

Robyn E. Bladow
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
Telephone: (213) 680-8400
robyn.bladow@kirkland.com

Martin L. Roth, P.C. (*pro hac vice*)
Alyssa C. Kalisky (*pro hac vice*)
Amelia H. Bailey (*pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
martin.roth@kirkland.com
alyssa.kalisky@kirkland.com
amelia.bailey@kirkland.com

Olivia Adendorff, P.C. (*pro hac vice*)
Rachael A. Rezabek
KIRKLAND & ELLIS LLP
4550 Travis Street
Dallas, TX 75205
Telephone: (214) 972-1770
olivia.adendorff@kirkland.com
rachael.rezabek@kirkland.com

Attorneys for the Defendant
PowerSchool Holdings, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EMILY CHERKIN, et al.,

Plaintiffs,

v.

POWERSCHOOL HOLDINGS, INC.,

Defendant.

CASE NO. 3:24-CV-02706-JD

**NOTICE OF MOTION AND MOTION
BY DEFENDANT TO DISMISS THE
CLASS ACTION COMPLAINT**

Complaint filed: May 6, 2024

Judge: The Hon. James Donato
Courtroom: Courtroom 11, 19th Floor
Date: November 7, 2024
Time: 10:00 a.m.

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that, on November 7, 2024, at 10:00 a.m., or as soon thereafter as
3 the Court is available, Defendant PowerSchool Holdings, Inc. (“PowerSchool”) will and hereby does
4 move the Court in Courtroom 11 of the federal courthouse located at 450 Golden Gate Avenue, San
5 Francisco, CA 94102, 19th Floor, to dismiss the Class Action Complaint (the “Complaint”) filed by
6 Plaintiffs Emily Cherkin, on behalf of herself and as parent and guardian of her minor child, S.G., and
7 David Concepción, on behalf of himself and as parent and guardian of his minor children, L.M.C. and
8 M.M.C. (collectively, “Plaintiffs”), in the above-captioned action, pursuant to Federal Rule of Civil
9 Procedure 12(b)(6) on the basis that the pleading fails to state a claim upon which relief can be granted.

10 PowerSchool’s motion is based on this Notice of Motion and Motion, the following
11 Memorandum of Points and Authorities, any additional briefing on this subject, and any evidence and
12 arguments that will be presented to the Court at the hearing on this matter.

13 DATED: July 22, 2024

Respectfully submitted,

14 KIRKLAND & ELLIS LLP

15 

16

Olivia Adendorff, P.C.

17 *Attorney for Defendant PowerSchool*
18 *Holdings, Inc.*

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INTRODUCTION

In the past 30 years, schools—like every other part of the modern economy—have transformed from pen-and-paper records to digital recordkeeping and web-based communications. Instead of spiral-bound grading books or “blue books” for essay exams, schools now utilize sophisticated online portals and programs. Defendant PowerSchool Holdings, Inc. (“PowerSchool”) provides education software products to schools and school districts to digitize student record management and other educational or administrative functions. The federal and state laws governing student records, including the Family Educational Rights and Privacy Act (“FERPA”) and the California Education Code, explicitly authorize the use of such tools and allow schools to rely on contractors like PowerSchool to manage student data. The school and/or school district maintains ownership and control of its students’ records and chooses the products that will aid its specific educational mission.

Plaintiffs’ sprawling Complaint includes extensive citations to broad, general social critiques condemning surveillance capitalism, cybercrimes, and manipulative digital product design, in an apparent attempt to mask that they cannot make specific allegations of wrongdoing by PowerSchool. The “general policy concerns and irrelevant information” included at length in the Complaint unduly “interfere[] with a clear presentation of the legal claims at issue,” warranting dismissal on that ground alone. *Cousart v. OpenAI LP*, 2024 WL 3282522, at *1 (N.D. Cal. May 24, 2024). And when stripped of the near endless rhetoric, the Complaint includes no more than vague and unsupported generic allegations of privacy theories that are in direct conflict with the more specific legislation that authorizes the challenged conduct. Plaintiffs do not (because they cannot) adequately plead the core elements for any of their legal claims. The Court should therefore dismiss their Complaint with prejudice under Rule 12(b)(6).

BACKGROUND¹

I. PowerSchool Provides Administrative and Pedagogical Assistance to Schools as Authorized by Federal and State Law.

PowerSchool is an education technology company that provides administrative and pedagogical assistance to schools and school districts. ECF 1, Compl. ¶¶ 33, 36. It assists its school

¹ Except as otherwise noted, the facts herein are drawn from the Complaint and accepted as true for this motion only.

1 and school district customers in collecting and managing their own student records. *Id.* ¶ 40.
 2 PowerSchool has not altered the traditional school–student relationship. Schools have always
 3 collected and maintained records on their students about a wide range of academic and social issues,
 4 including, for example, students’ academic capabilities, family status, vaccines, health-related
 5 absences, disciplinary records, and visits to the school guidance counselor, just to name a few. *Id.*
 6 PowerSchool simply provides software to make that process easier and help a school more efficiently
 7 utilize its own information in meaningful ways, such as by helping the school connect students with
 8 relevant job or higher education opportunities, *id.* ¶¶ 61, 70–72 (explaining how PowerSchool’s AI
 9 chatbot offers the services of “guidance counselors for the purpose of post-K12 planning”), or by
 10 flagging at-risk kids in need of additional school resources, *id.* ¶ 61.

11 Governing laws expressly allow schools to share their student data with contractors like
 12 PowerSchool without having to collect consent from individual students or their parents. FERPA, as
 13 interpreted by its enforcer, the Department of Education, *see* 20 U.S.C. § 1232g(f), allows student data
 14 to be shared with contractors who “[p]erform[] an institutional service or function for which the
 15 [educational] agency or institution would otherwise use employees” without parental consent. *Id.*
 16 § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1)(i)(B)(1). Consistent with that federal authorization, the
 17 California Education Code allows school districts to provide “access to pupil records” to a person
 18 authorized by federal regulation to have them “without written parental consent.” Cal. Educ. Code
 19 § 49076(a). The Code also independently permits school districts to release student records to
 20 contractors providing “outsourced institutional services or functions” to the districts “without written
 21 parental consent.” *Id.* § 49076(a)(2)(G)(i).

22 Of course, a contractor must meet certain requirements to be entrusted with student records.
 23 Both FERPA and the California Education Code require contractors to act under the direct control of
 24 the schools they serve and comply with contractual obligations to the schools. On the federal side,
 25 contractors like PowerSchool must act “under the direct control of the [educational institution] with
 26 respect to the use and maintenance of education records” and use the student records “only for the
 27 purposes for which the disclosure was made.” 34 C.F.R. §§ 99.31(a)(1)(i)(B)(2), 99.33(a)(2).
 28 Likewise, in California, the Education Code clarifies that student records are “the property of and

under the control of” the schools. Cal. Educ. Code § 49073.1(b)(1). A contractor must also promise to its school customers that it will not “us[e] any information in the pupil record for any purpose other than those required or specifically permitted by the contract.” *Id.* § 49073.1(b)(3).

PowerSchool duly implements these requirements in its contracts with its school customers. Indeed, Plaintiffs admit that PowerSchool’s handling of student data “is strictly controlled by the customer *through contractual obligations*, including data privacy agreements or privacy impact assessments.” Compl. ¶ 151; *accord id.* ¶ 153 (reemphasizing the same); *id.* ¶ 155 (“[PowerSchool] do[es] not use Student Data for any purpose other than to provide the services”); *id.* ¶ 153 (PowerSchool acknowledges that “schools own and control student data”).

