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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MYNOR F. PORTILLO, individually, and  
on behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 FARE DEPOT LLC, a Delaware  
15 corporation; and DOES 1-10, Inclusive,

16 Defendants.  
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Case No.: 2:17-cv-6318

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff MYNOR F. PORTILLO, on behalf of himself and all others similarly  
2 situated, alleges the following upon information and belief based upon investigation of  
3 counsel, except to his own acts, which he alleges upon personal knowledge.

4 **I. PARTIES**

5 1. Plaintiff Mynor F. Portillo (“Plaintiff”) is a resident of Los Angeles County  
6 in the Central District of California who contacted Defendant Fare Depot LLC  
7 (“Defendant”).

8 2. Defendant Fare Depot LLC is a Delaware corporation with its principal  
9 place of business in Arlington, Virginia, that does business in California. The true  
10 names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive,  
11 are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
12 names. Each of the Defendants designated herein as a DOE is legally responsible for  
13 the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this  
14 Complaint to reflect the true names and capacities of the DOE Defendants when such  
15 identities become known.

16 3. At all relevant times, each and every Defendant was acting as an agent  
17 and/or employee of each of the other Defendants and was acting within the course  
18 and/or scope of said agency and/or employment with the full knowledge and consent of  
19 each of the Defendants. Each of the acts and/or omissions complained of herein were  
20 alleged and made known to, and ratified by, each of the other Defendants (Fare Depot  
21 LLC and Doe Defendants will hereafter collectively be referred to as “Defendant”).

22 **II. JURISDICTION AND VENUE**

23 4. This Court has diversity jurisdiction over this class action pursuant to 28  
24 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the  
25 amount in controversy exceeds five million dollars (\$5,000,000.00), exclusive of  
26 interest and costs, and is a class action in which the members of the class are citizens of  
27 different states than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

28 5. This Court has jurisdiction over the Defendant named herein because

1 Defendant has sufficient minimum contacts with California and/or otherwise  
2 intentionally avails itself of the laws and markets of California, through the promotion,  
3 sale, marketing and distribution of its goods and services in California, to render the  
4 exercise of jurisdiction by the California courts permissible.

5 6. Venue is proper in this District under 28 U.S.C. §1391(b) because  
6 Defendant's improper conduct alleged in this complaint occurred in, was directed from,  
7 and/or emanated from this judicial district, because Defendant has caused harm to Class  
8 Members residing in this district, and/or because the Defendant is subject to personal  
9 jurisdiction in this district.

10 **III. FACTS**

11 7. In June 2017, while located in California, Plaintiff called Defendant at  
12 (866) 860-2929 from a wireless telephone. Plaintiff spoke to an employee/customer  
13 service representative of Defendant.

14 8. Plaintiff was not aware that the call was being recorded. Defendant did  
15 not, at any point during the telephone conversation with Defendant's customer service  
16 representative, advise Plaintiff that the call was being recorded. Plaintiff did not give  
17 either express or implied consent to the recording.

18 9. After completing his call, Plaintiff learned that Defendant records *all*  
19 incoming telephone calls, including the call from Plaintiff, but that Defendant does not  
20 disclose this to every caller, and did not disclose it to Plaintiff.

21 10. Plaintiff expected that his telephone call would be private (i.e., neither  
22 recorded nor monitored) due to Defendant's failure to disclose any recording or  
23 monitoring.

24 11. After receiving a letter from Plaintiff's counsel regarding the Defendant  
25 recording calls, a recording now states "This call is being recorded. If you do not wish  
26 to be recorded please disconnect at this time."

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1 **IV. CLASS ACTION ALLEGATIONS**

2 12. Plaintiff brings this class action pursuant to Rule 23(a), 23(b)(2) and  
3 23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and all members  
4 of the following Class:

5 *“All persons located in California whose wireless telephone*  
6 *conversations with Defendant were intentionally recorded*  
7 *without disclosure by Defendant at any time during the*  
8 *statute of limitations period through the date of final*  
9 *judgment in this action.”* (the “Class”).

10 13. Excluded from the Class are governmental entities, Defendant, any entity  
11 in which Defendant has a controlling interest, and Defendant’s officers, directors,  
12 affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries,  
13 and assigns, and individuals bound by any prior settlement. Also excluded from the  
14 Class is any judge, justice, or judicial officer presiding over this matter, and any callers  
15 who did receive a warning that their calls were recorded.

16 **Fed. R. Civ. P. 23(a) Factors**

17 14. **Numerosity.** Membership in the Class is so numerous that separate joinder  
18 of each member is impracticable. The precise number of Class Members is unknown at  
19 this time but can be readily determined from Defendant’s records. Plaintiff reasonably  
20 estimates that there are thousands of persons in the Class.

21 15. **Adequacy of Representation.** Plaintiff will fairly and adequately  
22 represent and protect the interests of the members of the Class. Plaintiff has retained  
23 counsel highly experienced in complex consumer class action litigation and intends to  
24 prosecute this action vigorously. Plaintiff is a member of the Class described herein  
25 and does not have interests antagonistic to, or in conflict with, the other members of the  
26 Class.

