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10 SOUTHWEST AIRLINES CO.

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 MIKE CLARK-ALONSO, individually and on
14 behalf of a class of similarly situated
15 individuals,

16 Plaintiff,

17 v.

18 SOUTHWEST AIRLINES CO.; and DOES 1
through 100, inclusive,

19 Defendants.

Case No.:

NOTICE OF REMOVAL

20
21
22 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO PLAINTIFF**
23 **AND HIS ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453,
25 Defendant Southwest Airlines Co. (“Southwest”) hereby removes the action filed by Mike Clark-
26 Alonso (“Plaintiff”) in the Superior Court of the State of California in and for the County of
27 Alameda, Case No. RG19030839 (the “State Court Action”), to the United States District Court for
28 the Northern District of California.

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JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332, and removal is proper under the Class Action Fairness Act of 2005, codified in part at 28 U.S.C. § 1332(d).

2. This Court is in the judicial district and division embracing the place where the State Court Action was brought and is pending. Thus, this Court is the proper district court to which this case should be removed. 28 U.S.C. §§ 1441(a) and 1446(a).

THE ACTION AND TIMELINESS OF REMOVAL

3. On August 12, 2019, Plaintiff, purportedly on behalf of himself and all others similarly situated, filed a Class Action Complaint (the “Complaint”) against Southwest and “Does 1 through 100, inclusive.” A true and correct copy of the Complaint is attached to this Notice of Removal as **Exhibit A**.

4. On August 28, 2019, Plaintiff served Southwest with copies of the Civil Case Cover Sheet, Civil Case Cover Sheet Addendum, Summons, Complaint, Alternative Dispute Resolution (ADR) Information Packet, Stipulation to Attend Alternative Dispute Resolution, and Notice of Hearing by personal delivery. True and correct copies of all documents filed in the State Court Action are collectively attached to this Notice as **Exhibit B**.

5. The removal is timely under 28 U.S.C. § 1446(b) because Defendants filed this removal within 30 days of being served with the Complaint. *See Murphy Bros. v. Michetti Pipe Stinging, Inc.*, 526 U.S. 344, 348 (1999) (time period for removal begins when the defendant is served).

CAFA JURISDICTION

6. Basis of Original Jurisdiction. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”) (codified in pertinent part at 28 U.S.C. § 1332(d)). Section 1332(d) provides that a district court shall have original jurisdiction over a class action with one hundred (100) or more putative class members, in which the matter in controversy, in the aggregate, exceeds the sum or value of \$5 million. Section 1332(d) further provides that, for

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1 CAFA to apply, a member of the putative class must be a citizen of a state different from any
2 defendant.

3 7. As set forth below, pursuant to 28 U.S.C. § 1441(a), Defendants may remove the
4 State Court Action to federal court under the Class Action Fairness Act of 2005 because: (i) this
5 action is pled as a class action; (ii) the putative class includes more than one hundred members; (iii)
6 members of the putative class are citizens of a state different from that of Defendants; and (iv) the
7 matter in controversy, in the aggregate, exceeds the sum or value of \$5 million, exclusive of
8 interests and costs.

9 **THE ACTION IS PLED AS A CLASS ACTION**

10 8. CAFA defines a “class action” as “any civil action filed under rule 23 of the Federal
11 Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action
12 to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

13 9. Plaintiff seeks class certification under California Code of Civil Procedure § 382.
14 [Compl. ¶ 21.] The “pertinent sections of [Rule 23 and Civil Code § 1781] are nearly
15 indistinguishable.” *Pickman v. Am. Exp. Co.*, No. C 11-05326 WHA, 2012 WL 258842, at *2
16 (N.D. Cal. Jan. 27, 2012) Thus, the first CAFA requirement is satisfied. [Compl. ¶ 1 (“This class
17 action lawsuit arises out of...”).]

