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

**JOHN MAXTON, Individually  
and On Behalf of All Others  
Similarly Situated,**

**Plaintiff,**

**v.**

**SANTA MONICA HOTEL  
OWNER LLC,**

**Defendant.**

**Case No.: 2:22-cv-06279**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

**Unlawful Recording of Cellular  
Communications under California  
Penal Code Section 632.7**

**JURY TRIAL DEMANDED**



## INTRODUCTION

- 1  
2 1. The California State Legislature passed the California Invasion of Privacy Act  
3 (“CIPA”) in 1967 to protect the right of privacy of the people of California,  
4 replacing prior laws which permitted the recording of telephone conversations  
5 with the consent of one party to the conversation. California Penal Code §  
6 632.7 was added to CIPA in 1992 due to specific privacy concerns over the  
7 increased use of cellular and cordless telephones. Section 632.7 prohibited  
8 intentionally recording all communications involving cellular and cordless  
9 telephones, not just confidential communications.
- 10 2. The plaintiff John Maxton (“Plaintiff”) individually and on behalf of all others  
11 similarly situated in California (“Class Members”), brings this action for  
12 damages and injunctive relief against defendant Santa Monica Hotel Owner  
13 LLC (“SMHO” or “Defendant”), for Defendant’s unauthorized and illegal  
14 recordings of conversations with Plaintiff without any notification or warning  
15 to Plaintiff or Class Members, causing Plaintiff and Class Members damages  
16 and invasion of privacy.
- 17 3. Plaintiff makes these allegations on information and belief, with the exception  
18 of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which  
19 Plaintiff alleges on personal knowledge.
- 20 4. Unless otherwise stated, all the conduct engaged in by Defendant took place  
21 in California.
- 22 5. Any violations by Defendant were knowing, willful, and intentional, and  
23 Defendant did not maintain procedures reasonably adapted to avoid any such  
24 violation.
- 25 6. Unless otherwise indicated, the use of Defendant’s names in this Complaint  
26 includes all agents, employees, officers, members, directors, heirs, successors,  
27 assigns, principals, trustees, sureties, subrogees, representatives, and insurers  
28 of the named Defendant.

**JURISDICTION AND VENUE**

- 7. This Court has jurisdiction over this action pursuant to CAFA, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one defendant; there are more than 100 class members; and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.
- 8. Defendant is a limited liability company that is registered under the laws of Delaware, with its principal place of business in New York, New York.
- 9. The Court has personal jurisdiction over Defendant because Defendant has sufficient minimum contacts with California and this judicial district.
- 10. Upon information and belief Defendant, at all material times hereto, made unlawful and illegal recordings of conversations with customers, including Plaintiff and many other consumers within this judicial district.
- 11. Venue is proper in this Court because, (i) a substantial part of the events giving rise to the Plaintiff’s claims against Defendant occurred within this judicial district (Plaintiff’s telephone call was illegally recorded while Plaintiff was within this judicial district) and (ii) Defendant conducts business within this judicial district.

**PARTIES**

- 12. Defendant was, and is, a limited liability company under the laws of the State of Delaware with its principal office located at 350 Park Avenue, 15th Floor, New York, New York 10002.
- 13. Upon information and belief, SMHO is the owner and operator of the Hilton Santa Monica Hotel & Suites.
- 14. Plaintiff is a natural person and who currently resides in Las Vegas, Nevada.

**FACTUAL ALLEGATIONS**

- 15. On or about July 6, 2022, at approximately 7:45 p.m. PST, Plaintiff was on his way to Santa Monica, California, from Valencia, California, when Plaintiff stopped for a hike near Griffith Park, in Los Angeles, California, and used the



1 “Hilton Honors” application on his smartphone to book a one (1) night stay at  
2 the Hilton Santa Monica Hotel & Suites (the “Hotel”).

3 16. A few minutes before booking the hotel room, Plaintiff, using his cellular  
4 telephone (starting with California area code, “909”), called Defendant’s  
5 phone number at (310) 395-3332 to inquire about the Hotel and its rates.

6 17. Plaintiff heard no recording disclosure at the outset of his call to Defendant’s  
7 phone number. Instead, he was presented with several call options, one of  
8 which was “zero” (“0”) to speak to a live representative.

9 18. Plaintiff, wanting to speak to a live representative, pressed “0” and was  
10 subsequently connected to one of Defendant’s representatives. However, at  
11 no point during Plaintiff’s conversation with that representative did the  
12 representative indicate that the phone call was being recorded.

