

ORIGINAL

FILED  
Superior Court of California  
County of Los Angeles

JUL 28 2020

Sherri R. Carter, Executive Officer/Clerk of Court  
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF LOS ANGELES  
17 UNLIMITED JURISDICTION

18 DAVID VACCARO, individually and on ) Case No. **20STCV28871**  
19 behalf of all others similarly situated, )  
20 Plaintiff, ) CLASS ACTION  
21 vs. ) **COMPLAINT FOR VIOLATIONS OF:**  
22 ) (1) CALIFORNIA PENAL CODE §  
23 DELTA DRUGS II, INC., and DOES 1 ) 632 [CLASS CLAIM]; AND  
24 through 10, inclusive, and each of them, ) (2) CALIFORNIA PENAL CODE §  
25 Defendants. ) 632.7 [CLASS CLAIM]  
26 ) DEMAND FOR JURY TRIAL  
27 )  
28 )

BY FAX

1. DAVID VACCARO ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of DELTA DRUGS II, INC. ("Defendant"), their related entities, subsidiaries and agents in knowingly, and/or willfully employing and/or causing to be employed certain recording equipment in order to record telephone conversation/s with Plaintiff without the knowledge or consent of Plaintiff, in violation of California Penal Code §§ 630 et seq., thereby invading Plaintiff's privacy.

1 Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences,  
2 and, as to all other matters, upon information and belief, including investigation conducted by his  
3 attorneys.

4 2. California Penal Code § 632 prohibits one party to a telephone call from intentionally  
5 recording the conversation without the knowledge or consent of the other. Penal Code § 632 is  
6 violated the moment the recording is made without the consent of all parties thereto, regardless of  
7 whether it is subsequently disclosed. The only intent required by Penal Code § 632 is that the act  
8 of recording itself be done intentionally. There is no requisite intent on behalf of the party doing  
9 the surreptitious recording to break California or any other law, or to invade the privacy right of  
10 any other person. Plaintiff alleges that despite California's two-party consent rule, Defendants  
11 continue to violate Penal Code § 632 by impermissibly recording its telephone conversations with  
12 California residents.

13 3. California Penal Code § 632.7 prohibits one party to a telephone call from intentionally  
14 recording the conversation without the knowledge or consent of the other while the person being  
15 recorded is on a cellular telephone. Penal Code § 632.7 is violated the moment the recording is  
16 made without the consent of all parties thereto, regardless of whether it is subsequently disclosed.  
17 The only intent required by Penal Code § 632 is that the act of recording itself be done intentionally.  
18 There is no requirement under California Penal Code § 632.7 that the communication be  
19 confidential. Plaintiff alleges that Defendants continue to violate Penal Code § 632.7 by  
20 impermissibly recording its telephone conversations with California residents while said residents  
21 are on cellular telephones.

### 22 JURISDICTION AND VENUE

23 4. This Court has personal jurisdiction over Defendant. Defendant DELTA DRUGS II, INC.  
24 conducted business within the State of California, has purposely availed itself of the benefits and  
25 protections of the State of California, and/or has sufficient contact with this State such that  
26 maintenance of this action in this locale would be consistent with traditional notions of fair play  
27 and substantial justice. Therefore, personal jurisdiction is present, and this Court has jurisdiction.

28 5. Venue is proper in the Superior Court of the state of California for the County of Los

1 Angeles because the Plaintiff resides in the County of Los Angeles, a substantial part of the events  
2 giving rise to Plaintiff's causes of action against Defendants occurred within the County of Los  
3 Angeles, and Defendants conduct business in the County of Los Angeles, California.

4 **PARTIES**

5 6. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of  
6 California. Plaintiff is, and at all times mentioned herein was a "person" as defined by 47 U.S.C. §  
7 153 (39).

8 7. Plaintiff is informed and believes, and thereon alleges, that Defendant DELTA DRUGS II,  
9 INC. is, and at all times mentioned herein was, a corporation dealing in prescription medications,  
10 healthcare products and medical supplies. Defendant is and at all times mentioned herein was, a  
11 corporation and is a "person," as defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times  
12 relevant herein Defendant conducted business in the State of California and in the County of Los  
13 Angeles, and within this judicial district.

