

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 SONIA R. MARTIN (Bar No. 191148)
sonia.martin@dentons.com
2 DENTONS US LLP
1999 Harrison Street, Suite 1300
3 Oakland, California 94612
Tel: (415) 882-5000 / Fax: (415) 882-0300

4 JOEL D. SIEGEL (Bar No. 259571)
joel.siegel@dentons.com
5 PAUL M. KAKUSKE (Bar No. 190911)
paul.kakuske@dentons.com
6 POOJA L. SHAH (Bar No. 330550)
pooja.l.shah@dentons.com
7 DENTONS US LLP
8 601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
9 Tel: (213) 623-9300 / Fax: (213) 623-9924

10 Attorneys for Defendant
NATIONWIDE MUTUAL INSURANCE CO.

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 SONYA VALENZUELA, individually
and on behalf of all others similarly
15 situated,

Plaintiff,

16 v.

17 NATIONWIDE MUTUAL
INSURANCE CO., an Ohio
18 corporation; and DOES 1 through 25,
inclusive,
19 Defendants.

Case No. 2:22-cv-06177

**NOTICE OF REMOVAL UNDER
CAFA, 28 U.S.C. § 1332(d), 28 U.S.C. §
1441, 28 U.S.C. § 1446, AND 28 U.S.C. §
1453**

[From the Superior Court of California,
County of Los Angeles, Case No.
22STCV24136]

20
21 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**
22 **THE CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND**
23 **HER ATTORNEYS OF RECORD:**

24 PLEASE THAT NOTICE that pursuant to the Class Action Fairness Act
25 (“CAFA”), 28 U.S.C. § 1332(d), 28 U.S.C. § 1441, 28 U.S.C. § 1446, and 28 U.S.C.
26 § 1453, Defendant NATIONWIDE MUTUAL INSURANCE CO. (“Nationwide” or
27 “Defendant”) hereby files its Notice of Removal of the above-entitled action from the

28

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 Superior Court of the State of California, County of Los Angeles, to the United States
2 District Court for the Central District of California. In support of its removal,
3 Defendant respectfully offers the following:

4 **I. BACKGROUND**

5 1. On July 26, 2022, Plaintiff Sonya Valenzuela (“Plaintiff”) filed a civil
6 action, on behalf of a putative California Class, captioned *Sonya Valenzuela,*
7 *individually and on behalf of all others similarly situated, v. Nationwide Mutual*
8 *Insurance Co., an Ohio Corporation, and Does 1-25, inclusive,* Los Angeles County
9 Superior Court Case No. 22STCV24136 (“State Court Action”).

10 2. The sole named defendant in the State Court Action is Nationwide
11 Mutual Insurance Co.

12 3. Plaintiff alleges a single cause of action against Nationwide for invasion
13 of privacy in violation of California Penal Code section 631. (Complaint ¶¶ 25-31).
14 The Complaint alleges that Nationwide’s website secretly monitors the “keystrokes
15 and mouse clicks” of all visitors to the website and that Nationwide is thus
16 “wiretapping” those visitors in violation of Penal Code section 631. (*Id.* ¶¶ 1-3.)

17 4. On August 1, 2022, a copy of the Summons, Complaint, and associated
18 papers were personally served on Nationwide’s registered agent for service of
19 process. Pursuant to 28 U.S.C. § 1446(a), all of the pleadings and papers filed and
20 served upon Nationwide in the State Court Action, including the Complaint, are
21 attached as **Exhibit A**.

22 5. Nationwide is filing this Notice of Removal within thirty (30) days of
23 the service of Plaintiff’s Complaint on it in this action, and thus removal is timely
24 under 28 U.S.C. section 1446.

