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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

FRANCISCO AVALOS, individually and on)	Case No: 22CV020643
behalf of a class of similarly situated)	
individuals,)	
Plaintiff,)	<u>CLASS ACTION</u>
v.)	COMPLAINT FOR DAMAGES
AXLEHIRE, INC.; and DOES 1 through 50,)	<u>DEMAND FOR JURY TRIAL</u>
inclusive,)	
Defendants.)	
)	
)	
)	

CLASS ACTION COMPLAINT

1
2 Plaintiff Francisco Avalos (“Plaintiff”), on behalf of himself and a class of similarly
3 situated individuals as defined below (the “PC § 632.7 Class”), alleges on information and belief
4 as follows:

INTRODUCTION

5
6 1. This class action lawsuit arises out of Defendant AxleHire, Inc.’s (“Defendant” or
7 “AxleHire”) policy and practice of recording and/or monitoring,¹ without the consent of all
8 parties, inbound calls Defendant’s telephone numbers. Defendant’s telephone numbers may be
9 referred to collectively as “Defendant’s customer service numbers.” Those numbers include but
10 are not limited to 855-249-SHIP (7447).

11 2. AxleHire advertises itself as an industry leader in last-mile logistic solutions.
12 Among its customers is Hello Fresh, which provides customers with meal kits. AxleHire
13 affiliated drivers deliver, among other items, The Farmer’s Dog pet food and Hello Fresh, Blue
14 Apron, and Gobble meal kits. AxleHire operates a 24/7 customer care center that handles calls
15 directed to 855-249-SHIP.

16 3. During the relevant time period, Defendant intentionally and surreptitiously
17 recorded and/or monitored telephone calls made or routed to Defendant’s customer service
18 numbers. Defendant recorded and/or monitored calls without warning or disclosing to inbound
19 callers and, on information and belief, recipients of outbound calls that their calls might be
20 recorded or monitored.

21 4. Defendant’s policy and practice of recording and monitoring, without the consent
22 of all parties, Defendant’s telephone conversations with California citizens who, while physically
23 located in California, called Defendant’s customer service numbers violates the California
24 Invasion of Privacy Act (Penal Code §§ 630, *et seq.* (“CIPA”)). Specifically, Defendant’s policy
25

26
27 ¹ “Monitor,” as used in this complaint, includes both (a) the common understanding of a person
28 listening in on a call and (b) “intercepting,” as that term is used in the California Invasion of
Privacy Act (“CIPA”). Thus, “monitor” will be used in lieu of “intercept” throughout this
complaint.

1 and practice violate Penal Code § 632.7, which prohibits the recording or monitoring of a
2 communication made to or from a cellular or cordless telephone without the consent of all parties
3 to the communication.

4 5. Because of Defendant’s violations, all individuals who made a call to one of
5 Defendant’s customer service numbers while they were in California and were recorded and/or
6 monitored by Defendant surreptitiously and without disclosure are entitled to an award of
7 statutory damages.

8 **PARTIES**

9 6. Plaintiff Francisco Avalos is an individual and a resident of California.

10 7. Defendant AxleHire, Inc. is a corporation organized under the laws of the State of
11 Delaware with its headquarters in San Leandro, California. AxleHire systematically and
12 continuously does business in California and with California citizens.

13 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
14 DOES 1 through 50, inclusive, and therefore sues those defendants by those fictitious names.
15 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
16 Plaintiff is informed and believes, and on that ground alleges, that each of the fictitiously-named
17 defendants is responsible in some manner for the occurrences alleged and that Plaintiff’s injuries
18 and damages, as alleged, are proximately caused by those occurrences.