Critically, *Plaintiffs do not allege that PowerSchool acted in contravention of its contractual requirements with any customer nor that it operated outside the bounds of FERPA or the California Education Code.*

As with PowerSchool, other companies also provide products for schools as contractors. *When schools direct PowerSchool to do so*, PowerSchool can connect its systems to these other products (such as EAB, Capture, and Finalsight) so that the schools’ suite of software providers can interoperate. *See, e.g., id.* ¶ 108 (EAB provides services to “education institutions”); *id.* ¶ 115 (Capture provides tools to “school personnel”); *id.* ¶ 116 (Finalsite provides services for “educational institutions”).

II. PowerSchool Publicly Discloses Its Data Practices.

PowerSchool publicly discloses its data practices in its Global Privacy Statement. Ex. 1.² PowerSchool receives two types of data about students: data about students that PowerSchool receives directly from the school, parent, or student,³ and data passively generated by PowerSchool applications and websites as a user interacts with them. The second category is technical “device and usage information” generated by PowerSchool’s websites or software when users interact with them, which

² Plaintiffs reference this document extensively in the Complaint. *See, e.g., id.* ¶¶ 145, 146, 149, 173, 181. As a result, the Court may consider “the full text of” these disclosures, “including portions which were not mentioned in the complaint[] in a ruling on a motion to dismiss.” *Habelt v. iRhythm Techs., Inc.*, 2022 WL 971580, at *5 (N.D. Cal. Mar. 31, 2022), *appeal dismissed*, 83 F.4th 1162 (9th Cir. 2023) (citing *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996)).

³ *See* Ex. 1, “Customer Data” and “Information You Provide” sections. All citations in the form of “Ex. ___” are to exhibits to the Rezabek Declaration, filed herewith.

includes their “unique device identifier, IP address, [their] browser type and configuration, the date and time of [their] use of the product or service and cookie data.”⁴ PowerSchool discloses that it collects such data automatically.⁵

III. Plaintiffs Seek to Bring a Privacy Class Action Based on Scattershot Factual Allegations Untethered to Their Legal Claims.

Plaintiffs—a Washington parent, a California parent, and their respective minor children—bring a plethora of privacy-related claims against PowerSchool. Plaintiffs seek to represent four classes: a nationwide student class, *id.* ¶ 414, a nationwide parent class, *id.* ¶ 415, a California student subclass, *id.* ¶ 416, and a California parent subclass, *id.* ¶ 417.

The allegations that purport to support Plaintiffs’ privacy claims are far from clear. The Complaint reads “like a book report that simply summarizes” horror stories about surveillance capitalism (*id.* ¶¶ 19–32), cybercrimes (*id.* ¶¶ 192–94), and targeted marketing and “datafication” (*id.* ¶¶ 304–09, 311–13). *Heeger v. Facebook, Inc.*, 509 F. Supp. 3d 1182, 1187 (N.D. Cal. 2020) (Donato, J.). This extensive background is tied to PowerSchool by nothing other than Plaintiffs’ insinuations. *See, e.g.*, Compl. ¶¶ 191, 303, 321.

Where Plaintiffs *do* attempt to tie their allegations to PowerSchool in a concrete way, they ignore the operative legal framework. For example, a core theme of Plaintiffs’ Complaint is PowerSchool’s alleged non-consensual collection of student data. *See id.* ¶¶ 136, 137, 140, 144–49, 166–90, 253–69. Yet nowhere in the Complaint do Plaintiffs cite or even acknowledge FERPA or the California Education Code, which expressly authorize schools to hire contractors to receive student data *without* having to obtain individual student or parent consent. Another core theme of Plaintiffs’ allegations is PowerSchool’s alleged “commercialization” of student data. *See id.* ¶¶ 43–46, 56, 58–62, 68, 82–91, 104–137.⁶ But Plaintiffs once again ignore that providing schools tools to manage, analyze, and generate insights from *their own data* is precisely what laws such as FERPA and the

⁴ See Ex. 1, “Collected Data,” “Transaction Data,” and “Information We Collect Automatically” sections.

⁵ See Ex. 1, “Information We Collect Automatically” section.

⁶ Note that Plaintiffs’ commercialization allegations rely in part on their allegations related to a product called P20W. *See* Compl. ¶¶ 93–101. P20W is in development and has not been launched with a single customer. In any case, the hope for P20W is simply to offer schools or their governing departments of education additional tools for analyzing and tracking *their own data*.

1 California Education Code allow. The law does not require PowerSchool to provide these tools for
 2 free. Plaintiffs do not (and cannot) allege that PowerSchool exceeds what it can lawfully do by merely
 3 charging a fee for its valuable services.

4 Stripped of these hodgepodge allegations and mischaracterizations, Plaintiffs' Complaint has
 5 little left. For most claims, Plaintiffs present "threadbare recitals of a cause of action's elements,
 6 supported by mere conclusory statements"—or less. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

7 **LEGAL STANDARD**

8 Federal Rule of Civil Procedure 8(a)(2) requires that complaints contain "a short and plain
 9 statement of the claim showing that the pleader is entitled to relief." And to survive a Rule 12(b)(6)
 10 motion, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell*
 11 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The allegations must be sufficiently concrete to
 12 give the defendant an idea of "where to begin" in responding to the complaint. *Id.* at 565 n.10. For
 13 claims sounding in fraud, plaintiffs must additionally satisfy the requirement of Rule 9(b) that they
 14 "state with particularity the circumstances constituting fraud" by "identify[ing] the who, what, when,
 15 where, and how of the misconduct charged, as well as what is false or misleading about the purportedly
 16 fraudulent statement, and why it is false." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637
 17 F.3d 1047, 1054–55 (9th Cir. 2011) (internal quotations omitted).

18 **ARGUMENT**

19 Plaintiffs cite many privacy-related theories but fail to support a claim under any of them. Very
 20 few paragraphs within the Complaint are devoted to actual allegations about PowerSchool. Thus,
 21 despite its length, the Complaint is readily dismissible because its "swaths of unnecessary and
 22 distracting allegations mak[es] it nearly impossible to determine the adequacy of [P]laintiffs' legal
 23 claims." *Cousart* 2024 WL 3282522, at *1. In any case, the Complaint should also be dismissed
 24 because Plaintiffs fail to allege "enough facts to state [any] claim to relief that is plausible on its face."
 25 *Twombly*, 550 U.S. at 570. Even if one disregards the express authorization under FERPA and the
 26 California Education Code for PowerSchool to perform the alleged actions, each count fails on its own
 27 merits.
 28

I. Plaintiffs Fail to Plead an Expectation of Privacy or Offensiveness for Counts I and VI.

Plaintiffs’ claims for common law intrusion upon seclusion (Count I) and invasion of privacy under the California Constitution (Count VI) are “distinct claims with different elements.” *Heeger*, 2019 WL 7282477, at *3 (Donato, J.). But when brought together on the same factual basis, “it is appropriate to assess the two claims together and examine . . . (1) the nature of any intrusion upon reasonable expectations of privacy, *and* (2) the offensiveness or seriousness of the intrusion, including any justification and other relevant interests.” *Id.* (emphasis added). Plaintiffs’ claims here touch on the two categories of data described above: (1) data shared directly by schools, students, or parents about students, and (2) passively generated technical data. *See* Compl. ¶¶ 448, 449, 542; *supra* at 3–4. The claims fail to meet the required elements for either category of data.