27 16. **Typicality.** Plaintiff’s claims are typical of the claims of the members of  
28 the Class. Plaintiff and all members of the Class called Defendant at (866) 860-2929

1 from a wireless telephone, and spoke to an employee/customer service representative of  
2 Defendant without knowing that the calls were being recorded.

3 **17. Existence and Predominance of Common Questions of Law and Fact.**

4 There are central and substantial questions of law and fact common to all Class  
5 Members that control this litigation and predominate over any individual issues.  
6 Included within the common questions are the following:

- 7 (a) Whether Defendant intentionally records telephone calls;
- 8 (b) Whether Defendant discloses its intentional recording of telephone  
9 communications; and
- 10 (c) Whether Defendant's conduct constitutes a violation of California  
11 Penal Code section 632.7.

12 **Fed. R. Civ. P 23(b)(3) Factors**

13 **18. Superiority.** A class action is superior to other available methods for the  
14 fair and efficient adjudication of this controversy for at least the following reasons:

- 15 a) Given the size of the claims of individual Class Members, as well as  
16 the resources of Defendant, few, if any, could afford to seek legal  
17 redress individually for the wrongs alleged herein;
- 18 b) This action will permit an orderly and expeditious administration of  
19 the claims of Class Members, will foster economies of time, effort  
20 and expense, and will ensure uniformity of decisions;
- 21 c) Any interest of Class Members in individually controlling the  
22 prosecution of separate actions is not practical, creates the potential  
23 for inconsistent or contradictory judgments, and would create a  
24 burden on the court system;
- 25 d) Without a class action, Class Members will continue to suffer as a  
26 consequence of Defendant's illegal and predatory conduct,  
27 Defendant's violations of law will proceed without remedy, and  
28 Defendant will continue to reap and retain the substantial proceeds

1 derived from its wrongful and unlawful conduct. Plaintiff and the  
2 Class are entitled to appropriate civil penalties. This action presents  
3 no difficulties that will impede its management by the Court as a  
4 class action.

5 19. Certification is also warranted under Rule 23(b)(2) of the Federal Rules of  
6 Civil Procedure because Defendant has acted or refused to act on grounds generally  
7 applicable to the Class, thereby making final relief pursuant to Penal Code Section  
8 632.7 appropriate with respect to the Class as a whole.

9 **V. CAUSE OF ACTION**

10 **California Penal Code § 632.7**

11 **(By Class Against All Defendants)**

12 20. Plaintiff incorporates by this reference the allegations contained in the  
13 preceding paragraphs above as if fully set forth herein.

14 21. California Penal Code Section 632.7 prohibits the intentional, non-  
15 consensual recording of any telephone communication without the consent of all parties  
16 where at least one party to the conversation is either using a cordless or cellular  
17 telephone. No expectation of confidentiality or privacy is required, nor is any other  
18 wrongful or surreptitious intent required – only that the defendant intended to record the  
19 communication.

20 22. Plaintiff is informed and believes, and thereon alleges that Defendant  
21 knowingly violated Cal. Pen Code § 632.7 by intentionally recording calls with persons  
22 using cordless or cellular telephones, including Plaintiff.

23 23. Based on the foregoing violations, Plaintiff and the Class are entitled to  
24 and seek the statutory remedies provided in section 637.2 of the California Penal Code.  
25 Plaintiff does not allege common law violation of privacy nor does Plaintiff seek actual  
26 damages other than statutory damages.

27 24. Plaintiff and the Class further seek attorneys' fees pursuant to section  
28 1021.5 of the California Code of Civil Procedure, or any other applicable statute, as this

1 action enforces an important right affecting the public's interest.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for relief  
4 and judgment as follows:

5 1. That the Court determine that this action may be maintained as a class  
6 action under Rule 23(a) of the Federal Rules of Civil Procedure, and define the Class as  
7 requested herein;

8 2. For preliminary and permanent injunctive relief enjoining Defendant, its  
9 agents, servants and employees, and all persons acting in concert with them, from  
10 engaging in this illegal practice;

11 3. For an award of statutory damages to Plaintiff and each member of the  
12 Class;

13 4. For attorneys' fees and expenses pursuant to all applicable laws including,  
14 without limitation, Code of Civil Procedure §1021.5 and the common law private  
15 attorney general doctrine;

16 5. For costs of suit; and

17 6. For such other and further relief as the Court deems just and proper.

18  
19 Dated: August 26, 2017

PACIFIC TRIAL ATTORNEYS, APC

20  
21 By: /s/ Scott J. Ferrell

22 Scott J. Ferrell

23 Attorneys for Plaintiff and the Class  
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**DEMAND FOR JURY TRIAL**

Plaintiff and Class Members, pursuant to Fed. R Civ. P. 38(b), hereby demand trial by jury.

Dated: August 26, 2017

PACIFIC TRIAL ATTORNEYS, APC

By: /s/ Scott J. Ferrell  
Scott J. Ferrell  
Attorneys for Plaintiff and the Class

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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: [Fare Depot Records Calls Without Consent, Suit Says](#)

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