLIANCE**

7 The undersigned, counsel of record for Defendant Alleviate Tax, LLC,
8 certifies that this brief contains 1,291 words, which complies with the word limit of
9 L.R. 11-6.1.

10 Dated: December 27, 2024

/s/ Brittany A. Andres

11 Brittany A. Andres

12
13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on December 27, 2024, a copy of the foregoing was
15 served by ECF to counsel of record.

16
17 /s/ Brittany A. Andres

18 Brittany A. Andres

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troutman@troutmanamin.com