Regarding the first category, Plaintiffs fail to plead that they have a reasonable expectation of privacy vis-à-vis their schools and their schools’ contractor with respect to the information they knowingly provide to their own schools. To satisfy this element, Plaintiffs must plead that they have “an objectively reasonable expectation of seclusion or solitude in the place, conversation or data source.” *In re Google, Inc. Priv. Pol’y Litig.*, 2013 WL 6248499, at *15 (N.D. Cal. Dec. 3, 2013) (internal quotations omitted). A reasonable expectation “is an objective entitlement founded on broadly based and widely accepted community norms.” *Hill v. Nat’l Collegiate Athletic Assn.*, 865 P.2d 633, 655 (Cal. 1994). “Advance notice” of the allegedly intruding action can diminish an expectation of privacy. *Id.*

As alleged by Plaintiffs, all data falling into the first category is what students would provide their school even if their school did not use PowerSchool as a contractor. Community norms expect schools to keep students’ “[s]chool records” such as “enrollment data,” “student grades,” and “extracurricular program membership,” their “[c]ontact information,” “[d]emographic information,” “[d]isciplinary and behavioral information,” “[m]edical information,” and communications with their parents. Compl. ¶ 40. And the schools are legally authorized to hire PowerSchool to help with the “digital storage, management, and retrieval of” of these routine student records. Cal. Educ. Code § 49073.1(a)(1); *accord* 34 C.F.R. § 99.31(a)(1)(i)(B). It is entirely reasonable and within accepted community norms for a school to share student data with the exact contractor hired to manage (and

often, even directly interact with the student on the school’s behalf to collect) that data.

Indeed, schools are legally authorized to give PowerSchool access to such data *without* having to collect consent from individual students and parents. *See* 34 C.F.R. § 99.31(a)(1)(i)(B); Cal. Educ. Code § 49076(a). Under the governing legal framework, Plaintiffs cannot seriously claim they reasonably expect their schools to keep their records shielded from a contractor whose role in processing these records is explicitly authorized by law. Moreover, as Plaintiffs allege, they are well aware that the schools they attend use PowerSchool to assist them with student records management. Compl. ¶ 348. In fact, they directly interact with PowerSchool products in order to share their information with their schools (*e.g.*, submitting a homework assignment through PowerSchool’s Schoology product). *Id.* ¶¶ 376, 377, 380. Such “advance notice” diminishes Plaintiffs’ alleged expectation of privacy. *Hill*, 865 P.2d at 655. Thus, Plaintiffs have no reasonable expectation of privacy in data submitted to their own schools, and they cannot sustain a claim for intrusion upon seclusion or invasion of privacy as to that data.⁷

Second, as to passively collected technical data, Plaintiffs’ allegations of offensiveness also fail. To be “highly offensive,” the alleged intrusion must be “sufficiently serious in [its] nature, scope, and actual or potential impact to constitute an *egregious breach* of the social norms underlying the privacy right.” *In re iPhone Application Litig.*, 844 F. Supp. 2d 1040, 1063 (N.D. Cal. 2012). Although the offensiveness determination usually requires factual assessment, where the allegations are obviously inadequate, as they are here, the question of offensiveness may be decided as a matter of law. *See Deteresa v. Am. Broad. Cos.*, 121 F.3d 460, 465 (9th Cir. 1997) (“If the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests, the question of invasion may be adjudicated as a matter of law.”).

Even as described by Plaintiffs, the technical data collected by PowerSchool is only data about students’ devices and use of PowerSchool’s own products, such as “unique device identifiers,” “IP address,” “browser type and configuration,” and “cookie data,” which is generated when they are using

⁷ Plaintiffs spill much ink alleging PowerSchool has “offensive” data practices, including allegedly “monetiz[ing]” their data and using their data to develop products. *See, e.g., id.* ¶¶ 448, 452. As PowerSchool points out, these allegations are based on Plaintiffs’ own confusion. *Supra* at 4–5. Regardless, Plaintiffs’ failure to plead a reasonable expectation of privacy dooms their claim without the need to consider the offensiveness element.

PowerSchool products. Compl. ¶ 277. As courts have repeatedly held, collecting this kind of data, which is ubiquitous across the internet, does not egregiously breach social norms. *See, e.g., In re iPhone Application Litig.*, 844 F. Supp. 2d at 1063 (disclosing “unique device identifier number, personal data, and geolocation information” to third parties does not constitute an egregious breach of social norms)).⁸ Further, PowerSchool adequately discloses that it collects such device and use data. *See supra* at 3–4. In short, the obvious nature of this metadata collection, which occurs when Plaintiffs choose to knowingly interact with PowerSchool’s products and websites, defeats Plaintiffs’ offensiveness allegation. *See Sheehan v. San Francisco 49ers, Ltd.*, 201 P.3d 472, 478 (Cal. 2009) (“If voluntary consent is present, a defendant’s conduct will rarely be deemed ‘highly offensive to a reasonable person’”). Thus, Plaintiffs’ claims as to this category of data fail as well. *See In re iPhone Application Litig.*, 844 F. Supp. 2d at 1063; *see also Taylor v. San Francisco Sheriff’s Dep’t*, 2024 WL 2808650, at *18 (N.D. Cal. May 31, 2024).

II. Count II Must Be Dismissed for Failure to Plead Reliance.

In order for Plaintiffs’ claim under California Civil Code §§ 1709-10 (Count II) to survive dismissal, Plaintiffs must allege, among other elements, justifiable reliance on an alleged misrepresentation. *See Diaz v. Fed. Express Corp.*, 373 F. Supp. 2d 1034, 1066–67 (C.D. Cal. 2005) (internal quotations omitted). Moreover, this claim is subject to the heightened pleading standards of Rule 9(b). *See Clark v. VIP Petcare, LLC*, 2023 WL 2779090, at *1 (N.D. Cal. Apr. 4, 2023).

Plaintiffs’ fraud claim must be dismissed because they do not allege reliance. Nowhere in the Complaint do Plaintiffs allege that they actually *read* PowerSchool’s privacy representations. Without reading them, Plaintiffs cannot have *relied* on those statements in choosing to provide their information. *See Amin v. Subway Restaurants, Inc.* 2021 WL 11680840, at *3 (N.D. Cal. Oct. 7, 2021) (dismissing fraud claim because plaintiff failed “describe the specific statements they saw and relied upon, when they saw the statements, and where the statements appeared”) (citing *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009)). As such, Count II should be dismissed.

⁸ *See also Saleh v. Nike, Inc.*, 562 F. Supp. 3d 503, 525 (C.D. Cal. 2021) (capturing “(a) [t]he user’s mouse clicks; (b) [t]he user’s keystrokes; (c) [t]he user’s payment card information, including card number, expiration date, and CCV code; (d) [t]he user’s IP address; (e) [t]he user’s location at the time of the visit; and (f) [t]he user’s browser type and the operating system on their devices” does not constitute “a serious invasion of a protected privacy interest”).

III. Plaintiffs' CIPA Claims (Counts III) Fail as a Matter of Law.

In Count III, Plaintiffs bring a claim under each clause of section 4(a) of the California Invasion of Privacy Act ("CIPA"). Cal. Penal Code § 631(a). Of the section's four clauses, the first prohibits making "unauthorized connection[s]" with "any telegraph or telephone wire, line, cable, or instrument," the second prohibits eavesdropping on communications, the third prohibits using information learned from eavesdropping, and the fourth imposes liability on aiders, abettors, and conspirators. *Id.* Plaintiffs' CIPA claim fails under each clause.