25 6. The State Court Action is removable to this Court, and this Court has
26 jurisdiction over this action, under CAFA, 28 U.S.C. § 1332(d), 28 U.S.C. § 1446,
27 and 28 U.S.C. § 1453, because the State Court Action satisfies all the requirements
28 under CAFA for federal jurisdiction based upon Plaintiff’s allegations and theories

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1 (which Nationwide disputes, but which control for removal purposes): (1) the parties
2 are minimally diverse; (2) the amount in controversy exceeds the \$5,000,000
3 jurisdictional threshold; (3) the proposed class consists of more than 100 putative
4 class members; and (4) the exceptions to CAFA preventing removal do not apply.

5 **II. THE STATE COURT ACTION IS REMOVABLE UNDER CAFA,**
6 **28 U.S.C. § 1332(d).**

7 7. Plaintiff brings this case as a putative class action pursuant to California
8 Code of Civil Procedure section 382. (Complaint ¶ 19). In particular, Plaintiff filed
9 this putative class action Complaint on behalf of:

10 “All persons within California, who (1) within one year of the filing of
11 this Complaint visited Defendant’s website, and (2) whose electronic
12 communications were caused to be intercepted, recorded, and/or
13 monitored by Defendant without prior consent.” (*Id.*)

14 Therefore, this action is a proposed “class action” under 28 U.S.C. §
15 1332(d)(1)(B), defined as “any civil action filed under Rule 23 of the Federal Rules
16 of Civil Procedure or similar State statute or rule of judicial procedure authorizing an
17 action be brought by 1 or more representative persons as a class action.”

18 8. CAFA expands federal jurisdiction over class actions and expressly
19 provides that class actions filed in state court are removable to federal court where (a)
20 any member of the putative class is a citizen of a State different from that of any
21 defendant; (b) the aggregate amount in controversy for the putative class exceeds
22 \$5,000,000 exclusive of interest and costs; and (c) the putative class contains at least
23 100 members. 28 U.S.C. § 1332(d); *see Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,
24 1020-21 (9th Cir. 2007). This suit satisfies all the requirements under CAFA for
25 federal jurisdiction.

26 **A. Burden on Removal**

27 9. In removing an action to federal court under CAFA, a defendant is not
28 required to submit evidence that the jurisdictional elements are satisfied. To the

1 contrary, a “defendant’s notice of removal need include only a plausible allegation”
 2 that the CAFA requirements are satisfied. *Dart Cherokee Basin Operating Co. v.*
 3 *Owens*, 547 U.S. 81 (2014).

4 **B. Minimal Diversity Exists.**

5 10. CAFA requires minimal diversity – at least one putative class member
 6 must be a citizen of a state different than one defendant. 28 U.S.C. § 1332(d)(2)(A).
 7 Here, many putative class members are citizens of the State of California.
 8 Specifically, Plaintiff “brings this class action on her own behalf and on behalf of all
 9 other Californians” whose electronic communications on Defendant’s website,
 10 <http://www.nationwide.com>, were allegedly wiretapped. (Complaint ¶¶ 1, 19.) “[A]
 11 person’s place of residence . . . is prima facie proof of his domicile” for purposes of
 12 jurisdiction. *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir.
 13 2011); *see State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)
 14 (same); *Gonzalez v. First NLC Fin. Serv.*, 2009 WL 2513670, at *2 (C.D.Cal.
 15 Aug. 12, 2009) (same).

16 11. In fact, the putative class contains at least one putative class member
 17 who is expressly identified as a citizen of the State of California, namely, Plaintiff
 18 Sonya Valenzuela. (Complaint ¶ 7); *see Mondragon v. Capital One Auto Finance*,
 19 736 F.3d 880, 886 (9th Cir. 2013) (“under CAFA, the jurisdictional allegations in the
 20 complaint can be taken as a sufficient basis, on their own, to resolve questions of
 21 jurisdiction where no party challenges the allegations. . . .”); *see also Hollinger*, 654
 22 F.3d at 571 (residence is “prima facie proof” of domicile).

