UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

JS-6

Case No. **CV 14-7743 DMG (SHx)** Date April 17, 2015

Title ***Los Angeles Lakers, Inc. v. Federal Insurance Company*** Page 1 of 12

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None Present	None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANT FEDERAL INSURANCE COMPANY'S MOTION TO DISMISS [9]

On September 2, 2014, Plaintiff Los Angeles Lakers, Inc. filed this action in the Los Angeles County Superior Court against Defendant Federal Insurance Company. Notice of Removal at ¶ 1. [Doc. # 1-1.] Plaintiff advances a cause of action for breach of contract and tortious breach of the implied covenant of good faith and fair dealing. Complaint ("Compl."). [Doc. # 3-1.] Specifically, Plaintiff alleges that Defendant had a duty to defend Plaintiff against a putative class action filed against Plaintiff for alleged violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq*. *Id*. The action was removed to this Court pursuant to 28 U.S.C. § 1441(b).

Defendant moved to dismiss the Complaint on October 13, 2014, contending that it had no duty to defend the underlying action due to an exclusion in the relevant insurance policy. Defendant Federal Insurance Company's Motion to Dismiss ("MTD"). [Doc. # 9.] On November 3, 2014, Plaintiff filed on opposition [Doc. # 16] and on November 14, 2014, Defendant filed a reply [Doc. # 20].

Having duly considered the parties' written submissions, the Court **GRANTS** Defendant's motion.

I.
STATEMENT OF FACTS

A. The Underlying Class Action Filed Against Plaintiff

On February 8, 2013, David Emmanuel filed a putative class action against Plaintiff in the Central District of California. Emmanuel Complaint [Doc. # 3-1, Ex. B]. Emmanuel sought damages and injunctive relief pursuant to the TCPA. *Id*. Emmanuel alleged that, while attending a Los Angeles Lakers basketball game on October 13, 2013, he acted on Plaintiff's solicitation to send a text message that would be posted on the arena's scoreboard during the

game. *Id*. ¶¶ 15-18. Emmanuel alleged that Plaintiff thereafter used Emmanuel's cellular telephone number to send an unsolicited text message "in order to attempt to solicit business from Emmanuel." *Id.* at ¶¶ 19-20. Emmanuel alleged that Plaintiff's "illegal actions . . . invad[ed] [Emmanuel's] privacy." *Id*. ¶ 1. Emmanuel's Complaint discussed the TCPA's purpose, which is "to prevent calls and messages like the ones within this complaint, and to protect the privacy of citizens like Plaintiff." *Id.* ¶ 2. The Complaint discussed how Congress, in enacting the TCPA, found that "automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call." *Id.* ¶ 4.

Emmanuel sought statutory damages and injunctive relief for negligent and willful violations of the TCPA. Emmanuel alleged that, "[t]his suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto." *Id.* ¶ 32. Emmanuel alleged that the class was harmed by "incur[ring] certain cellular telephone charges or reduc[ing] cellular telephone time for which [Emmanuel] and the Class members previously paid, and invading the privacy of [Emmanuel] and the Class members." *Id.* ¶ 31.

The Emmanuel action was ultimately dismissed with prejudice on April 18, 2013, following Plaintiff's motion to dismiss. Compl. ¶ 15. The court found that no violation of the TCPA had occurred because "by sending his original message, [Emmanuel] expressly consented to receiving a confirmatory text from the Lakers." *Id.* ¶ 15 (quoting *Emmanuel v. Los Angeles Lakers, Inc.*, 2013 WL 1719035, at *3 (C.D. Cal. Apr. 18, 2013)).

B. The D& O Insurance Policy

Plaintiff purchased ForeFront Portfolio Insurance Policy Number 8170-7206 from Defendant for the policy period of January 1, 2012 to January 1, 2013. Compl. ¶ 4, Ex. A (the "Policy"). The purpose of the Policy was to protect Plaintiff and its directors and officers in the event that claims were made against any of them, including claims for "wrongful acts." Compl. at ¶ 5; Policy at ¶ (R). The Policy defines "wrongful acts" as "any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committee or attempted by . . . any Insured Organization[.]" Compl. at ¶ 8; Policy at ¶ (N). The Policy states that Defendant "shall have the right and duty to defend any Claim covered by this Policy." Compl. at ¶ 9.

