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

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| <p>11 YRASEMA ORTIZ, individually 12 and on behalf of others similarly 13 situated, 14 Plaintiff, 15 vs. 16 VANGUARD MARKETING 17 CORPORATION, 18 Defendant.</p> | <p>CASE NO. <u>'22CV1685 RBM JLB</u></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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INTRODUCTION

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2 1. Plaintiff Yrasema Ortiz (“Plaintiff”), on behalf of Plaintiff and a Class of
3 similarly situated individuals defined below, bring this Class Action Complaint
4 and Demand for Jury Trial against Vanguard Marketing Corporation
5 (“Defendant”) to put an end to its unlawful use, examination, and recording of
6 Plaintiff’s and putative Class members’ biometric voice prints without express
7 written consent. Plaintiff, for this Class Action Complaint, alleges as follows
8 upon personal knowledge as to Plaintiff’s own acts and experiences and, as to all
9 other matters, upon information and belief.

NATURE OF THE ACTION

- 10
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 Plaintiff and Class
21 members.
- 22 5. Defendant does not obtain “express written consent” from any callers before
23 examining and analyzing their voices.
- 24 6. Recognizing the need to protect its residents from situations like these, California
25 enacted the California Invasion of Privacy Act (“CIPA”), and specifically Cal.
26 Pen. Code § 637.3, to regulate entities that examine or record California residents’
27 voice prints or voice stress patterns without obtaining the residents’ express
28 written consent first.

1 7. Despite this law, Defendant disregards California residents’ statutorily protected
2 privacy rights and unlawfully examines or records their voices in violation of
3 CIPA. Specifically, Defendant has violated (and continues to violate) CIPA
4 because it uses a system which examines or records California residents’ “voice
5 prints or voice stress patterns... to determine the truth or falsity of statements”
6 without their express written consent.

7 **PARTIES**

8 8. Plaintiff is, and at all times mentioned herein was, a natural person and resident
9 of the State of California and the County of San Diego.

10 9. Defendant is, and at all times mentioned herein was, a Pennsylvania corporation
11 with its principal place of business located in Pennsylvania.

12 10. At all times relevant herein Defendant conducted business in the State of
13 California, in the County of San Diego, within this judicial district.

14 **JURISDICTION AND VENUE**

15 11. Jurisdiction is proper under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §
16 1332(d), because Plaintiff, a resident of the State of California, seeks relief on
17 behalf of a California class, which will result in at least one Class member
18 belonging to a different state than Defendant, a Delaware Corporation with its
19 principal place of business in Texas.

20 12. Plaintiff is requesting statutory damages of \$1,000 per violation of Cal. Penal Code
21 §637.3, which, when aggregated among a proposed class number in the tens of
22 thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction under
23 CAFA.

24 13. Therefore, both diversity jurisdiction and the damages threshold under CAFA are
25 present, and this Court has jurisdiction.

26 14. Because Defendant conducts business within the State of California, personal
27 jurisdiction is established.

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1 15. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i) the
2 conduct complained of herein occurred within this judicial district; and (ii)
3 Defendant conducted business within this judicial district at all times relevant.

4 **BACKGROUND**

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

6 16. The California Legislature enacted the Invasion of Privacy Act to protect certain
7 privacy rights of California residents. The legislature expressly recognized that
8 devices and techniques which create a serious threat to privacy and the free
9 exercise of personal liberties cannot be tolerated in a free and civilized society.

10 17. As part of the Invasion of Privacy Act, the California Legislature introduced Penal
11 Code § 637.3 that states;

12 “No person or entity in this state shall use any system which
13 examines or records in any manner voice prints or other voice
14 stress patterns of another person to determine the truth or
15 falsity of statements made by such person without his or her
16 express written consent given in advance of the examination
17 or recordation.” Cal. Pen Code § 637.3

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

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

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

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

2 21. On its website, Defendant says it can “Verify your identity with the sound of your
3 voice.”¹

4 22. Defendant’s system “confirms your identity when you call by comparing your
5 voice.”²

6 23. Defendant states; “We safeguard your voiceprint with the same high-level
7 standards that we use to secure your financial information. Our system uses
8 sophisticated biometric technology to identify the unique patterns of your voice.”³

9 24. Defendant claims that callers must first set up the voice verification feature, but
10 Plaintiff alleges that Defendant analyzes the voice of anyone that calls it to
11 determine the truth or falsity of their statements, regardless of if they set up the
12 feature or not.

