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*Attorneys for Plaintiffs
and the Putative Class*

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>11 EMIR BALANZAR and CECELIA 12 LAHR, individually and on behalf of 13 others similarly situated,</p> <p>14 Plaintiffs,</p> <p>15 vs.</p> <p>16 FIDELITY BROKERAGE 17 SERVICES, LLC,</p> <p>18 Defendant.</p>	<p>CASE NO. '22CV1372 GPC BGS</p> <p><u>CLASS ACTION</u></p> <p>COMPLAINT FOR DAMAGES FOR VIOLATIONS OF:</p> <p>THE CALIFORNIA INVASION OF PRIVACY ACT, CAL. PEN. CODE 637.3 ET SEQ.</p> <p>JURY TRIAL DEMANDED</p>
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1 **INTRODUCTION**

2 1. Plaintiffs Emir Balanzar and Cecelia Lahr (“Plaintiffs”), on behalf of themselves
3 and a Class of similarly situated individuals defined below, bring this Class
4 Action Complaint and Demand for Jury Trial against Defendant Fidelity
5 Brokerage Services, LLC (“Defendant”) to put an end to its unlawful use,
6 examination, and recording of Plaintiffs’ and putative Class members’ biometric
7 voice prints. Plaintiffs, for this Class Action Complaint, allege as follows upon
8 personal knowledge as to Plaintiffs’ own acts and experiences and, as to all other
9 matters, upon information and belief.

10 **NATURE OF THE ACTION**

- 11 2. Defendant utilizes a system that enables it to examine the voice of anyone that calls
12 it to determine the truth or falsity of the callers’ statements. The software combines
13 audio, voice, and artificial intelligence technologies to compare the callers’ voices
14 to a comprehensive database of recordings and metrics.
- 15 3. The system Defendant uses allows it to authenticate or refute the true identity of
16 callers, among other things. The system contains voice recognition software that
17 creates a biometric voice print of each caller. The system then allows Defendant
18 to analyze the callers’ voice prints to determine the truth or falsity of their
19 statements.
- 20 4. Defendant does this for anyone that calls it, including Plaintiffs and Class
21 members.
- 22 5. In addition to the behind-the-scenes voice examinations that Defendant performed
23 on Plaintiffs and class members, Defendant published a notice that it uses a system
24 it calls “Fidelity MyVoice” which “will detect and verify your voiceprint* in the
25 first few moments of the call.”¹

26 ///

27 _____
28 ¹ <https://www.fidelity.com/security/fidelity-myvoice/overview>

1 6. Defendant states; “A voiceprint is a combination of your physical and behavioral
2 voice patterns. Like a fingerprint, it's unique to you” and “A voice print is a set of
3 characteristics associated with your unique voice pattern. This pattern is saved and
4 will be used to verify your identity when you call us. A voice print is a set of
5 characteristics associated with your unique voice pattern. This pattern is saved and
6 will be used to verify your identity when you call us.”²

7 7. While Defendant claims that consumers must enroll into its MyVoice System,
8 Plaintiffs allege that Defendant performs the same or similar voice examinations
9 on anyone that calls it.

10 8. Plaintiffs allege that Defendant was secretly using voice print technology for years
11 prior to publishing its existence and seeking enrollment.

12 9. Defendant does not obtain “express written consent” from any callers before
13 examining and analyzing their voices.

14 10. Even those that enroll into its MyVoice System do it verbally over the phone,³
15 which does not satisfy the CIPA requirement of express written consent.

16 11. Recognizing the need to protect its residents from situations like these, California
17 enacted the California Invasion of Privacy Act (“CIPA”), and specifically Cal.
18 Pen. Code § 637.3, to regulate entities that examine or record California residents’
19 voice prints or voice stress patterns without obtaining the residents’ express
20 written consent first.

21 12. Despite this law, Defendant disregards California residents’ statutorily protected
22 privacy rights and unlawfully examines or records their voices in violation of
23 CIPA. Specifically, Defendant has violated (and continues to violate) CIPA
24 because it uses a system which examines or records California residents’ “voice
25 prints or voice stress patterns... to determine the truth or falsity of statements”
26 without their express written consent.

27
28 ² <https://www.fidelity.com/security/fidelity-myvoice/overview>

³ <https://www.fidelity.com/security/fidelity-myvoice/overview>

1 **PARTIES**

2 13. Plaintiffs are natural persons and residents of the State of California.

3 14. Defendant is a limited liability company registered in Delaware with its principal
4 place of business located in Massachusetts. Defendant has thirty-four (34)
5 locations in California.⁴

6 **JURISDICTION AND VENUE**

7 15. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
8 1332(d) because there are more than 100 Class members and the aggregate amount
9 in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and at
10 least one Class member is a citizen of a state different from Defendant.

