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Superior Court of California,  
County of San Diego  
**01/31/2024** at 12:15:20 PM  
Clerk of the Superior Court  
By Amanda Gidron, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN DIEGO**

11 EKATERINA GLIADKOVSKY, on Behalf of )  
12 Herself and All Others Similarly Situated, )

13 Plaintiff, )

14 v. )

15 WALGREEN CO., and DOES 1 through 100, )  
16 inclusive, )

17 Defendants. )  
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Case No: 37-2024-00004818-CU-BT-CTL

**CLASS ACTION**

**COMPLAINT FOR:**

**STATUTORY DAMAGES AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Ekaterina Gliadkovsky (“Plaintiff”), brings this action against Defendant  
2 Walgreen Co., and DOES 1-100 (collectively referred to as “Walgreens” or “Defendant”) on  
3 behalf of herself, and all others similarly situated, upon information and belief, except as to her  
4 own actions, the investigation of her counsel, and the facts that are a matter of public record, as  
5 follows:

6 **INTRODUCTION**

7 1. This class action arises out Defendant’s policy and practice to record, without the  
8 consent of all parties, telephone calls made to Defendant’s toll-free customer service telephone  
9 number in violation of California’s Invasion of Privacy Act, California Penal Code §630, *et seq.*  
10 Defendant’s toll-free customer service number – 877-250-5823 – is referred to as “Defendant’s  
11 customer service number.” During the relevant time period, Defendant intentionally and  
12 surreptitiously recorded telephone communications made to Defendant’s customer service  
13 number. Defendant did so without warning or disclosing to inbound callers that their calls might  
14 be recorded.

15 2. Defendant’s policy and practice of recording telephone conversations without the  
16 consent of all parties violates the California Invasion of Privacy Act (Penal Code §§ 630, *et seq.*  
17 (“CIPA”). Specifically, Defendant’s acts and practices violate Penal Code § 632.7. Penal Code  
18 § 632.7 is violated the moment the recording of a telephone communication is made without the  
19 knowledge or consent of all parties thereto, regardless of whether it is subsequently disclosed.  
20 The only intent required is that the act of recording itself be done intentionally. There is no  
21 requisite intent on behalf of the party doing the surreptitious recording to break California law, or  
22 to invade the privacy rights of any other person. Moreover, there is no requirement under Penal  
23 Code § 632.7 that the communication be confidential.

24 3. Penal Code § 630, *et seq.* plays an important role in protecting the privacy of  
25 California residents. As recognized by the California Supreme Court, secret recording “denies  
26 the speaker an important aspect of privacy of communication – the right to control the nature and  
27 extent of the firsthand dissemination of his statements.” *Ribas v. Clark*, 38 Cal. 3d 355, 361  
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1 (1985) (citations omitted). The California Supreme Court has declared that California has a  
2 “strong and continuing interest in the full and vigorous application” of the provisions that  
3 prohibit “the recording of telephone conversations without the knowledge or consent of *all*  
4 parties to the conversations.” *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 126  
5 (2006) (italics in original). In *Kearney*, the California Supreme Court explained that if a  
6 company wants to record calls as part of its routine business activity, it can avoid liability by  
7 giving an appropriate warning at the beginning of each call. “A business that adequately advises  
8 all parties to a telephone call, at the outset of the conversation, of its intent to record the call  
9 would not violate the provision.” *Id* at 118. Furthermore, businesses can take unfair advantage  
10 of consumers if they do not disclose that the calls are being recorded, by “selectively disclosing  
11 recordings when disclosure serves the company’s interest, but not volunteering the recordings’  
12 existence (or quickly destroying them) when they would be detrimental to the company. . .” *Id*  
13 at 126. The California Supreme Court has declared that Penal Code § 632.7 makes it illegal to  
14 record *any* communication involving cellular or cordless telephones without regard to whether  
15 the communication is “confidential.” *Flanagan v. Flanagan*, 27 Cal. 4th 766, 771, fn. 2 (2002).  
16 Moreover, in *Smith v. LoanMe, Inc.*, 11 Cal. 5th 183, 202-203 (2021), the California Supreme  
17 Court held that Penal Code “section 632.7 prohibits parties as well as nonparties from  
18 intentionally recording a communication transmitted between a cellular or cordless telephone and  
19 another device without the consent of all parties to the communication.”