19 9. Plaintiff is informed and believes and, on that ground, alleges that, at all relevant
20 times, each named Defendant and the Doe Defendants were the principals, agents, partners, joint
21 venturers, officers, directors, controlling shareholders, subsidiaries, affiliates, parent
22 corporations, successors in interest, and/or predecessors in interest of some or all of the other
23 Defendants, were engaged with some or all of the other Defendants in a joint enterprise for profit,
24 and bore such other relationships to some or all of the other Defendants as to be liable for their
25 conduct with respect to the matters alleged below. Plaintiff is informed and believes, and on that
26 ground alleges, that each Defendant acted pursuant to and within the scope of the relationships
27 alleged above and that each knew or should have known about and that each authorized, ratified,
28 adopted, approved, controlled, aided and abetted the conduct of all Defendants.

JURISDICTION AND VENUE

1
2 10. This Court has subject matter jurisdiction over this action under California Penal
3 Code §§ 632.7 and 637.2.

4 11. This Court has personal jurisdiction over the parties because Defendant
5 continuously and systematically has conducted business in the State of California. Likewise,
6 Plaintiff’s rights were violated in the State of California and these violations arose out of his
7 contact with Defendant from and within California.

8 12. Venue is proper in this Court because AxleHire’s principal executive office is
9 located in San Leandro, County of Alameda, California.

10 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

11 13. Plaintiff is informed and believes and on that ground alleges that, at all relevant
12 times, Defendant’s customer service numbers, including without limitation 855-249-SHIP,
13 connected callers to Defendant’s customer service representatives.

14 14. Plaintiff is informed and believes and on that ground alleges that, at all relevant
15 times, Defendant’s employees and agents at the customer service call centers received incoming
16 calls from callers including California callers. Plaintiff is further informed and believes and on
17 that ground alleges that Defendant intentionally has used technology consisting of hardware
18 and/or software or other equipment to carry out a policy and practice of recording and/or
19 monitoring inbound calls made to Defendant’s customer service numbers.

20 15. Plaintiff is informed and believes and on that ground alleges that, at all relevant
21 times, Defendant’s employees and agents at the customer service call centers made outbound calls
22 to callers including California callers. Plaintiff is further informed and believes and on that
23 ground alleges that Defendant intentionally has used technology consisting of hardware and/or
24 software or other equipment to carry out a policy and practice of recording and/or monitoring
25 outbound calls made by Defendant’s customer service representatives.

26 16. Plaintiff is informed and believes and on that ground alleges that, at all relevant
27 times, Defendant’s employees and agents at or associated with the customer service call centers
28 were and are directed, trained and instructed to, and did and do, record and/or monitor telephone

1 calls between the customer service representatives and callers, including California callers.

2 17. During the period from approximately August 31, 2022 through October 4, 2022,
3 Plaintiff delivered a variety of meal kits. At various times, he needed to call 855-249-SHIP to get
4 assistance from AxleHire’s customer service representatives. Plaintiff made these telephone calls
5 from a location within California while using his cellular telephone. At other times, AxleHire
6 customer service representatives would make outbound calls to Plaintiff’s cellular telephone
7 number.

8 18. During Plaintiff’s telephone conversations with Defendant’s employees or agents
9 between approximately August 31, 2022 and October 4, 2022, Defendant’s employees or agents
10 failed to disclose to Plaintiff, at the call outset, that his telephone conversations were being
11 recorded and/or monitored. Plaintiff did not give and could not have given consent for his
12 telephone calls to be recorded or monitored because the lack of warning and lack of disclosure
13 regarding call recording left him unaware during the telephone calls that Defendant was engaged
14 in that practice.

15 19. Plaintiff is informed and believes and on that ground alleges that, at all relevant
16 times, other callers who called one or more of Defendant’s customer service numbers from a
17 location in California were not informed at the call outset by Defendant or anyone else that their
18 calls were being recorded and/or monitored. Thus, that recording and/or monitoring necessarily
19 occurred without the callers’ knowledge or consent.

20 20. Because there was no warning that Plaintiff’s calls would be recorded or
21 monitored, Plaintiff had a reasonable expectation that his telephone conversations with
22 Defendant’s employees and agents were, and would remain, private and confined to the parties
23 on the telephone. That recording and/or monitoring occurred without his consent, is highly
24 offensive to Plaintiff and would be highly offensive to a reasonable person, including members
25 of the proposed Plaintiff Class.

