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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

BEHESHTA MAHBOOB, on behalf of
herself, and all others similarly situated,

Plaintiff,

v.

EDUCATIONAL CREDIT
MANAGEMENT CORPORATION,

Defendant.

CASE NO.

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO CALIFORNIA
PENAL CODE §§ 632.7 ET SEQ.**

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Beheshta Mahboob (“Plaintiff”) bring this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of Educational Credit Management Corporation
5 (“Defendant”), in recording telephone conversations with Plaintiff without consent,
6 in violation of the California Invasion of Privacy Act, Cal. Pen. Code § 632.7
7 (“CIPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon
8 personal knowledge as to her own acts and experiences, and, as to all other matters,
9 upon information and belief, including investigation conducted by their attorneys.

10 **JURISDICTION AND VENUE**

11 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
12 seeks up to \$5,000 in damages for each violation of the CIPA, which, when
13 aggregated among a proposed class number in the tens of thousands, exceeds the
14 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a class
15 which will result in class members belonging to a different state than that of the
16 Defendant, providing jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Therefore, both
17 elements of diversity jurisdiction under the Class Action Fairness Act of 2005
18 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. §§ 1391(b) because Defendant, at all
21 times herein mentioned, was doing business in the County of Ventura, State of
22 California and is licensed in California as entity number C3323027. Further, venue
23 is proper in this district because Plaintiff Mahboob has resided in this district at all
24 times herein mentioned such that a substantial part of the events giving rise to the
25 claim occurred in this district.

1 **PARTIES**

2 4. Plaintiff Beheshta Mahboob is, and at all times mentioned herein was,
3 a resident of the State of California, County of Ventura. She is, and at all times
4 mentioned herein was a “person” as defined by Cal. Pen. Code § 632(b).

5 5. Defendant is a company that specializes in student loan servicing and
6 maintains its principal place of business at 111 Washington Avenue South, Suite
7 1400, Minneapolis, MN 55401 and maintains an agent for service of process in
8 California with CT Corporation Systems, 818 West Seventh St. 2nd Floor, Los
9 Angeles CA 90017, and is a “person” as defined by Cal. Pen. Code § 632(b).

10 6. Plaintiff alleges that at all times relevant herein Defendant conducted
11 business in the state of California and in the County of Ventura, and within this
12 judicial district.

13 **FACTUAL ALLEGATIONS**

14 7. Defendant is a student loan servicer with many accounts in California.
15 While attempting to collect debts, Defendant often talks to Californians on their
16 cellular telephones. Defendant records all of their calls.

17 8. CIPA was enacted to protect consumers from a violation of their
18 privacy, requiring a party to warn an individual if a call is being monitored or
19 recorded

20 9. On, or around, March 27, 2015, Plaintiff Mahboob called Defendant
21 using her cellular telephone, 805-XXX-6800, in Ventura County, California. The
22 number that Plaintiff Mahboob called, 866-945-6305, is a number that is owned by
23 Defendant. During this private telephone conversation, Defendant’s representatives
24 discussed confidential information with Plaintiff Mahboob.

25 10. The telephone call between Plaintiff Mahboob and Defendant’s
26 representative concerned personal financial affairs that Plaintiff Mahboob had not
27 openly discussed with others.

1 11. Unbeknownst to Plaintiff Mahboob, the call between Plaintiff
2 Mahboob and Defendant was recorded by Defendant without Plaintiff Mahboob's
3 knowledge or consent.

4 12. Defendant did not warn Plaintiff Mahboob that the call between them
5 would be recorded, and Plaintiff Mahboob never gave consent for the call to be
6 recorded.

7 13. Plaintiff Mahboob did not hear intermittent beeping sounds during the
8 call that may have alerted Plaintiff Mahboob that the call was being recorded.

9 14. In fact, Plaintiff Mahboob experienced no hold time after she made the
10 phone call to Defendant's 866-945-6305 inbound line and was directly connected
11 with an agent.

12 15. During the call, Plaintiff Mahboob was completely unaware that
13 Defendant was recording the calls.