18 **THE PUTATIVE CLASS INCLUDES AT LEAST 100 MEMBERS**

19 10. Plaintiff alleges that “[o]n July 22, 2019, while located as his residence, [he] used
20 his cordless telephone to call [Southwest’s] Rapid Rewards number, 800-445-5764.” [Comp.¶ 16.]
21 According to Plaintiff, during the telephone conversation, Southwest “failed to disclose to [him]
22 that his telephone conversation with [Southwest] was being recorded and/or monitored” and that
23 he “did not give and could not have given consent for the telephone conversation to be recorded or
24 monitored because he was unaware during the telephone call that [Southwest was] engaged in that
25 practice.” [*Id.* at ¶ 17.] Based on the above allegations, Plaintiff asserts a single cause of action
26 against Southwest for violation of California Penal Code § 632.7. [*See, generally, id.*]

27 11. Plaintiff purports to bring this action on behalf of a California-specific class (the
28 “Class”). [*Id.* at ¶ 21.] Plaintiff defines the Class as: “All California residents who, while located

1 within California at any time during the applicable limitations period preceding the filing of this
2 Complaint in this Matter and through and included the date of resolution, and while one or both of
3 the parties to the call were using a cellular or cordless telephone, engage in a telephone conversation
4 with Defendants’ employee(s) or agent(s) and were recorded and/or monitored by Defendants
5 without any warning or disclosure at the outset of the call.” [*Id.* at ¶ 21.]

6 12. Although Plaintiff alleges that “[b]ased on information and belief, the Class consists
7 of at least seventy-five individuals,” [*Id.* at ¶ 26], Southwest has determined, based on its own
8 investigation to date, that, between August 12, 2018 and August 12, 2019, more than 100
9 individuals with California area codes called 1-800-445-5764.

10 13. Therefore, the number of putative class members exceeds the statutorily required
11 minimum of 100.

12 **MINIMAL DIVERSITY OF CITIZENSHIP EXISTS**

13 14. Pursuant to 28 U.S.C. § 1332(d)(2)(A), the “district court shall have original
14 jurisdiction” over a “class which . . . *any member of the class of plaintiffs is a citizen of a State*
15 *different from any defendant.*” (emphasis added). *See also Abrego Abrego v. The Dow Chem. Co.*,
16 443 F.3d 676, 680 n.5 (9th Cir. 2006) (“One way to satisfy minimal diversity is by demonstrating
17 that any member of a class of plaintiffs is . . . a citizen or subject of a foreign state and any defendant
18 is a citizen of a State.”) (internal citations omitted).

19 15. Plaintiff’s Citizenship. As alleged in the Complaint, Plaintiff “is and was a
20 California resident at all times relevant to this Complaint.” [Comp. ¶ 5.] For diversity purposes, a
21 person is a “citizen” of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries,*
22 *Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). “[A] person is domiciled in a location where he or she
23 has established a fixed habitation or abode in a particular place, and [intends] to remain there
24 permanently or indefinitely.” *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986) (internal
25 quotations omitted). “[T]he existence of domicile for purposes of diversity is determined as of the
26 time the lawsuit is filed.” *Id.* at 750. Since Plaintiff alleged that he resided in California at the time
27 he filed his lawsuit, Plaintiff is a citizen of the State of California.

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1 16. Southwest’s Citizenship. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be
2 deemed to be a citizen of any State by which it has been incorporated and of the State where it has
3 its principal place of business.” The United States Supreme Court has concluded that a
4 corporation’s “principal place of business” is “where a corporation’s officers direct, control, and
5 coordinate the corporation’s activities,” or its “nerve center.” *Hertz Corp. v. Friend*, 559 U.S. 77,
6 93-94. (2010). “[I]n practice,” a corporation’s “nerve center” should “normally be the place where
7 the corporation maintains its headquarters.” *Id.* at 93. “The public often (though not always)
8 considers it the corporation’s main place of business.” *Id.*

9 17. Southwest is a corporation formed and incorporated under the laws of the State of
10 Texas. [Comp. ¶ 6.]

11 18. Plaintiff alleges that Southwest’s headquarters are located in Dallas, Texas. [*Id.*]

12 19. As established in Paragraphs 16-18 above, minimal diversity of citizenship is
13 established, pursuant to CAFA, because Plaintiff is a citizen of California and Southwest is a citizen
14 of Texas.

15 **THE AMOUNT IN CONTROVERSY EXCEEDS THE CAFA THRESHOLD**¹

16 20. Where a complaint does not specify the amount of damages sought, as is the case
17 with Plaintiff’s Complaint, the removing defendant must prove by a preponderance of the evidence
18 that the jurisdictional amount-in-controversy is satisfied. 28 U.S.C. § 1446(c)(2)(B). The Supreme
19 Court has held that “a defendant’s notice of removal need include only a plausible allegation that
20 the amount in controversy exceeds the jurisdictional threshold” to meet this standard. *Dart*
21 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014).