26 **CLASS ACTION ALLEGATIONS**

27 21. Plaintiff brings this action under California Code of Civil Procedure § 382 on
28 behalf of himself and the class (the “PC § 632.7 Class”) defined as follows:

1 All California citizens who, while located within California at any time during the
2 applicable limitations period preceding the filing of the Complaint in this matter and
3 through and including the date of resolution, and where the communication was
4 transmitted between two cellular radio telephones, a cellular radio telephone and a
5 landline telephone, two cordless telephones, or a cordless telephone and a cellular radio
6 telephone, and engaged in a conversation with Defendant's employee(s) or agent(s), were
7 recorded and/or monitored by Defendant without any warning or disclosure at the call
8 outset.

9 22. The PC § 632.7 Class that Plaintiff seeks to represent contains numerous members
10 and is clearly ascertainable including, without limitation, by using Defendant's records and/or
11 Defendant's telephone company's and/or other telecommunications and service providers'
12 records regarding calls made from Defendant's customer service numbers to determine the size
13 of the PC § 632.7 Class and to determine the identities of individual PC § 632.7 Class members.
14 Plaintiff reserves the right to amend or modify the PC § 632.7 Class definition and/or to add
15 subclasses or limitations to particular issues.

16 23. By its unlawful actions, Defendant has violated Plaintiff's and the PC § 632.7
17 Class members' privacy rights under CIPA, California Penal Code §§ 630 *et seq.* The questions
18 raised are, therefore, of common or general interest to the PC § 632.7 Class members, who have
19 a well-defined community of interest in the questions of law and fact raised in this action.

20 24. Plaintiff's claims are typical of those of the PC § 632.7 Class, as Plaintiff now
21 suffers and has suffered from the same violations of the law as other putative PC § 632.7 Class
22 members. Plaintiff has retained counsel with substantial experience in prosecuting complex
23 litigation and class actions to represent him and the PC § 632.7 Class, and Plaintiff will fairly and
24 adequately represent the interests of the PC § 632.7 Class.

25 25. This action may properly be maintained as a class action under section 382 of the
26 California Code of Civil Procedure because there is a well-defined community of interest in the
27 litigation and the proposed PC § 632.7 Class is ascertainable.

28 ///

1 **Numerosity**

2 26. Based on information and belief, the Class consists of at least seventy-five
3 individuals, making joinder of individual cases impracticable.

4 **Typicality**

5 27. Plaintiff's claims are typical of the claims of all of the other members of the PC §
6 632.7 Class. Plaintiff's claims and the PC § 632.7 Class members' claims are based on the same
7 legal theories and arise from the same unlawful conduct, resulting in the same injury to Plaintiff
8 and to all of the other PC § 632.7 Class members.

9 **Common Questions of Law and Fact**

10 28. There are questions of law and fact common to the PC § 632.7 Class that
11 predominate over any questions affecting only individual PC § 632.7 Class members. Those
12 common questions of law and fact include, without limitation, the following:

- 13 a. Whether Defendant had a policy or practice of recording and/or monitoring inbound
14 telephone calls made by Defendant's agents or employees;
- 15 b. Whether Defendant had a policy or practice of not disclosing to inbound callers that
16 their conversations with Defendant's agents and employees would be recorded
17 and/or monitored;
- 18 c. Whether Defendant had a policy or practice of failing to obtain consent to record
19 and/or monitor conversations between Defendant's employees or agents, on the one
20 hand, and inbound callers, on the other;
- 21 d. Whether Defendant violated California Penal Code § 632.7 by recording and/or
22 monitoring, surreptitiously and without disclosure at the call outset, inbound
23 telephone conversations between Defendant's employees and agents and inbound
24 callers where the communication was transmitted between two cellular radio
25 telephones, a cellular radio telephone and a landline telephone, two cordless
26 telephones, or a cordless telephone and a cellular radio telephone;
- 27 e. Whether Defendant had a policy or practice of recording and/or monitoring
28 outbound telephone calls made by Defendant's agents or employees;