The Policy contains an exclusion for any claim "based upon, arising from, or in consequence of libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious

prosecution, malicious use or abuse of process, assault, battery, or loss of consortium." *Id.*, Policy at ¶ (C)(5).

C. Plaintiff's Tender of the Emmanuel Complaint to Defendant

Plaintiff tendered the Emmanuel action to Defendant on November 27, 2012. Compl at. ¶ 18. Defendant sent Plaintiff a letter on January 3, 2013 denying coverage for the Emmanuel action on the ground that the Policy's invasion of privacy exclusion barred coverage. *Id.* Thereafter, Plaintiff requested reconsideration of Defendant's coverage position, "pointing out that the Emmanuel plaintiffs alleged economic injury, and not damages for invasion of privacy." *Id.* ¶ 20. Plaintiff "also noted that the Policy contained no express exclusion for claims made under the TCPA." *Id.* Defendant continued to deny coverage of the Emmanuel action, despite numerous requests by Plaintiff for coverage through the entirety of the Emmanuel action. *Id.* at ¶¶ 20-22.

II.
LEGAL STANDARD

Federal Rule of Civil Procedure 8(a), provides that a "pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." The complaint must state facts sufficient to show that a claim for relief is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint need not include detailed factual allegations, but must provide more than a "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and quotations omitted).

A party may move to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Dismissal is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support one. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In considering a motion to dismiss, the allegations in the challenged complaint are deemed true and must be construed in the light most favorable to the non-moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir. 1996). A court, however, need not "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Sciences Sec. Litig.*,

536 F.3d 1049, 1055 (9th Cir. 2008) (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001)).

III.
DISCUSSION

A. Interpretation of Insurance Policy

In this diversity action, the forum state's law governs the interpretation of the insurance policy. *Bell Lavalin, Inc. v. Simcoe and Erie Gen. Ins. Co.*, 61 F.3d 742, 745 (9th Cir. 1995). Thus, California law governs. Under California law, the

> [i]nterpretation of an insurance policy is a question of law and follows the general rules of contract interpretation. The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the mutual intentions of the parties at the time the contract is formed. Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. Such intent is to be inferred, if possible, solely from the written provisions of the contract. The "clear and explicit" meaning of these provisions, interpreted in their "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage" controls judicial interpretation. A policy provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable. But language in a contract must be interpreted as a whole, and in the circumstances of the case, and cannot be found to be ambiguous in the abstract.

MacKinnon v. Truck Ins. Exch., 31 Cal. 4th 635, 647-48 (2003) (internal citations omitted).

Provisions about coverage are to be "interpreted broadly so as to afford the greatest possible protection to the insured, whereas exclusionary clauses are interpreted narrowly against the insurer." *Id.* (internal citations and quotations omitted). This is especially true "when the coverage portion of the insurance policy would lead an insured to reasonably expect coverage for the claim purportedly excluded." *Id.*

> An insurer cannot escape its basic duty to insure by means of an exclusionary clause that is unclear. As we have declared time and again any exception to the performance of the basic underlying obligation must be so stated as clearly to

> apprise the insured of its effect. Thus, the burden rests upon the insurer to phrase exceptions and exclusions in clear and unmistakable language. The exclusionary clause must be "conspicuous, plain and clear."

Id. at 648 (internal citations omitted). The exclusionary clause must be "stated precisely and understandably, in words that are part of the working vocabulary of the average layperson." *Haynes v. Farmers Exch.*, 32 Cal. 4th 1198, 1204 (2004).

B. Duty to Defend

Under California law, an insurer's duty to defend against litigation brought against the insured by a third party arises whenever the insurer ascertains facts that give rise to the potential for indemnity under its policy. *Scottsdale Ins. Co. v. MV Transp.*, 36 Cal. 4th 643, 654 (2005). Thus,

> if an insurer "erroneously denies coverage and/or improperly refuses to defend the insured" in violation of its contractual duties, "the insured is entitled to make a reasonable settlement of the claim in good faith and may then maintain an action against the insurer to recover the amount of the settlement. . . ."