13 25. Even if Plaintiff or Class members did set up the voice verification feature with
14 Defendant, they did not provide “express written consent” under Cal. Pen. Code
15 § 637.3.

16 26. Defendant recognizes consumers’ identities by (1) making a recording of the
17 initial call with the consumer (2) examining that recording to identify specific
18 stress patterns and other characteristics to create a “voice print” which is entered
19 into a database then (3) examining all subsequent calls from that consumer and
20 comparing the voice prints to those already on file for that consumer.

21 27. Defendant determines the truth or falsity of caller statements (even for first-time
22 callers) by examining patterns. There are known audible indications of lying such
23 as (1) change in breathing (2) repeating words or phrases (3) difficulty speaking⁴
24 (4) change in speech patterns (5) unusual rise or fall in vocal tone⁵ (6) odd
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27 ¹ <https://investor.vanguard.com/client-benefits/voice-verification>

² <https://investor.vanguard.com/client-benefits/voice-verification>

³ <https://investor.vanguard.com/client-benefits/voice-verification>

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

⁵ <https://www.forensicscolleges.com/blog/resources/10-signs-someone-is-lying>

1 inflection (7) context of use of contractions (8) lack of use of personal pronouns⁶
2 (9) using a high-pitched voice (10) sudden change of volume (11) using phrases
3 such as ‘I want to be honest with you,’ ‘honestly’ or ‘let me tell you the truth’ (12)
4 using words such as ‘uh,’ ‘like’ and ‘um’ and (13) slip-ups and corrections⁷ that
5 can indicate a caller is not being truthful.

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

9 29. The system Defendant uses is very similar to a Polygraph Test. Such a system is
10 exactly what the California Legislature chose to regulate when it made it unlawful
11 to use without express written consent.

12 30. Defendant did not obtain prior express written consent from Plaintiff or Class
13 members to examine their voices or record their unique voice prints to determine
14 the truth or falsity of their statements in violation of Cal. Penal Code §637.3.

15 **FACTS SPECIFIC TO PLAINTIFF**

16 31. Over the last couple years, Plaintiff has called Defendant and spoken with
17 representatives on the telephone.

18 32. Defendant examined and analyzed Plaintiff’s voice attempting to ascertain the
19 truthfulness of Plaintiff’s statements.

20 33. Defendant recorded Plaintiff’s voice and created “voice prints” associated with
21 Plaintiff.

22 34. Defendant then automatically input Plaintiff’s voice prints into its biometric voice
23 print database.

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28 ⁶ <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>

⁷ <https://time.com/5443204/signs-lying-body-language-experts/>

1 35. Defendant utilized a system that examined Plaintiff's voice and compared it to the
2 voice prints it stored in its database. Defendant did this to determine the truth or
3 falsity of Plaintiff's statements, including to determine the true identity of
4 Plaintiff.

5 36. Defendant examined or recorded Plaintiff's voice print and voice stress pattern,
6 without Plaintiff's knowledge.

7 37. Plaintiff did not give consent – written or otherwise – to Defendant to collect voice
8 prints and examine Plaintiff's voice for any purpose whatsoever.

9 **STANDING**

10 38. Defendant's conduct constituted invasions of privacy because it disregarded
11 Plaintiff's statutorily protected rights to privacy, in violation of CIPA.