23 12. For the purposes of CAFA, “a corporation shall be deemed to be a
 24 citizen of every State and foreign state by which it has been incorporated and of the
 25 State or foreign state where it has its principal place of business.” 28 U.S.C. §
 26 1332(c)(1). Here, Nationwide alleges that it is a corporation organized under the laws
 27 of the State of Ohio. (*See also* Complaint ¶ 8) (alleging that Nationwide is “an Ohio
 28 corporation”).

1 13. The phrase “principal place of business” refers to the place where a
2 company’s “high level officers direct, control, and coordinate” operations, and will
3 “typically be found” at a company’s headquarters. *Hertz Corp. v. Friend*, 559 U.S.
4 77, 80-81, 175 L.Ed.2d 1029, 130 S.Ct. 1181 (2010).

5 14. Here, Nationwide’s officers direct, control, and coordinate Nationwide’s
6 activities from its headquarters in Columbus, Ohio. Thus, Nationwide’s principal
7 place of business is in the State of Ohio. Because Nationwide is a citizen of Ohio, and
8 because many putative class members are citizens of California, minimal diversity
9 exists.

10 **C. The Putative Class Exceeds 100 Members.**

11 15. CAFA requires that the class consist of at least 100 persons. *See* 28
12 U.S.C. § 1332(d)(5). This requirement is met here. Plaintiff alleges she “does not
13 know the number of Class Members but believes the number to be in the *tens of*
14 *thousands, if not more.*” (*See* Complaint ¶ 20 (emphasis added).)

15 **D. The CAFA Amount-in-Controversy Requirement is Satisfied.**

16 16. CAFA also requires that the aggregate amount in controversy exceed
17 \$5,000,000 for the entire putative class, exclusive of interest and costs. 28 U.S.C. §
18 1332(d)(6) (“In any class action, the claims of the individual class members shall be
19 aggregated to determine whether the amount in controversy exceeds the sum or value
20 of \$5,000,000, exclusive of interest and costs.”). In a Notice of Removal, a defendant
21 need only allege that it is more likely than not that the amount in controversy exceeds
22 \$5,000,000. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th
23 Cir. 1997). Moreover, the ultimate inquiry depends on what amount is “put in
24 controversy” by the plaintiff -- not what a defendant will actually owe. *Rippee v.*
25 *Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005). In considering
26 whether the amount in controversy is met in actions seeking statutory penalties,
27 courts may consider the statutory maximum penalty available under the claims
28 asserted. *See Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 (9th Cir. 2000); *Morey v. Louis Vuitton N. Am., Inc.*, 461 Fed. Appx. 642, 643 (9th
2 Cir. 2011) (CAFA amount-in-controversy satisfied where “complaint sought
3 [statutory] penalties of ‘up to ... \$1,000 per violation’”).

4 17. Here, based upon Plaintiff’s allegations and theories (which Nationwide
5 disputes, but which control for removal purposes), the \$5,000,000 amount in
6 controversy requirement is satisfied. Plaintiff’s prayer for relief seeks for Plaintiff
7 and each member of the putative class, statutory damages for violations of California
8 Penal Code § 631(a) and punitive damages pursuant to Cal. Civil Code § 3294.

9 18. The Complaint does not quantify the number of alleged wiretaps at
10 issue, or otherwise quantify the amount of damages sought. (*See* Complaint ¶ 31
11 (alleging only that the putative class is entitled to “injunctive relief and statutory
12 damages of at least \$2,500 per violation.”).) The Complaint alleges Plaintiff “does
13 not know the number of Class Members but believes the number to be in the tens of
14 thousands, if not more.” (*See* Complaint ¶ 20). Thus, the amount in controversy far
15 exceeds the \$5,000,000 to satisfy CAFA’s amount in controversy requirement (*i.e.*,
16 \$2,500 in statutory damages per violation multiplied by 10,000 putative class
17 members alone equals \$25,000,000).

18 19. The exceptions to CAFA preventing removal do not apply here.

19 **IV. REMOVAL TO THE CENTRAL DISTRICT IS PROPER**

20 20. This Notice of Removal is filed within thirty days of August 1, 2022,
21 when Nationwide was served with the Summons and Complaint in the State Court
22 Action. Thus, this Notice of Removal is timely filed in accordance with 18 U.S.C.
23 § 1446(b).