11 16. This court has personal jurisdiction over Defendant because Defendant conducts
12 business in this State and within this judicial district and the conduct alleged in
13 this Complaint occurred in, and/or emanated from, this State and within this
14 judicial district. Additionally, Plaintiffs reside in this judicial district.

15 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial
16 part of the events giving rise to Plaintiffs’ claims took place within this District.

17 **BACKGROUND**

18 **I. The California Invasion of Privacy Act**

19 18. The California Legislature enacted the Invasion of Privacy Act to protect certain
20 privacy rights of California residents. The legislature expressly recognized that
21 devices and techniques which create a serious threat to privacy and the free
22 exercise of personal liberties cannot be tolerated in a free and civilized society.

23 19. As part of the Invasion of Privacy Act, the California Legislature introduced Penal
24 Code § 637.3. The purpose of the legislation was to prohibit any person or entity
25 in California from using;

26 “any system which examines or records in any manner voice
27 prints or other voice stress patterns of another person to

28 _____
⁴ <https://www.fidelity.com/branches/branch-locations>

1 determine the truth or falsity of statements made by such
2 person without his or her express written consent given in
3 advance of the examination or recordation.” Cal. Pen Code §
637.3

4 20. Creating a voice print requires extracting an individual’s phonetic features
5 (including their unique speech patterns, tones, and other characteristics) from their
6 voice. As such, a voice print serves as an audible “fingerprint” which can directly
7 identify an individual and can even reveal the speaker’s behavioral traits.

8 21. The California Legislature intended to protect individuals from the unauthorized
9 examination and recording of their voice prints, especially when it takes place
10 without an individual’s knowledge or consent. Such surreptitious examination
11 poses a serious threat to California residents’ privacy and personal liberties.

12 22. Individuals may bring an action against the violator of this section of CIPA to
13 recover actual damages or \$1,000 for each violation, whichever is greater under
14 Cal. Penal Code §637.3(c).

15 **II. Defendant Violated the California Invasion of Privacy Act**

16 23. Around January of 2014, Defendant implemented new terms and conditions for
17 using its services. The terms and conditions did not contain any disclaimer that it
18 used a voice print system.⁵

19 24. No later than 2017, Defendant began examining and recording the voice prints of
20 consumers that called it. In fact, Defendant was one of the first retail brokers to
21 use a voice print system to identify the true identity of people.⁶

22 25. On November 21, 2017, a fidelity customer complained that; “Based on my own
23 experience, Fidelity now enables MyVoice automatically for its customers who
24 call in for other reasons. Apparently, their conversation with Fidelity customer
25 service provides enough data for MyVoice to recognize them. (Customers are
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28 ⁵ https://web.archive.org/web/20140122191103/https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/customer-service/brokerage-retirement-cust-agree-and-commission-sched.pdf

⁶ <https://www.cnn.com/2017/11/22/sandler-oneill-you-may-soon-be-able-to-trade-stocks-with-your-voice.html>

1 informed afterward that MyVoice has been enabled, and they can opt out, although
2 they aren't told that opting out is possible.) In an era where Apple's face
3 recognition is easily defeated by family members, is voice recognition any more
4 secure? Is a "voiceprint" even possible?"⁷

5 26. Around May of 2018, Fidelity began touting its use of MyVoice technology on its
6 website.⁸

7 27. Around January of 2021, Fidelity finally added a disclaimer to its terms and
8 conditions that it uses MyVoice technology.⁹

9 28. From no later than 2017 to around January of 2021, Defendant was using its
10 MyVoice technology to create and examine voice prints of anyone that called it
11 without disclosing it in its terms and conditions.

12 29. Around January of 2021, Defendant may have sent a Notice of Change of Terms
13 to its customers attempting to enable it to use MyVoice on them legally.

14 30. However, this would not satisfy the express written consent requirement of CIPA.
15 Under CIPA, the consumer must provide the written consent. It is not enough for
16 the entity to tell the consumer in writing what it is doing. The consumer would
17 need to expressly agree to it with a signature, an e-signature, a checkbox, or some
18 other affirmative written act besides simply continuing to use Defendant's
19 services.

20 31. Plaintiffs and Class members were unaware of the new terms and never expressly
21 agreed to them in writing as required by CIPA.