14 16. Reasonable California residents expect that their telephone
15 communications are not being recorded in the absence of a call recording advisement
16 of some kind at the outset of the telephone call(s), since call recording advisements
17 given at the outset of telephonic communications with businesses are ubiquitous
18 today.

19 17. Due to the lack of a recording advisement at the outset of the telephone
20 calls, Plaintiff reasonably believed and expected that Defendant was not secretly
21 recording the telephone conversations with Plaintiff, which concerned alleged debts.

22 18. California Penal Code § 632.7(a) is very clear in its prohibition against
23 such unauthorized tape recording without the consent of the other party to the
24 conversation: "Every person who, without the consent of all parties to a
25 communication, intercepts or receives and intentionally records, or assists in the
26 interception or reception and intentional recordation of, a communication
27 transmitted between two cellular radio telephones, a cellular radio telephone and a
28 landline telephone, two cordless telephones, a cordless telephone and a landline

1 telephone, or a cordless telephone and a cellular radio telephone [violates this
2 section]”. California Penal Code § 637.2 permits Plaintiff to bring this action for
3 any violation of California Penal Code § 632.7(a) and provides for statutory damages
4 of \$5,000.00 for each violation and injunctive relief.

5 19. This suit seeks only damages and injunctive relief for recovery of
6 economic injury and it expressly is not intended to request any recovery for personal
7 injury and claims related thereto.

8 20. Plaintiff is informed and believes, and thereon alleges, that Defendant
9 intentionally recorded communications transmitted between a cellular radio
10 telephone and a landline telephone without Plaintiff’s consent as prohibited by
11 California Penal Code § 632.7(a).

12 21. Defendant violated Plaintiff’s constitutionally protected privacy rights
13 by failing to advise or otherwise provide notice at the beginning of the recorded
14 conversations with Plaintiff that the call would be recorded and Defendant did not
15 try to obtain the Plaintiff’s consent before such recording.

16 22. Plaintiff is informed and believes, and thereon alleges, that during the
17 relevant time period, Defendant has had a policy and a practice of recording all
18 inbound and outbound telephone conversations with consumers. Defendant’s
19 employees and agents are directed, trained and instructed to, and do, record
20 telephone conversations with the public, including Plaintiff and other California
21 residents.

22 23. Plaintiff is informed and believes, and thereon allege, that during the
23 relevant time period, Defendant had installed and/or caused to be installed certain
24 recording equipment on all its inbound and outbound lines. Defendant uses these
25 devices to record each and every telephone conversation on said telephone lines.

26 24. Plaintiff is informed and believes, that during the relevant time period,
27 many of Defendant’s inbound lines, including the 866-945-6305 line which Plaintiff
28 called, were erroneously set with a non-mandatory message setting.

1 25. Plaintiff is informed and believes, and thereon allege, that during the
2 relevant time period, Defendant recorded numerous calls on the lines set to non-
3 mandatory, without the knowledge or consent of the public, including Plaintiff and
4 other California residents.

5 26. Defendant's conduct alleged herein constitutes violations of the right to
6 privacy of the public, including Plaintiff and other California residents, and
7 California Penal Code § 630 *et seq.*

8 27. Defendant concealed from Plaintiff, and similarly situated California
9 residents, that Defendant was recording the telephone calls between itself on the one
10 hand and Plaintiff and other similarly situated California residents on the other.

11 28. Defendant concealed the fact that it was recording the afore-mentioned
12 phone calls and created a false impression in the minds of Plaintiff and similarly
13 situated California residents that they were not being recorded. At the outset of the
14 calls there was no warning that the calls were, or even may be, recorded.

15 29. As a result thereof, Plaintiff and the class have been damaged as set
16 forth in the Prayer for Relief herein.

17 30. Plaintiff seeks statutory damages for herself and the class and injunctive
18 relief under California Penal Code § 637.2.