14 8. The above named Defendant, and its subsidiaries and agents, are collectively referred to as  
15 "Defendants." The true names and capacities of the Defendants sued herein as DOE  
16 DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues  
17 such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally  
18 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
19 Complaint to reflect the true names and capacities of the DOE Defendants when such identities  
20 become known.

21 9. Plaintiff is informed and believes that at all relevant times, each and every Defendant was  
22 acting as an agent and/or employee of each of the other Defendants and was acting within the course  
23 and scope of said agency and/or employment with the full knowledge and consent of each of the  
24 other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions  
25 complained of herein was made known to, and ratified by, each of the other Defendants.

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07/31/2020

**FACTUAL ALLEGATIONS**

1           10. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at  
2 all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

3           11. Defendant is, and at all times mentioned herein was, a corporation and “person,” as defined  
4 by 47 U.S.C. § 153 (39).

5           12. At all times relevant Defendant conducted business in the State of California and in the  
6 County of Los Angeles, within this judicial district. Defendant’s employees and agents are directed,  
7 trained and instructed to, and do, record, the telephone conversations with the public, including  
8 California residents.

9           13. In or around June and July of 2020, Defendant placed multiple calls to Plaintiff’s cell phone  
10 number ending in -3928. Defendant called from telephone number (855) 948-0335.

11           14. Defendant and Plaintiff had numerous prior communications via telephone over the course  
12 of their business relationship.

13           15. During this process, Defendant contacted and communicated with Plaintiff via telephone.  
14 During these communications, Defendant recorded the calls without ever disclosing to Plaintiff that  
15 the call was being recorded. At no time did Plaintiff ever provide actual or constructive consent to  
16 Defendant to record the telephone calls.

17           16. Plaintiff was unaware that Defendant had been recording the calls until Plaintiff placed a  
18 call to Defendant’s telephone number (855) 948-0335 and heard a recording advisory issued at the  
19 outset of the call.

20           17. Defendant called Plaintiff and the Defendant agent did not inform Plaintiff that the call was  
21 being recorded until well into the conversation between the Defendant agent and Plaintiff. Plaintiff  
22 then explicitly told the Defendant agent that he did not consent to being recorded and promptly  
23 ended the conversation.

24           18. The contents of the call/s between Defendant and Plaintiff that were recorded by Defendant  
25 were confidential in nature due to the fact that Plaintiff’s private medical information was  
26 discussed, for which Plaintiff had an expectation of privacy.  
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1 19. At no point did Plaintiff have a reasonable expectation that any of the calls with Defendant,  
2 that were initiated by Defendant, were being recorded, until after Plaintiff heard the recording  
3 advisory when calling Defendant.

4 20. It is Defendants' pattern and practice to record incoming calls made to by California  
5 residents. The calls are about individuals' medical prescriptions. Defendant does not inform, or  
6 warn, the California residents, including Plaintiff, that the telephone calls may be or will be  
7 recorded. Plaintiff was unaware that the phone call between himself and Defendant in California  
8 were recorded prior to Plaintiff asking. There was no pre-call recorded message. The Defendants'  
9 representatives never informed Plaintiff that the calls were being recorded until after Plaintiff's  
10 inquiry.

11 21. Plaintiff did not learn that Defendants recorded the phone call between Plaintiff and  
12 Defendants until after the event occurred.

13 **ACCURAL OF RIGHTS TO PRIVACY CLAMS, CONTINUING VIOLATION, EQUITABLE**  
14 **TOLLING, AND FRAUDULENT CONCEALMENT**

15 22. Plaintiff did not discover, and could not discover through the exercise of reasonable  
16 diligence, the fact that Defendant was recording the phone calls between Plaintiff and members of  
17 the California Class and Defendants without their knowledge or consent.

18 23. Defendants concealed from Plaintiff and members of the California Class that it was  
19 recording the telephone calls between itself on the one hand and Plaintiff or other members of the  
20 California Class on the other hand.

21 24. Defendants concealed the fact that it was recording the afore-mentioned phone calls to  
22 create the false impression in the minds of Plaintiff and members of the California Class that they  
23 were not being recorded. At the outset of the phone calls there was no warning that the phone calls  
24 were, or even may, be recorded. Such warnings are ubiquitous today.