22 32. Defendant recognizes consumers' identities by (1) making a recording of the
23 initial call with the consumer (2) examining that recording to identify specific
24 stress patterns and other characteristics to create a "voice print" which is entered
25

27 ⁷ <https://slashdot.org/submission/7630881/fidelity-automatically-signs-up-its-customers-for-voice-recognition>

28 ⁸ <https://web.archive.org/web/20180530085020/https://www.fidelity.com/security/fidelity-myvoice/overview>

⁹ https://web.archive.org/web/20210128193837/https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/customer-service/brokerage-retirement-cust-agree-and-commission-sched.pdf

1 into a database then (3) examining all subsequent calls from that consumer and
2 comparing the voice prints to those already on file for that consumer.

3 33. Defendant determines the truth or falsity of caller statements (even for first-time
4 callers) by examining patterns. There are known audible indications of lying such
5 as (1) change in breathing (2) repeating words or phrases (3) difficulty speaking¹⁰
6 (4) change in speech patterns (5) unusual rise or fall in vocal tone¹¹ (6) odd
7 inflection (7) context of use of contractions (8) lack of use of personal pronouns¹²
8 (9) using a high-pitched voice (10) sudden change of volume (11) using phrases
9 such as ‘I want to be honest with you,’ ‘honestly’ or ‘let me tell you the truth’ (12)
10 using words such as ‘uh,’ ‘like’ and ‘um’ and (13) slip-ups and corrections¹³ that
11 can indicate a caller is not being truthful.

12 34. Defendant’s system uses the full audio of a call to determine its characteristics,
13 meaning Defendant analyzes unique acoustic and behavioral features of a caller’s
14 voice, including stress patterns to determine truth or falsity of statements.

15 35. The system Defendant uses is very similar to a Polygraph Test. Such a system is
16 exactly what the California Legislature chose to regulate when it made it unlawful
17 to use without express written consent.

18 36. Defendant did not obtain prior express written consent from Plaintiffs or Class
19 members to examine their voices or record their unique voice prints to determine
20 the truth or falsity of their statements in violation of Cal. Penal Code §637.3.

21 **FACTS SPECIFIC TO PLAINTIFFS**

22 37. Around 2005, Plaintiff Emir Balanzar became a customer of Defendant.

23 38. Around 2017, Plaintiff Cecelia Lahr became a customer of Defendant.

24 39. Over the years, Plaintiffs have called Defendant on numerous occasions.

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26
27 ¹⁰ <https://www.businessinsider.com/11-signs-someone-is-lying-2014-4>

¹¹ <https://www.forensicscolleges.com/blog/resources/10-signs-someone-is-lying>

28 ¹² <https://www.cnbc.com/2022/04/07/want-to-tell-if-someone-is-lying-to-you-a-body-language-expert-shares-the-biggest-signs-to-look-for.html>

¹³ <https://time.com/5443204/signs-lying-body-language-experts/>

1 40. Starting no later than 2017, Defendant began examining and analyzing Plaintiffs’
2 voices attempting to ascertain the truthfulness of Plaintiffs’ statements.

3 41. Defendant recorded Plaintiffs’ voices and created “voice prints” associated with
4 Plaintiffs.

5 42. Defendant then automatically input Plaintiffs’ voice prints into its biometric voice
6 print database.

7 43. When Plaintiffs subsequently called Defendant, Defendant utilized a system that
8 examined Plaintiffs’ voices again and compared it to the voice prints it stored in
9 its database from previous calls. Defendant did this to determine the truth or falsity
10 of Plaintiffs’ statements, including to determine the true identity of Plaintiffs.

11 44. Plaintiffs have called Defendant on numerous occasions since Defendant began
12 utilizing its voice analysis system. During at least one of these calls, Defendant
13 examined and recorded Plaintiffs’ voice print and voice stress pattern passively,
14 without Plaintiffs’ knowledge.

15 45. Plaintiffs did not give consent – written or otherwise – to Defendant to collect
16 voice prints and examine Plaintiffs’ voice for any purpose whatsoever.

17 46. Any applicable statute(s) of limitations has been tolled by the “delayed discovery”
18 rule. Plaintiffs did not know (and had no way of knowing) that Plaintiffs’ voices
19 were recorded for purposes of creating voice prints, or that Plaintiffs’ voice stress
20 patterns were examined, because Defendant kept this information secret.

21 47. Plaintiffs have been exposed to the risks and harmful conditions created by
22 Defendant’s violations of CIPA alleged herein.

23 48. Plaintiffs seek statutory damages under CIPA as compensation for the injuries
24 Defendant caused.

25 **STANDING**

26 49. Defendant’s conduct constituted invasions of privacy because it disregarded
27 Plaintiffs’ statutorily protected rights to privacy, in violation of CIPA.