24 21. The United District Court for the Central District of California embraces
25 the county and court in which the Plaintiff filed this case. 28 U.S.C. § 84(c).
26 Therefore, this action is properly removed to this Court pursuant to 28 U.S.C.
27 § 1446(a).

28 22. Pursuant to 28 U.S.C. § 1446(a), Nationwide has attached as Exhibit A,

1 a copy of all process, pleadings and orders served upon it in the State Court Action.

2 23. Nationwide will promptly serve Plaintiff with this Notice of Removal,
3 and will promptly file a copy of this Notice of Removal with the clerk of the Superior
4 Court of the State of California for the County of Los Angeles, as required by 28
5 U.S.C. § 1446(d).

6

7 Dated: August 30, 2022

Respectfully submitted,

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DENTONS US LLP

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By: /s/ Joel D. Siegel

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Sonia R. Martin

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Joel D. Siegel

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Paul M. Kakuske

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Pooja L. Shah

Attorneys for Defendant

NATIONWIDE MUTUAL INSURANCE CO.

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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Electronically FILED by Superior Court of California, County of Los Angeles on 07/26/2022 05:36 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

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 Attorneys for Plaintiff and Proposed Class

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF LOS ANGELES**
 11

12 SONYA VALENZUELA, individually and on
 13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 NATIONWIDE MUTUAL INSURANCE CO., an
 17 Ohio corporation; and DOES 1 through 25,
 inclusive,

18 Defendants.

Case No. **22STCV24136**

**CLASS ACTION COMPLAINT FOR
 VIOLATION OF PENAL CODE § 631**

1 **INTRODUCTION**

2 1. Plaintiff Sonya Valenzuela (“Plaintiff”) brings this class action on her own behalf and
3 on behalf of all other Californians similarly situated against Defendant for its illegal wiretapping of
4 their electronic communications with Defendant’s website, <https://www.nationwide.com> (the
5 “Website”).

6 2. Unbeknownst to visitors to the Website, Defendant has secretly deployed “keystroke
7 monitoring” software that Defendant uses to surreptitiously intercept, monitor, and record the
8 communications (including keystrokes and mouse clicks) of all visitors to its Website. Defendant
9 neither informs visitors nor seeks their express or implied consent prior to this wiretapping.

10 3. Defendant has violated and continues to violate the California Invasion of Privacy Act
11 (“CIPA”), California Penal Code § 631, entitling Plaintiff and Class Members to relief pursuant
12 thereto.

13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over all causes of action asserted herein.

15 5. Venue is proper in this Court because Defendant knowingly engages in activities
16 directed at consumers in this County and engaged in the wrongful conduct alleged herein against
17 residents of this County.

18 6. Any out-of-state participants can be brought before this Court pursuant to California’s
19 “long-arm” jurisdictional statute.

20 **PARTIES**

21 7. Plaintiff Sonya Valenzuela is an adult resident of California.

22 8. Defendant is an Ohio corporation. Defendant does business and affects commerce
23 within the state of California and with California residents.

24 9. The above-named Defendants, and their subsidiaries and agents, are collectively
25 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE
26 DEFENDANTS 1 through 25, inclusive, are currently unknown to Plaintiff, who therefore sues such
27 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally
28 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the

1 Complaint to reflect the true names and capacities of the DOE Defendants when such identities
2 become known.

3 10. Plaintiff is informed and believes that at all relevant times, every Defendant was acting
4 as an agent and/or employee of each of the other Defendants and was acting within the course and
5 scope of said agency and/or employment with the full knowledge and consent of each of the other
6 Defendants.

7 11. Plaintiff is informed and believe that each of the acts and/or omissions complained of
8 herein was made known to, and ratified by, each of the other Defendants.

