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Tuan Nguyen

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE – CIVIL DIVISION – UNLIMITED**

**TUAN NGUYEN, INDIVIDUALLY
AND ON BEHALF OF ALL
OTHERS SIMILARLY
SITUATED,**

Plaintiff,

v.

**SQUARETRADE, INC.; AND,
DOES 1-20 INCLUSIVE,**

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO CALIFORNIA’S
INVASION OF PRIVACY ACT,
CAL. PENAL CODE § 632.7**

JURY TRIAL DEMANDED

CASE NO.:

Nguyen, et al. v. SquareTrade, Inc.

**PLAINTIFF TUAN NGUYEN’S CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF PURSUANT TO CALIFORNIA PENAL CODE § 632.7**

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INTRODUCTION

1. The California State Legislature passed the California Invasion of Privacy Act (“CIPA”) in 1967 to protect the right of privacy of the people of California, replacing prior laws which permitted the recording of telephone conversations with the consent of one party to the conversation. California Penal Code § 632.7 was added to CIPA in 1992 due to specific privacy concerns over the increased use of cellular and cordless telephones. Section 632.7 prohibits intentionally recording all communications involving cellular and cordless telephones, not just confidential communications.
2. TUAN NGUYEN (“Plaintiff”) bring this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant SQUARETRADE, INC. (“Defendant”) and its related entities, subsidiaries and agents in willfully employing and/or causing to be employed certain recording equipment in order to record the telephone conversations of Plaintiff without the knowledge or consent of Plaintiff in violation of California Penal Code § 632.7 thereby invading Plaintiff’s privacy.
3. Plaintiff alleges as follows upon personal knowledge as to their own acts and experiences, and, as to all other matters, upon information and belief, including the investigation conducted by Plaintiff’s attorneys.
4. California Penal Code § 632.7 prohibits one party to a telephone call from intentionally recording the same conversation without the knowledge or consent of the other while the person being recorded is on a cellular telephone.
5. Unlike California Penal Code § 632, there is no requirement under California Penal Code § 632.7 that the communication be confidential.

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1 6. Plaintiff alleges that Defendant continues to violate Penal Code § 632.7 by
2 impermissibly recording its telephone conversations with California
3 residents while said residents are on cellular telephones.

4 **JURISDICTION AND VENUE**

5 7. Jurisdiction of this Court is proper because the events leading to Plaintiff’s
6 cause of action occurred in Orange County and in the State of California.

7 8. This action arises out of Defendant’s violations of California’s Invasion of
8 Practice Act, Cal. Penal Code § 632.7 (“CIPA”).

9 9. Because Defendant conducts business within the State of California,
10 personal jurisdiction is established.

11 10. Venue is proper.

12 **PARTIES**

13 11. Plaintiff is, and at all times mentioned herein was, an individual citizen and
14 resident of the State of California.

15 12. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
16 at all times mentioned herein was, a corporation incorporated in the State of
17 Delaware and headquartered in the State of California. Defendant as a part
18 of its business is in the business of debt collection and regularly collects
19 debts. Defendant has a policy and practice of recording telephone
20 conversations with the public, including California residents.

21 13. Plaintiff is informed and believes, and thereon alleges, that Defendant’s
22 employees and agents are directed, trained and instructed to, and do, record
23 cellular telephone conversations with the public, including California
24 residents.

25 ///

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1 14. The true names and capacities, whether individual, corporate (including
 2 officers and directors thereof), associate or otherwise of Defendants sued
 3 herein as DOES 1 through 20, inclusive, are unknown to Plaintiff, who
 4 therefore sues these Defendants by such fictitious names, pursuant to the
 5 California Civil Procedure Code § 474. Plaintiff is informed and believes,
 6 and thereon alleges that each Defendant designated as a DOE is involved in
 7 or is in some manner responsible as a principal, beneficiary, agent, co-
 8 conspirator, joint venturer, alter ego, third-party beneficiary, or otherwise,
 9 for the agreements, transactions, events and/or acts hereinafter described,
 10 and thereby proximately caused injuries and damages to Plaintiff. Plaintiff
 11 request that when the true names and capacities of these DOE Defendants
 12 are ascertained, they may be inserted in all subsequent proceedings, and that
 13 this action may proceed against them under their true names.

14 15. Plaintiff is informed and believes, and thereon alleges that at all times herein
 15 mentioned, Defendants DOES 1 through 20, were agents or employees of
 16 each of their co-defendants and, in doing the things hereafter mentioned,
 17 each was acting in the scope of his authority as such agent or employee and
 18 with the permission and consent of their co-defendants, and each of them.

19 **FACTUAL ALLEGATIONS**

20 16. Defendant is, and at all times mentioned herein was, a corporation doing
 21 business in California.