28 ///

1 50. Defendant caused Plaintiffs to (1) suffer invasions of legally protected interests.
2 (2) The invasions were concrete because the injuries actually existed for Plaintiffs
3 and continue to exist every time Plaintiffs call Defendant. The privacy invasions
4 suffered by Plaintiffs and the Class were real and not abstract. Plaintiffs and the
5 Class have a statutory right to be free from voice examination without first
6 providing their express written consent. The voice examinations Defendant
7 performed were meant to determine truth or falsity of statements, similar to a
8 Polygraph Test. Plaintiffs and Class members were completely unaware they were
9 being subject to such a test. Plaintiffs' injuries were not divorced from concrete
10 harm in that privacy has long been protected in the form of trespassing laws and
11 the Fourth Amendment of the U.S. Constitution for example. Like here, an
12 unreasonable search may not cause actual physical injury, but is considered serious
13 harm, nonetheless. (3) The injuries here were particularized because they affected
14 Plaintiffs in personal and individual ways. The injuries were individualized rather
15 than collective since Plaintiffs' unique voice patterns were examined without
16 consent during different calls on separate occasions. (4) Defendant's past invasions
17 were actual and future invasions are imminent and will occur next time Plaintiffs
18 call Defendant. Defendant continues to examine voices in California without
19 express written consent. A favorable decision by this court would redress the
20 injuries of Plaintiffs and the Class.

21 CLASS ACTION ALLEGATIONS

22 51. **Class Definition:** Plaintiffs bring this action pursuant to Federal Rules of Civil
23 Procedure 23 and on behalf of Plaintiffs and a Class defined as follows:

24 All residents of the State of California that had their voice
25 prints or other voice stress patterns examined or recorded by
26 Defendant to determine the truth or falsity of their statements.

27 52. The following people are excluded from the Class: (1) any Judge or Magistrate
28 presiding over this action and members of their families; (2) Defendant,

1 Defendant's subsidiaries, parents, successors, predecessors, and any entity in
2 which the Defendant or its parents have a controlling interest and their current or
3 former officers and directors; (3) persons who properly execute and file a timely
4 request for exclusion from the Class; (4) persons whose claims in this matter have
5 been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel
6 and Defendant's counsel; and (6) the legal representatives, successors, and assigns
7 of any such excluded persons.

8 **53. Ascertainability and Numerosity:** The exact number of Class members is
9 unknown to Plaintiffs at this time, but Defendant is a very large entity with millions
10 of customers in the United States and California. Members of the Class will be
11 easily identified through Defendant's records.

12 **54. Commonality and Predominance:** There are many questions of law and fact
13 common to the claims of Plaintiffs and the Class, and those questions predominate
14 over any questions that may affect individual members of the Class. Common
15 questions for the Class include, but are not necessarily limited to the following:

- 16 a. Whether Defendant used a system which examined, or recorded Plaintiffs'
17 and the Class's voice prints or voice stress patterns;
- 18 b. Whether Defendant used voice prints or voice stress patterns to determine the
19 truth or falsity of statements made by Plaintiffs and the Class; and
- 20 c. Whether Defendant obtained prior express written consent from Plaintiffs
21 and the Class members.

22 **55. Typicality:** Plaintiffs' claims are typical of the claims of all the other members of
23 the Class. Plaintiffs and the Class members sustained substantially similar injuries
24 as a result of Defendant's uniform wrongful conduct, based upon the same
25 interactions with Defendant that were made without exception as to Plaintiffs and
26 the Class.

27 **56. Adequate Representation:** Plaintiffs will fairly and adequately represent and
28 protect the interests of the Class and have retained counsel competent and

1 experienced in complex litigation and class actions. Plaintiffs have no interest
2 adverse to the Class, and Defendant has no defenses unique to Plaintiffs. Plaintiffs
3 and Plaintiffs' counsel are committed to vigorously prosecuting this action on
4 behalf of the members of the Class and have the financial resources to do so.
5 Neither Plaintiffs nor Plaintiffs' counsel have any interest contrary to those
6 interests of the of the Class.

7 57. **Superiority:** This case is appropriate for class certification because class
8 proceedings are superior to all other available methods for the fair and efficient
9 adjudication of this controversy because joinder of all parties is impracticable. The
10 damage suffered by the individual members of the Class will likely be relatively
11 small, especially given the burden and expense of individual prosecution of the
12 complex litigation necessitated by Defendant's actions. Thus, it would be virtually
13 impossible for the individual members of the Class to obtain effective relief from
14 Defendant's misconduct. Even if members of the Class could sustain such
15 individual litigation, it would still not be preferable to a class action because
16 individual litigation would increase the delay and expense to all parties due to the
17 complex legal and factual controversies presented in this Complaint. By contrast,
18 a class action presents far fewer management difficulties and provides the benefits
19 of single adjudication, economies of scale, and comprehensive supervision by a
20 single Court. Economies of time, effort, and expense will be fostered, and
21 uniformity of decisions ensured.