13 19. When Plaintiff arrived at the Hotel and accessed his hotel room, he was not  
14 pleased at its condition, so Plaintiff requested another hotel room from  
15 Defendant’s front-desk staff.

16 20. On or about July 7, 2022, at approximately 10:48 a.m. PST, Plaintiff called  
17 Defendant’s phone number at (310) 395-3332 again and pressed “0.”

18 21. Again, no recording disclosure was given at the outset of the call or at any  
19 point during Plaintiff’s conversation with one of Defendant’s representatives.

20 22. During the second phone call, Plaintiff spoke to an individual by the name of  
21 “Jenny,” who was Defendant’s front office manager, about his disappointing  
22 stay because the second hotel room he was provided came with a defective  
23 smoke detector that was beeping uncontrollably for about twenty (20) minutes  
24 while Plaintiff was in his room.

25 23. On or about July 8, 2022, Plaintiff called Defendant’s phone number at (310)  
26 395-3332 approximately seven (7) more times for various reasons relating to  
27 his unpleasant stay. At no point during any of those calls was Plaintiff made  
28 aware of the fact that he was being recorded.

1 24. On or about July 9, 2022, at 4:36 p.m. PST, Plaintiff called Defendant's phone  
2 number at (310) 395-3332. When prompted, Plaintiff pressed "0" and was  
3 transferred to a Hotel employee named Adam, who introduced himself and  
4 indicated that he was "on a recorded line."

5 25. Surprised, Plaintiff asked Adam, for clarification, whether the call was being  
6 recorded, to which Adam replied "yes."

7 26. In response to this clarification, Plaintiff indicated that he had called  
8 Defendant's phone number several times before and that this was the first time  
9 he had ever received a disclosure that his call was being recorded.

10 27. Adam then stated that "all calls are recorded" and that some of Defendant's  
11 employees fail to notify callers that this is the case.

12 28. Shocked at Adam's answer, Plaintiff hung up the phone.

13 29. Taking a moment to compose himself, Plaintiff decided to call Defendant's  
14 phone number at (310) 395-3332 a few minutes later to confirm whether the  
15 call was being recorded.

16 30. During the second call on July 9, 2022, Plaintiff was reconnected with  
17 Defendant's employee, Adam, who once again introduced himself and stated  
18 that the call was being recorded. This time, Plaintiff asked Adam to transfer  
19 the call to a manager.

20 31. After the second call on July 9, 2022, was transferred to a manager, Plaintiff  
21 asked the manager whether the call was recorded, and in response, the  
22 manager told Plaintiff that he could neither confirm nor deny whether the call  
23 was recorded. Not satisfied with the manager's response, and not wanting to  
24 risk being recorded, Plaintiff ended the call.

25 32. The notion that he may have been recorded without his consent came as a  
26 shock to the Plaintiff, and he was upset that Defendant had not informed him  
27 that the call would be audio recorded and considered it an invasion of  
28 Plaintiff's right to privacy.

1 33.Plaintiff did not discover, and could not discover through the exercise of  
2 reasonable diligence, the fact that Defendant was recording telephone calls  
3 from Plaintiff or that Defendant intended to record the calls before the  
4 untimely disclosure by Defendant’s employee.

5 34.Defendant concealed the fact that it was recording the aforementioned  
6 telephone calls on several occasions to create the false impression in the minds  
7 of Plaintiff and those similarly situated without their knowledge or consent  
8 that they were not being recorded.

9 35.Before or at the outset of the phone calls there was no verbal warnings that  
10 the calls were, or even may, be recorded. Such warnings are ubiquitous today  
11 when companies elect to audio record telephone calls with consumers.

12 36.California law requires consent from all parties to the call, particularly when  
13 Plaintiff was present in California at the time of the call.

14 37.Through Defendant’s aforementioned conduct, Plaintiff suffered an invasion  
15 of a legally protected interest in privacy, which is specifically addressed and  
16 protected by California law.

17 38.Plaintiff was personally affected by Defendant’s aforementioned conduct  
18 because Plaintiff was shocked, upset and angry that Defendant audio recorded  
19 one or more cellular telephone conversations with Plaintiff without Plaintiff’s  
20 knowledge or consent.