20 4. As a result of Defendant’s violations, all individuals, who called Walgreens  
21 customer service number, while they were in California and were recorded by Defendant  
22 surreptitiously and without disclosure are entitled to an award of statutory damages as set forth in  
23 Penal Code § 637.2 and injunctive relief as detailed therein.

#### 24 JURISDICTION AND VENUE

25 5. This Court has subject matter jurisdiction over the cause of action asserted herein  
26 pursuant to Article VI, § 10 of the California Constitution, California Penal Code §§ 632.7 and  
27 637.2. In the aggregate, the damages caused to the members of the Class as defined below  
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1 exceed the jurisdictional minimum of this Court, but neither the Plaintiff nor any member of the  
2 Class individually has suffered damages of, at least, \$75,000.

3 6. This Court has personal jurisdiction over the Defendant named herein because  
4 Defendant does sufficient business in California, has sufficient minimum contacts with California  
5 or otherwise intentionally avails itself of the markets within California through its sales,  
6 advertising and marketing to render the exercise of jurisdiction by California courts and the  
7 application of California law to the claims of the Plaintiff permissible under traditional notions of  
8 fair play and substantial justice. Specifically, Defendant advertises, markets and sells its  
9 products and services through its brick-and-mortar pharmacy stores, e-commerce and call center  
10 platforms which serves consumers throughout California. Further, there is no federal question at  
11 issue as the claims herein are based solely on California law.

12 7. Venue is proper in this Court since because California Code of Civil Procedure  
13 §§395 and 395.5, and case law interpreting those sections, provide that if a foreign business  
14 entity fails to designate with the office of the California Secretary of State a principal place of  
15 business in California, it is subject to being sued in any county in the State that plaintiff desires.  
16 On information and belief, as of the date this Complaint is filed, Defendant is a foreign business  
17 entity that has failed to designate a principal place of business in California with the office of the  
18 Secretary of State.

19 **THE PARTIES**

20 **A. Plaintiff**

21 8. Plaintiff Ekaterina Gliadkovsky (herein referred to as "Plaintiff") is an individual  
22 and resident of California. It is alleged that on November 30, 2023 and December 4, 2023, while  
23 Plaintiff was physically present in the State of California, she called Walgreens customer service  
24 number 877-250-5823 and had telephonic communications with live representatives of  
25 Defendant while using her cellular telephone. Plaintiff is informed and believes and thereon  
26 alleges, that the communications were surreptitiously recorded by Defendant, without first  
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1 providing her notice and without first obtaining her consent to record the telephone  
2 communications.

3 **B. Defendant**

4 9. Defendant Walgreen Co. (herein referred to as “Walgreens”) is an Illinois  
5 corporation, with its headquarters located in Deerfield, Illinois. Walgreens is the second-largest  
6 pharmacy store chain in the United States, and specializes in filling prescriptions, and sells health  
7 and wellness products, and other services. Walgreens offers a broad range of products under the  
8 following categories: Personal Care, Home Health Care Solutions, Vitamins and Supplements,  
9 Medicines and Treatments, and Household. Walgreens is a wholly-owned subsidiary of  
10 Walgreens Boots Alliance, Inc., a global leader in retail and wholesale pharmacies. Walgreens  
11 has 8,602 stores in the United States, including 555 store locations in California and sells  
12 products through its call centers with telephone calls routed to live customer service  
13 representatives as part of its direct-to-consumer strategies.

14 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant’s  
15 employees, agents, and representatives were and are directed, trained and instructed to, and do,  
16 record incoming telephone communications between the customer service representatives and  
17 callers, including California callers.

18 **C. Doe Defendants**

19 11. The true names and capacities of defendants sued in this Complaint as DOES 1  
20 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues such defendants by  
21 such fictitious names. Plaintiff will amend this Complaint to reflect the true names and  
22 capacities of the defendants designated herein as DOES 1 through 100 when such identities  
23 become known. For ease of reference, Plaintiff will refer to the named defendant Walgreen Co.  
24 and the DOE defendants collectively as “Defendants.”