12 39. Defendant caused Plaintiff to (1) suffer invasions of legally protected interests. (2)
13 The invasions were concrete because the injuries actually existed for Plaintiff and
14 continue to exist every time Plaintiff calls Defendant. The privacy invasions
15 suffered by Plaintiff and the Class were real and not abstract. Plaintiff has a
16 statutory right to be free from voice examination without first providing express
17 written consent. The voice examinations Defendant performed were meant to
18 determine truth or falsity of statements, similar to a polygraph test. Plaintiff was
19 completely unaware Plaintiff was being subject to such a test. Plaintiff's injuries
20 were not divorced from concrete harm in that privacy has long been protected in
21 the form of trespassing laws and the Fourth Amendment of the U.S. Constitution
22 for example. Like here, an unreasonable search may not cause actual physical
23 injury, but is considered serious harm, nonetheless. (3) The injuries here were
24 particularized because they affected Plaintiff in personal and individual ways. The
25 injuries were individualized rather than collective since Plaintiff's unique voice
26 was examined without consent during different calls on separate occasions. (4)
27 Defendant's past invasions were actual and future invasions are imminent and will
28 occur next time Plaintiff calls Defendant. Defendant continues to examine voices

1 in California without express written consent. A favorable decision by this court
2 would redress the injuries of Plaintiff and the Class.

3 **TOLLING**

4 40. Any applicable statute of limitations has been tolled by the “delayed discovery”
5 rule. Plaintiff did not know that Defendant surreptitiously examined Plaintiff’s
6 voice because Defendant did not tell Plaintiff or seek consent.

7 **CLASS ACTION ALLEGATIONS**

8 41. **Class Definition:** Plaintiff brings this action pursuant to Federal Rules of Civil
9 Procedure 23 and on behalf of Plaintiff and a Class defined as follows:

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

13 42. The following people are excluded from the Class: (1) any Judge or Magistrate
14 presiding over this action and members of their families; (2) Defendant,
15 Defendant’s subsidiaries, parents, successors, predecessors, and any entity in
16 which the Defendant or its parents have a controlling interest and their current or
17 former officers and directors; (3) persons who properly execute and file a timely
18 request for exclusion from the Class; (4) persons whose claims in this matter have
19 been finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel
20 and Defendant’s counsel; and (6) the legal representatives, successors, and assigns
21 of any such excluded persons.

22 43. **Ascertainability and Numerosity:** The exact number of Class members is
23 unknown to Plaintiff at this time, but Defendant is a very large entity with millions
24 of customers in the United States and California. Members of the Class will be
25 easily identified through Defendant’s records.

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- 1 44. **Commonality and Predominance:** There are many questions of law and fact
2 common to the claims of Plaintiff and the Class, and those questions predominate
3 over any questions that may affect individual members of the Class. Common
4 questions for the Class include, but are not necessarily limited to the following:
- 5 a. Whether Defendant used a system which examined, or recorded Plaintiff's
6 and the Class's voice prints or voice stress patterns;
 - 7 b. Whether Defendant used voice prints or voice stress patterns to determine the
8 truth or falsity of statements made by Plaintiff and the Class; and
 - 9 c. Whether Defendant obtained prior express written consent from Plaintiff and
10 the Class members.
- 11 45. **Typicality:** Plaintiff's claims are typical of the claims of all the other members of
12 the Class. Plaintiff and the Class members sustained substantially similar injuries
13 as a result of Defendant's uniform wrongful conduct, based upon the same
14 interactions with Defendant that were made without exception as to Plaintiff and
15 the Class.
- 16 46. **Adequate Representation:** Plaintiff will fairly and adequately represent and
17 protect the interests of the Class and have retained counsel competent and
18 experienced in complex litigation and class actions. Plaintiff has no interest
19 adverse to the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff
20 and Plaintiff's counsel are committed to vigorously prosecuting this action on
21 behalf of the members of the Class and have the financial resources to do so.
22 Neither Plaintiff nor Plaintiff's counsel have any interest contrary to those
23 interests of the of the Class.
- 24 47. **Superiority:** This case is appropriate for class certification because class
25 proceedings are superior to all other available methods for the fair and efficient
26 adjudication of this controversy because joinder of all parties is impracticable. The
27 damage suffered by the individual members of the Class will likely be relatively
28 small, especially given the burden and expense of individual prosecution of the