Isaacson v. California Ins. Guarantee Assn., 44 Cal. 3d 775, 791 (1988*), as modified on denial of reh'g* (Apr. 6, 1988) (citing *Clark v. Bellefonte Ins. Co.*, 113 Cal. App. 3d 326, 335 (1980)).

The California rules of contract interpretation also include the

> familiar principle that a liability insurer owes a broad duty to defend its insured against claims that create a potential for indemnity. [*Gray v. Zurich Insurance Co.*, 65 Cal.2d 263 (1996)(*Gray*)]. As we said in *Gray,* "the carrier must defend a suit which *potentially* seeks damages within the coverage of the policy." *Id.* at 275 (emphasis in original). Implicit in this rule is the principle that the duty to defend is broader than the duty to indemnify; an insurer may owe a duty to defend its insured in an action in which no damages ultimately are awarded.

Horace Mann Ins. Co. v. Barbara B., 4 Cal. 4th 1076, 1081 (1993).

The determination whether the insurer owes a duty to defend usually is based on a consideration of the allegations of the complaint in light of the terms of the policy. *Id.* "When determining whether a particular policy provides a potential for coverage," the court is "guided

by the principle that interpretation of an insurance policy is a question of law." *Powerine Oil Co., Inc. v. Superior Court*, 37 Cal. 4th 377, 390 (2005).

"Once the defense duty attaches, the insurer is obligated to defend against all of the claims involved in the action, both covered and noncovered, until the insurer produces undeniable evidence supporting an allocation of a specific portion of the defense costs to a noncovered claim." *Id.* "Any doubt as to whether the facts give rise to a duty to defend is resolved in the insured's favor." *Id.* Thus, "for an insurer, the existence of a duty to defend turns not upon the ultimate adjudication of coverage under its policy of insurance, but upon those facts known by the insurer at the inception of a third party lawsuit. Hence, the duty may exist even where coverage is in doubt and ultimately does not develop." *Montrose Chem. Corp. v. Superior Court*, 6 Cal. 4th 287, 295 (1993) (internal quotations marks and citations omitted). The insurer, however, need not defend if the third party complaint *can by no conceivable theory raise a single issue which could bring it within the policy coverage*." *Montrose Chem. Corp.* at 300 (emphasis in original) (citing *Gray v. Zurich Ins. Co.*, 65 Cal. 2d 263, 275 (1966)).

"In an insurance coverage action, the insured has the burden to prove that the claim falls within the basic scope of coverage." *Pan Pac. Retail Properties, Inc. v. Gulf Ins. Co.*, 471 F.3d 961, 970-71 (9th Cir. 2006) (*citing Collin v. Am. Empire Ins. Co.*, 21 Cal. App. 4th 787, 803, (1994)). When the insured seeks reimbursement after the underlying litigation has settled, the insured "must show that the expenses at issue were related to claims that actually fell within the basic scope of coverage." *Id.*

C. Applicability of the Invasion of Privacy Exclusion to the Underlying Lawsuit

Defendant contends that it had no duty to defend Plaintiff in the Emmanuel action because that action was expressly excluded by the Policy's invasion of privacy exclusion. Defendant contends that a TCPA violation is by its nature, a type of invasion of privacy. Defendant points to the statute's text, legislative history, and other courts' interpretations of the statute to support its position.

The relevant portion of the TCPA states:

> It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—
>
> (B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the

> called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B).

28 U.S.C. § 227(b)(1)(B).

While it is true that the text of the TCPA does not use the word "privacy," it is the conceptual wellspring of the TCPA's protections. An examination of the legislative history bears this out.

The Senate Report on the TCPA states that "[t]he purposes of the bill are to protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automatic telephone calls to the home and to facilitate interstate commerce by restricting certain uses of facsimile (fax) machines and automatic retailers." MTD, Ex. 2, Request for Judicial Notice ("RJN"), Ex. A, Senate Report No. 102-178 on the Automated Telephone Consumer Protection Act ("TCPA Senate Report")[1] at 4. [Doc. # 9-2.]