25 **D. Agency/Aiding And Abetting**

26 12. At all times herein mentioned, Defendants, and each of them, were an agent or  
27 joint venturer of each of the other Defendants, and in doing the acts alleged herein, were acting  
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1 within the course and scope of such agency. Each Defendant had actual and/or constructive  
2 knowledge of the acts of each of the other Defendants, and ratified, approved, joined in,  
3 acquiesced and/or authorized the wrongful acts of each co-defendant, and/or retained the benefits  
4 of said wrongful acts.

5 13. Defendants, and each of them, aided and abetted, encouraged and rendered  
6 substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the  
7 Class, as alleged herein. In taking action, as particularized herein, to aid and abet and  
8 substantially assist the commissions of these wrongful acts and other wrongdoings complained  
9 of, each of the Defendants acted with an awareness of its primary wrongdoing and realized that  
10 its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful  
11 goals, and wrongdoing.

12 14. Whenever reference is made in this Complaint to any act of “Walgreens” or  
13 “Defendant,” such shall be deemed to mean that officers, directors, agents, employees, or  
14 representatives of the Defendant named in this lawsuit committed or authorized such acts, or  
15 failed and omitted to adequately supervise or properly control or direct their employees while  
16 engaged in the management, direction, operation or control of the affairs of the Defendant and  
17 did so within the scope of their employment or agency.

18 **CONDUCT GIVING RISE TO THE VIOLATIONS OF THE LAW**

19 **A. Plaintiff’s Contact with Defendant**

20 15. On November 30, 2023 and thereafter on December 4, 2023, while located at  
21 her residence within California, Plaintiff placed telephone calls to Defendant and while using  
22 her cellular telephone. On both occasions, Plaintiff called Walgreens toll-free customer  
23 service number at 877-250-5823, and spoke with employees, agents, or representatives of  
24 Defendant. During the call on November 30, 2023, Plaintiff obtained information with a live  
25 representative of Defendant about certain fragrance products sold by Defendant and made  
26 a purchase as a guest with the representative. Thereafter, on December 4, 2023, Plaintiff  
27 called Walgreens customer service number at 877-250-5823 regarding the original purchase  
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1 (Order Number: 210070612247) of the products and inquired about Walgreens return and refund  
2 policy with a live representative of Defendant. Plaintiff is informed and believes, and based  
3 thereon alleges, that the toll-free telephone number connected Plaintiff to Defendant's live  
4 customer service representatives.

5 16. During these inbound telephone communications with employees, agents, or  
6 representatives of Defendant, Plaintiff revealed sensitive, private, and confidential information,  
7 including but not limited to her full name, home address, and email address. At no point during  
8 these inbound telephone communications was Plaintiff ever informed that her communications  
9 were being recorded. At no point during the inbound telephone communications did Plaintiff  
10 give her consent for the telephone communications to be recorded, and she was entirely unaware  
11 that Defendant was engaged in that practice during the telephone communications. On  
12 information and belief, these inbound telephone communications were recorded by Defendant,  
13 without Plaintiff's knowledge or consent.

14 **B. Defendant's Conduct Violated Penal Code Penal Code § 632.7**

15 17. Plaintiff is informed and believes and thereon alleges, that Defendant recorded  
16 said inbound telephone communications. Defendant failed to verbally warn Plaintiff, at the  
17 outset of the telephone communications, of Defendant's intent to record the communications.  
18 Defendant failed to provide an automated, pre-recorded warning at the call outset or a  
19 periodically repeated, audible "beep tone" or other sound throughout the duration of the  
20 telephone communications to warn Plaintiff that the communications were being recorded.  
21 Plaintiff did not give, and could not have given consent for the telephone communications to be  
22 recorded because she was entirely unaware that Defendant was engaged in that practice during  
23 the telephone communications.