22 21. Plaintiff requests, pursuant to California Penal Code § 637.2, \$5,000 in statutory
23 damages per violation, [Compl. ¶¶ 39, Prayer for Relief (c)], which, aggregated across the putative
24 class, places more than \$5 million in controversy, exclusive of interests and costs.

25
26 _____
27 ¹ The amounts set forth in this Notice of Removal are solely for purposes of establishing that the
28 amount in controversy exceeds the \$5 million threshold and are not intended and cannot be
construed as an admission that Plaintiff can state a claim or is entitled to damages in any amount.
Defendant denies liability, denies Plaintiff is entitled to recover any amount, and denies that a class
can be properly certified in this matter.

1 22. Statutory Damages. Specifically, Southwest has determined, based on its own
2 investigation to date, that, between August 12, 2018 and August 12, 2019, it received on its 1-800-
3 445-5764 telephone line at least 1,500 calls from individuals with a California area code.
4 Therefore, based just on the \$5,000 statutory damages alone, the amount in controversy is at least
5 \$7.5 million (calculated as: 1,500 phone calls x \$5,000 in statutory damages).

6 23. Attorneys’ Fees. Plaintiff also seeks to recover his attorneys’ fees. [*Id.* at Prayer
7 for Relief, (e).] “[W]here an underlying statute authorizes an award of attorneys’ fees, either with
8 mandatory or discretionary language, such fees may be included in the amount in controversy.”
9 *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1004 (9th Cir. 2007) (internal quotations
10 omitted). The Court may take into account reasonable estimates of attorneys’ fees when analyzing
11 disputes over the amount in controversy. *See Brady v. Mercedes-Benz USA, Inc.*, 243 F.Supp.2d
12 1004, 1010-11 (N.D. Cal. 2002). Here, Plaintiff alleges that he is entitled to statutory attorneys’
13 fees under California Code of Civil Procedure § 1021.5. They should therefore be included in
14 analyzing the amount in controversy.

15 24. In the Ninth Circuit, 25% of the award has been used as a “benchmark” for
16 attorneys’ fees. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Using this
17 benchmark, attorneys’ fees, when added to the amounts discussed above, further increase the
18 amount in controversy for alleged liability exposure above the jurisdictional minimum for removal.

19 25. Accordingly, the State Court Action is pled as a class action, and the class size,
20 diversity, and amount in controversy requirements of CAFA are satisfied. Defendants have
21 properly removed the State Court Action to this Court.

22 26. This notice is submitted without waiver of any procedural or substantive defense.

23 27. The State Court Action was filed on August 12, 2019, thus one year has not elapsed
24 from the date the action in state court commenced.

25 **NOTICE OF INTERESTED PARTIES**

26 28. Pursuant to Local Rule 3-15, a Certification of Interested Entities or Parties is being
27 filed concurrently with this Notice of Removal.
28

1 29. As required by 28 U.S.C. § 1446(d), Defendants are providing written notice of the
2 filing of this Notice of Removal to Plaintiff and are filing a copy of this Notice of Removal with
3 the Clerk of the Superior Court of the State of California in and for the County of Alameda.

4 Respectfully submitted this 9th day of July 2019

5
6 DATED: September 26, 2019

BAKER & HOSTETLER LLP

7 By: */s/ Matthew D. Pearson*

8 _____
Teresa C. Chow
Matthew D. Pearson

9 *Attorneys for Defendant*
10 *SOUTHWEST AIRLINES CO.*

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EXHIBIT

A



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10 Attorneys for Plaintiff
11 Mike Clark-Alonso

FILED
ALAMEDA COUNTY

AUG 12 2019

CLERK OF THE SUPERIOR COURT
By Janina Puerto Deputy

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF ALAMEDA**

16 MIKE CLARK-ALONSO, individually and on)
17 behalf of a class of similarly situated)
18 individuals,)

19 Plaintiff,

20 v.