25 25. Plaintiff was justified in not bringing the claim earlier based on Defendants' failure to  
26 inform Plaintiff and other members of The Class that the phone calls were being recorded.

**CLASS ACTION ALLEGATIONS**

1           26. Plaintiff brings this action on behalf of himself and on behalf of and all others similarly  
2 situated, as a member of the proposed class (hereafter “the Class”) defined as follows:  
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4           All persons in California whose inbound and outbound telephone conversations  
5 were recorded without their consent by Defendants or its agent/s within the one  
6 year prior to the filing of this action.

7           27. Defendants and their employees or agents are excluded from the Class. Plaintiff does not  
8 know the number of members in the Class, but believes the Class members number in the  
9 thousands, if not more. Thus, this matter should be certified as a Class action to assist in the  
10 expeditious litigation of this matter.

11           28. Plaintiff and members of the Class were harmed by the acts of Defendants in at least the  
12 following ways: Defendants, either directly or through its agents, illegally recording inbound and  
13 outbound cellular telephone conversations without their consent within the one year prior to the  
14 filing of the original Complaint in this action. Plaintiff and the Class members were damaged  
15 thereby.

16           29. This suit seeks only damages and injunctive relief for recovery of economic injury on  
17 behalf of the Class, and it expressly is not intended to request any recovery for personal injury and  
18 claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery  
19 on behalf of additional persons as warranted as facts are learned in further investigation and  
20 discovery.

21           30. The joinder of the Class members is impractical and the disposition of their claims in the  
22 Class action will provide substantial benefits both to the parties and to the court. The Class can be  
23 identified through Defendants’ records or Defendants’ agents’ records.

24           31. There is a well-defined community of interest in the questions of law and fact involved  
25 affecting the parties to be represented. The questions of law and fact to the Class predominate  
26 over questions which may affect individual Class members, including the following:

- 27           1. Whether Defendants have a policy of recording incoming and/or outgoing calls;  
28

2. Whether Defendants have a policy of recording incoming and/or outgoing calls initiated to a cellular telephone;
3. Whether Defendants discloses to callers and/or obtains their consent that their incoming and/or outgoing telephone conversations were being recorded;
4. Whether Defendants' policy of recording incoming and/or outgoing calls to cellular telephones constituted a violation of California Penal Code §§632(a), 632.7; and 637;
5. Whether Plaintiff, and the Class were damaged thereby, and the extent of damages for such violations; and
6. Whether Defendants should be enjoined from engaging in such conduct in the future.

32. As a person whose telephone communications from Defendants were recorded without notice or consent, Plaintiff is asserting claims that are typical of the Class because every other member of the Class, like Plaintiff, was exposed to virtually identical conduct and are entitled to the greater of statutory damages of \$2,500 per violation pursuant to California Penal Code § 632.7.

33. Plaintiff is asserting claims that are typical of the Class because every other member of the Class, like Plaintiff, were exposed to virtually identical conduct and are entitled to statutory damages of \$5,000 per violation pursuant to California Penal Code § 637.2(a).

34. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

35. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

36. Plaintiff has retained counsel experienced in handling class action claims to further ensure such protection.

1 37. A class action is a superior method for the fair and efficient adjudication of this  
2 controversy. Class-wide damages are essential to induce Defendants to comply with federal and  
3 California law. The interest of Class members in individually controlling the prosecution of  
4 separate claims against Defendant is small because the maximum statutory damages in an  
5 individual action for violation of privacy are minimal. Management of these claims is likely to  
6 present significantly fewer difficulties than those presented in many class claims.

7 38. Defendant has acted on grounds generally applicable to the Class, thereby making  
8 appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as  
9 a whole.

10 **FIRST CAUSE OF ACTION**

11 **INVASION OF PRIVACY: VIOLATION OF PENAL CODE § 632**

12 39. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though  
13 fully stated herein.

14 40. Californians have a constitutional right to privacy. Moreover, the California Supreme  
15 Court has definitively linked the constitutionally protected right to privacy within the purpose,  
16 intent and specific protections of the Privacy Act, including specifically, Penal Code § 632. "In  
17 addition, California's explicit constitutional privacy provision (Cal. Const., 1 § 1) was enacted in  
18 part specifically to protect California from overly intrusive business practices that were seen to  
19 pose a significant and increasing threat to personal privacy. (Citations omitted). Thus, Plaintiff  
20 believes that California must be viewed as having a strong and continuing interest in the full and  
21 vigorous application of the provisions of section 632 prohibiting the recording of telephone  
22 conversations without the knowledge or consent of all parties to the conversation.