24 18. Because Defendant failed to warn Plaintiff at the outset of the telephone  
25 communications that the communications were being recorded and her consent for recording of  
26 the telephone communications never was sought, Plaintiff had an objectively reasonable  
27 expectation that her telephone communications with Defendant's employees, agents, or  
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1 representatives were not being recorded. That recording occurred without her consent, is highly  
2 offensive to Plaintiff and would be highly offensive to a reasonable person, including members of  
3 the Class proposed herein.

4 19. Plaintiff is further informed and believes and thereon alleges, that during the  
5 Class Period, Defendant has intentionally utilized certain computer hardware and/or software  
6 technology and/or other equipment (“Call Recording Technology”) to execute a company-wide  
7 policy and practice of recording inbound telephone communications with callers, including  
8 California callers.

9 20. Plaintiff is further informed and believes and thereon alleges, that Defendant  
10 installed and/or utilized Call Recording Technology on its consumer-facing telephone line. This  
11 Call Recording Technology enabled Defendant to record telephone communications with callers,  
12 including California callers, and allowed them to store these recordings for various purposes.

13 21. Plaintiff is further informed and believes and thereon alleges, that Defendant’s  
14 employees, agents, and representatives were and are directed, trained, and instructed to,  
15 and did record inbound telephone communications made to Walgreens toll-free customer service  
16 number at 877-250-5823 from California callers, including Plaintiff, without their consent.

17 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

18 22. Plaintiff brings this lawsuit on behalf of an ascertainable statewide Class  
19 consisting of the following (the “Class”):

20 All persons who, while located in California at any time during the one-year  
21 period of time preceding the filing of the Complaint in this matter and until said  
22 practice is terminated (“Class Period”), called Defendant’s customer service  
23 number, from a cellular or cordless telephone, engaged in a telephone  
24 conversation with Defendant’s employee(s) or representative(s) and were recorded  
25 by Defendant without warning or disclosure at the call outset.

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1           23. Excluded from the Class are all employees of Defendant, all attorneys and  
2 employees of Defendant's counsel, all attorneys and employees of Plaintiff's Counsel, and the  
3 judicial officers to whom this matter is assigned and their staff.

4           24. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to  
5 amend or otherwise alter the Class definition presented to the Court at the appropriate time, or  
6 propose or eliminate subclasses, in response to facts learned through discovery, legal argument  
7 advanced by Defendant, or otherwise.

8           25. This action has been brought and may properly be maintained as a class action  
9 pursuant to California Code of Civil Procedure § 382, and case law thereunder, to which the  
10 California trial courts have been directed by the California Supreme Court to look for guidance.

11           26. The members of the Class are so numerous that joinder of all members is  
12 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,  
13 Plaintiff estimates that there are more than 100 persons. Moreover, Plaintiff alleges that the  
14 precise number of Class members and their location can be ascertained through appropriate  
15 discovery and records held by Defendant and/or Defendant's telephone company's and/or other  
16 telecommunications and toll-free service providers' records regarding calls from California area  
17 codes to Defendant's toll-free customer service telephone number. Such records, including  
18 without limitation call detail records, purchase records, customer records, call lists, and the secret  
19 recordings themselves, can be used to determine the size of the Penal Code § 632.7 Class and to  
20 determine the identities of individual Penal Code § 632.7 Class members. This information may  
21 then be used to contact potential Class members.

22           27. There is a well-defined community of interest in the questions law and fact  
23 affecting the parties represented in this action.

24           28. Common questions of law and fact exist as to all members of the Class. These  
25 common questions predominate over the questions affecting only individual members of the  
26 Class.

