

1 PACIFIC TRIAL ATTORNEYS
A Professional Corporation
2 Scott J. Ferrell, Bar No. 202091
sferrell@pacifictrialattorneys.com
3 David W. Reid, Bar No. 267382
dreid@pacifictrialattorneys.com
4 Victoria C. Knowles, Bar No. 277231
vknowles@pacifictrialattorneys.com
5 4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
6 Tel: (949) 706-6464
Fax: (949) 706-6469
7

8 Attorneys for Plaintiff and the Class

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

11 JOSHUA GAMEZ, individually, and on
behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 HILTON GRAND VACATIONS INC., a
15 Delaware corporation; and DOES 1-10,
Inclusive,

16 Defendants.
17

Case No.: 2:18-cv-4803

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

4 **I. PARTIES**

5 1. Plaintiff Joshua Gamez is a resident of Los Angeles County in the Central
6 District of California who contacted Defendant Hilton Grand Vacations Inc.

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

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

22 **II. JURISDICTION AND VENUE**

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

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

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

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

10 III. FACTS

11 7. In May, 2017, while located in California, Plaintiff called Defendant at
12 (800) 230-7068, from a wireless telephone. Plaintiff spoke to several
13 employees/customer service representatives of Defendant who identified themselves as
14 "Kyle", "Laquita" and "Bryan." Plaintiff engaged in a confidential and private
15 communication with these persons

16 8. Plaintiff was not aware that his private and confidential call was being
17 recorded. Defendant did not, at any point during the telephone conversation with
18 Defendant's customer service representatives, advise Plaintiff that the call was being
19 recorded. Plaintiff did not give either express or implied consent to the recording, nor
20 did Defendant seek to obtain or obtain Plaintiff's consent to recording.

21 9. After completing his call, Plaintiff learned that at all relevant times
22 Defendant recorded and/or monitored *all* incoming telephone calls, including the call
23 from Plaintiff, but that at all relevant times Defendant did not disclose this to every
24 caller, nor seek consent to recording confidential and private telephone calls, and did
25 not disclose it to Plaintiff.

26 10. Plaintiff expected that his telephone call would be private (i.e., neither
27 recorded nor monitored) due to Defendant's failure to disclose any recording or
28 monitoring or seek consent therefor, and due to the private and confidential nature of

1 Plaintiff's telephone conversation with Defendant.

2 11. On information and belief, Plaintiff understands that after receiving
3 Plaintiff's notification regarding Defendant's Penal Code violations as set forth herein,
4 Defendant modified its system, and callers to Defendant's number(s) now hear the
5 following language: "This call may be recorded for quality assurance purposes." This
6 fact underscores strongly the correctness and validity of Plaintiff's position and of the
7 factual and legal contentions set forth in this Complaint.

8 **IV. CLASS ACTION ALLEGATIONS**

9 12. Plaintiff brings this class action pursuant to Rule 23(a), 23(b)(2) and
10 23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and all members
11 of the following Class:

12 *"All persons located in California whose wireless telephone*
13 *conversations with Defendant were intentionally recorded*
14 *without disclosure by Defendant at any time during the*
15 *statute of limitations period through the date of final*
16 *judgment in this action."* (the "Class").

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

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

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

28 15. **Adequacy of Representation.** Plaintiff will fairly and adequately

1 represent and protect the interests of the members of the Class. Plaintiff has retained
2 counsel highly experienced in complex consumer class action litigation and intends to
3 prosecute this action vigorously. Plaintiff is a member of the Class described herein
4 and does not have interests antagonistic to, or in conflict with, the other members of the
5 Class.

6 16. **Typicality.** Plaintiff's claims are typical of the claims of the members of
7 the Class. Plaintiff and all members of the Class called the phone number, operated by
8 Defendant, at (800) 230-7068 from a wireless telephone, and spoke to an
9 employee/customer service representative of Defendant without knowing that the calls
10 were being recorded.