Under the first clause, Plaintiffs do not plead that PowerSchool ever made connection with a "telegraph or telephone wire, line, cable, or instrument." Cal. Penal Code § 631(a) (emphasis added). Courts have "consistently interpreted this clause as applying only to communications over telephones and not through the internet." *Licea v. Am. Eagle Outfitters, Inc.*, 659 F. Supp. 3d 1072, 1079 (C.D. Cal. 2023) (dismissing internet-based CIPA claim under first clause and summarizing similar cases). Without the predicate communication through the required channel, the claim fails at the gate.

Plaintiffs also cannot state a claim under the second clause. As an initial matter, it is unclear what Plaintiffs' theory about eavesdropping really is. It is legally implausible for them to allege that PowerSchool attempted to learn the contents of their communications *with PowerSchool's own websites and products*,⁹ because "[a] party to a communication can record it (and is not eavesdropping when it does)." *Graham v. Noom, Inc.*, 533 F. Supp. 3d 823, 831 (N.D. Cal. 2021). But to the extent Plaintiffs allege that PowerSchool eavesdrops on their communications with unspecified third parties, Plaintiffs' barebone assertions that they communicated with "one or more entities based in California, or with one or more entities whose servers were located in California," Compl. ¶ 477, give PowerSchool no idea of "where to begin" in responding to the Complaint. *Twombly*, 550 U.S. at 565, n.10. For these reasons, regardless of which interpretation Plaintiffs may try to assert in their opposition, their CIPA claim under the second clause of § 631(a) must be dismissed.

Given Plaintiffs cannot state a claim under the first two clauses, their remaining CIPA claim

⁹ Paragraph 473 of the Complaint is especially difficult to parse. It alleges that "PowerSchool intentionally tapped and tracked Plaintiffs' and Class members' communications during and after navigating away from PowerSchool's websites." Reading this sentence in the most charitable manner possible, PowerSchool interprets the freestanding "during" as implying communications that take place during Plaintiffs' visits to PowerSchool websites.

necessarily fails. *See In re Google Assistant Priv. Litig.*, 457 F. Supp. 3d at 827 (for third clause, “the information at issue” must be “obtained through a violation of the first or second clauses”); *Mastel v. Miniclip SA*, 549 F. Supp. 3d 1129, 1137 (E.D. Cal. 2021) (no underlying violation, no claim under the fourth clause).

IV. Plaintiffs Fail to State Any Unfair Competition Claim (Count IV).

Plaintiffs bring a claim under all three prongs of California’s Unfair Competition Law (“UCL”). Yet for all three prongs, the UCL requires them to “ha[ve] lost money or property” due to the alleged unfair competition. Cal. Bus. & Prof. Code § 17204. Plaintiffs have alleged no such loss.

Plaintiffs’ allegations about “harm” are filled with general commentaries about the importance of data protection that bear no connection to Plaintiffs themselves. Compl. ¶¶ 301, 304–09, 311–13, 323–27, 330–34, 345–50, 355–56. Once “these fillers are stripped away,” *Heeger*, 509 F. Supp. 3d at 1188, all Plaintiffs have left is their belief that their data has value in PowerSchool’s hands, Compl. ¶¶ 353–59, and their disapproval of PowerSchool’s generating revenue from providing valuable pedagogical and administrative services and tools to schools, *id.* ¶ 367. But “[t]hat the information has external value, but no economic value to [a] plaintiff, cannot serve to establish that [the] plaintiff has personally lost money or property.” *Bass v. Facebook, Inc.*, 394 F. Supp. 3d 1024, 1040 (N.D. Cal. 2019).¹⁰ Plaintiffs fail exactly that requirement.

In an attempt to save their claim, Plaintiffs resort to conjecture: “PowerSchool caused Plaintiffs to participate in a transaction for less than they otherwise would have had they been given a choice, including the choice not to participate at all.” Compl. ¶ 364. This is not cognizable harm under the UCL. Plaintiffs do not allege that they “intended or attempted to participate in [any] data market” or that they “lost the ability to participate in [any] data market.” *Tanner v. Acushnet Co.*, 2023 WL 8152104, at *8 (C.D. Cal. Nov. 20, 2023). Without alleging that they “personally lost money or property,” *Bass*, 394 F. Supp. at 1040, Plaintiffs cannot proceed.

Plaintiffs’ UCL claim fails on each of the three prongs for additional reasons as well. For the

¹⁰ *McClung v. AddShopper, Inc.*, 2024 WL 189006, at *2 (N.D. Cal. Jan. 17, 2024) (disapproving of the “theory that California’s statutory standing requirement[s]” like monetary loss or actual damages “can be satisfied simply by alleging that the defendant was unjustly enriched by the misappropriation of personal information”) (collecting cases).

unlawful prong, Plaintiffs’ allegations are derivative of their other claims in the Complaint.¹¹ Because those other claims fail, Plaintiffs’ claims under the UCL unlawful prong fail by association. *See, e.g., In re Google, Inc. Privacy Pol’y Litig.*, 58 F. Supp. 3d 968, 984 (N.D. Cal. 2014). For the fraudulent prong, although Plaintiffs recite that they “reasonabl[y] reli[ed] on PowerSchool’s misrepresentations and omissions,” Compl. ¶ 492, they fail to plead with particularity “the circumstances in which they were exposed to” PowerSchool’s alleged misrepresentations, *Herrington v. Johnson & Johnson Consumer Cos.*, 2010 WL 3448531, at *7 (N.D. Cal. Sept. 1, 2010). And given that Plaintiffs do not state a claim under either the unlawful or the fraudulent prong, their claim under the unfair prong also fails. *See Hammerling v. Google LLC*, 615 F. Supp. 3d 1069, 1094 (N.D. Cal. 2022). Thus, Plaintiffs’ UCL claim must be dismissed.

V. Plaintiffs’ CDAFA Claim (Count V) Fails as a Matter of Law.

Plaintiffs also cannot state a claim under the Comprehensive Computer Data Access and Fraud Act (“CDAFA”). *See* Cal. Penal Code § 502. The CDAFA is California’s “state law counterpart to” the Computer Fraud and Abuse Act, a federal statute that was “enacted primarily to address the growing problem of computer hacking” and not intended as “a sweeping Internet-policing mandate.” *Brodsky v. Apple Inc.*, 445 F. Supp. 3d 110, 129 (N.D. Cal. 2020) (internal quotations omitted). Plaintiffs’ CDAFA claim fails for two reasons.

First, under the CDAFA, a plaintiff must “suffer[] damage or loss by reason of a violation” of the statute. Cal. Penal Code § 502(e)(1). As with their other statutory claims, Plaintiffs do not allege any cognizable loss. *See supra* at 10; *infra* at 13. For this alone, Plaintiffs’ CDAFA claim should be dismissed. *See, e.g., Doe v. Meta Platforms, Inc.*, 690 F. Supp. 3d 1064, 1081–82 (N.D. Cal. 2023).

Second, Plaintiffs cannot show PowerSchool tampered with computer systems “without permission,” as they are required to under all four provisions of the CDAFA. Cal. Penal Code § 502(c)(1), (6), (7), (8); *see also id.* subsec. (12). Given CDAFA’s dual civil-and-criminal nature,

¹¹ Plaintiffs reference the Student Online Personal Information Protection Act, but do not allege how PowerSchool purportedly violated that Act. PowerSchool has no idea of “where to begin” in responding to the Complaint.” *Twombly*, 550 U.S. at 565, n.10; *accord Davis v. Wells Fargo Bank, N.A.*, 2010 WL 2724090, at *1 (N.D. Cal. July 8, 2010) (“A plaintiff alleging unfair business practices under the UCL must state with reasonable particularity the facts supporting the statutory elements of the violation.” (internal quotations omitted)).

