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5
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6   *and the Putative Class*

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8   **UNITED STATES DISTRICT COURT**

9   **SOUTHERN DISTRICT OF CALIFORNIA**

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11 | RUSSELL SMITH, individually and on behalf of others similarly situated, | CASE NO. **'22 CV 1370 AJB DDL** |
    | --- | --- |
    | | CLASS ACTION |
    | Plaintiff, | COMPLAINT FOR DAMAGES FOR VIOLATIONS OF: |
    | vs. | |
    | TD BANK, N.A., | THE CALIFORNIA INVASION OF PRIVACY ACT, CAL. PEN. CODE 637.3 ET SEQ. |
    | Defendant. | JURY TRIAL DEMANDED |

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Class Action Complaint

INTRODUCTION

1. Plaintiff Russell Smith ("Plaintiff"), on behalf of Plaintiff and a Class of similarly situated individuals defined below, bring this Class Action Complaint and Demand for Jury Trial against Defendant TD Bank, N.A. ("Defendant") to put an end to its unlawful use, examination, and recording of Plaintiff's and putative Class members' biometric voice prints. Plaintiff, for this Class Action Complaint, allege as follows upon personal knowledge as to Plaintiff's own acts and experiences and, as to all other matters, upon information and belief.

NATURE OF THE ACTION

2. Defendant utilizes a system that enables it to examine the voice of anyone that calls it to determine the truth or falsity of the callers' statements. The software combines audio, voice, and artificial intelligence technologies to compare the callers' voices to a comprehensive database of recordings and metrics.

3. The system Defendant uses allows it to authenticate or refute the true identity of callers, among other things. The system contains voice recognition software that creates a biometric voice print of each caller. The system then allows Defendant to analyze the callers' voice prints to determine the truth or falsity of their statements.

4. Defendant does this for anyone that calls it, including Plaintiff and Class members.

5. In addition to the behind-the-scenes voice examinations that Defendant performed on Plaintiff and class members, Defendant published that it has a system called TD VoicePrint and "TD VoicePrint is a voice recognition technology that allows us to use your voiceprint – as unique to you as your fingerprint – to validate your identify whenever you speak on the phone with one of our Live Customer Service representatives."[1]

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[1] https://www.tdbank.com/bank/tdvoiceprint.html

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Class Action Complaint

6. Defendant goes on to say; "TD VoicePrint system takes a "print" of your voice in real time and transcribes it into mathematical data that cannot be replicated. Like the lines in your finger, your voiceprint is based on your unique voice. It's composed of over a hundred different characteristics that uniquely represent your voice (e.g., the shape and size of your vocal tract). No one else has a voice just like you."[2]

7. While Defendant claims that consumers must enroll into TD VoicePrint, Plaintiff alleges that Defendant performs the same or similar voice examinations on anyone that calls it.

8. Plaintiff alleges that Defendant was secretly using TD VoicePrint technology for years prior to publishing its existence and seeking enrollment.

9. Defendant does not obtain "express written consent" from any callers before examining and analyzing their voices.

10. Even those that enroll in TD VoicePrint do it verbally over the phone[3], which does not satisfy the CIPA requirement of express written consent.

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

12. Despite this law, Defendant disregards California residents' statutorily protected privacy rights and unlawfully examines or records their voices in violation of CIPA. Specifically, Defendant has violated (and continues to violate) CIPA because it uses a system which examines or records California residents' "voice

[2] https://www.tdbank.com/bank/tdvoiceprint.html
[3] https://www.tdbank.com/bank/tdvoiceprint.html

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Class Action Complaint

1 prints or voice stress patterns… to determine the truth or falsity of statements"
2 without their express written consent.

PARTIES

4 13. Plaintiff is a natural person and a resident of the State of California.

5 14. Defendant is a federally chartered bank with its principal place of business located
6 outside of California.

JURISDICTION AND VENUE

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

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

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

BACKGROUND

19 ### I.   The California Invasion of Privacy Act

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

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

27 "any system which examines or records in any manner voice
prints or other voice stress patterns of another person to
28 determine the truth or falsity of statements made by such

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Class Action Complaint

person without his or her express written consent given in advance of the examination or recordation." Cal. Pen Code § 637.3

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

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

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

II.   Defendant Violated the California Invasion of Privacy Act

23. Around 2017, Defendant integrated TD VoicePrint technology into its call centers. When customers call, the system verifies their identify by using the sound of their voice. The system uses over 150 different characteristics that make up one's voice and transcribes them in real time into a unique algorithm that cannot be replicated.[4]

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

25. Defendant determines the truth or falsity of caller statements (even for first-time callers) by examining patterns. There are known audible indications of lying such

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[4] https://www.thedrum.com/creative-works/project/tbwachiatday-new-york-td-bank-td-voice-print-experiment

Class Action Complaint

as (1) change in breathing (2) repeating words or phrases (3) difficulty speaking[5] (4) change in speech patterns (5) unusual rise or fall in vocal tone[6] (6) odd inflection (7) context of use of contractions (8) lack of use of personal pronouns[7] (9) using a high-pitched voice (10) sudden change of volume (11) using phrases such as 'I want to be honest with you,' 'honestly' or 'let me tell you the truth' (12) using words such as 'uh,' 'like' and 'um' and (13) slip-ups and corrections[8] that can indicate a caller is not being truthful.