Courts have recognized that the legislative intent and purpose of the TCPA was to protect against invasions of privacy. The United States Supreme Court has stated that "[t]he Act bans certain practices invasive of privacy and directs the Federal Communications Commission (FCC or Commission) to prescribe implementing regulations." *Mims v. Arrow Fin. Servs., LLC*, ___U.S.___, 132 S. Ct. 740, 744, 181 L. Ed. 2d 881 (2012). The Supreme Court further observed that

> [i]n enacting the TCPA, Congress made several findings relevant here. "Unrestricted telemarketing," Congress determined, "can be an intrusive invasion of privacy." TCPA, 105 Stat. 2394, note following 47 U.S.C. § 227 (Congressional Findings) (internal quotation marks omitted). In particular, Congress reported, "[m]any consumers are outraged over the proliferation of intrusive, nuisance [telemarketing] calls to their homes." *Ibid.* (internal quotation marks omitted). "[A]utomated or prerecorded telephone calls" made to private residences, Congress found, were rightly regarded by recipients as "an invasion of privacy."

[1] A court may take judicial notice of a fact not subject to reasonable dispute. Fed. R. Evid. 201(b); *see L.H. v. Schwarzenegger*, 519 F. Supp. 2d 1072, 1079 (E.D. Cal. 2007) ("the Senate Report is a public record, and therefore the court is able to accurately and readily determine its contents."). The Court takes judicial notice of Senate Report No. 102-178.

Id. at 745.

The Ninth Circuit also explored the purposes of the TCPA when it determined that the term "call" in the TCPA was intended to include both voice and text. In considering the purposes of the TCPA, the Ninth Circuit stated that

> The TCPA was enacted to "protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home and to facilitate interstate commerce by restricting certain uses of facsimile machines and automatic dialers." S.Rep. No. 102–178, at 1 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968. The TCPA was enacted in response to an increasing number of consumer complaints arising from the increased number of telemarketing calls. *See id.* at 2. The consumers complained that such calls are a "nuisance and an invasion of privacy." *See id.* The purpose and history of the TCPA indicate that Congress was trying to prohibit the use of ATDSs to communicate with others by telephone in a manner that would be an invasion of privacy. We hold that a voice message or a text message are not distinguishable in terms of being an invasion of privacy.

Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 954 (9th Cir. 2009).

Other circuit courts also have noted the TCPA's purpose of protecting privacy interests. *See, e.g., Int'l Sci. & Tech. Inst., Inc. v. Inacom Commc'ns, Inc.*, 106 F.3d 1146, 1150 (4th Cir. 1997), *abrogated on other grounds by Mims*, __U.S.__, 132 S. Ct. 740, 181 L.Ed.2d 881 (2012); *Bonime v. Avaya, Inc.*, 547 F.3d 497, 499 (2d Cir. 2008).

Defendant cites numerous federal and state cases in various districts and states that have held that claims for violations of the TCPA are claims for invasion of privacy. *See, e.g., ACS Sys., Inc. v. St. Paul Fire & Marine Ins. Co.*, 147 Cal. App. 4th 137, 149 (2007) ("By alleging violations of the TCPA, the *Kaufman* suit alleged the violation of 'seclusion' privacy"); *Universal Underwriters Ins. Co. v. Lou Fusz Auto. Network, Inc.*, 401 F.3d 876, 882 (8th Cir. 2005) (alleged TCPA violations fell within insurance policy's coverage for "private nuisance" and "invasions of the rights of privacy").

Courts have explored the invasion of privacy implications of the TCPA in determining whether insurers have a duty to defend TCPA claims under a commercial general liability ("CGL") policy, as opposed to a director and officer ("D&O") policy at issue here. Some courts

have come to the conclusion that CGL policies cover only "secrecy-based" privacy interests rather than "seclusion-based" privacy interest.[2] From this, some courts have determined that TCPA violations are outside a CGL policy's "invasion of privacy" coverage because TCPA violations involve "seclusion-based" privacy interests. *See, e.g.*, *Am. States Ins. Co. v. Capital Associates of Jackson Cnty., Inc.*, 392 F.3d 939, 942 (7th Cir. 2004). Other courts disagree, finding that TCPA violations are encompassed within CGL policies' "invasion of privacy" coverage provisions. *See Owners Ins. Co. v. European Auto Works, Inc.*, 695 F.3d 814, 819 (8th Cir. 2012) ("We conclude that the ordinary meaning of the term 'right of privacy' [in CGL policies] easily includes violations of the type of privacy interest protected by the TCPA"). This Court is persuaded by the Eighth Circuit's reasoning that TCPA violations should be considered an invasion of privacy.