1 complex litigation necessitated by Defendant’s actions. Thus, it would be virtually
2 impossible for the individual members of the Class to obtain effective relief from
3 Defendant’s misconduct. Even if members of the Class could sustain such
4 individual litigation, it would still not be preferable to a class action because
5 individual litigation would increase the delay and expense to all parties due to the
6 complex legal and factual controversies presented in this Complaint. By contrast,
7 a class action presents far fewer management difficulties and provides the benefits
8 of single adjudication, economies of scale, and comprehensive supervision by a
9 single Court. Economies of time, effort, and expense will be fostered, and
10 uniformity of decisions ensured.

11 **CAUSE OF ACTION**

12 **Violation of Cal. Penal Code § 637.3**

13 **(On Behalf of Plaintiff and the Class)**

- 14 48. Plaintiff incorporates the foregoing allegations as though fully set forth herein.
- 15 49. Cal. Penal Code § 637.3 prohibits any person or entity in this state from using
16 “any system which examines or records in any manner voice prints or other voice
17 stress patterns of another person to determine the truth or falsity of statements
18 made by such person without his or her express written consent given in advance
19 of the examination or recordation.”
- 20 50. Defendant is a corporation and therefore an “entity” under CIPA.
- 21 51. Defendant is “in this state” because it has an office in XXXXXXXXX, it conducts
22 business in California and is registered in California.
- 23 52. Defendant utilizes software that creates a “system” under CIPA because it
24 examines, or records Plaintiff’s and the Class’s voice prints or other voice stress
25 patterns.
- 26 53. Defendant utilized the system on Plaintiff and Class members when they spoke
27 with Defendant on phone lines that were connected to the system.

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1 54. Defendant examined or recorded Plaintiff's and Class members' voice prints to
2 determine the truth or falsity of their statements, especially their statements about
3 who they claimed to be.

4 55. Defendant did not obtain prior express written consent from Plaintiff or Class
5 members to use, examine, or record their voice prints or voice stress patterns for
6 any purpose whatsoever.

7 56. On behalf of Plaintiff and the Class, Plaintiff seeks: (1) injunctive and equitable
8 relief as is necessary to protect the interests of Plaintiff and the Class by requiring
9 Defendant to comply with CIPA's requirements for the use, recording, and
10 examination of voice prints or other voice stress patterns as described herein; and
11 (2) damages of \$1,000 for each violation of CIPA pursuant to Cal. Penal Code §
12 637.3(c).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of Plaintiff and the Class, respectfully
15 requests this Court to enter an order:

- 16 A. Certifying this case as a class action on behalf of the Class defined above
17 pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the
18 representatives of the Class, and appointing Plaintiff's counsel as Class
19 Counsel;
- 20 B. Declaring that Defendant's actions, as described above, violated CIPA;
- 21 C. Awarding statutory damages of \$1,000 for each violation of CIPA pursuant to
22 Cal. Penal Code § 637.3(c);
- 23 D. Awarding injunctive and other equitable relief as is necessary to protect the
24 interests of the Class;
- 25 E. Awarding Plaintiff and the Class their reasonable litigation expenses and
26 attorneys' fees;
- 27 F. Awarding Plaintiff and the Class pre- and post-judgement interest, to the extent
28 allowable; and

1 G. Awarding such other and further relief as equity and justice may require.

2 **JURY TRIAL**

3 Pursuant to the Seventh Amendment of the United States Constitution, Plaintiff
4 demands a trial by jury for all issues so triable.

5
6 Respectfully submitted,

7 **SWIGART LAW GROUP**

8 Date: October 28, 2022

9 By: s/ Joshua Swigart

10 Joshua B. Swigart, Esq.

11 Josh@SwigartLawGroup.com

12 Attorney for Plaintiff

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

14 Date: October 28, 2022

15 By: s/ Daniel Shay

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18 Attorney for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Vanguard Marketing Corporation Illegally Records, Examines Callers' Voices, Class Action Claims](#)