1 courts interpret the term “without permission” strictly to “provide adequate notice of the conduct
 2 which it criminally prohibits.” *In re Facebook Priv. Litig.*, 791 F. Supp. 2d 705, 715–16 (N.D. Cal.
 3 2011), *aff’d*, 572 F. App’x 494 (9th Cir. 2014). Under that interpretation, defendants “may only be
 4 subjected to liability for acting without permission under Section 502 if they access[] or us[e] a
 5 computer, computer network, or website in a manner that overcomes technical or code-based barriers.”
 6 *Id.* at 715 (internal quotations omitted). The 87-page Complaint contains but **one sentence** reciting
 7 this requirement. Compl. ¶ 527. This one sentence is nothing more than “a legal conclusion, devoid
 8 of factual content, and insufficient to carry Plaintiffs’ burden at the pleading stage.” *Elsayed v.*
 9 *McAlee*, 2018 WL 3659249, at *3 (N.D. Cal. Aug. 2, 2018) (internal quotations omitted).

10 **VI. Plaintiffs Cannot State a Claim for Statutory Larceny (Count VII).**

11 Plaintiffs’ statutory larceny claim (Count VII) fails for three reasons. **First**, as with Plaintiffs’
 12 other statutory claims, the claim must be dismissed on account of Plaintiffs’ failure to state “actual
 13 damages.” Cal. Penal Code § 496(c); *accord Tanner v. Acushnet Co.*, 2023 WL 8152104, at *10 (C.D.
 14 Cal. Nov. 20, 2023) (statutory larceny claim must include actual damages). *See supra* at 10.

15 **Second**, Plaintiffs fail to plead that any property was taken by PowerSchool with respect to
 16 either category of data PowerSchool receives. For data PowerSchool receives directly from schools,
 17 parents, or students, Plaintiffs cannot plausibly allege that they have property interest in it. “Under
 18 California law, property must be capable of exclusive possession or control.” *Lau v. Gen Digital Inc.*,
 19 2024 WL 1880161, at *4 (N.D. Cal. Apr. 3, 2024) (internal quotations omitted). Plaintiffs cannot have
 20 exclusive possession or control over such data because it is the “property of and under the control of”
 21 their schools. *See* Cal. Educ. Code § 49073.1(b)(1). And even assuming they can, no larceny has
 22 occurred because PowerSchool “has the authority to” receive such data as a contractor of the schools
 23 (the owners of the data), and in fact, does so at the school’s own request. *See* Compl. ¶ 164 (admitting
 24 that PowerSchool collect such data “on behalf of” its school customers); *Doe v. Kaiser Found. Health*
 25 *Plan, Inc.*, 2024 WL 1589982, at *26 (N.D. Cal. Apr. 11, 2024); *supra* at 2–3. Further, to the extent
 26 Plaintiffs allege PowerSchool develops tools for schools to collect information from them,
 27 PowerSchool has not committed larceny, because rather than “*actively* stealing users’ data,” as the
 28 statute requires, PowerSchool “merely create[ed] conditions that allow[]” Plaintiffs’ schools to collect

1 their data. *In re Meta Pixel Tax Filing Cases*, 2024 WL 1251350, at *23 (N.D. Cal. Mar. 25, 2024).
 2 For technical data, again, such device and user information generated by PowerSchool’s own websites
 3 and products is by its nature not subject to Plaintiffs’ exclusive control or possession and therefore
 4 cannot give rise to a larceny claim. *See Lau*, 2024 WL 1880161, at *4 (“By its nature, browsing data
 5 is shared with a variety of service providers that facilitate access to the website at issue.”).

6 **Third**, to the extent Plaintiffs allege PowerSchool steals their data by false pretense, Compl.
 7 ¶¶ 548–52, their claim fails for the same reason as their fraud claims. *See In re Meta Pixel Tax Filing*
 8 *Cases*, 2024 WL 1251350, at *23 (“Absent a misrepresentation and reliance, the theft by false pretense
 9 theory fails.”).

10 **VII. Plaintiffs’ Unjust Enrichment Claim (Counts VIII) Fails as a Matter of Law.**

11 Finally, Plaintiffs’ unjust enrichment claim cannot survive because “unjust enrichment is a
 12 remedy and not an independent claim.” *McLellan v. Fitbit, Inc.*, 2018 WL 2688781, at *4 (N.D. Cal.
 13 June 5, 2018) (Donato, J.) (dismissing unjust enrichment claim with prejudice). In addition, Plaintiffs’
 14 unjust enrichment claim must also be dismissed because their failure to state a claim under all other
 15 counts means that they “have not plausibly pleaded an actionable wrong.” *Hammerling*, 615 F. Supp.
 16 3d at 1096.

17 **VIII. The Court Should Dismiss All of Plaintiffs S.G.’s and Cherkin’s Claims Because They** 18 **Cannot Sue Under California Law.**

19 Finally, the Court should dismiss all claims brought by Plaintiffs S.G. and Cherkin, residents
 20 of Washington, because they cannot sue under California law.¹² To begin, S.G. and Cherkin cannot
 21 invoke California law because they have not overcome the presumption against extraterritoriality. *See*
 22 *Sullivan v. Oracle Corp.*, 254 P.3d 237, 248 & n.9 (Cal. 2011) (the presumption gives effect to the
 23 “limitations on the extraterritorial application of state law” imposed by the “due process clause of the
 24 United States Constitution”). In keeping with the presumption, California generally does not extend
 25 its laws beyond state lines. *See, e.g., Kaiser Found. Health Plan*, 2024 WL 1589982, at *13 (“[O]nly
 26 a California Plaintiff can bring a CIPA claim.”); *Diva Limousine, Ltd. v. Uber Techs., Inc.*, 392 F.

27 ¹² *See Frenzel v. AliphCom*, 76 F. Supp. 3d 999, 1007–08 (N.D. Cal. 2014) (holding that it is
 28 appropriate to address choice of law on motion to dismiss where “further development of the
 factual record is not reasonably likely to materially impact” the determination).

Supp. 3d 1074, 1094 (N.D. Cal. 2019) (“It is well-established that the UCL does not apply extraterritorially.”). Unless Plaintiffs can show a “clearly expresse[d]” legislative intent to apply the statutes they cite extraterritorially, *Sullivan*, 254 P.3d at 248, or point to “authority from the California courts or the California legislature” directing California common law to have “extraterritorial effect,” *Cave Consulting Grp., Inc. v. Truven Health Analytics Inc.*, 2017 WL 1436044, at *7 (N.D. Cal. Apr. 24, 2017), S.G. and Cherkin cannot sue under California law. Plaintiffs have not done so.

Even assuming the Washington Plaintiffs could overcome the presumption against extraterritoriality, their claims should nevertheless be governed by their home state’s laws because “California law may only be used on a classwide basis if the interests of other states are not found to outweigh California’s interest in having its law applied.” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 590 (9th Cir. 2012) (internal quotations omitted), *overruled on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022). To determine whether the interests of other states outweigh California’s interest, California courts use a three-step governmental interest test:

First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different.

Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists.

Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law to determine which state’s interest would be more impaired if its policy were subordinated to the policy of the other state, and then ultimately applies the law of the state whose interest would be more impaired if its law were not applied.

Mazza, 666 F.3d at 590. All three steps weigh against applying California law to S.G. and Cherkin.