At base, violations of the TCPA are rooted in a violation of an individual's privacy interests. The allegations in the Emmanuel Complaint demonstrate that Emmanuel sought relief based on the invasion of his privacy rights. Accordingly, because the Policy specifically excludes claims arising from invasions of privacy, the TCPA claims alleged in the Emmanuel Complaint are not covered under the Policy.

Plaintiff contends that the TCPA serves purposes other than combatting invasion of privacy violations. These purposes include avoiding the nuisance and annoyance of unsolicited phone calls, and preventing cost-shifting in advertising and marketing. Plaintiff contends that even though the Emmanuel Complaint references the term "invasion of privacy," the focus of the Emmanuel action was the economic damages incurred from the annoyance and nuisance of incurring cellular telephone charges. Plaintiff points to the paragraph in the Emmanuel Complaint that states that the class action seeks only economic injuries, not personal injuries. From this, Plaintiff contends that "only a small portion of the lawsuit actually relates to invasion of privacy." Opp. at 7. Plaintiff contends that the order dismissing the Emmanuel action never

[2] Judge Easterbrook has explained the difference between these two privacy interests:

> Privacy" is a word with many connotations. The two principal meanings are secrecy and seclusion, each of which has multiple shadings. A person who wants to conceal a criminal conviction, bankruptcy, or love affair from friends or business relations asserts a claim to privacy in the sense of secrecy. A person who wants to stop solicitors from ringing his doorbell and peddling vacuum cleaners at 9 p.m. asserts a claim to privacy in the sense of seclusion.

Am. States Ins. Co. v. Capital Associates of Jackson Cnty., Inc., 392 F.3d 939, 942 (7th Cir. 2004) (internal citation omitted).

referenced invasion of privacy and, therefore, invasion of privacy is not implicated in the Emmanuel action.

This argument is unpersuasive. By protecting consumers against the nuisance and annoyance of unsolicited calls, the TCPA protects consumers against invasions of privacy. The nuisance and annoyance violate consumers' seclusion-based privacy interest. Moreover, the mere fact that the Emmanuel Complaint seeks only economic damages does not strip the allegations of their privacy-based character. The economic injury stems from Plaintiff's alleged invasion of Emmanuel's and putative class members' privacy rights through the sending of unsolicited text messages. The economic damages allegedly incurred are thus a direct result of the invasion of privacy. Furthermore, the order dismissing the Emmanuel action analyzed whether or not the text message Emmanuel received could be considered intrusive or a nuisance under the TCPA. The court determined that, by sending the original text message, Emmanuel had "expressly consented to receiving a confirmatory text from the Lakers," and there was therefore no violation of the TCPA. *Emmanuel v. Los Angeles Lakers, Inc.*, No. 2013 WL 1719035, at *3 (C.D. Cal. Apr. 18, 2013). This conclusion does not rule out invasion of privacy as the basis for the Emmanuel action. To the contrary, the court's ruling was tantamount to a determination that there was no invasion of privacy because Emmanuel consented to receiving the text.