21 SOUTHWEST AIRLINES CO.; and DOES 1)
22 through 100, inclusive,)

23 Defendants.)
24)
25)
26)
27)
28)

Case No: Rg 19030839

CLASS ACTION

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

BY FAX ORIGINAL

KELLER GROVER LLP

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CLASS ACTION COMPLAINT

1
2 Plaintiff Mike Clark-Alonso (“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 Southwest Airlines Co.’s
7 (“Defendant”) policy and practice of recording and/or monitoring,¹ without the consent of all
8 parties, (1) California residents’ telephone calls to Defendant’s toll-free Rapid Rewards
9 customer service telephone number and, on information and belief, (2) Defendant’s return calls
10 to California residents. Defendant’s toll-free Rapid Rewards customer service telephone
11 number – 800-445-5764 -- is referred to herein as “Defendant’s Rapid Rewards number.”

12 2. During the relevant time period, Defendant intentionally and surreptitiously
13 recorded and/or monitored telephone calls made or routed to Defendant’s Rapid Rewards
14 number. Defendant recorded and/or monitored calls without warning or disclosing to inbound
15 callers and, on information and belief, recipients of outbound calls that their calls might be
16 recorded or monitored.

17 3. Defendant’s policy and practice of recording and/or monitoring, without the
18 consent of all parties, Defendant’s telephone conversations with California residents who, while
19 physically located in California, called Defendant’s Rapid Rewards number or, on information
20 and belief, received a call from Defendant, violates the California Invasion of Privacy Act,
21 Penal Code §§ 630, *et seq.* (“CIPA”). Specifically, Defendant’s policy and practice violates
22 Penal Code § 632.7, which prohibits the recording or monitoring of a communication made to
23 or from a cellular or cordless telephone without the consent of all parties to the communication.

24 4. Due to Defendant’s violations, all California residents who, while they were in
25 California, called Defendant’s Rapid Rewards number and, under either circumstance, were
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. Thus, “monitor” will be used in lieu of “intercept” throughout this complaint.

1 recorded or monitored by Defendant surreptitiously and without disclosure are entitled to an
2 award of statutory damages as set forth in Penal Code § 637.2.

3 **PARTIES**

4 5. Plaintiff Mike Clark-Alonso is an individual. Plaintiff is and was a California
5 resident at all times relevant to this Complaint.

6 6. Defendant Southwest Airlines Co. is a Texas corporation with its headquarters in
7 Dallas, Texas. Defendant systematically and continuously does business in California and with
8 California residents.

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

15 8. Plaintiff is informed and believes and on that ground alleges that, at all relevant
16 times, each Defendant was the principal, agent, partner, joint venturer, officer, director,
17 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
18 predecessor in interest of some or all of the other Defendants, and was engaged with some or all
19 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some
20 or all of the other Defendants as to be liable for their conduct with respect to the matters alleged
21 below. Plaintiff is informed and believes and, on that ground, alleges that each Defendant acted
22 pursuant to and within the scope of the relationships alleged above, and that each knew or
23 should have known about and authorized, ratified, adopted, approved, controlled, aided and
24 abetted the conduct of all Defendants.

25 **JURISDICTION AND VENUE**

26 9. This Court has subject matter jurisdiction over this action under California Penal
27 Code §§ 632.7 and 637.2.

28 10. This Court has personal jurisdiction over the parties because Defendant

1 continuously and systematically has conducted business in the State of California. Likewise,
2 Plaintiff's rights were violated in the State of California and arose out of his contact with
3 Defendant from and within California.

4 11. Venue is proper in this Court because California Code of Civil Procedure §§ 395
5 and 395.5, and case law interpreting those sections, provide that if a foreign business entity fails
6 to designate with the office of the California Secretary of State a principal place of business in
7 California, it is subject to being sued in any county in the state that plaintiff desires. On
8 information and belief, as of the date this Complaint is filed, Defendant is a foreign business
9 entity that has failed to designate a principal place of business in California with the office of
10 the Secretary of State.

11 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

12 12. Plaintiff is informed and believes and, on that ground, alleges that Defendant's
13 Rapid Rewards number, 800-445-5764, connects callers to Defendant's customer service
14 representatives.

15 13. Plaintiff is informed and believes and, on that ground, alleges that Defendant's
16 employees and agents at the customer service call centers receive incoming calls from callers
17 including California callers. Plaintiff is further informed and believes and, on that ground,
18 alleges that Defendant intentionally has used technology consisting of hardware and/or software
19 and/or other equipment to carry out a policy and practice of recording and/or monitoring calls
20 routed to Defendant's customer service representatives.