- 1 f. Whether Defendant had a policy or practice of not disclosing to outbound call
2 recipients that their conversations with Defendant’s agents and employees would
3 be recorded and/or monitored;
- 4 g. Whether Defendant had a policy or practice of failing to obtain consent to record
5 and/or monitor conversations between Defendant’s employees or agents, on the one
6 hand, and outbound call recipients, on the other;
- 7 h. Whether Defendant violated California Penal Code § 632.7 by recording and/or
8 monitoring, surreptitiously and without disclosure at the call outset, outbound
9 telephone conversations between Defendant’s employees and agents and inbound
10 callers where the communication was transmitted between two cellular radio
11 telephones, a cellular radio telephone and a landline telephone, two cordless
12 telephones, or a cordless telephone and a cellular radio telephone; and
- 13 i. Whether Class members are entitled to statutory damages of \$5,000 under Penal
14 Code § 637.2 for each violation of Penal Code § 632.7.

15 **Adequacy**

16 29. Plaintiff will fairly and adequately represent and protect the interests of the other
17 members of the PC § 632.7 Class. Plaintiff has retained counsel with substantial experience in
18 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to
19 prosecuting this action vigorously on behalf of the other PC § 632.7 Class members and have the
20 financial resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those
21 of the other PC § 632.7 Class members.

22 **Superiority**

23 30. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because individual litigation of the claims of all PC § 632.7 Class
25 members is impracticable and questions of law and fact common to the PC § 632.7 Class
26 predominate over any questions affecting only individual members of the PC § 632.7 Class. Even
27 if every individual PC § 632.7 Class member could afford individual litigation, the court system
28 could not. It would be unduly burdensome to the courts if individual litigation of the numerous

1 cases were to be required. Individualized litigation also would present the potential for varying,
2 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
3 and to the court system resulting from multiple trials of the same factual issues. By contrast, the
4 conduct of this action as a class action with respect to some or all of the issues will present fewer
5 management difficulties, conserve the resources of the court system and the parties and protect
6 the rights of each PC § 632.7 Class member. Further, it will prevent the very real harm that would
7 be suffered by numerous putative PC § 632.7 Class members who simply will be unable to enforce
8 individual claims of this size on their own, and by Defendant’s competitors, who will be placed
9 at a competitive disadvantage as their punishment for obeying the law. Plaintiff anticipates no
10 difficulty in the management of this case as a class action.

11 31. The prosecution of separate actions by individual PC § 632.7 Class members may
12 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive
13 of the interests of other PC § 632.7 Class members not parties to those adjudications or that would
14 substantially impair or impede the ability of those non-party PC § 632.7 Class members to protect
15 their interests.

16 32. The prosecution of individual actions by PC § 632.7 Class members would run the
17 risk of establishing inconsistent standards of conduct for Defendant.

18 **FIRST CAUSE OF ACTION**
19 **Unlawful Recording and/or Monitoring of**
20 **Cellular and Cordless Telephone Communications**
21 **(Violation of California Penal Code § 632.7)**

22 33. Plaintiff incorporates each allegation set forth above as if fully set forth herein and
23 further alleges as follows.

24 34. At various times between approximately August 31, 2022 and October 4, 2022,
25 while located in California, Plaintiff used a cellular telephone to call Defendant’s customer
26 service number 855-249-SHIP and participated in telephone conversations with Defendant’s
27 employees or agents.

28 35. Plaintiff is informed and believes and on that ground alleges that, at all relevant
times, Defendant had a policy and practice of using hardware and/or software or other equipment

1 to surreptitiously record and/or monitor telephone conversations with Plaintiff and other PC §
2 632.7 Class members who made calls to Defendant's customer service numbers where the
3 communication was transmitted between two cellular radio telephones, a cellular radio telephone
4 and a landline telephone, two cordless telephones, or a cordless telephone and a cellular radio
5 telephone.