23 41. California Penal Code § 632 prohibits one party to a telephone call from intentionally  
24 recording the conversation without the knowledge or consent of the other party. Penal Code § 632  
25 is violated the moment the recording is made without the consent of all parties thereto, regardless  
26 of whether it is subsequently disclosed that the telephone call was recorded. The only intent  
27 required by Penal Code § 632 is that the act of recording itself be done intentionally. There is no  
28



1 requisite intent on behalf of the party doing the surreptitious recording to break California law or  
2 any other law, or to invade the privacy right of any other person.

3 42. Plaintiff is informed and believes, and thereupon alleges, that Defendants employed and/or  
4 caused to be employed certain recording equipment on the telephone lines of all employees,  
5 officers, directors, and managers of Defendants.

6 43. Plaintiff is informed and believes, and thereupon alleges, that all these devices were  
7 maintained and utilized to record each and every outgoing telephone conversation over said  
8 telephone lines.

9 44. Said recording equipment was used to record the telephone conversations of Plaintiff and  
10 the members of The Class, all in violation of California Penal Code § 632.6(a).

11 45. At no time during which these telephone conversations were taking place between  
12 Defendants or any employee, agent, manager, officer, or director of Defendants, and any other  
13 person, did Defendants inform Plaintiff or any other member of The Class that the recording of  
14 their telephone conversations were taking place and at no time did Plaintiff or any other member  
15 of The Class consent to this activity.

16 46. Defendants, knowing that this conduct was unlawful and a violation of Plaintiff and the  
17 members of The Class' right to privacy and a violation of California Penal Code § 630, *et seq.*, did  
18 intrude on Plaintiff and the members of The Class' privacy by knowingly and/or negligently and/or  
19 intentionally engaging in the aforementioned recording activities relative to the telephone  
20 conversations between Plaintiff and The Class members, on the one hand, and Defendants on the  
21 other hand, as alleged herein above.

22 47. Based on the foregoing, Plaintiff and the members of The Class are entitled to, and below  
23 herein do pray for, their statutory remedies and damages, including but not limited to, those set  
24 forth in California Penal Code § 637.2.

25 48. Because this case is brought for the purposes of enforcing important rights affecting the  
26 public interest, Plaintiff and The Class seek recovery of their attorney's fees pursuant to the private  
27 attorney general doctrine codified in Code of Civil Procedure § 1021.5, or any other statutory  
28 basis.

**SECOND CAUSE OF ACTION**

**INVASION OF PRIVACY: VIOLATION OF PENAL CODE § 632.7**

1  
2  
3 49. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as stated  
4 herein.

5 50. Californians have a constitutional right to privacy. Moreover, the California Supreme  
6 Court has definitively linked the constitutionally protected right to privacy within the purpose,  
7 intent and specific protections of the Privacy Act, including specifically, Penal Code § 632. “In  
8 addition, California’s explicit constitutional privacy provision (Cal. Const., 1 § 1) was enacted in  
9 part specifically to protect California from overly intrusive business practices that were seen to  
10 pose a significant and increasing threat to personal privacy. (Citations omitted). Thus, Plaintiff  
11 believes that California must be viewed as having a strong and continuing interest in the full and  
12 vigorous application of the provisions of section 632 prohibiting the recording of telephone  
13 conversations without the knowledge or consent of all parties to the conversation.

14 51. California Penal Code § 632.7 prohibits in pertinent part “[e]very person who, without the  
15 consent of all parties to a communication...intentionally records, or assists in the...intentional  
16 recordation of, a communication transmitted between...a cellular radio telephone and a landline  
17 telephone.” Thus, on its face, California Penal Code § 632.7 precludes the recording of all  
18 communications involving a cellular telephone.

19 52. Though similar, California Penal Code § 632 and 632.7 are not duplicative and protect  
20 separate rights. California Penal Code § 632.7 grants a wider range of protection to conversations  
21 where one participant uses a cellular phone or cordless phone. For example, the “confidential  
22 communication” requirement of California Penal Code § 632 is absent from California Penal Code  
23 § 632.7.