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

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

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

FACTS SPECIFIC TO PLAINTIFF

29. Over the last few years, Plaintiff has called Defendant on numerous occasions.

30. Starting with the first call, Defendant began examining and analyzing Plaintiff's voice attempting to ascertain the truthfulness of Plaintiff's statements.

31. Defendant recorded Plaintiff's voice and created "voice prints" associated with Plaintiff.

32. Defendant then automatically input Plaintiff's voice prints into its biometric voice print database.

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[5] https://www.businessinsider.com/11-signs-someone-is-lying-2014-4
[6] https://www.forensicscolleges.com/blog/resources/10-signs-someone-is-lying
[7] 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
[8] https://time.com/5443204/signs-lying-body-language-experts/

6

Class Action Complaint

33. When Plaintiff subsequently called Defendant, Defendant utilized a system that examined Plaintiff's voice again and compared it to the voice prints it stored in its database from previous calls. Defendant did this to determine the truth or falsity of Plaintiff's statements, including to determine the true identity of Plaintiff.

34. Plaintiff has called Defendant on numerous occasions since Defendant began utilizing its voice analysis system. During at least one of these calls, Defendant examined and recorded Plaintiff's voice print and voice stress pattern passively, without Plaintiff's knowledge.

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

36. Any applicable statute(s) of limitations has been tolled by the "delayed discovery" rule. Plaintiff did not know (and had no way of knowing) that Plaintiff's voice was recorded for purposes of creating voice prints, or that Plaintiff's voice stress patterns were examined, because Defendant kept this information secret.

37. Plaintiff has been exposed to the risks and harmful conditions created by Defendant's violations of CIPA alleged herein.

38. Plaintiff seeks statutory damages under CIPA as compensation for the injuries Defendant caused.

STANDING

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

40. Defendant caused Plaintiff to (1) suffer invasions of legally protected interests. (2) The invasions were concrete because the injuries actually existed for Plaintiff and continue to exist every time Plaintiff calls Defendant. The privacy invasions suffered by Plaintiff and the Class were real and not abstract. Plaintiff and the Class have a statutory right to be free from voice examination without first providing their express written consent. The voice examinations Defendant performed were meant to determine truth or falsity of statements, similar to a polygraph test.

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Plaintiff and Class members were completely unaware they were being subject to such a test. Plaintiff's injuries were not divorced from concrete harm in that privacy has long been protected in the form of trespassing laws and the Fourth Amendment of the U.S. Constitution for example. Like here, an unreasonable search may not cause actual physical injury, but is considered serious harm, nonetheless. (3) The injuries here were particularized because they affected Plaintiff in personal and individual ways. The injuries were individualized rather than collective since Plaintiff's unique voice was examined without consent during different calls on separate occasions. (4) Defendant's past invasions were actual and future invasions are imminent and will occur next time Plaintiff calls Defendant. Defendant continues to examine voices in California without express written consent. A favorable decision by this court would redress the injuries of Plaintiff and the Class.

CLASS ACTION ALLEGATIONS

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

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

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

Class Action Complaint

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

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

   a. Whether Defendant used a system which examined, or recorded Plaintiff's and the Class's voice prints or voice stress patterns;

   b. Whether Defendant used voice prints or voice stress patterns to determine the truth or falsity of statements made by Plaintiff and the Class; and

   c. Whether Defendant obtained prior express written consent from Plaintiff and the Class members.

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

46. **Adequate Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interest adverse to the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest contrary to those interests of the of the Class.

Class Action Complaint

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

CAUSE OF ACTION

Violation of Cal. Penal Code § 637.3

(On Behalf of Plaintiff and the Class)

48. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

49. CIPA prohibits any person or entity from using "any system which examines or records in any manner voice prints or other voice stress patterns of another person to determine the truth or falsity of statements made by such person without his or her express written consent given in advance of the examination or recordation." Cal. Penal Code § 637.3(a).

50. Defendant is a bank and therefore an "entity" under CIPA. *Id*.

51. Defendant utilizes software that creates a "system" under CIPA because it examines, or records Plaintiff's and the Class's voice prints or other voice stress patterns.

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Class Action Complaint

52. Defendant utilized the system to examine or record the voice prints of Plaintiff and the Class when they called Defendant's customer support lines that were connected to the voice printing and analysis system.

53. Defendant examined or recorded Plaintiff's and Class members' voice prints to determine the truth or falsity of their statements – including, for example, their statements about who they claimed to be.