6 36. Plaintiff is informed and believes and on that ground alleges that, at all relevant
7 times, Defendant had and followed a policy and practice of intentionally and surreptitiously
8 recording and/or monitoring Plaintiff's and PC § 632.7 Class members' telephone conversations
9 with Defendant's employees and agents where the communication was transmitted between two
10 cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless
11 telephones, or a cordless telephone and a cellular radio telephone.

12 37. Plaintiff is informed and believes and on that ground alleges that, at all relevant
13 times, Defendant had and followed a policy and practice of not advising or warning California
14 citizens, such as Plaintiff or PC § 632.7 Class members, at the outset of inbound calls that their
15 telephone communications with Defendant's employees or agents, where the communication was
16 transmitted between two cellular radio telephones, a cellular radio telephone and a landline
17 telephone, two cordless telephones, or a cordless telephone and a cellular radio telephone, was
18 being recorded and/or monitored.

19 38. Plaintiff is informed and believes and on that ground alleges that, at all relevant
20 times, Defendant had and followed a policy and practice of not advising or warning California
21 citizens, such as Plaintiff or PC § 632.7 Class members, at the outset of outbound calls that their
22 telephone communications with Defendant's employees or agents, where the communication was
23 transmitted between two cellular radio telephones, a cellular radio telephone and a landline
24 telephone, two cordless telephones, or a cordless telephone and a cellular radio telephone, was
25 being recorded and/or monitored.

26 39. Because Defendant did not disclose to Plaintiff or PC § 632.7 Class members at
27 the call outset that their calls were being recorded and/or monitored, Defendant did not obtain,
28 and could not have obtained, Plaintiff's or PC § 632.7 Class members' express or implied advance

1 consent to the recording or monitoring of those conversations. As a result, Plaintiff and PC §
2 632.7 Class members had an objectively reasonable expectation that their calls were not being
3 recorded and/or monitored. That expectation and its objective reasonableness arise, in part, from
4 the objective offensiveness of surreptitiously recording people’s conversations, the absence of
5 even a simple pre-recorded message as short as four simple words – “calls may be recorded” –
6 and the ease with which such a message could have been put in place. As the California Supreme
7 Court has stated, “in light of the circumstance that California consumers are accustomed to being
8 informed at the outset of a telephone call whenever a business entity intends to record the call, it
9 appears equally plausible that, in the absence of such an advisement, a California consumer
10 reasonably would anticipate that such a telephone call is not being recorded, particularly in view
11 of the strong privacy interest most persons have with regard to the personal financial information
12 frequently disclosed in such calls.” See *Kearney v. Salomon Smith Barney* (2006) 39 Cal. 4th 95.

13 40. Defendant’s conduct as described above violated California Penal Code §
14 632.7(a). Under Penal Code § 637.2, Plaintiff and PC § 632.7 Class members therefore are
15 entitled to \$5,000 in statutory damages per violation, even in the absence of proof of actual
16 damages, the amount deemed proper by the California Legislature.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, on behalf of himself and members of the Class, prays for the
19 following relief:

- 20 a. An order certifying the PC § 632.7 Class, appointing Plaintiff Francisco Avalos as
21 representative of the PC § 632.7 Class, and appointing counsel for Plaintiff as
22 counsel for the PC § 632.7 Class;
- 23 b. An order declaring that Defendant’s actions, as described above, violate California
24 Penal Code § 632.7;
- 25 c. A judgment for and award of statutory damages of \$5,000 per violation under
26 California Penal Code § 637.2 to Plaintiff and the members of the PC § 632.7 Class;
- 27 d. Payment of costs of the suit;
- 28 e. Payment of attorneys’ fees under California Code of Civil Procedure § 1021.5;

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- f. An award of pre- and post-judgment interest to the extent allowed by law; and
- g. Such other or further relief as the Court may deem proper.

Respectfully submitted,

Dated: October 27, 2022

KELLER GROVER LLP

By: 
ERIC A. GROVER
Attorneys for Plaintiff

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: October 27, 2022

KELLER GROVER LLP

By: 
ERIC A. GROVER
Attorneys for Plaintiff