22 CAUSE OF ACTION

23 Violation of Cal. Penal Code § 637.3

24 (On Behalf of Plaintiffs and the Class)

25 58. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

26 59. CIPA prohibits any person or entity in California from using "any system which
27 examines or records in any manner voice prints or other voice stress patterns of
28 another person to determine the truth or falsity of statements made by such person

1 without his or her express written consent given in advance of the examination or
2 recordation.” Cal. Penal Code § 637.3(a).

3 60. Defendant is a limited liability company and therefore an “entity” under CIPA.

4 61. Defendant has thirty-four (34) branch locations in California¹⁴ and is therefore “in
5 this state” under CIPA.

6 62. Defendant utilizes software that creates a “system” under CIPA because it
7 examines, or records Plaintiffs’ and the Class’s voice prints or other voice stress
8 patterns.

9 63. Defendant utilized the system to examine or record the voice prints of Plaintiffs
10 and the Class when they called Defendant’s customer support lines that were
11 connected to the voice printing and analysis system.

12 64. Defendant examined or recorded Plaintiffs’ and Class members’ voice prints to
13 determine the truth or falsity of their statements – including, for example, their
14 statements about who they claimed to be.

15 65. Defendant did not obtain prior express written consent from Plaintiffs and the
16 Class to use, examine, or record their voice prints or voice stress patterns for any
17 purpose whatsoever.

18 66. On behalf of Plaintiffs and the Class, Plaintiffs seek: (1) injunctive and equitable
19 relief as is necessary to protect the interests of Plaintiffs and the Class by requiring
20 Defendant to comply with CIPA’s requirements for the use, recording, and
21 examination of voice prints or other voice stress patterns as described herein; and
22 (2) damages of \$1,000 for each violation of CIPA pursuant to Cal. Penal Code §
23 637.3(c).

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on behalf of Plaintiffs and the Class,
26 respectfully requests this Court to enter an order:

27 _____
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¹⁴ <https://www.fidelity.com/branches/branch-locations>

- 1 A. Certifying this case as a class action on behalf of the Class defined above
2 pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiffs as the
3 representatives of the Class, and appointing Plaintiffs' counsel as Class
4 Counsel;
- 5 B. Declaring that Defendant's actions, as described above, violated CIPA;
- 6 C. Awarding statutory damages of \$1,000 for each violation of CIPA pursuant to
7 Cal. Penal Code § 637.3(c);
- 8 D. Awarding injunctive and other equitable relief as is necessary to protect the
9 interests of the Class;
- 10 E. Awarding Plaintiffs and the Class their reasonable litigation expenses and
11 attorneys' fees;
- 12 F. Awarding Plaintiffs and the Class pre- and post-judgement interest, to the
13 extent allowable; and
- 14 G. Awarding such other and further relief as equity and justice may require.

15 **JURY TRIAL**

16 Pursuant to the Seventh Amendment of the United States Constitution,
17 Plaintiffs demand a trial by jury for all issues so triable.

18
19 Respectfully submitted,

20 **SWIGART LAW GROUP**

21 Date: September 11, 2022

22 By: *s/ Joshua Swigart*
23 Joshua B. Swigart, Esq.
24 Josh@SwigartLawGroup.com
25 Attorney for Plaintiffs

26 **LAW OFFICE OF DANIEL G. SHAY**

27 Date: September 11, 2022

28 By: *s/ Daniel Shay*
Daniel G. Shay, Esq.
DanielShay@TCPAFDCPA.com
Attorney for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Emir Balanzar and Cecelia Lahr, individually and on behalf of others
(b) County of Residence of First Listed Plaintiff San Diego
(c) Attorneys (Firm Name, Address, and Telephone Number)
Swigart Law Group, 2221 Camino Del Rio S, Ste 308 San Diego, CA 92108 - 866-219-3343 & Daniel Shay, Esq

DEFENDANTS
Fidelity Brokerage Services, LLC
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
'22CV1372 GPC BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [X] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
TORTS: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157, INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016, SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)), FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from Another District (specify) [] 6 Multidistrict Litigation - Transfer [] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d) and California Invasion of Privacy Act (CIPA), Cal. Pen .Code 637.3 et seq.
Brief description of cause:
Illegal examining or recording of voice prints or other voice stress patterns without express written consent.

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 9/11/2022 SIGNATURE OF ATTORNEY OF RECORD s/ Joshua B. Swigart

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)