19 **CLASS ALLEGATIONS**

20 31. Plaintiff brings this action on behalf of herself and on behalf of all other
21 similar situated. Because Plaintiff's cellular phone call was recorded, the
22 representative Plaintiff represents, and is a member of the Class she seeks to
23 represent, persons whose cellular telephone calls were recorded by Defendant in the
24 Class Period, with the Class as defined as follows:

25
26 All individuals who, between August 2, 2014, to March 31, 2015, inclusive
27 (the "Class Period"), participated in an inbound telephone conversation with
28 a live representative of ECMC that was: (1) placed to an ECMC phone line

1 that used the non-mandatory message setting for its admonition that the call
2 is being recorded; (2) made from a telephone number that includes a
3 California area code (i.e., 209, 213, 310, 323, 408, 415, 424, 442, 510, 530,
4 559, 562, 619, 626, 650, 657, 661, 707, 714, 747, 760, 805, 818, 831, 858,
5 909, 916, 925, 949, or 951); (3) transmitted via cellular telephone; (4) wherein
6 the inbound caller waited on hold for less than 4 seconds.

7 32. Excluded from the Class are the following persons: (1) any Judge or
8 Magistrate presiding over this action and members of their families; (2) Defendant,
9 its subsidiaries, parents, successors, predecessors, and any entity in which Defendant
10 or its parents have a controlling interest, and its current or former employees,
11 officers, and directors; (3) persons who properly execute and file a timely request
12 for exclusion from the Class; (4) persons whose claims in this matter have been
13 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and
14 Defendant's counsel; and (6) the legal representatives, successors, and assigns of
15 any such excluded persons.

16 33. Due to the secretive nature of the privacy invasion, members of the
17 Class do not have notice of Defendant's violation of California Penal Code § 632.7.

18 34. Plaintiff believes there are over 1,000 Class members. Thus, this matter
19 should be certified as a Class action to assist in the expeditious litigation of this
20 matter.

21 35. This suit seeks only damages and injunctive relief for recovery of
22 economic injury on behalf of the Class and it expressly is not intended to request
23 any recovery for personal injury and claims related thereto.

24 36. Plaintiff reserves the right to modify or expand the definition of the
25 Class to seek recovery on behalf of additional persons as warranted as facts are
26 learned in further investigation and discovery.

27 37. The joinder of Class members is impractical and the disposition of their
28 claims in the Class action will provide substantial benefits both to the parties and to

1 the Court. The Class can be identified through Defendant's records and/or
2 Defendant's agent's records.

3 38. There is a well-defined community of interest in the questions of law
4 and fact involved affecting the parties to be represented. The questions of law and
5 fact to the Class predominate over questions which may affect individual Class
6 members, including, but not limited to, the following:

- 7 a. Whether Defendant has a policy of recording its calls;
- 8 b. Whether Defendant discloses to California consumers and/or obtains
9 their consent that Defendant's telephone conversations were recorded
10 at the outset of the conversation;
- 11 c. Whether Defendant recorded its telephone conversations with persons
12 in California while those persons were on a cellular telephone;
- 13 d. Whether Defendant's policy of recording all of its calls without the
14 required call recording disclosure constituted a violation of California
15 Penal Code § 632.7;
- 16 e. Whether Defendant should be enjoined from engaging in such
17 conduct in the future; and,
- 18 f. Whether Plaintiff, and Class members are entitled to any other relief.

19 39. Plaintiff is asserting claims that are typical of the Class because every
20 other member of the Class, like Plaintiff, was exposed to virtually identical conduct
21 and are entitled to the greater of statutory damages of \$5,000 per violation or three
22 times actual damages per violation pursuant to Penal Code § 637.2(a).

23 40. Plaintiff will fairly and adequately represent and protect the interests of
24 the Class in that Plaintiff has no interests antagonistic to any member of the Class.
25 Plaintiff has retained counsel experienced in handling class actions and claims under
26 California's Invasion of Privacy Act to further ensure such protection.

27 41. Plaintiff and the members of the Class have all suffered irreparable
28 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class

1 action, the Class will continue to face the potential for irreparable harm. In addition,
2 these violations of law will be allowed to proceed without remedy and Defendant
3 will likely continue such illegal conduct. Because of the size of the individual Class
4 members' claims, few Class members could afford to seek legal redress for the
5 wrongs complained of herein.

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

13 43. Defendant has acted on grounds generally applicable to the Class.

14 44. Californians have a constitutional right to thereby making appropriate
15 final injunctive relief and corresponding declaratory relief with respect to the Class
16 as a whole.