Another court in this district came to the same conclusion on this issue in a nearly identical case. *See LAC Basketball Club Inc. v. Fed. Ins. Co.*, No. CV 14-00113 GAF FFMX, 2014 WL 1623704 (C.D. Cal. Feb. 14, 2014). There, the underlying complaint alleged the same two causes of action for negligent and willful violation of the TCPA alleged in the Emmanuel Complaint. *Id*. The complaint was based on the Los Angeles Clippers' similar solicitation for patrons to send text messages that would then be posted on a scoreboard enabling everyone attending the game to see them. The Los Angeles Clippers sought insurance coverage under their D&O policy with Defendant, which Defendant denied based on the policy's invasion of privacy exclusion. The court looked to the Ninth Circuit's interpretation of the TCPA's purpose of protecting privacy interests as outlined in *Satterfield*. From this, the court concluded that the invasion of privacy exclusion clause in the relevant policy "plainly covers claims involving 'invasion of privacy' which in turn encompass TCPA claims as explained in *Satterfield*." *Id.* at *5. The court went on to explain:

> *Satterfield*'s analysis shows that "invasion of privacy" need not be included as an element [of the TCPA] because Congress has already determined that the prohibited behavior, if proved, ***constitutes*** an invasion of privacy. Thus, while a right of privacy may encompass any number of attributes, *Satterfield*

> demonstrates that the right includes the right to be free from bombardment with voice and text messages through telecommunications devices.

Id. (emphasis in original). The court ultimately concluded that "[b]ecause the D&O policy excludes claims involving invasion of privacy and because a violation of the TCPA is rooted in the recipient's privacy right, TCPA claims brought against [the Los Angeles Clippers] are excluded from coverage." *See also Res. Bank v. Progressive Cas. Ins. Co.*, 503 F. Supp. 2d 789, 797 (E.D. Va. 2007) (D&O policy's invasion of privacy exclusion excluded coverage for injuries claimed in TCPA class actions). Plaintiff's attempt to distinguish this case from *LAC Basketball Club* is unpersuasive given the alignment of facts and legal issues.

Plaintiff contends that the *LAC Basketball Club* court failed to consider California rules of insurance contract interpretation. According to Plaintiff, under established rules of insurance contract interpretation, Defendant was required to defend it against the Emmanual action as long as there was a potential or possibility of coverage under the Policy. *See Montrose*, 6 Cal. 4th at 300. Plaintiff recites California rules requiring strict scrutiny of insurance contract exclusions and their need to be conspicuous, plain, and clear. Plaintiff does not posit any convincing arguments, however, as to why the Policy exclusion is not conspicuous, plain or clear. Plaintiff contends that "several courts have observed an insurance company's failure to use available language to exclude certain types of liability gives rise to the inference that the parties intended not to so limit coverage." *Fireman's Fund Ins. Companies v. Atl. Richfield Co.*, 94 Cal. App. 4th 842, 852 (2001). For example, some insurance policies contain explicit TCPA exclusions. *See, e.g., Integral Res., Inc. v. Hartford Fire Ins. Co.*, 2014 WL 2761170, at *7 (C.D. Cal. June 13, 2014) (addressing insurance policy with a TCPA exclusion which precludes coverage for "'personal and advertising injury' arising directly or indirectly out of any action or omission that violates or is alleged to violate . . . [t]he Telephone Consumer Protection Act (TCPA), including any amendment or addition to such law."). Although Defendant could have included a more specific TCPA exclusion in the Policy, this does not mean that the broader invasion of privacy exclusion in the Policy does not apply to TCPA violations.

Given courts' universal interpretation of TCPA claims as implicit invasion-of-privacy claims, the exclusion here encompasses TCPA claims. This is especially true given that the exclusion applies to claims that are "[b]ased upon, arising from, or in consequence of . . . invasion of privacy." Policy at ¶ (C)(5). Under California law, "arising from" is interpreted broadly. *See, e.g., Davis v. Farmers Ins. Grp.*, 134 Cal. App. 4th 100, 107 (2005) ("'[a]rising out of' are words of much broader significance than 'caused by.' They are ordinarily understood to mean 'originating from[,]' 'having its origin in,' 'growing out of' or 'flowing from' or in

short, 'incident to, or having connection with'"). The allegations in the Emmanuel Complaint fit within this broad exclusionary clause.

Accordingly, Defendant had no duty to defend Plaintiff in the Emmanuel action, and thus did not breach its contract or the implied duty of good faith and fair dealing by failing to do so.

VI.
CONCLUSION

In light of the foregoing, Defendant's motion to dismiss is **GRANTED** with prejudice.

IT IS SO ORDERED.