11 17. **Existence and Predominance of Common Questions of Law and Fact.**
12 There are central and substantial questions of law and fact common to all Class
13 Members that control this litigation and predominate over any individual issues.
14 Included within the common questions are the following:

- 15 (a) Whether at all relevant times Defendant intentionally recorded
16 or monitored confidential telephone calls;
- 17 (b) Whether at all relevant times Defendant obtained consent, or
18 otherwise disclosed its intentional recording of confidential
19 telephone communications; and
- 20 (c) Whether at all relevant times Defendant's conduct constituted
21 a violation of California Penal Code section 631(a), 632(a)
22 and/ or 637.

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

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

- 26 i) Given the size of the claims of individual Class Members, as well as
27 the resources of Defendant, few, if any, could afford to seek legal
28 redress individually for the wrongs alleged herein;

1 required – only that the defendant intended to record the communication.

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

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

9 24. Plaintiff and the Class further seek attorneys' fees pursuant to section
10 1021.5 of the California Code of Civil Procedure, or any other applicable statute, as this
11 action enforces an important right affecting the public's interest.

12 **Second Cause of Action - Penal Code § 632**

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

14 25. Plaintiff incorporates by this reference the allegations contained in the
15 preceding paragraphs above as if fully set forth herein.

16 26. As part of the California Invasion of Privacy Act, the Legislature enacted
17 section 632 of the California Penal Code in 1967 to address the growing concern that
18 “advances in science and technology have led to the development of new devices and
19 techniques for the purpose of eavesdropping upon private communications and that the
20 invasion of privacy resulting from the continual and increasing use of such devices and
21 techniques has created a serious threat to the free exercise of personal liberties and
22 cannot be tolerated in a free and civilized society.” Cal. Penal Code § 630.

23 27. Section 632 prohibits the non-consensual recording, monitoring, and/or
24 eavesdropping upon confidential telephone communications by means of any electronic
25 amplifying or recording device, including a wiretap. “Intentional” within the context of
26 section 632 merely requires that a defendant intend that the confidential communication
27 be recorded, monitored, and/or eavesdropped upon. *See People v. Superior Court of*
28 *Los Angeles County*, 70 Cal. 2d 123, 133 (1969). No other wrongful or surreptitious

1 intent is required, only that the defendant intended to record the confidential
2 communication is necessary.

3 28. Plaintiff is informed and believes, and thereon alleges that Defendant
4 knowingly violated Cal. Penal Code § 632 by habitually, and making a practice of,
5 routinely recording, monitoring, and/or eavesdropping upon confidential
6 communications of its customers and potential customers. Such communications are
7 considered to be confidential to those customers and potential customers who call
8 Defendant because such communications are carried on under circumstances that
9 reasonably indicate that the customer-party to the communication desires it to be
10 confined to them and Defendant.

11 29. Plaintiff is informed and believes, and thereon alleges that the foregoing
12 recording, monitoring, and/or eavesdropping on said confidential communications
13 without consent via recording device, including but not limited to wiretapping,
14 constitutes a violation of California Penal Code sections 631(a) and 632.6(a).

15 30. Based on the foregoing violations, Plaintiff and members of the Class are
16 entitled to and seek the statutory remedies provided in section 637.2 of the California
17 Penal Code, i.e. \$5,000 per statutory violation or three times the amount of actual
18 damages, whichever is higher.

19 31. Plaintiff and the Class further seek attorneys' fees pursuant to section
20 1021.5 of the California Code of Civil Procedure, or any other applicable statute, as this
21 action enforces an important right affecting the public's interest.

22 **PRAYER FOR RELIEF**

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

25 1. For preliminary and permanent injunctive relief enjoining Defendant, its
26 agents, servants and employees, and all persons acting in concert with them, from
27 engaging in this illegal practice;

28 2. For certification of the putative class and an award of statutory damages

1 thereto;

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

5 4. For costs of suit; and

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

7
8 Dated: May 30, 2018

PACIFIC TRIAL ATTORNEYS, APC

9
10 By: 
11 Scott J. Ferrell
12 Attorneys for Plaintiff and the Class
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

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

Dated: May 30, 2018

PACIFIC TRIAL ATTORNEYS, APC

By: 

Scott J. Ferrell
Attorneys for Plaintiff and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Hilton Grand Vacations Records Customer Phone Calls Without Consent, Class Action Alleges](#)
