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19 **UNITED STATES DISTRICT COURT**
 20 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>21 MICHAEL MENDELL, 22 individually and on behalf of 23 others similarly situated,</p> <p>24 Plaintiff,</p> <p>25 vs.</p> <p>26 AMERICAN MEDICAL 27 RESPONSE, INC.,</p> <p>28 Defendant.</p>	<p>Case No: <u>'19CV1227 BAS KSC</u></p> <p><u>CLASS ACTION</u></p> <p>COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF:</p> <p>1. UNLAWFUL RECORDING OF CELLULAR COMMUNICATIONS UNDER CALIFORNIA PENAL CODE SECTION 632.7</p> <p>2. NEGLIGENCE</p> <p>3. INVASION OF PRIVACY INTRUSION INTO PRIVATE AFFAIRS</p> <p>JURY TRIAL DEMANDED</p>
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INTRODUCTION

1. Michael Mendell (“Plaintiff”), individually and on behalf of all other similarly situated California residents (“Class Members”), brings this action for damages and injunctive relief against American Medical Response, Inc. (“Defendant”), and its present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, related entities for unauthorized recordings of conversations with Plaintiff and Class Members without any notification nor warning to Plaintiff or Class Members in violation of the California Invasion of Privacy Act, Cal. Pen. Code § 630, et seq. (“CIPA”).
2. The California State Legislature passed CIPA in 1967 to protect the right of privacy of the people of California, replacing prior laws, which permitted the recording of telephone conversations with the consent of one party to the conversation. California Penal Code § 632.7 was added to CIPA in 1992 due to specific privacy concerns over the increased use of cellular and cordless telephones. Section 632.7 prohibits intentionally recording all communications involving cellular and cordless telephones, not just confidential communications.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which Plaintiff alleges on his personal knowledge.
4. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.
5. All violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violation.
6. Unless otherwise indicated, the use of Defendant’s names in this Complaint includes all agents, employees, officers, members, directors, heirs, successors,

1 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
2 the named Defendant.

3 **JURISDICTION & VENUE**

4 7. Jurisdiction is proper under the Class Action Fairness Act (“CAFA”), 28 U.S.C.
5 § 1332(d)(2), because Plaintiff, a resident of the State of California, seeks relief
6 on behalf of a California class, which will result in at least one class member
7 belonging to a different state than that of Defendant, a Delaware Corporation.

8 8. Plaintiff also seeks the greater of statutory punitive damages of \$5,000 per
9 violation per violation pursuant to Cal. Civ. Code § 1785.31, which, when
10 aggregated among a proposed class number in the tens of thousands, exceeds the
11 \$5,000,000 threshold for federal court jurisdiction.

12 9. Therefore, both diversity jurisdiction and the damages threshold under CAFA
13 are present, and this Court has jurisdiction.

14 10. Because Defendant conducts business within the State of California, personal
15 jurisdiction is established.

16 11. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons:
17 (i) Plaintiff resides in the County of San Diego, State of California which is
18 within this judicial district; (ii) the conduct complained of herein occurred
19 within this judicial district; and (iii) Defendant conducted business within this
20 judicial district at all times relevant.

21 **PARTIES & DEFINITIONS**

22 12. Plaintiff is, and at all times mentioned herein was, a natural person and residents
23 of the State of California, County of San Diego, in this judicial district.

24 13. Defendant is, and at all times mentioned herein, was a Delaware corporation
25 with its headquarters located in Greenwood Village, Colorado. Plaintiff alleges
26 that at all times relevant herein Defendant conducted business in the State of
27 California, in the County of San Diego, within this judicial district.
28

1 14. Defendant is, and at all times mentioned herein was, a “person”, as defined by
2 Cal. Pen. Code § 632(b).

3 **FACTUAL ALLEGATIONS**

4 15. Defendant records all of its outbound and inbound telephonic conversations.

5 16. On or around November 12, 2018, at approximately 10:49 am, Defendant called
6 Plaintiff on his cellular telephone from the number (800) 913-9106.

7 17. During the telephonic conversation, Defendant’s representative, agent, or
8 employee and Plaintiff discussed Plaintiff’s personal information including
9 financial obligations allegedly owed to Defendant, Plaintiff’s medical insurance
10 and Plaintiff’s legal representation. Defendant’s agent was insistent, threatening,
11 and spoke aggressively towards Plaintiff.

12 18. At the inception of the call, Defendant did not advise Plaintiff that the call was
13 being recorded, and Plaintiff did not consent to the call being recorded. Indeed,
14 at no point did Defendant inform Plaintiff that the call was being recorded.
15 Nonetheless, Defendant was in fact surreptitiously recording the entirety of the
16 approximately one-minute long phone conversation between Plaintiff and
17 Defendant.

18 19. Plaintiff was completely unaware that the November 12, 2018 call was recorded.