1           29.     Among the questions of law and fact common to the Class are, *inter alia*:

2           a.     Whether Defendant has or had a policy and practice of recording inbound  
3 telephone calls made to Walgreens customer service number at 877-250-5823;

4           b.     Whether Defendant installed Call Recording Technology to implement its  
5 policy of recording inbound telephone calls with callers;

6           c.     Whether Defendant's employees, agents, or representatives were directed, trained,  
7 and instructed to, and did, record inbound telephone calls with callers in order to implement the  
8 Defendant's policy and practice of recording telephone calls with callers;

9           d.     Whether Defendant's policy and practice of recording inbound telephone calls  
10 included a policy and practice of warning Class members, including the Plaintiff, at the outset of  
11 each recorded telephone call that the telephone call was being recorded;

12          e.     Whether Defendant failed to warn Class members who participated in an inbound  
13 telephone call with the Defendant that the telephone call was being recorded;

14          f.     Whether Defendant has or had a policy or practice of not obtaining consent to  
15 record telephone calls made to Walgreens customer service number at 877-250-5823;

16          g.     Whether Defendant's recording of Plaintiff's and Class members' inbound  
17 telephone calls without warning or disclosure at the call outset constitutes violations of  
18 California Penal Code § 632.7;

19          h.     Whether Plaintiff and each Class member are entitled to statutory damages of five  
20 thousand dollars (\$5,000) under California Penal Code § 637.2(a)(1) for each violation of  
21 California Penal Code § 632.7; and

22          i.     Whether Plaintiff and Class members are entitled to injunctive relief under  
23 California Penal Code § 637.2(b) to enjoin or restrain the Defendant from committing further  
24 violations of California Penal Code § 632.7.

25           30.     Plaintiff's claims are typical of the claims of all of the other members of the Class.  
26 Plaintiff's claims and the Class member's claims are based on the same legal theories and arise  
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1 from the same unlawful conduct, resulting in the same injury to Plaintiff and to all of the other  
2 Class members.

3 31. Plaintiff will fairly and adequately represent the interests of the Class, she has no  
4 conflicts of interest with other Class members, is subject to no unique defenses, and has retained  
5 counsel competent and experienced in the prosecution of complex litigation and class actions.

6 32. A class action is superior to other available methods for the fair and efficient  
7 adjudication of this controversy because joinder of all members is impracticable, the damages  
8 suffered by each Class member are low, the likelihood of individual Class members prosecuting  
9 separate claims is remote and individual Class members do not have a significant interest in  
10 individually controlling the prosecution of separate actions. Relief concerning Plaintiff's rights  
11 under the laws alleged herein and with respect to the Class as a whole would be appropriate.  
12 Plaintiff knows of no difficulty to be encountered in the management of this action which would  
13 preclude its maintenance as a class action.

14 33. The prosecution of individual actions by California Penal Code § 632.7  
15 Class members would run the risk of establishing inconsistent standards of conduct for  
16 Defendant.

17 34. Defendant has acted, or refused to act, on grounds generally applicable to the  
18 Class, thereby making injunctive relief and statutory damages pursuant to California Penal Code  
19 § 637.2 appropriate with respect to the Class as a whole. Likewise, Defendant's conduct as  
20 described above is unlawful, capable of repetition, and could continue unless restrained and  
21 enjoined by the Court.

22 35. Plaintiff explicitly reserves the right to add additional class representatives,  
23 provided that Defendant is given an opportunity to conduct discovery on the chosen  
24 representative(s). Plaintiff will identify and propose class representatives with the filing of  
25 Plaintiff's motion for class certification.

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**FIRST CAUSE OF ACTION**

**FOR VIOLATIONS OF CALIFORNIA PENAL CODE § 632.7**

**(By Plaintiff and the Class Against Defendant Walgreen Co., and DOES 1 through 100, Inclusive)**

36. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs above as if fully set forth herein and further alleges as follows.

37. On November 30, 2023 and thereafter on December 4, 2023, and while physically present in California, Plaintiff used her cellular telephone to dial Defendant’s customer service number 877-250-5823 and participated in telephone communications with Defendant’s live customer service representatives.

38. Plaintiff alleges on information and belief that, within the applicable statute of limitations, Plaintiff and the Class members, while physically present in California, called Defendant’s customer service number 877-250-5823 and participated in telephone communications with live representatives of Defendant while using a cellular or cordless telephone, which communications were recorded by Defendant without the consent of Plaintiff and the Class members. Defendant did not notify Plaintiff and the Class members at the call outset that their communications were being recorded. Nor did Defendant provide an automated, pre-recorded warning at the call outset that their communications were being recorded. Further, there were no beeps or similar sounds throughout the duration of the telephone communications that would lead Plaintiff and the Class members to believe that their communications were being recorded.