21 **CLASS ACTION ALLEGATIONS**

22 39.Plaintiff brings this lawsuit as a class action on behalf of himself and Class  
23 Members of the proposed Class pursuant to Federal Rule of Civil Procedure  
24 23(b)(2) and 23(b)(3). This action satisfies the numerosity, commonality,  
25 typicality, adequacy, predominance, and superiority requirements of those  
26 provisions.

27 40.Plaintiff is a member of the proposed Class consisting of and defined as  
28 follows:



1 All persons in California whose inbound and outbound  
2 cellular telephone conversations were recorded by  
3 Defendant and/or its employees and/or agent/s within one  
4 year prior to the filing of this action.

5 41. Excluded from the Class are: (1) Defendant, any entity or division in which  
6 Defendant has a controlling interest, and their legal representatives, officers,  
7 directors, assigns, and successors; (2) the Judge to whom this case is assigned  
8 and the Judge's staff; and (3) those persons who have suffered personal  
9 injuries as a result of the facts alleged herein.

10 42. Plaintiff reserves the right to redefine the Class and to add subclasses as  
11 appropriate based on discovery and specific theories of liability.

12 43. Numerosity: The Class members are so numerous that joinder of all members  
13 would be unfeasible and impractical. The membership of the entire Class is  
14 currently unknown to Plaintiff at this time; however, given that, on  
15 information and belief, Defendant audio recorded calls of at least several  
16 thousand class members in California during the Class Period, it is reasonable  
17 to presume that the members of the Classes are so numerous that joinder of  
18 all members is impracticable. The disposition of their claims in a class action  
19 will provide substantial benefits to the parties and the Court.

20 44. Commonality: There are common questions of law and fact as to Class  
21 members that predominate over questions affecting only individual members,  
22 including, but not limited to:

- 23 • Whether, within the statutory period Defendant recorded any call with the  
24 California members of the Class;
- 25 • Whether Defendant had and continues to have a policy during the relevant  
26 period of recording telephone calls;
- 27 • Whether Defendant had and continues to have a policy during the relevant  
28 period of recording cellular telephone calls with the Class members;

- 1 • Whether Defendant recorded the calls without first advising of call
- 2 recording at the outset of the calls;
- 3 • Whether Defendant’s policy or practice of recording telephone
- 4 communications with Class members constitutes a violation of Cal. Penal
- 5 Code § 632.7;
- 6 • Whether Plaintiff and Class members were damaged thereby, and the
- 7 extent of damages for such violation; and,
- 8 • Whether Defendant should be enjoined from engaging in such conduct in
- 9 the future.

10 45. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the

11 interests of each Class member with whom they are similarly situated, and

12 Plaintiff’s claims (or defenses, if any) are typical of all Class members as

13 demonstrated herein.

14 46. Plaintiff represents and is a Class member because Plaintiff called and spoke

15 with Defendant or its agent for a time without a prompt or proper warning that

16 the call was being recorded, and Defendant recorded its conversations with

17 Plaintiff without recording advisements at the outset or prior to recording the

18 conversation.

19 47. Plaintiff and Class members were harmed by the acts of Defendant in at least

20 the following ways: Defendant illegally recorded the Plaintiff and Class

21 members by way of their cellular telephones thereby causing Plaintiff and

22 Class members to have personal information revealed without notification that

23 their conversation was being recorded and by invading the privacy of said

24 Plaintiff and Class members. Plaintiff and Class members were damaged

25 thereby.

26 48. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the

27 interests of each Class member with whom he is similarly situated, as

28 demonstrated herein. Plaintiff acknowledges that he will have an obligation





1 to make known to the Court any relationship, conflicts, or differences with  
2 any Class member. Plaintiff's attorneys, the proposed class counsel, are  
3 versed in the rules governing class action discovery, certification, and  
4 settlement. In addition, the proposed class counsel is experienced in handling  
5 claims involving consumer actions and violations of California Penal Code  
6 Section 632.7.

7 49.Predominance: Questions of law or fact common to the Class members  
8 predominate over any questions affecting only individual members of the  
9 class. The elements of the legal claims brought by Plaintiff and Class members  
10 are capable of proof at trial through evidence that is common to the Class  
11 rather than individual to its members.