24 53. Defendants caused to be employed certain recording equipment on the telephone lines of  
25 all employees, officers, directors, and managers of Defendants.

26 54. Plaintiff is informed and believes, and thereupon alleges, that all these devises were  
27 maintained and utilized to record each and every outgoing telephone conversation over said  
28 telephone lines.

1 55. Said recording equipment was used to record the telephone conversations of Plaintiff and  
2 the members of the Class utilizing cellular telephones, all in violation of California Penal Code §  
3 632.7.

4 56. Based on the foregoing, Plaintiff and the members of the Class are entitled to, and below  
5 herein do pray for, their statutory remedies and damages, including but not limited to, those set  
6 forth in California Penal Code § 632.7; and California Penal Code § 637.2.

7 57. Because this case is brought for the purposes of enforcing important rights affecting the  
8 public interest, Plaintiffs and the Class seek recovery of their attorney's fees pursuant to the private  
9 attorney general doctrine codified in Code of Civil Procedure § 1021.5, or any other statutory  
10 basis.

11 **PRAYER FOR RELIEF**

12 **FIRST CAUSE OF ACTION FOR INVASION OF PRIVACY:**

13 **VIOLATION OF PENAL CODE § 632**

14 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members  
15 the following relief against Defendants:

16 58. That this action be certified as a class action on behalf of The Class and Plaintiff be  
17 appointed as the representative of The Class;

18 59. For the greater of statutory damages of \$5,000 per violation or three times actual damage  
19 per violation pursuant to Penal Code § 637.2(a) for Plaintiff and each member of The Class;

20 60. Injunctive relief in the form of an order requiring Defendants to disgorge all ill-gotten gains  
21 and awarding Plaintiff, The Class and The Sub-Class full restitution of all monies wrongfully  
22 acquired by Defendants by means of such unfair and unlawful conduct;

23 61. That the Court preliminarily and permanently enjoin Defendants from recording each and  
24 every oncoming and outgoing telephone conversation with California resident, including Plaintiff  
25 and The Class, without their prior consent, as required by California Penal Code § 630, *et seq.*,  
26 and to maintain the confidentiality of the information of Plaintiff and The Class;

27 62. For exemplary or treble damages;

28 63. For costs of suit;

1 64. For prejudgment interest at the legal rate; and

2 65. For such further relief as this Court deems necessary, just, and proper.

3  
4 **SECOND CAUSE OF ACTION FOR INVASION OF PRIVACY:**  
5 **VIOLATION OF PENAL CODE § 632.7**

6 66. That this action be certified as a class action on behalf of the Class and Plaintiff be  
7 appointed as the representative of the Class;

8 57. For statutory damages of \$5,000 per violation pursuant to Penal Code § 637.2(a) for  
9 Plaintiff and each member of the Class;

10 68. For \$2,500 per violation of California Penal Code § 632.7 for Plaintiff and each member  
11 of the Class;

12 69. Injunctive relief in the form of an order prohibiting Defendants from unilaterally recording  
13 telephone conversations, without first informing and receiving consent from the other party to the  
14 conversation.

15 70. That the Court preliminarily and permanently enjoin Defendants from overhearing,  
16 recording, and listening to each and every oncoming and outgoing telephone conversation with  
17 California resident, including Plaintiff and the Class, without their prior consent, as required by  
18 California Penal Code § 630, et seq., and to maintain the confidentiality of the information of  
19 Plaintiff and the Class.

20 71. For general damages according to proof;

21 72. For costs of suit;

22 73. For prejudgment interest at the legal rate;

23 74. For attorney's fees and costs, pursuant to Cal. Code of Civ. Proc. § 1021.5; and,

24 75. For such further relief as this Court deems necessary, just, and proper.

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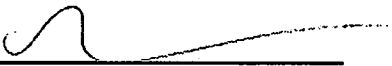
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**Trial By Jury**

76. Pursuant to the seventh amendment to the Constitution of the United States of America,  
Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 28<sup>th</sup>, 2020    **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

BY:   
\_\_\_\_\_  
TODD M. FRIEDMAN, ESQ.  
ATTORNEYS FOR PLAINTIFF

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