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

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

PRAYER FOR RELIEF

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

A. Certifying this case as a class action on behalf of the Class defined above pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as the representatives of the Class, and appointing Plaintiff's counsel as Class Counsel;

B. Declaring that Defendant's actions, as described above, violated CIPA;

C. Awarding statutory damages of $1,000 for each violation of CIPA pursuant to Cal. Penal Code § 637.3(c);

D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class;

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Class Action Complaint

E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiff and the Class pre- and post-judgement interest, to the extent allowable; and

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

JURY TRIAL

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

Respectfully submitted,

SWIGART LAW GROUP

Date: September 11, 2022

By: _s/ Joshua Swigart_
Joshua B. Swigart, Esq.
Josh@SwigartLawGroup.com
Attorney for Plaintiff

12

Class Action Complaint

JS 44   (Rev. 04/21)

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	DEFENDANTS
Russell Smith, individually and on behalf of others	TD Bank, N.A.

(b) County of Residence of First Listed Plaintiff   San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(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

Attorneys *(If Known)*

'22CV1370 AJB DDL

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)*
- [x] 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)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[x] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[x] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 Insurance	**PERSONAL INJURY**	**PERSONAL INJURY**	[ ] 625 Drug Related Seizure of Property 21 USC 881	[ ] 422 Appeal 28 USC 158	[ ] 375 False Claims Act
[ ] 120 Marine	[ ] 310 Airplane	[ ] 365 Personal Injury - Product Liability	[ ] 690 Other	[ ] 423 Withdrawal 28 USC 157	[ ] 376 Qui Tam (31 USC 3729(a))
[ ] 130 Miller Act	[ ] 315 Airplane Product Liability	[ ] 367 Health Care/ Pharmaceutical		**INTELLECTUAL PROPERTY RIGHTS**	[ ] 400 State Reapportionment
[ ] 140 Negotiable Instrument	[ ] 320 Assault, Libel & Slander	Personal Injury Product Liability		[ ] 820 Copyrights	[ ] 410 Antitrust
[ ] 150 Recovery of Overpayment & Enforcement of Judgment	[ ] 330 Federal Employers' Liability	[ ] 368 Asbestos Personal Injury Product Liability		[ ] 830 Patent	[ ] 430 Banks and Banking
[ ] 151 Medicare Act	[ ] 340 Marine			[ ] 835 Patent - Abbreviated New Drug Application	[ ] 450 Commerce
[ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)	[ ] 345 Marine Product Liability	**PERSONAL PROPERTY**		[ ] 840 Trademark	[ ] 460 Deportation
[ ] 153 Recovery of Overpayment of Veteran's Benefits	[ ] 350 Motor Vehicle	[ ] 370 Other Fraud	**LABOR**	[ ] 880 Defend Trade Secrets Act of 2016	[ ] 470 Racketeer Influenced and Corrupt Organizations
[ ] 160 Stockholders' Suits	[ ] 355 Motor Vehicle Product Liability	[ ] 371 Truth in Lending	[ ] 710 Fair Labor Standards Act		[ ] 480 Consumer Credit (15 USC 1681 or 1692)
[ ] 190 Other Contract	[ ] 360 Other Personal Injury	[ ] 380 Other Personal Property Damage	[ ] 720 Labor/Management Relations	**SOCIAL SECURITY**	[ ] 485 Telephone Consumer Protection Act
[ ] 195 Contract Product Liability	[ ] 362 Personal Injury - Medical Malpractice	[ ] 385 Property Damage Product Liability	[ ] 740 Railway Labor Act	[ ] 861 HIA (1395ff)	[ ] 490 Cable/Sat TV
[ ] 196 Franchise			[ ] 751 Family and Medical Leave Act	[ ] 862 Black Lung (923)	[ ] 850 Securities/Commodities/ Exchange
			[ ] 790 Other Labor Litigation	[ ] 863 DIWC/DIWW (405(g))	[x] 890 Other Statutory Actions
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**	[ ] 791 Employee Retirement Income Security Act	[ ] 864 SSID Title XVI	[ ] 891 Agricultural Acts
[ ] 210 Land Condemnation	[ ] 440 Other Civil Rights	**Habeas Corpus:**		[ ] 865 RSI (405(g))	[ ] 893 Environmental Matters
[ ] 220 Foreclosure	[ ] 441 Voting	[ ] 463 Alien Detainee		**FEDERAL TAX SUITS**	[ ] 895 Freedom of Information Act
[ ] 230 Rent Lease & Ejectment	[ ] 442 Employment	[ ] 510 Motions to Vacate Sentence		[ ] 870 Taxes (U.S. Plaintiff or Defendant)	[ ] 896 Arbitration
[ ] 240 Torts to Land	[ ] 443 Housing/ Accommodations	[ ] 530 General		[ ] 871 IRS—Third Party 26 USC 7609	[ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
[ ] 245 Tort Product Liability	[ ] 445 Amer. w/Disabilities - Employment	[ ] 535 Death Penalty	**IMMIGRATION**		[ ] 950 Constitutionality of State Statutes
[ ] 290 All Other Real Property	[ ] 446 Amer. w/Disabilities - Other	**Other:**	[ ] 462 Naturalization Application		
	[ ] 448 Education	[ ] 540 Mandamus & Other	[ ] 465 Other Immigration Actions		
		[ ] 550 Civil Rights			
		[ ] 555 Prison Condition			
		[ ] 560 Civil Detainee - Conditions of Confinement			

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	SIGNATURE OF ATTORNEY OF RECORD
9/11/2022	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](#)