19 20. On or around November 15, 2018, at approximately 4:04 pm, Defendant again
20 called Plaintiff on his cellular telephone from the number (800) 913-9106.

21 21. There was no warning that call was recorded either. During the call, Plaintiff
22 informed the agent that he had an attorney and was filing bankruptcy.
23 Defendant’s agent then threatened Plaintiff saying she would contact his
24 employer. At no point did the agent inform Plaintiff that the call was recorded.

25 22. Plaintiff’s attorney called Defendant and confirmed “all calls are recorded”.

26 23. Defendant surreptitiously recorded a telephone calls with Plaintiff, in which
27 Plaintiff proffered personal information, all the while Defendant did not provide
28 any disclosure to Plaintiff regarding its unauthorized recording.

1 24. Plaintiff was personally affected by Defendant's aforementioned conduct
2 because Plaintiff was shocked, upset and angry that Defendant audio recorded
3 telephone conversations with Plaintiff without Plaintiff's knowledge or consent.

4 25. California Penal Code § 632.7(a) is very clear in its prohibition against such
5 unauthorized tape recording without the consent of the other party to the
6 conversation: "Every person who, without the consent of all parties to a
7 communication, intercepts or receives and intentionally records, or assists in the
8 interception or reception and intentional recordation of, a communication
9 transmitted between two cellular radio telephones, a cellular radio telephone and
10 a landline telephone, two cordless telephones, a cordless telephone and a
11 landline telephone, or a cordless telephone and a cellular radio telephone
12 [violates this section]." California Penal Code § 637.2 permits Plaintiff to bring
13 this action for any violation of California Penal Code § 632.7(a) and provides
14 for statutory damages of \$5,000.00 for each violation.

15 26. Defendant recorded or otherwise made unauthorized connections to the
16 Plaintiff's conversations with Defendant and its employees in violation of
17 California's statutory and common law against such unlawful intrusions into a
18 person's private affairs, including the California Constitution's prohibition in
19 Article 1, Section 1.

20 27. This suit seeks only damages and injunctive relief for recovery of economic
21 injury and it expressly is not intended to request any recovery for personal injury
22 and claims related thereto.

23 28. Plaintiff is informed and believes, and thereon alleges, that Defendant
24 intentionally recorded communications transmitted between a cellular radio
25 telephone and a landline telephone without Plaintiff's consent as prohibited by
26 California Penal Code § 632.7(a).

27 29. Defendant violated Plaintiff's constitutionally protected privacy rights by failing
28 to advise or otherwise provide notice at the beginning of the recorded

1 conversations with Plaintiff that the call would be recorded and Defendant did
2 not try to obtain the Plaintiff's consent before such recording.

3 30. The recording or other unauthorized connection was done over the telephone,
4 without Plaintiff's prior knowledge or consent. Plaintiff was damaged thereby,
5 as detailed herein, in at least an amount permitted by the statutory damages
6 mandated by California Penal Code § 637.2(a).

7 31. Defendant, and its employees and agents, surreptitiously recorded calls made
8 involving Defendant and Plaintiffs. At no time before, during, or after any of
9 the calls were Plaintiffs warned, told, advised or otherwise given any indication
10 by Defendant, its employees or agents, that the calls were recorded.

11 32. As a result thereof, Plaintiff has been damaged as set forth in the Prayer for
12 Relief herein.

13 33. Plaintiff seeks statutory damages and injunctive relief under California Penal
14 Code § 637.2.

15 **CLASS ACTION ALLEGATIONS**

16 34. Plaintiff brings this lawsuit as a class action on behalf of himself and Class
17 Members of the proposed Class. This action satisfies the numerosity,
18 commonality, typicality, adequacy, predominance, and superiority requirements
19 of those provisions.

20 35. Plaintiff proposes the following Class consisting of and defined as follows:

21 All persons in California whose cellular telephone
22 conversations were recorded without their consent by
23 Defendant and/or its agent/s within the one year prior to the
filing of the Complaint.

24 36. Excluded from the Class are: (1) Defendant, any entity or division in which
25 Defendant has a controlling interest, and its legal representatives, officers,
26 directors, assigns, and successors; (2) the Judge to whom this case is assigned
27 and the Judge's staff; and (3) those persons who have suffered personal injuries
28 as a result of the facts alleged herein.

1 37. Plaintiff reserves the right to redefine the Class and to add subclasses as
2 appropriate based on discovery and specific theories of liability

3 38. Numerosity: The Class Members are so numerous that joinder of all members
4 would be unfeasible and impractical. The membership of the entire Class is
5 currently unknown to Plaintiff at this time; however, given that, on information
6 and belief, Defendant called thousands of class members statewide and recorded
7 those calls during the class period, it is reasonable to presume that the members
8 of the Class are so numerous that joinder of all members is impracticable. The
9 disposition of their claims in a class action will provide substantial benefits to
10 the parties and the Court.