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

27 15. Plaintiff is informed and believes and, on that ground, alleges that Defendant's
28 employees and agents at or associated with the customer service call centers were and are

1 directed, trained, and instructed to, and did and do, record and/or monitor telephone calls
2 between the customer service representatives and callers, including California callers.

3 16. On July 22, 2019, while located at his residence within California, Plaintiff used
4 his cordless telephone to call Defendant's Rapid Rewards number, 800-445-5764.

5 17. During Plaintiff's telephone conversation with Defendant, Defendant failed to
6 disclose to Plaintiff that his telephone conversation with Defendant was being recorded and/or
7 monitored. Plaintiff did not give and could not have given consent for the telephone
8 conversation to be recorded or monitored because he was unaware during the telephone call that
9 Defendant were engaged in that practice.

10 18. Plaintiff is informed and believes and, on that ground, alleges that other callers
11 who called Defendant's Rapid Rewards number from a location in California and were routed to
12 one of Defendant's customer service call centers were not informed at the call outset by
13 Defendant or anyone else that their calls were being recorded and/or monitored. Thus, that
14 recording and/or monitoring necessarily occurred without the callers' knowledge or consent.

15 19. Plaintiff is informed and believes and, on that ground, alleges that persons located
16 in California who received calls from Defendant's customer service call centers were not
17 informed at the call outset by Defendant or anyone else that their calls were being recorded
18 and/or monitored. Thus, that recording and/or monitoring necessarily occurred without the call
19 recipients' knowledge or consent.

20 20. Because there was no warning that calls would be recorded or monitored,
21 Plaintiff had a reasonable expectation that his telephone conversation with Defendant's
22 employees and agents was, and would remain, private and confined to the parties on the
23 telephone. That recording and/or monitoring without his consent is highly offensive to Plaintiff
24 and would be highly offensive to a reasonable person, including members of the proposed
25 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 residents 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 while one or both parties to the call
4 were using a cellular or cordless telephone, engaged in a telephone conversation with
5 Defendant's employee(s) or agent(s) and were recorded and/or monitored by
6 Defendant without any warning or disclosure at the call outset.

7 22. The PC § 632.7 Class that Plaintiff seeks to represent contains numerous
8 members and is clearly ascertainable including, without limitation, by using Defendant's
9 records and/or Defendant's telephone company's and/or other telecommunications and toll-free
10 service providers' records regarding calls from California area codes to Defendant's toll-free
11 numbers and calls from Defendant and its employees and agents to telephone numbers with
12 California area codes to determine the size of the PC § 632.7 Class and to determine the
13 identities of individual PC § 632.7 Class members. Plaintiff reserves the right to amend or
14 modify the PC § 632.7 Class definitions and/or to add subclasses or limitations to particular
15 issues.

16 23. By its unlawful actions, Defendant has violated Plaintiff's and the PC § 632.7
17 Class members' privacy rights under CIPA. The questions raised are, therefore, of common or
18 general interest to the PC § 632.7 Class members, who have a well-defined community of
19 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 violation 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
24 and adequately represent the interests of the PC § 632.7 Class.

25 25. This action may properly be maintained as a class action under § 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 other PC § 632.7 Class members' claims are based on the
7 same legal theories and arise from the same unlawful conduct, resulting in the same injury to
8 Plaintiff 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 has or had a policy or practice of recording and/or
14 monitoring inbound telephone calls made to Defendant's Rapid Rewards
15 number, 800-445-5764;
- 16 b. Whether Defendant has or had a policy or practice of not disclosing to
17 inbound callers to Defendant's Rapid Rewards number that their
18 conversations with Defendant's employees or agents would be recorded
19 and/or monitored;
- 20 c. Whether Defendant has or had a policy or practice of failing to obtain
21 consent to record and/or monitor conversations between Defendant's
22 employees or agents, on the one hand, and inbound callers to the Rapid
23 Rewards number, on the other;
- 24 d. Whether Defendant violated California Penal Code § 632.7 by recording
25 and/or monitoring, surreptitiously and without disclosure at the call outset,
26 telephone conversations
- 27
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- i. between inbound callers to the Rapid Rewards number using cellular and cordless telephones within California and Defendant’s employees and agents, and
- ii. between inbound callers to the Rapid Rewards number who were using landline telephones within California and Defendant’s employees and agents who were using cellular or cordless phones;
- e. Whether Defendant has or had a policy or practice of not disclosing to outbound call recipients that their conversations with Defendant’s employees or agents would be recorded and/or monitored;
- f. Whether Defendant has or had a policy or practice of failing to obtain consent to record and/or monitor conversations between Defendant’s employees or agents, on the one hand, and outbound call recipients, on the other;
- g. Whether Defendant violated California Penal Code § 632.7 by recording and/or monitoring, surreptitiously and without disclosure at the call outset, telephone conversations
 - i. between Defendant’s employees and agents and outbound call recipients who were using cellular and cordless telephones within California, and
 - ii. between Defendant’s employees and agents using cellular or cordless phones and outbound call recipients who were using landline telephones within California; and
- h. Whether Class members are entitled to statutory damages of \$5,000 under Penal Code § 637.2 for each violation of Penal Code § 632.7.