22 17. Plaintiff is informed and believes, and on the basis of that information and
 23 belief alleges, that at all times mentioned in this Complaint, Defendants
 24 whether agents or employees in doing the things alleged in this Complaint,
 25 were acting within the course and scope of that agency and employment.

26 18. At all times relevant, Plaintiff is an individual residing within the State of
 27 California.
 28

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- 1 19. On or about August 28, 2017, at approximately 9:01 a.m. Plaintiff received a
2 call on Plaintiff’s cellular telephone from Defendant.
- 3 20. The phone call came from the number 1-877-927-7268.
- 4 21. Plaintiff answered said phone call and spoke to a representative named
5 “Ricky.”
- 6 22. Plaintiff and Defendant’s representative spoke for several minutes.
- 7 23. During the course of this conversation, at no time did Defendant inform
8 Plaintiff that the call was being recorded.
- 9 24. On or about August 28, 2017, at approximately 9:06 a.m. Plaintiff received a
10 second phone call on Plaintiff’s cellular telephone from Defendant.
- 11 25. The phone call came from the number 1-877-927-7268.
- 12 26. Plaintiff answered said phone call and spoke to a representative named
13 “Ella.”
- 14 27. Plaintiff and Defendant’s representative spoke for several minutes.
- 15 28. During the course of this conversation, at no time did Defendant inform
16 Plaintiff that the call was being recorded.
- 17 29. Both of these conversations with Defendant’s representatives pertained to
18 the collection of a debt allegedly owed by Plaintiff.
- 19 30. Specifically, Plaintiff wanted to cancel Plaintiff’s protection plan that
20 Plaintiff purchased from Defendant.
- 21 31. Plaintiff no longer needed said protection plan because Plaintiff did not
22 retain the monitor that needed the protection plan for.
- 23 32. Plaintiff only discovered said phone calls were being recorded after
24 inquiring with Defendant’s Representatives about whether the call was being
25 recorded at the end of these telephonic communications.
- 26 33. Said conversation, at its very core, is private.
- 27
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- 1 34. Defendant, acting as a debt collection agency, is in the practice of having
2 conversations which are highly personal and involve private financial
3 information.
- 4 35. Information of this nature is not regularly discussed with others.
- 5 36. Plaintiff had no reasonable expectation that any of Plaintiff's cellular
6 telephone conversations with Defendant would be recorded.
- 7 37. Had Plaintiff known that the conversations were recorded, Plaintiff would
8 have conducted herself differently.
- 9 38. Plaintiff was shocked to discover that such a confidential communication
10 was being recorded by Defendant without Plaintiff's knowledge or consent.
- 11 39. Plaintiff found Defendant's clandestine recording to be highly offensive due
12 to the delicacy of the topics discussed during said conversations.
- 13 40. Had Plaintiff received a recording disclosure at the outset of the call, as
14 Plaintiff is accustomed to hearing, Plaintiff would have not discussed such
15 private information with Defendant.
- 16 41. The conversation with Plaintiff, was without Plaintiff's knowledge or
17 consent, recorded by Defendant, causing harm and damage to Plaintiff.
- 18 42. At no time during the call did Plaintiff give consent for the cellular
19 telephone call to be monitored, recorded and/or eavesdropped upon.
- 20 43. Plaintiff is informed and believes, and thereon alleges, that during the
21 relevant time period, Defendant has had a policy and a practice of recording
22 telephone conversations with consumers.
- 23 44. Plaintiff is further informed and believes, and thereon alleges that
24 Defendant's employees and agents are directed, trained and instructed to,
25 and do, record cellular telephone conversations with the public, including
26 Plaintiff and other California residents.
- 27 45. Plaintiff is informed and believes, and thereon alleges, that during the
28 relevant time period, Defendant has had all of its calls to the public,

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1 including those made to California residents, recorded without the
2 knowledge or consent of the public, including Plaintiff and other California
3 residents.

4 46. California Penal Code § 632.7(a) is very clear in its prohibition against such
5 unauthorized tape recording without the consent of the other party to the
6 conversation: “Every person who, without the consent of all parties to a
7 communication, intercepts or receives and intentionally records, or assists in
8 the interception or reception and intentional recordation of, a communication
9 transmitted between two cellular radio telephones, a cellular radio telephone
10 and a landline telephone, two cordless telephones, a cordless telephone and a
11 landline telephone, or a cordless telephone and a cellular radio telephone
12 [violates this section].”

13 47. As such, California Penal Code § 637.2 permits Plaintiff to bring this action
14 for any violation of California Penal Code § 632.7(a) and provides for
15 statutory damages of \$5,000.00 for each violation.

16 48. This suit seeks only damages and injunctive relief for recovery of economic
17 injury and it expressly is not intended to request any recovery for personal
18 injury and claims related thereto.