11 39. Commonality: There are common questions of law and fact as to Class Members
12 that predominate over questions affecting only individual members, including,
13 but not limited to:

- 14 • Whether, within the statutory period Defendant recorded any call with the
15 Class Members;
- 16 • Whether Defendant had, and continues to have, a policy during the
17 relevant period of recording telephone calls made to the Class Members;
- 18 • Whether Defendant's policy or practice of recording telephone
19 communications with Class Members constitutes an invasion of privacy
20 and a violation of Cal. Penal Code § 632.7;
- 21 • Whether Plaintiff and the Class Members were damaged thereby, and the
22 extent of damages for such violation; and
- 23 • Whether Defendant should be enjoined from engaging in such conduct in
24 the future.

25 40. Typicality Plaintiff's conversations were unlawfully recorded without a warning
26 of such recording, and thus, his injuries are also typical to Class Members.

27 41. Plaintiff and Class Members were harmed by the acts of Defendant in at least
28 the following ways: Defendant, either directly or through its agents, illegally

1 recorded the Plaintiff and Class Members' conversations with Defendant, and
2 Defendant invading the privacy of said Plaintiff and Class. Plaintiff and Class
3 Members were damaged thereby.

4 42. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
5 interests of each Class Member with whom he is similarly situated, as
6 demonstrated herein. Plaintiff acknowledges that he has an obligation to make
7 known to the Court any relationships, conflicts, or differences with any Class
8 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
9 rules governing class action discovery, certification, and settlement. In addition,
10 the proposed class counsel is experienced in handling claims involving
11 consumer actions and violations of the California Penal Code section 632.7.
12 Plaintiff has incurred, and throughout the duration of this action, will continue to
13 incur costs and attorneys' fees that have been, are, and will be, necessarily
14 expended for the prosecution of this action for the substantial benefit of each
15 Class Member.

16 43. Predominance: Questions of law or fact common to the Class Members
17 predominate over any questions affecting only individual members of the Class.
18 The elements of the legal claims brought by Plaintiff and Class Members are
19 capable of proof at trial through evidence that is common to the Class rather
20 than individual to its members.

21 44. Superiority: A class action is a superior method for the fair and efficient
22 adjudication of this controversy because:

- 23 a. Class-wide damages are essential to induce Defendant to comply with
24 California law.
- 25 b. Because of the relatively small size of the individual Class Members'
26 claims, it is likely that only a few Class Members could afford to seek legal
27 redress for Defendant's misconduct.
- 28 c. Management of these claims is likely to present significantly fewer

1 difficulties than those presented in many class claims.

2 d. Absent a class action, most Class Members would likely find the cost
3 of litigating their claims prohibitively high and would therefore have no
4 effective remedy at law.

5 e. Class action treatment is manageable because it will permit a large
6 number of similarly situated persons to prosecute their common claims in a
7 single forum simultaneously, efficiently, and without the unnecessary
8 duplication of effort and expense that numerous individual actions would
9 endanger.

10 f. Absent a class action, Class Members will continue to incur damages,
11 and Defendant's misconduct will continue without remedy.

12 45. Plaintiff and the Class Members have all suffered and will continue to suffer
13 harm and damages as a result of Defendant's unlawful and wrongful conduct. A
14 class action is also superior to other available methods because as individual
15 Class Members have no way of discovering that Defendant recorded their
16 telephone conversations without Class Members' knowledge or consent.

17 46. The Class may also be certified because:

- 18 • the prosecution of separate actions by individual Class Members would
19 create a risk of inconsistent or varying adjudication with respect to
20 individual Class Members, which would establish incompatible standards
21 of conduct for Defendant;
- 22 • the prosecution of separate actions by individual Class Members would
23 create a risk of adjudications with respect to them that would, as a
24 practical matter, be dispositive of the interests of other Class Members
25 not parties to the adjudications, or substantially impair or impede their
26 ability to protect their interests; and
- 27 • Defendant has acted or refused to act on grounds generally applicable to
28 the Class, thereby making appropriate final and injunctive relief with

1 55. Plaintiff and Class Members are entitled to recovery of statutory damages in the
2 amount of \$5,000.00 per violation of Cal. Pen. Code § 632.7.

3 56. Plaintiff's counsel is also entitled to attorneys' fees and costs pursuant to Cal.
4 Code of Civ. Proc. § 1021.5.

5 **SECOND CAUSE OF ACTION**

6 **NEGLIGENCE**

7 57. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

8 58. Defendant owed a duty to Plaintiff and the Class to exercise reasonable care in
9 recording as well as in engaging in confidential conversations with Plaintiffs and
10 the Class members.