Adequacy

29. Plaintiff will fairly and adequately represent and protect the interests of the other members of the PC § 632.7 Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to

1 prosecuting this action vigorously on behalf of the other PC § 632.7 Class members and have the
 2 financial resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those
 3 of the other PC § 632.7 Class members.

4 **Superiority**

5 30. A class action is superior to other available methods for the fair and efficient
 6 adjudication of this controversy because individual litigation of the claims of all PC § 632.7
 7 Class members is impracticable and questions of law and fact common to the PC § 632.7 Class
 8 predominate over any questions affecting only individual members of the PC § 632.7 Class.
 9 Even if every individual PC § 632.7 Class member could afford individual litigation, the court
 10 system could not. It would be unduly burdensome to the courts if individual litigation of the
 11 numerous cases were to be required. Individualized litigation also would present the potential
 12 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense
 13 to all parties and to the court system resulting from multiple trials of the same factual issues. By
 14 contrast, the conduct of this action as a class action with respect to some or all of the issues will
 15 present fewer management difficulties, conserve the resources of the court system and the
 16 parties and protect the rights of each PC § 632.7 Class member. Further, it will prevent the very
 17 real harm that would be suffered by numerous putative PC § 632.7 Class members who simply
 18 will be unable to enforce individual claims of this size on their own, and by Defendant's
 19 competitors, who will be placed at a competitive disadvantage as their punishment for obeying
 20 the law. Plaintiff anticipates no difficulty managing this case as a class action.

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

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

28 //

FIRST CAUSE OF ACTION
Unlawful Recording and/or Monitoring of
Cellular and Cordless Telephone Communications
(Violation of California Penal Code § 632.7)
Against All Defendants

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

6 34. While located in California, and within one year before the filing of this
7 complaint, Plaintiff used a cordless telephone to dial 800-445-5764 and participate in at least
8 one telephone conversation with one of Defendant's customer service representatives.

9 35. Plaintiff is informed and believes and on that ground alleges that, at all relevant
10 times, Defendant has or had a policy and practice of using hardware and/or software and/or other
11 equipment that enabled it to surreptitiously record and/or monitor telephone conversations with
12 Plaintiff and other PC § 632.7 Class members (a) who used cellular or cordless telephones to
13 make calls to Defendant's Rapid Rewards number, (b) who used landline telephones to make
14 calls to Defendant's Rapid Rewards number and spoke with customer service representatives
15 who were using cellular or cordless telephones, (c) who received calls on their cellular or
16 cordless telephones from Defendant's customer service agents, and/or (d) who received calls on
17 their landline telephones from Defendant's customer service agents who were using cellular or
18 cordless telephones.

19 36. Plaintiff is informed and believes and, on that ground, alleges that, at all relevant
20 times, Defendant has or had and followed a policy and practice of intentionally and
21 surreptitiously recording and/or monitoring Plaintiff's and PC § 632.7 Class members' telephone
22 calls made to the Rapid Rewards number in which one or both parties to the call were using
23 cellular or cordless telephones.

24 37. Plaintiff is informed and believes and, on that ground, alleges that, at all relevant
25 times, Defendant has or had and followed a policy and practice of intentionally and
26 surreptitiously recording and/or monitoring calls that Plaintiff and PC § 632.7 Class members
27 received from Defendant's customer service agents in which one or both parties to the call were
28 using cellular or cordless telephones.