39. Penal Code § 632.7 prohibits the intentional recording of *any* communication without the consent of all parties where at least one of the parties to the communication is using a cellular or cordless telephone. There is no requirement under Penal Code § 632.7 that the communication be confidential. Defendant violated Penal Code § 632.7 in its telephone communications with Plaintiff and the Class during the Class Period. Plaintiff is informed and believes and thereon alleges that, Defendant as a standard business practice, has intentionally made use of a Call Recording Technology that enabled Defendant to surreptitiously record

1 communications with Plaintiff and the Class members, that were made to customer service  
2 telephone number 877-250-5823 on cellular or cordless telephones, without obtaining their  
3 consent.

4 40. Because Defendant did not disclose to Plaintiff or Class members who called the  
5 telephone number 877-250-5823, at the call outset, that their calls were being recorded,  
6 Defendant did not obtain, and could not have obtained, Plaintiff or Class members consent to the  
7 recording of those conversations. Indeed, Plaintiff and the Class had an objectively reasonable  
8 expectation that their calls were not being recorded. That expectation and its objective  
9 reasonableness arises, in part, and is supported by the fact that: (1) Defendant is required by law  
10 to inform persons it receives calls from, at the outset of the communication, of its intent to record  
11 the calls; (2) Businesses that record telephone calls customarily do so inform the persons they  
12 call or receive calls from, at the outset of the communication; and (3) Defendant did not inform  
13 Plaintiff and Class members who called 877-250-5823, at the outset of the communications, that  
14 their telephone communications were being recorded, nor did Defendant seek to obtain their  
15 consent to record. In the business-call context, the California Supreme Court has stated, “in light  
16 of the circumstances that California consumers are accustomed to being informed at the outset of  
17 a telephone call whenever a business entity intends to record the call, it appears equally plausible  
18 that, in the absence of such an advisement, a California consumer reasonably would anticipate  
19 that such a telephone call is *not* being recorded, particularly in view of the strong privacy interest  
20 most persons have with regard to the personal financial information frequently disclosed in such  
21 calls.” *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 118 (2006).

22 41. Due to these violations as set forth herein, Plaintiff and Class members are entitled  
23 to an award of five thousand dollars (\$5,000) per violation pursuant to California Penal Code  
24 § 637.2(a)(1), even in the absence of proof of actual damages, an amount deemed proper by the  
25 California Legislature. Plaintiff and the Class are also entitled to injunctive relief to enjoin  
26 further violations pursuant to California Penal Code § 637.2(b).

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1 42. Plaintiff and Class members are entitled to recover reasonable attorneys’ fees  
2 pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or  
3 the common fund doctrine.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of herself and members of the Class, prays for  
6 judgment against Defendant as follows:

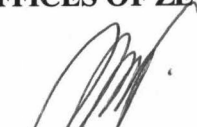
- 7 1. For an order certifying this matter as a class action;
- 8 2. For an order declaring that Defendant’s actions, as described herein, violate  
9 California Penal Code § 632.7;
- 10 3. For an order awarding Plaintiff and each member of the Class statutory damages  
11 of five thousand dollars (\$5,000) per violation under California Penal Code § 637.2(a)(1);
- 12 4. For appropriate injunctive relief under California Penal Code § 637.2(b);
- 13 5. For an award of attorneys’ fees as authorized by statute including, but not limited  
14 to, the provisions of California Code of Civil Procedure § 1021.5, and as authorized under the  
15 “common fund” doctrine, and as authorized by the “substantial benefit” doctrine;
- 16 6. For costs of the suit incurred herein;
- 17 7. For prejudgment interest at the legal rate; and
- 18 8. For such other and further relief as the Court may deem proper.

19  
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial by jury for Plaintiff and the Class on all claims so triable.  
22

23 Dated: January 31, 2024

**LAW OFFICES OF ZEV B. ZYSMAN. APC**

24  
25 By:   
26 Zev B. Zysman

*Attorneys for Plaintiff and the Class*