12 50.Superiority: Plaintiff and the Class members have all suffered and will  
13 continue to suffer harm and damages as a result of Defendant's unlawful and  
14 wrongful conduct. A class action is superior to other available methods for the  
15 fair and efficient adjudication of the controversy particularly because  
16 individual Class members have no way of discovering that Defendant  
17 recorded their telephone conversations without Class members' knowledge or  
18 consent. Furthermore, absent a class action, most Class members would likely  
19 find the cost of litigating their claims prohibitively high and would therefore  
20 have no effective remedy at law. Class action treatment is manageable because  
21 it will permit a large number of similarly situated persons to prosecute their  
22 common claims in a single forum simultaneously, efficiently, and without the  
23 unnecessary duplication of effort and expense that numerous individual  
24 actions would endanger. Because of the relatively small size of the individual  
25 Class members claims, it is likely that only a few Class members could afford  
26 to seek legal redress for Defendant's misconduct. Absent a class action, Class  
27 members will continue to incur damages, and Defendant's misconduct will  
28 continue without remedy. Class treatment of common questions of law and

1 fact would also be a superior method to multiple individual actions or  
2 piecemeal litigation in that class treatment will conserve the resources of the  
3 courts and the litigants and will promote consistency and efficiency of  
4 adjudication.

5 51. The Class may also be certified because:

6 (a) the prosecution of separate actions by individual Class members would  
7 create a risk of inconsistent or varying adjudication with respect to  
8 individual Class members, which would establish incompatible standards  
9 of conduct for Defendant;

10 (b) the prosecution of separate actions by individual Class members would  
11 create a risk of adjudications with respect to them that would, as a  
12 practical matter, be dispositive of the interests of other Class members not  
13 parties to the adjudications, or substantially impair or impede their ability  
14 to protect their interests; and

15 (c) Defendant has acted or refused to act on grounds generally applicable to  
16 the Class, thereby making appropriate final and injunctive relief with  
17 respect to the members of the Class as a whole.

18 52. This suit seeks only damages and injunctive relief for recovery of economic  
19 injury on behalf of Class members and it expressly is not intended to request  
20 any recovery for personal injury and claims related thereto. Plaintiff reserves  
21 the right to expand The Class definitions to seek recovery on behalf of  
22 additional persons as warranted as facts are learned in further investigation  
23 and discovery.

24 53. The joinder of Class members is impractical and the disposition of their claims  
25 in the Class action will provide substantial benefits both to the parties and to  
26 the court. The Class members can be identified through Defendant's records.

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**COUNT I**  
**ILLEGAL TELEPHONE RECORDING OF CELLULAR PHONE CONVERSATIONS**  
**UNDER CALIFORNIA PENAL CODE § 632.7**

54. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

55. At all relevant times hereto, Defendant had and followed a policy and practice of using a telecommunications system that enabled them to surreptitiously record cellular telephone communications between Defendant and Plaintiff and California Class members.

56. At all relevant times hereto, Defendant intentionally and surreptitiously recorded cellular telephone calls concerning personal matters between Defendant and Plaintiff and Class members.

57. At all relevant times hereto, Defendant had and followed a policy and practice of not advising or warning Plaintiff and Class members immediately before or at the outset of the calls that the cellular telephone communications with Defendant would be recorded.

58. Defendant failed to obtain consent of Plaintiff and Class members prior to recording any of their cellular telephone conversations.

59. Defendant's conduct violated section 632.7(a) of the California Penal Code.

60. Plaintiff and Class members are entitled to recovery actual and statutory damages in the amount of \$5,000.00 per violation.

61. Plaintiff is also entitled to attorneys' fees and costs pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Class, pray that judgment be entered against Defendant, and Plaintiff and the Class be awarded damages from Defendant as follows:

- That the action regarding each violation of the Invasion of Privacy and Cal. Penal Code Section § 632.7 be certified as a class action on behalf of the

Class and requested herein;

- That Plaintiff be appointed as representative of the Class;
- That Plaintiff’s counsel be appointed as counsel for the Class;
- An amount of \$5,000 for each violation of Section 632.7 of the California Penal Code, pursuant to Cal. Pen. Code § 637.2(a);
- Injunctive relief to prevent the further occurrence of such illegal acts alleged herein pursuant to Cal. Pen. Code § 637.2(b);
- Reasonable attorneys’ fees, pursuant to, *inter alia*, Cal. Code Civ. Proc. § 1021.5 and the common fund doctrine;
- Costs of suit; and
- All other relief that the Court may deem just and proper including interest.

**JURY DEMAND**

62.Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff and Class members are entitled to, and demand, a trial by jury.

Dated: September 2, 2022

Respectfully submitted,

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