First, the relevant Washington privacy laws are materially different than the California laws Plaintiffs invoke. For instance, unlike their California counterparts, Washington courts have “consistent[ly] refus[ed]” to “recognize a cause of action in tort for constitutional violations.” *Blinka v. Wash. State Bar Ass’n*, 36 P.3d 1094, 1102 (Wash. App. 2001). Likewise, Washington’s equivalent of the CDAFA provides for no civil remedy. *See* Wash. Rev. Code Ann. § 9A.90.010 *et seq.* Further,

Washington’s version of CIPA affords much narrower protection than California’s. Of the two operative clauses of the Washington Privacy Act’s eavesdropping provision, one protects communications “between two or more individuals,” and the other protects only “oral” conversation. *See* Wash. Rev. Code Ann. § 9.73.030(1)(a); *Cousineau v. Microsoft Corp.*, 992 F. Supp. 2d 1116, 1129 (W.D. Wash. 2012). Neither is at issue here. And Washington’s unfair competition law, unlike California’s, requires private plaintiffs to establish that the “public interest was impacted.” *Wade Cook Seminars, Inc. v. Mellon*, 95 Wash. App. 1008 (1999).

Second, a true conflict exists between Washington’s and California’s interest in applying their laws. The states offer different protections for consumers and thus, different legal obligations and responsibilities for businesses operating within their borders. As in *Mazza*, it would be inappropriate to “discount[] or not recogniz[e]” Washington’s valid “interest in setting the appropriate level of liability for companies conducting business within its territory.” 666 F.3d at 592.

Finally, Washington would be most impaired by the application of California law. In particular, California recognizes that “with respect to regulating or affecting conduct within its borders, the place of the wrong has the predominant interest.” *Mazza*, 666 F.3d at 593. As to S.G. and Cherkin, the place of the wrong is *Washington* (where these Plaintiffs interact with PowerSchool). *See, e.g., Zinn v. Ex-Cell-O Corp.*, 306 P.2d 1017, 1032 n.6 (Cal. App. 1957) (concluding in a fraud case the place of the wrong is the state where the misrepresentations were communicated to the plaintiffs, not where the intention to misrepresent was formed). California, on the other hand, has but an “attenuated” interest in applying its law to protect residents of foreign states. *Mazza*, 666 F.3d at 593–594.

In sum, all three steps of California’s governmental interest test support applying Washington, instead of California, law to S.G. and Cherkin’s claims. Thus, their California law claims should be dismissed. *See Frezza v. Google Inc.*, 2013 WL 1736788, at *7 (N.D. Cal. Apr. 22, 2013) (dismissing North Carolina plaintiffs’ California law claims after concluding that North Carolina law applies).

CONCLUSION

For the foregoing reasons, the Court should dismiss the Complaint with prejudice.

1 DATED: July 22, 2024

Respectfully submitted,

2 KIRKLAND & ELLIS LLP

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Olivia Adendorff, P.C.

5 *Attorney for Defendant PowerSchool*
6 *Holdings, Inc.*

ATTESTATION

I, Rachael Rezabek, am the ECF user whose ID and password are being used to file this Notice of Motion and Motion by Defendant to Dismiss the Class Action Complaint. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in this filing has been obtained from all signatories.

DATED: July 22, 2024



Rachael A. Rezabek

Robyn E. Bladow
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
Telephone: (213) 680-8400
robyn.bladow@kirkland.com

Martin L. Roth, P.C. (*pro hac vice*)
Alyssa C. Kalisky (*pro hac vice*)
Amelia H. Bailey (*pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
martin.roth@kirkland.com
alyssa.kalisky@kirkland.com
amelia.bailey@kirkland.com

Olivia Adendorff, P.C. (*pro hac vice*)
Rachael A. Rezabek
KIRKLAND & ELLIS LLP
4550 Travis Street
Dallas, TX 75205
Telephone: (214) 972-1770
olivia.adendorff@kirkland.com
rachael.rezabek@kirkland.com

Attorneys for the Defendant
PowerSchool Holdings, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EMILY CHERKIN, et al.,

Plaintiffs,

v.

POWERSCHOOL HOLDINGS, INC.,

Defendant.

CASE NO. 3:24-CV-02706-JD

**DECLARATION OF RACHAEL A.
REZABEK IN SUPPORT OF THE
MOTION TO DISMISS THE CLASS
ACTION COMPLAINT**

Judge: The Hon. James Donato
Courtroom: Courtroom 11, 19th Floor
Date: November 7, 2024
Time: 10:00 a.m.

1 I, Rachael A. Rezabek, declare as follows:

2 1. I am an attorney at the law firm of Kirkland & Ellis LLP, a member in good standing
3 of the bars of the States of California and Texas, and duly admitted to practice before this Court. I
4 am counsel for Defendant PowerSchool Holdings, Inc. ("PowerSchool") in this matter, and am one
5 of the firm's attorneys chiefly responsible for this representation.

6 2. I submit this declaration in support of PowerSchool's Motion to Dismiss the Class
7 Action Complaint filed by Plaintiffs Emily Cherkin, on behalf of herself and as parent and guardian
8 of her minor child, S.G., and David Concepción, on behalf of himself and as parent and guardian of
9 his minor children, L.M.C. and M.M.C., in the above-captioned action.

10 3. I have personal knowledge of the matters in this declaration, and I am competent to
11 testify as to the matters set forth below.

12 4. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of PowerSchool's
13 Global Privacy Statement, which Plaintiffs reference extensively in the Complaint. I last visited
14 Exhibit 1, which is located at <https://www.powerschool.com/privacy/>, on July 21, 2024.

15 I declare under the penalty of perjury that the foregoing is true and correct. Executed on this
16 22nd day of July, 2024, in Frisco, Texas.

17
18 /s/ Rachael A. Rezabek

19 Rachael A. Rezabek
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CERTIFICATE OF SERVICE

On July 22, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) and L.R. 5-1 have been so served.

/s/ Rachael A. Rezabek

Rachael A. Rezabek












Exhibit 1

Global Privacy Statement

Last Updated: July 1, 2024

I. Introduction

This Global Privacy Statement ("Statement") provides information to you on how PowerSchool Holdings, Inc., and its various operating subsidiaries ("PowerSchool") respects the privacy of the student educational records and personal information (referred to collectively as "Customer Data") provided to us by our K-12 or higher education institutional customers (educational institutions) to process on their behalf when they, their staff, parents/guardians, and students access and use our products, including mobile services. This Statement also provides information how PowerSchool may collect personal information ("Collected Data") when you visit and consent to use our publicly accessible products or websites, including <https://www.powerschool.com/>, (our "Websites"), (collectively, the "PowerSchool Products"). How we process the information provided or collected may differ based on our relationship with you and our contractual obligations to our customers and users. Below, we've detailed the different relationships we may have with you. References to "us," "we," "our," or "PowerSchool" in this Privacy Statement, are referring to PowerSchool.