9 **FACTUAL ALLEGATIONS**

10 12. Without warning visitors or seeking their consent, Defendant has secretly deployed
11 wiretapping software on its Website. This software allows Defendant to surreptitiously record every
12 aspect of a visitor’s interaction with the Website, including keystrokes, mouse clicks, data entry and
13 other electronic communications.

14 13. Defendant’s actions amount to the digital equivalent of both looking over a consumer’s
15 shoulder and eavesdropping on a consumer’s conversation. Defendant’s conduct is not only illegal, it
16 is offensive: indeed, a recent study conducted by the Electronic Privacy Information Center, a
17 respected thought leader regarding digital privacy, found that: (1) nearly 9 in 10 adults are “very
18 concerned” about data privacy; and (2) 75% of adults are unaware of the true extent to which
19 companies gather, store, and exploit their personal data. See <https://archive.epic.org/privacy/survey/>
20 (last downloaded July 2022).

21 14. Within the past year, Plaintiff visited Defendant’s Website. Plaintiff communicated
22 with a “person” that Plaintiff believed to be an actual human customer service representative. In
23 reality, Defendant’s Website utilizes a sophisticated “chatbot” that convincingly impersonates an
24 actual human that encourages consumers to share their personal information. At the same time, the
25 Defendant simultaneously records and stores the entire conversation using secretly embedded
26 wiretapping technology.

1 15. Both the “chatbot” and “replay” technology were created by third party providers who
2 license the technology to Defendant and with whom Defendant routinely shares the contents of the
3 wiretapped communications.

4 16. Defendant did not inform Plaintiff, or any of the Class Members, that Defendant was
5 secretly monitoring, recording, and sharing Plaintiff’s and the Class’s communications.

6 17. Defendant did not seek Plaintiff’s or the Class Members’ consent to monitoring,
7 recording, and sharing the electronic communications with the Website.

8 18. Plaintiff and Class Members did not know at the time of the communications that
9 Defendant was secretly intercepting, monitoring, recording, and sharing the electronic
10 communications.

11 **CLASS ALLEGATIONS**

12 19. Plaintiff brings this action individually and on behalf of all others similarly situated (the
13 “Class”) defined as follows:

14 **All persons within California, who (1) within one year of the filing of this**
15 **Complaint visited Defendant’s website, and (2) whose electronic communications**
16 **were caused to be intercepted, recorded, and/or monitored by Defendant without**
17 **prior consent.**

18 20. NUMEROSITY: Plaintiff does not know the number of Class Members but believes the
19 number to be in the tens of thousands, if not more. The exact identities of Class Members may be
20 ascertained by the records maintained by Defendant.

21 21. COMMONALITY: Common questions of fact and law exist as to all Class Members,
22 and predominate over any questions affecting only individual members of the Class. Such common
23 legal and factual questions, which do not vary between Class members, and which may be determined
24 without reference to the individual circumstances of any Class Member, include but are not limited to
25 the following:

- 26 a. Whether Defendant caused Plaintiff’s and the Class’s electronic communications with
27 the Website to be recorded, intercepted and/or monitored;
28 b. Whether Defendant violated CIPA based thereon;

- 1 c. Whether Plaintiff and Class Members are entitled to statutory damages pursuant to Cal.
- 2 Penal Code § 631(a);
- 3 d. Whether Plaintiff and Class Members are entitled to punitive damages pursuant to Cal.
- 4 Civil Code § 3294; and
- 5 e. Whether Plaintiff and Class Members are entitled to injunctive relief.

6 22. TYPICALITY: As a person who visited Defendant’s Website and had her electronic
7 communications recorded, intercepted and monitored, Plaintiff is asserting claims that are typical to
8 the Class.

9 23. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members
10 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals
11 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion
12 would otherwise be improper are excluded.