19 49. Plaintiff is informed and believes, and thereon alleges, that Defendant
20 intentionally recorded a communication transmitted between a cellular radio
21 telephone and a landline telephone without Plaintiff’s consent as prohibited
22 by California Penal Code § 632.7(a).

23 50. Defendant violated Plaintiff’s constitutionally protected privacy rights by
24 failing to advise or otherwise provide notice at the beginning of the recorded
25 conversation with Plaintiff that the calls would be recorded and Defendant
26 did not try to obtain the Plaintiff’s consent before such recording.

27 51. The recording or other unauthorized connection was done over the telephone,
28 without Plaintiff’s prior knowledge or consent. Plaintiff was damaged

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1 thereby, as detailed herein, in at least an amount permitted by the statutory
2 damages mandated by California Penal Code § 637.2(a).

3 52. Defendant, and its employees and agents, surreptitiously recorded calls made
4 by Defendant to Plaintiff. At no time before the calls was Plaintiff warned,
5 told, advised or otherwise given any indication by Defendant, its employees
6 or agents, that the calls would be recorded.

7 53. As a result thereof, Plaintiff has been damaged as set forth in the Prayer for
8 Relief herein.

9 54. Plaintiff seeks statutory damages and injunctive relief under California Penal
10 Code § 637.2.

11 **CLASS ACTION ALLEGATIONS**

12 55. Plaintiff brings this action on behalf of herself and on behalf of all others
13 similarly situated (“The Class”).

14 56. Plaintiff represents, and is a member of, “The Class” defined as follows:

15 All persons in California whose inbound and/or outbound
16 cellular telephone conversations were recorded without their
17 consent by Defendant within one year prior to the filing of the
original Complaint in this action.

18 57. Defendant, and its employees and agents are excluded from The Class.
19 Plaintiff does not know the number of members in The Class, but believe
20 this number to be in the tens of thousands, if not more. Thus, this matter
21 should be certified as a Class action to assist in the expeditious litigation of
22 this matter.

23 58. This suit seeks only damages and injunctive relief for recovery of economic
24 injury on behalf of The Class and it expressly is not intended to request any
25 recovery for personal injury and claims related thereto. Plaintiff reserves the
26 right to expand The Class definition to seek recovery on behalf of additional
27 persons as warranted as facts are learned in further investigation and
28 discovery.

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1 59. The joinder of The Class members is impractical and the disposition of their
2 claims in the Class action will provide substantial benefits both to the parties
3 and to the Court. The Class can be identified through Defendant’s records.

4 60. There is a well-defined community of interest in the questions of law and
5 fact involved affecting the parties to be represented. The questions of law
6 and fact to The Class predominate over questions which may affect
7 individual Class members, including the following:

- 8 a. Whether Defendant has a policy of recording incoming and/or outgoing
9 calls made to cellular telephones;
- 10 b. Whether Defendant discloses to callers and/or obtains their consent that
11 their incoming and/or outgoing cellular telephone conversations were
12 being recorded;
- 13 c. Whether Defendant’s policy of recording incoming and/or outgoing calls
14 constituted a violation of California Penal Code §§ 632.7 and/or 637;
- 15 d. Whether Defendant’s policy of recording incoming and/or outgoing calls
16 constitutes an invasion of privacy;
- 17 e. Whether Plaintiff and The Class were damaged thereby, and the extent of
18 damages for such violations; and
- 19 f. Whether Defendant should be enjoined from engaging in such conduct in
20 the future.

21 61. Plaintiff is asserting claims that are typical of The Class because every other
22 member of The Class, like Plaintiff, was exposed to virtually identical
23 conduct and are entitled to the greater of statutory damages of \$5,000 per
24 violation or three times actual damages per violation pursuant to Penal Code
25 § 637.2(a).

1 62. Plaintiff will fairly and adequately represent and protect the interests of The
 2 Class in that Plaintiff has no interest antagonistic to any member of The
 3 Class. Plaintiff has retained counsel experienced in handling class action
 4 claims to further ensure such protection.

5 63. Plaintiff and the members of The Class have all suffered irreparable harm as
 6 a result of the Defendant's unlawful and wrongful conduct. Absent a class
 7 action, The Class will continue to face the potential for irreparable harm. In
 8 addition, these violations of law will be allowed to proceed without remedy
 9 and Defendant will likely continue such illegal conduct. Because of the size
 10 of the individual Class member's claims, few, if any, Class members could
 11 afford to seek legal redress for the wrongs complained of herein.

12 64. A class action is a superior method for the fair and efficient adjudication of
 13 this controversy. Class-wide damages are essential to induce Defendant to
 14 comply with California law. The interest of The Class members in
 15 individually controlling the prosecution of separate claims against Defendant
 16 is small because the maximum statutory damages in an individual action for
 17 violation of privacy are minimal. Management of these claims is likely to
 18 present significantly fewer difficulties than those presented in many class
 19 claims.