 <h3>A. Data Categories</h3> <p>PowerSchool categorizes data into 3 categories: Customer Data, Collected Data and Transaction Data... more +</p> <div></div>	 <h3>B. Customer Data</h3> <p>PowerSchool customers are mainly K through 12 schools and districts, and higher education institutions. The makeup of Customer Data processed... more +</p> <div></div>
 <h3>C. Collected Data</h3> <p>Although most PowerSchool on-line services and products are used by customers for Customer Data collection, PowerSchool websites and some... more +</p> <div></div>	 <h3>D. Transaction Data</h3> <p>Transaction Data is not Customer Data, nor is it Collected Data. It is a different PowerSchool category of data. Transaction Data may contain copied... more +</p> <div></div>
 <h3>E. Commitment to Protecting Your Data</h3> <p>Whether PowerSchool is a collector or processor of your data, PowerSchool is committed to protecting your personal information. PowerSchool uses... more +</p> <div></div>	 <h3>F. Children's Privacy</h3> <p>Under the Family Educational Rights and Privacy Act (FERPA), PowerSchool acts as a "school official" with "legitimate educational interests" and... more +</p> <div></div>
 <h3>G. Data Subject Rights</h3> <p>In response to proper requests from Data Subjects (a natural person about whom a data controller holds personal information and who can be... more +</p> <div></div>	 <h3>H. Data Retention</h3> <p>We keep information collected on behalf of our Customers for as long as necessary to fulfill the purpose for which it was collected, pursuant to... more +</p> <div></div>
 <h3>I. Data Subprocessors</h3> <p>To comply with PowerSchool's obligations under applicable data protection laws and to our customers, we provide a list of significant... more +</p> <div></div>	 <h3>J. Legitimate Interest</h3> <p>PowerSchool's legitimate interest to process personal data, whether Collected Data or Customer Data is addressed in our Legitimate Interest Statement.</p>
 <h3>K. Bases of Processing</h3> <p>PowerSchool's base for processing student education records and personal data of data subjects is the contract we enter into with our customers. We may also base our processing on the consent from data subjects, or legal obligation.</p>	



A. Data Categories

PowerSchool categorizes data into 3 categories: Customer Data, Collected Data and Transaction Data... [less -](#)



B. Customer Data

PowerSchool customers are mainly K through 12 schools and districts, and higher education institutions. The makeup of Customer Data processed... [more +](#)



C. Collected Data

Although most PowerSchool on-line services and products are used by customers for Customer Data collection, PowerSchool websites and some... [more +](#)



PowerSchool categorizes the data into 3 categories: Customer Data, Collected Data and Transaction Data. ✕

Customer data which is the data received by PowerSchool from its customers and customer users and is processed by PowerSchool on behalf of the customer in our capacity as “data processor”. Collected data which means the personal information collected by PowerSchool directly from the users of our Publicly Accessible Products. Transaction data, also known as metadata, this data generated by PowerSchool software using PowerSchool Products and services and is proprietary to PowerSchool.



A. Data Categories

PowerSchool categorizes data into 3 categories: Customer Data, Collected Data and Transaction Data... [more +](#)



B. Customer Data

PowerSchool customers are mainly K through 12 schools and districts, and higher education institutions. The makeup of Customer Data processed... [less -](#)



C. Collected Data

Although most PowerSchool on-line services and products are used by customers for Customer Data collection, PowerSchool websites and some... [more +](#)



PowerSchool customers are mainly K through 12 schools and districts, and higher education institutions. The makeup of Customer Data processed by PowerSchool can vary by PowerSchool service and a customer's product configuration. PowerSchool provides a full spectrum of education-related services for customers to choose from. These include K-12 education technology products, higher education products, and administration products. Customers may have one or more of these PowerSchool products and services. Depending on the product or service, Customers may provide student data, employee data, or applicant data for PowerSchool processing. The mix of data provided by each customer may also vary based on how the customer configures the PowerSchool product or service for Customer Data collection (potential variations are discussed in more detail below). For this reason, it is impossible for PowerSchool to fully document the data that it will process for each customer until after the customer has fully implemented and configured the PowerSchool product and service. The configuration may also be dynamic in that the school or district may change its data collection configuration over time. If you have questions about which data is being collected by a customer connected to you, you should direct those questions directly to the PowerSchool customer that controls your data. The customer's privacy policy may be another good source of information. ✕

Many school districts are also obligated to parents to post information about the data that these institutions may collect. It bears mentioning again that PowerSchool processes the Customer Data under strict contractual obligations and privacy agreements signed with the customer. PowerSchool does not use or disclose Customer Data except as authorized and required by our customers and as provided for in our agreements with our customers. Because PowerSchool does not own or control Customer Data, any request for access, review, correction, or deletion of Customer Data must come directly from our customers. With our customer's consent, PowerSchool may receive information from affiliates in our PowerSchool Group of companies, or third parties and combine that information with Customer Data.



A. Data Categories

PowerSchool categorizes data into 3 categories: Customer Data, Collected Data and Transaction Data... [more +](#)



B. Customer Data

PowerSchool customers are mainly K through 12 schools and districts, and higher education institutions. The makeup of Customer Data processed... [more +](#)



C. Collected Data

Although most PowerSchool on-line services and products are used by customers for Customer Data collection, PowerSchool websites and some... [less -](#)



Although most PowerSchool on-line services and products are used by customers for Customer Data collection, PowerSchool websites and some PowerSchool products and services collect data directly from users of our website or those products and services. In these situations, PowerSchool is a “data controller” because PowerSchool determines the purposes for which and the way personal information is processed. Because PowerSchool is the collector and controls the configuration of these products and services, PowerSchool can provide more detail on the data collection. These websites, products and services are further detailed below. ✕

We also collect device and usage information when you access and use PowerSchool Products, including information that your browser or the mobile app sends when you are using our products. This data may include your unique device identifier, IP address, your browser type and configuration, the date and time of your use of the product or service and cookie data. Learn more about our use of cookies in our [Cookie Statement](#).



D. Transaction Data

Transaction Data is not Customer Data, nor is it Collected Data. It is a different PowerSchool category of data. Transaction Data may contain copied... [less -](#)



E. Commitment to Protecting Your Data

Whether PowerSchool is a collector or processor of your data, PowerSchool is committed to protecting your personal information. PowerSchool uses... [more +](#)



F. Children's Privacy

Under the Family Educational Rights and Privacy Act (FERPA), PowerSchool acts as a "school official" with "legitimate educational interests" and... [more +](#)



Transaction Data is not Customer Data, nor is it Collected Data. It is a different PowerSchool category of data. Transaction Data may contain copied elements from Customer Data or Collected Data. For example, the logging of a user session may contain a unique id that identifies the user. The unique id is necessary for monitoring the health and security of PowerSchool applications.



The monitoring of PowerSchool systems and applications is a part of our standard business operations to protect Customer Data and Collected Data; comply with laws; be able to provide customer support, and monitor events related to Customer Data or Collected Data. The monitoring of events is essential in preventing data-related incidents and determining if a data-related incident has occurred or is occurring that requires immediate attention by PowerSchool's Incident Response Team. System and application events are monitored by the creation of artifacts or metadata about our systems, applications and their use. We call this "Transaction Data". Transaction Data is vital to our ability to improve our products; trouble shoot customer support questions; analyze the health and performance of our products; and maintain security of Customer Data and Collected data, and privacy investigations. Transaction Data may either contain personal information along with application data that does not directly or indirectly relate to a person; or application data without any personal information at all.

The storage and maintenance of Transaction Data is separate from the storage and maintenance of Customer Data and Collected Data with clear boundaries between the three types of data. In fact, Transaction Data is temporary. This means Transaction Data is permanently deleted on a regular rolling basis over time. This occurs regardless of whether Transaction Data contains any personal information or not. This is an implementation of the data minimization principle. Transaction Data which contains no personal information or Transaction Data containing even one element of personal information are all treated the same. Except for Service Providers acting as data subprocessors supporting our applications who are granted secure access to Transaction Data, PowerSchool does not share, disclose, sell or transfer such Transaction Data. Additionally, PowerSchool treats all Transaction Data as PowerSchool Restricted Information – meaning confidential and secured – and at the same level as Customer Data and Collected Data.

PowerSchool does work with various data subprocessors to support the operability of our products. For these vendors to service us as captured in our agreements with them, they do create metadata within their systems. In these cases, PowerSchool binds these vendors to privacy requirements to ensure any metadata is properly deleted as required by law.