11 59. Defendant breached its duties by failing to obtain consent from Plaintiff and the
12 Class or in any way warning them that their calls were being recorded. Instead,
13 Defendant covertly recorded cellular telephone calls concerning confidential
14 matters between Defendant and Plaintiff and Class Members without their
15 knowledge and or authorization.

16 60. But for Defendant's wrongful and negligent breach of its duties owed to Plaintiff
17 and the Class, their privacy would not have been improperly invaded.
18 Defendant's negligence was a direct and legal cause of the intrusion of into
19 Plaintiff and Class' privacy resulting in damages.

20 61. The injury and harm suffered by Plaintiff and the Class members was the
21 reasonably foreseeable result of Defendant's failure to exercise reasonable care
22 with its disclosures, and which the Cal. Pen. Code § 632.7 was designed to
23 prevent.

24 62. These damages include, but are not limited to, invasion of Plaintiff and the
25 Class' constitutionally protected right to privacy, emotional distress, shock, and
26 effort and money in responding to Defendant's negligence.

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1 **THIRD CAUSE OF ACTION**

2 **INVASION OF PRIVACY INTRUSION INTO PRIVATE AFFAIRS**

- 3 63. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
- 4 64. Plaintiff and Class Members had a reasonable expectation of privacy while some
- 5 of the above conduct took place.
- 6 65. Defendants intentionally intruded into Plaintiff and Class Members' expectation
- 7 of Privacy.
- 8 66. Defendant's intrusion would be highly offensive to a reasonable person.
- 9 67. Plaintiff and Class Members were harmed as a direct and proximate result of
- 10 these unauthorized and unwarned recorded communications.
- 11 68. The conduct of Defendant was a substantial factor in causing Plaintiff and Class
- 12 Members this harm.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff and the Class Members pray that judgment be entered

15 against Defendant, and Plaintiff and the Class be awarded damages from Defendant,

16 as follows:

- 17 • Certify the Class as requested herein;
- 18 • Appoint Plaintiff to serve as the Class Representative for the Class; and
- 19 • Appoint Plaintiff's Counsel as Class Counsel in this matter for the Class.

20 In addition, Plaintiff and the Class Members pray for further judgment as

21 follows against Defendant:

22 **ILLEGAL TELEPHONE RECORDING OF CELLULAR PHONE CONVERSATIONS**

23 **UNDER CALIFORNIA PENAL CODE § 632.7**

- 24 • Special, general, compensatory and punitive damages;
- 25 • As a result of Defendant's violation of California Penal Code Sections 630 *et*
- 26 *seq.*, Plaintiff seeks statutory damages of \$5,000.00 pursuant to California Penal
- 27 Code § 637.2(a);
- 28 • Reasonable attorneys' fees pursuant to Cal. Code of Civ. Proc. § 1021.5;

- 1 • Injunctive relief to prevent the further occurrence of such illegal acts pursuant to
- 2 California Penal Code § 637.2(b);
- 3 • An award of costs to Plaintiff; and
- 4 • Any other relief the Court may deem just and proper including interest.

5 **NEGLIGENCE**

- 6 • Special, general, compensatory and punitive damages;
- 7 • Injunctive relief, prohibiting such conduct in the future; and
- 8 • Any other relief the Court may deem just and proper.

9 **INVASION OF PRIVACY**

10 **INTRUSION INTO PRIVATE AFFAIRS**

- 11 • Special, general, compensatory and punitive damages;
- 12 • Injunctive relief, prohibiting such conduct in the future; and
- 13 • Any other relief the Court may deem just and proper.

14 **TRIAL BY JURY**

15 61. Pursuant to the Seventh Amendment to the Constitution of the United States of
16 America, Plaintiff and Class Members are entitled to, and demand, a trial by jury.

17
18 Respectfully submitted,

19 **HYDE & SWIGART, APC**

20
21 Date: July 1, 2019

22 By: s/Yana A. Hart
23 Yana A. Hart, Esq.
24 yana@westcoastlitigation.com
25 *Attorneys for Plaintiff*

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

Michael Mendell

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Yana A. Hart, Hyde & Swigart, APC, 2221 Camino Del Rio S, Suite 101, San Diego, CA 92108, (619) 233-7770 Daniel G. Shay, Law Office of Daniel G. Shay, 2221 Camino Del Rio S, Suite 308, San Diego, CA 92108, (619) 222-7429

DEFENDANTS

American Medical Response, Inc.

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.

Attorneys (If Known)

'19CV1227 BAS KSC

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) 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Contains numerous checkboxes for various legal categories.

V. ORIGIN (Place an "X" in One Box Only)

- 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):

Cal. Pen. Code § 632.7

Brief description of cause:

Violations of the Unlawful Recording of Cellular Communications

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/01/2019

s/ Yana A. Hart

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims American Medical Response Secretly Records Calls](#)