13 24. SUPERIORITY: A class action is superior to other available methods of adjudication
14 because individual litigation of the claims of all Class Members is impracticable and inefficient. Even
15 if every Class Member could afford individual litigation, the court system could not. It would be
16 unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

17 **CAUSE OF ACTION**

18 **Violations of the California Invasion of Privacy Act**

19 **Cal. Penal Code § 631**

20 25. Section 631(a) of California’s Penal Code prohibits and imposes liability upon any
21 entity that “by means of any machine, instrument, contrivance, or in any other manner,” (1)
22 “intentionally taps, or makes any unauthorized connection, whether physically, electrically,
23 acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument,
24 including the wire, line, cable, or instrument of any internal telephonic communication system,” or (2)
25 “willfully and without the consent of all parties to the communication, or in any unauthorized manner,
26 reads, or attempts to read, or to learn the contents or meaning of any message, report, or
27 communication while the same is in transit or passing over any wire, line, or cable, or is being sent
28 from, or received at any place within this state” or (3) “uses, or attempts to use, in any manner, or for

1 any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with,
2 employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any
3 of the acts or things mentioned above in this section”.

4 26. Section 631 of the California Penal Code applies to internet communications and thus
5 applies to Plaintiff’s and the Class’s electronic communications with Defendant’s Website. (“Though
6 written in terms of wiretapping, Section 631(a) applies to Internet communications. It
7 makes liable anyone who ‘reads, or attempts to read, or to learn the contents’ of a communication
8 ‘without the consent of all parties to the communication.’ Cal. Penal Code § 631(a).” *Javier v.*
9 *Assurance IQ, LLC*, 21-16351, 2022 WL 1744107, at *1 (9th Cir. May 31, 2022).

10 27. The software employed by Defendant on its Website to record Plaintiff’s and the
11 Class’s electronic communications qualifies as a “machine, instrument, contrivance, or ... other
12 manner” used to engage in the prohibited conduct alleged herein.

13 28. At all relevant times, Defendant intentionally caused the internet communication
14 between Plaintiff and Class Members with Defendant’s website to be tapped and recorded.

15 29. At all relevant times, Defendant willfully, and without the consent of all parties to the
16 communication, caused to be intercepted, read or attempted to be read, logged, and stored, the contents
17 of electronic communications of Plaintiff and Class Members with its Website, while the electronic
18 communications were in transit over any wire, line or cable, or were being sent from or received at any
19 place within California.

20 30. Plaintiff and Class Members did not consent to any of Defendant’s actions in
21 implementing wiretaps on its Website, nor did Plaintiff or Class Members consent to Defendant’s
22 intentional access, interception, recording, monitoring, reading, learning and collection of Plaintiff and
23 Class Members’ electronic communications with the Website.

24 31. Defendant’s conduct constitutes numerous independent and discreet violations of Cal.
25 Penal Code § 631(a), entitling Plaintiff and Class Members to injunctive relief and statutory damages
26 of at least \$2,500.00 per violation.


27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 1 1. An order certifying the Class, naming Plaintiff as the representative of the Class and
- 2 Plaintiff's attorneys as Class counsel;
- 3 2. An order declaring Defendant's conduct violates CIPA;
- 4 3. An order of judgment in favor of Plaintiff and the Class and against Defendant on the
- 5 cause of action asserted herein;
- 6 4. An order enjoining Defendant's conduct as alleged herein and any other injunctive
- 7 relief that the Court finds proper;
- 8 5. Statutory damages to Plaintiff and the Class pursuant to Cal. Penal Code § 631(a);
- 9 6. Punitive damages to Plaintiff and the Class pursuant to Cal. Civil Code § 3294;
- 10 7. Prejudgment interest;
- 11 8. Reasonable attorneys' fees and costs incurred in this action pursuant to Cal. Code Civ.
- 12 Proc. § 1021.5; and
- 13 9. All other relief that would be just and proper as a matter of law or equity, as determined
- 14 by the Court.

15 Dated: July 26, 2022

PACIFIC TRIAL ATTORNEYS, APC

16
17 By: 
18 Scott. J. Ferrell
Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nationwide Illegally Records Website Visitors' Electronic Communications, Lawsuit Claims](#)