17 **FIRST CAUSE OF ACTION**

18 **UNLAWFUL INVASION OF PRIVACY**

19 **CALIFORNIA PENAL CODE SECTION 632.7**

20 45. Plaintiff incorporates by reference all of the above paragraphs of this
21 Complaint as though fully stated herein.

22 46. Californians have a constitutional right to privacy. Moreover, the
23 California Supreme Court has definitively linked the constitutionally protected right
24 to privacy within the purpose, intent and specific protections of the Privacy Act,
25 including specifically, Penal Code § 632. In addition, California's explicit
26 constitutional privacy provision (Cal. Const., 1 § 1) was enacted in part specifically
27 to protect California from overly intrusive business practices that were seen to pose
28 a significant and increasing threat to personal privacy. Thus, we believe that

1 California must be viewed as having a strong and continuing interest in the full and
2 vigorous application of the provisions of section 632 prohibiting the recording of
3 telephone conversations without the knowledge or consent of all parties to the
4 conversation. *See Kearney v. Salmon Smith Barney, Inc.*, (2006) 39 Cal. 4th 95, 125.

5 47. California Penal Code § 632.7 prohibits one party to a telephone call
6 from intentionally recording the conversation without the knowledge or consent of
7 the other party, where a cellular telephone is involved. Cal. Pen. Code § 632.7 is
8 violated the moment the recording is made without the consent of all parties thereto,
9 regardless of whether it is subsequently disclosed that the telephone call was
10 recorded. The only intent required by Cal. Pen. Code § 632.7 is that the act of
11 recording itself be done intentionally. There is no requisite intent on behalf of the
12 party doing the surreptitious recording to break California law or any other law, or
13 to invade the privacy right of any other person.

14 48. Plaintiff is informed and believe and thereupon alleges that Defendant
15 employed and/or caused to be employed certain recording equipment on the
16 telephone lines of all employees, officers, directors, and managers of Defendant.

17 49. Plaintiff is informed and believes and thereupon alleges that all these
18 devises were maintained and utilized to record each and every one of Defendant's
19 telephone conversations over said telephone lines.

20 50. Said recording equipment was used to record Defendant's telephone
21 conversations with Plaintiff and the members of the Class, all in violation of
22 California Penal Code § 632.7.

23 51. Defendant or any employees, agents, managers, officers, or directors of
24 Defendant, and any other person, failed to inform Plaintiff or any other member of
25 the Class, at the outset of Defendant's telephone conversations, that the recording of
26 the telephone conversations were taking place, and at no time did Plaintiff or any
27 other member of the Class consent to this activity.

28

1 52. If any consent and/or disclosure were given, such disclosure/s and/or
2 consent was not at the inception of the call/s.

3 53. Defendant, knowing that it was unlawful and a violation of Plaintiff,
4 the Class members' right to privacy and a violation of California Penal Code § 630,
5 *et seq.*, intruded on Plaintiff's, and Class members' right to privacy by intentionally
6 engaging in recording activities relative to the telephone conversations between
7 Plaintiff and the Class on the one hand, and Defendant on the other hand, as alleged
8 herein.

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

12 55. Because this case is brought for the purposes of enforcing important
13 rights affecting the public interest, Plaintiff and the Class seek recovery of their
14 attorneys' fees pursuant to the private attorney general doctrine codified in Code of
15 Civil Procedure § 1021.5, or any other statutory basis.

16 **PRAYER FOR RELIEF**

17 **Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and Class
18 members the following relief against Defendant:

19 **FIRST CAUSE OF ACTION**

20 **UNLAWFUL INVASION OF PRIVACY**

21 **CALIFORNIA PENAL CODE SECTION 632.7**

22 56. As a result of Defendant's, and Defendant's agents', willful and/or
23 knowing violations of Cal. Pen Code § 637.2(a), Plaintiff seeks for herself and each
24 Class member the greater of \$5,000.00 for each and every violation or three times
25 actual damage per violation, pursuant to Cal. Pen Code § 637.2(a).

26 57. Pursuant to California Penal Code § 637.2(a), injunctive relief
27 prohibiting such conduct in the future.

28