20 65. Defendant has acted on grounds generally applicable to The Class, thereby
 21 making appropriate final injunctive relief and corresponding declaratory
 22 relief with respect to The Class as a whole.

23 **FIRST CAUSE OF ACTION**

24 **INVASION OF PRIVACY: VIOLATION OF PENAL CODE § 632.7**

25 66. Plaintiff incorporates by reference all of the above paragraphs of this
 26 Complaint as though fully stated herein.

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1 67. Californians have a constitutional right to privacy. Moreover, the California
2 Supreme Court has definitively linked the constitutionally protected right to
3 privacy within the purpose, intent and specific protections of the Privacy
4 Act, including specifically, Penal Code § 632.

5 68. “In addition, California’s explicit constitutional privacy provision (Cal.
6 Const., 1 § 1) was enacted in part specifically to protect California from
7 overly intrusive business practices that were seen to pose a significant and
8 increasing threat to personal privacy.” (Citations omitted).

9 69. Plaintiff believes that California must be viewed as having a strong and
10 continuing interest in the full and vigorous application of the provisions of
11 section 632 prohibiting the recording of telephone conversations without the
12 knowledge or consent of all parties to the conversation.

13 70. California Penal Code § 632.7 prohibits in pertinent part “[e]very person
14 who, without the consent of all parties to a communication . . . intentionally
15 records, or assists in the . . . intentional recordation of, a communication
16 transmitted between . . . a cellular radio telephone and a landline telephone.”

17 71. As such, on its face, California Penal Code § 632.7 precludes the recording
18 of all communications involving a cellular telephone.

19 72. Though similar, California Penal Code § 632 and 632.7 are not duplicative
20 and protect separate rights. California Penal Code § 632.7 grants a wider
21 range of protection to conversations where one participant uses a cellular
22 phone or cordless phone. For example, the “confidential communication”
23 requirement of California Penal Code § 632 is absent from California Penal
24 Code § 632.7.

25 73. Plaintiff is informed and believes, and thereupon alleges, that Defendant
26 employed and/or caused to be employed certain recording equipment on the
27 telephone lines of all employees, officers, directors, and managers of
28 Defendant.

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1 74. Plaintiff is informed and believes, and thereupon alleges, that all these
2 devices were maintained and utilized to record each and every incoming and
3 outgoing telephone conversation over said telephone lines.

4 75. Said recording equipment was used to record the cellular telephone
5 conversations of Plaintiff and the members of The Class, all in violation of
6 California Penal Code § 632.7.

7 76. At no time during which these cellular telephone conversations were taking
8 place between Defendant or any employee, agent, manager, officer, or
9 director of Defendant, and any other person, did Defendant inform Plaintiff
10 or any other member of The Class recording of their cellular telephone
11 conversations were taking place and at no time did Plaintiff or any other
12 member of The Class consent to this activity.

13 77. Defendant, knowing that this conduct was unlawful and a violation of
14 Plaintiff and the members of The Class' right to privacy and a violation of
15 California Penal Code § 630, *et seq.*, did intrude on Plaintiff and the
16 members of The Class' privacy by knowingly and/or negligently and/or
17 intentionally engaging in the aforementioned intercepting, eavesdropping,
18 listening, and recording activities relative to the telephone conversations
19 between Plaintiff and The Class members, on the one hand, and Defendant
20 on the other hand, as alleged herein above.

21 78. Based on the foregoing, Plaintiff and the members of The Class are entitled
22 to, and below herein do pray for, their statutory remedies and damages,
23 including but not limited to, those set forth in California Penal Code § 637.2.

24 79. Because this case is brought for the purposes of enforcing important rights
25 affecting the public interest, Plaintiff and The Class seek recovery of their
26 attorney's fees pursuant to the private attorney general doctrine codified in
27 Code of Civil Procedure § 1021.5, or any other statutory basis.
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PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

- That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;
- For \$5,000 per violation of California Penal Code § 632.7 for Plaintiff and each member of The Class;
- Injunctive relief in the form of an order requiring Defendant to disgorge all ill-gotten gains and awarding Plaintiff and The Class full restitution of all monies wrongfully acquired by Defendant by means of such unfair and unlawful conduct;
- That the Court preliminarily and permanently enjoin Defendant from recording, each and every oncoming and outgoing cellular telephone conversation with California residents, including Plaintiff and The Class, without their prior consent, as required by California Penal Code § 630, *et seq.*, and to maintain the confidentiality of the information of Plaintiff and The Class;
- For costs of suit;
- For prejudgment interest at the legal rate; and
- For such further relief as this Court deems necessary, just, and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 21, 2018

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CA Woman Claims Squaretrade Secretly Recorded Cell Phone Conversations](#)