1 38. Plaintiff is informed and believes and, on that ground, alleges that Defendant has
 2 or had and followed a policy and practice of not advising or warning California residents at the
 3 outset of inbound calls to the Rapid Rewards number and outbound calls that their telephone
 4 communications with Defendant's employees and agents, in which one or both parties to the call
 5 were using cellular or cordless telephones, would be recorded and/or monitored. Because
 6 Defendant did not disclose to Plaintiff or PC § 632.7 Class members at the call outset that those
 7 calls were being recorded and/or monitored, Defendant did not obtain, and could not have
 8 obtained, Plaintiff's or PC § 632.7 Class members' express or implied advance consent to the
 9 recording or monitoring of those conversations. As a result, Plaintiff and PC § 632.7 Class
 10 members had an objectively reasonable expectation that the calls were not being recorded and/or
 11 monitored. That expectation and its objective reasonableness arise, in part, from the objective
 12 offensiveness of surreptitiously recording people's conversations, the absence of even a simple
 13 pre-recorded message as short as four words – "calls may be recorded" – and the ease with
 14 which such a message could have been put in place. As the California Supreme Court has stated,
 15 "in light of the circumstance that California consumers are accustomed to being informed at the
 16 outset of a telephone call whenever a business entity intends to record the call, it appears equally
 17 plausible that, in the absence of such an advisement, a California consumer reasonably would
 18 anticipate that such a telephone call is not being recorded, particularly in view of the strong
 19 privacy interest most persons have with regard to the personal financial information frequently
 20 disclosed in such calls." (See *Kearney v. Salomon Smith Barney* (2006) 39 Cal. 4th 95.)

21 39. Defendant's conduct as described above violated California Penal Code §
 22 632.7(a). Under Penal Code § 637.2, Plaintiff and PC § 632.7 Class members therefore are
 23 entitled to \$5,000 in statutory damages per violation, even in the absence of proof of actual
 24 damages, the amount deemed proper by the California Legislature.

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PRAYER FOR RELIEF

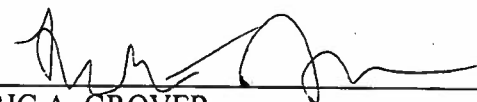
WHEREFORE, Plaintiff, on behalf of himself and members of the Class, prays for the following relief:

- a. An order certifying the PC § 632.7 Class, appointing Plaintiff Mike Clark-Alonso as the representative of the PC § 632.7 Class, and appointing counsel for Plaintiff as lead counsel for the PC § 632.7 Class;
- b. An order declaring that the actions of Defendant, as described above, violate California Penal Code § 632.7;
- c. A judgment for and award of statutory damages of \$5,000 per violation to Plaintiff and the members of the PC § 632.7 Class under California Penal Code § 637.2;
- d. Payment of costs of the suit;
- e. Payment of attorneys' fees under California Code of Civil Procedure § 1021.5;
- f. An award of pre- and post-judgment interest to the extent allowed by law; and
- g. For such other or further relief as the Court may deem proper.

Respectfully submitted,

Dated: August 9, 2019

KELLER GROVER LLP

By: 

 ERIC A. GROVER
 ROBERT SPENCER
Attorneys for Plaintiff

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JURY DEMAND

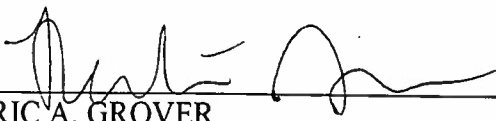
Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: August 9, 2019

KELLER GROVER LLP

By:



ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiff



22836787

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric A. Grover, Esq. (SBN 136080), Robert Spencer, Esq. (SBN 238491) KELLER GROVER LLP 1965 Market Street San Francisco, California 94103 TELEPHONE NO.: 415-543-1305 FAX NO.: 415-543-7861 ATTORNEY FOR (Name): Plaintiff Mike Clark-Alonso	FOR COI FILED ALAMEDA COUNTY AUG 12 2019 CLERK OF THE SUPERIOR COURT By <i>Jaricia P. [Signature]</i> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: 1225 Fallon Street CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NUMBER: Rg 19030839 JUDGE: DEPT:
CASE NAME: Clark-Alonso v. Southwest Airlines, Co.	CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 1
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 9, 2019
 Robert Spencer, Esq.

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

BY FAX ORIGINAL

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Southwest Airlines Secretly Records Rapid Rewards Customer Service Calls](#)