PowerSchool respects our customers' privacy and data security requirements. Transaction Data is one way we fulfill that promise to our customers – educational institutions and individuals. Transaction Data provides us with the ability to service our customers properly.

V. PowerSchool Websites, Webinars, Demos

For users of our publicly accessible Websites, we offer details on how PowerSchool collects and uses information from or about you. In this relationship, PowerSchool acts as a data collector (controller). This is because we collect aggregated information about your browser until and if you consent to provide us personal information about you when you wish to engage with PowerSchool directly to receive information about our webinars, white papers and product information.

Information You Provide: You may voluntarily provide us with information when you complete a form or survey on our Websites or subscribe to our blogs or newsletters. This may include some or all the following categories of information: name and role; job title; signature; profession; social media account name; username; telephone number; and email address. You may also provide information when you register for an account through a Website to log in to a PowerSchool Product, or submit a resume or other information through the [Careers link](#). From the moment you first interact with one of our Websites, we may collect personal information. Sometimes we collect personal information automatically when you interact with our Websites and sometimes we collect the personal information directly from you. At times, we may collect personal information about you from other sources and third parties, even before our first direct interaction.

Note that if you use a PowerSchool application website to access a service or product, you may need to log in to make use of the functionality of the product.

Our Websites may offer publicly accessible community forums. You should be aware that any information you provide in these areas is public and may be read, collected, and used by others who access them and may remain on the public forum indefinitely. To request removal of your personal information from our community forums, please contact us via our [Data Subject Access Form](#). In some cases, we may not be able to remove your personal information, in which case we will let you know if we are unable to do so and why. We encourage all users to exercise caution when providing personal information in community forums. If you provide information when you communicate through our PowerSchool community forums, we may link this information with your personal information.

Information We Collect Automatically. We collect information about the pages your device's browser visits and how your browser accesses and uses the Websites using cookies, tracking technologies and other third-party analytics tools. Specifically, we and our service providers use cookies and similar technologies such as local storage (HTML5), web beacons, JavaScript, and eTags on our Websites. This includes information about the devices you use to access the Websites including, but not limited to, unique device identifiers, IP address, operating system, browser, and cookies. Depending on your device settings, we may also collect information about your approximate geographical location. You can learn about our use of cookies, and set your preferences, in our [Cookie Statement](#).

Information We Receive From Third Parties. PowerSchool works with third-party ad publishers to re-publish PowerSchool content on paid media platforms. We may receive personal information about users from these publishers, which we may use to provide user-requested information or to contact users regarding PowerSchool Products. We may also supplement the information we collect from you with information from PowerSchool Group affiliates and other third parties that we use to promote PowerSchool Products. For example, we may receive information from a third party about how well an online marketing or email campaign performed, or from conference and trade show organizers.

How We Use Your Information

In addition to the uses described above, we may collect and use your personal information for the following purposes:

- 1 **Product Improvements, Analytics and Requested Communications.** We may use your information collected to provide and improve our Websites and PowerSchool Products by using third-party analytics tools to help us understand how our Websites are used, analyze usage information for sales and marketing purposes, and to communicate with you in any manner that you have requested. We also use the information collected to communicate with you in any manner that you have requested.
- 2 **Marketing.** We conduct marketing to promote PowerSchool Products, but do not use or disclose student information (whether personal information or otherwise) provided by customers into our platforms for targeting of advertisements to students. When we conduct (or sponsor) events, conferences, and webinars, we will collect information about attendees, such as the session they attend and their contact information to provide them information about PowerSchool Products and other PowerSchool information. **Marketing Preferences and Opt-Out** Our marketing emails include an "unsubscribe" link so that you can change your preferences and opt-out of receiving marketing emails or communications from PowerSchool. You can also send us email at marketingops@powerschool.com to unsubscribe. Please note that even if you opt-out of marketing emails, we may still need to contact you with important information about your PowerSchool account.
- 3 **Interest-based Advertising.** We use third party advertising tools to collect information about your device browser's visits to the Websites to provide targeted advertisements to you based on your browsing history on other websites or on other devices you may use. If you would prefer to not receive personalized ads based on your browser or device usage, you may generally express your opt-out preference to no longer receive tailored advertisements. Please note that you will continue to receive advertisements, but they will no longer be tailored to your interests.

To learn more or opt-out of interest-based advertising by participating companies in the following consumer choice mechanisms, please visit:

3 Interest-based Advertising.

We use third party advertising tools to collect information about your device browser's visits to the Websites to provide targeted advertisements to you based on your browsing history on other websites or on other devices you may use. If you would prefer to not receive personalized ads based on your browser or device usage, you may generally express your opt-out preference to no longer receive tailored advertisements. Please note that you will continue to receive advertisements, but they will no longer be tailored to your interests.

To learn more or opt-out of interest-based advertising by participating companies in the following consumer choice mechanisms, please visit:

- Digital Advertising Alliance (DAA)'s self-regulatory opt-out page (<https://optout.aboutads.info/>) and mobile application-based "AppChoices" download page (<https://youradchoices.com/appchoices>).
- European Interactive Digital Advertising Alliance (EDAA)'s consumer opt-out page (<https://yourofflinechoices.eu>), if you're located in the EU
- Network Advertising Initiative (NAI)'s self-regulatory opt-out page (<https://optout.networkadvertising.org/>).

Please note that we do not use student data for targeted advertising purposes, for example, by inhibiting these third-party advertising networks from collecting information for targeted advertising purposes when a student logs into the service through their student account. We do not provide any student data to any third parties for marketing purposes not related to legitimate educational interests.

Show less -

Robyn E. Bladow
KIRKLAND & ELLIS LLP
555 South Flower Street, Suite 3700
Los Angeles, CA 90071
Telephone: (213) 680-8400
robyn.bladow@kirkland.com

Martin L. Roth, P.C. (*pro hac vice*)
Alyssa C. Kalisky (*pro hac vice*)
Amelia H. Bailey (*pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
martin.roth@kirkland.com
alyssa.kalisky@kirkland.com
amelia.bailey@kirkland.com

Olivia Adendorff, P.C. (*pro hac vice*)
Rachael A. Rezabek
KIRKLAND & ELLIS LLP
4550 Travis Street
Dallas, TX 75205
Telephone: (214) 972-1770
olivia.adendorff@kirkland.com
rachael.rezabek@kirkland.com

*Attorneys for the Defendant PowerSchool
Holdings, Inc.*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EMILY CHERKIN, et al.,

Plaintiffs,

v.

POWERSCHOOL HOLDINGS, INC.,

Defendant.

CASE NO. 3:24-CV-02706-JD

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS**

Judge: The Hon. James Donato
Courtroom: Courtroom 11, 19th Floor
Date: November 7, 2024
Time: 10:00 a.m.

1 Before the Court is Defendant PowerSchool Holdings, Inc.'s Motion to Dismiss (the
2 "Motion") the Class Action Complaint (the "Complaint") filed by Plaintiffs Emily Cherkin, on
3 behalf of herself and as parent and guardian of her minor child, S.G., and David Concepción, on
4 behalf of himself and as parent and guardian of his minor children, L.M.C. and M.M.C., in the
5 above-captioned action. Having considered the briefs and the arguments of the parties, and with
6 good cause appearing therefor, the Court hereby GRANTS the Motion and DISMISSES the
7 Complaint (ECF. No. 1) with prejudice.

8 IT IS SO ORDERED.

9
10 Dated: _____, 2024

The Honorable James Donato