

EXHIBIT B

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15
16 MIKE CLARK-ALONSO, individually and on) Case No:
behalf of a class of similarly situated)
17 individuals,)
18) CLASS ACTION
Plaintiff,) **COMPLAINT FOR DAMAGES**
19 v.) DEMAND FOR JURY TRIAL
20 HOME DEPOT U.S.A., INC.; and DOES 1)
through 100, inclusive,)
21 Defendants.)
22)
23)

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CLASS ACTION COMPLAINT

Plaintiff Mike Clark-Alonso (“Plaintiff”), on behalf of himself and a class of similarly situated individuals as defined below (the “PC § 632.7 Class”), alleges on information and belief as follows:

INTRODUCTION

1. This class action lawsuit arises out of Defendant Home Depot U.S.A., Inc.’s (“Defendant” or “Home Depot”) policy and practice of recording and/or monitoring,¹ without the consent of all parties, Defendant’s outbound calls to California citizens. Defendant’s telephone numbers may be referred to collectively as “Defendant’s customer service numbers.” Those numbers include but are not limited to (855) 284-3349 and (512) 977-2000.

2. Home Depot is one of the largest home improvement retailers in the United States, with 247 store locations in California. Defendant sells tools, construction products, appliances, and services, including tool rental and repair services for a wide range of electric and gas-powered tools.

3. During the relevant time period, Defendant intentionally and surreptitiously recorded and/or monitored outbound telephone calls made from Defendant’s customer service numbers. Defendant recorded and/or monitored calls without warning or disclosing to recipients of outbound calls that their calls might be recorded or monitored.

4. Defendant’s policy and practice of recording and monitoring, without the consent of all parties, Defendant’s telephone conversations with California citizens who, while physically located in California, received a call from Defendant violates the California Invasion of Privacy Act (Penal Code §§ 630, *et seq.* (“CIPA”)). Specifically, Defendant’s policy and practice violate Penal Code § 632.7, which prohibits the recording or monitoring of a communication made to or from a cellular or cordless telephone without the consent of all parties to the communication.

¹ “Monitor,” as used in this complaint, includes both (a) the common understanding of a person listening in on a call and (b) “intercepting,” as that term is used in the California Invasion of Privacy Act (“CIPA”). Thus, “monitor” will be used in lieu of “intercept” throughout this complaint.

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1 received on Plaintiff’s cellular telephone while he was at home in California, and they concerned
2 the repair or return of a gas weed-eater that Plaintiff had purchased.

3 17. During Plaintiff’s telephone conversations with Defendant’s employees or agents
4 in August and September 2022, Defendant’s employees or agents failed to disclose to Plaintiff,
5 at the call outset, that his telephone conversations were being recorded and/or monitored. Plaintiff
6 did not give and could not have given consent for his telephone calls to be recorded or monitored
7 because the lack of warning and lack of disclosure regarding call recording left him unaware
8 during the telephone calls that Defendant was engaged in that practice.

9 18. Plaintiff is informed and believes and on that ground alleges that, at all relevant
10 times, persons located in California who received calls from Defendant’s customer service call
11 centers were not informed at the call outset by Defendant or anyone else that their calls were
12 being recorded and/or monitored. Thus, that recording and/or monitoring necessarily occurred
13 without the call recipients’ knowledge or consent.

14 19. Because there was no warning that Plaintiff’s calls would be recorded or
15 monitored, Plaintiff had a reasonable expectation that his telephone conversations with
16 Defendant’s employees and agents were, and would remain, private and confined to the parties
17 on the telephone. That recording and/or monitoring occurred without his consent, is highly
18 offensive to Plaintiff and would be highly offensive to a reasonable person, including members
19 of the proposed Plaintiff Class.

20 **CLASS ACTION ALLEGATIONS**

21 20. Plaintiff brings this action under California Code of Civil Procedure § 382 on
22 behalf of himself and the class (the “PC § 632.7 Class”) defined as follows:

23 21. All California citizens who, while located within California at any time during the
24 applicable limitations period preceding the filing of the Complaint in this matter and through and
25 including the date of resolution, received an outbound telephone call from one of Defendant’s
26 customer service numbers where the communication was transmitted between two cellular radio
27 telephones, a cellular radio telephone and a landline telephone, two cordless telephones, or a
28 cordless telephone and a cellular radio telephone, and engaged in a conversation with Defendant’s

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1 employee(s) or agent(s) and were recorded and/or monitored by Defendant without any warning
2 or disclosure at the call outset.

3 22. The PC § 632.7 Class that Plaintiff seeks to represent contains numerous members
4 and is clearly ascertainable including, without limitation, by using Defendant's records and/or
5 Defendant's telephone company's and/or other telecommunications and service providers'
6 records regarding calls made from Defendant's customer service numbers to determine the size
7 of the PC § 632.7 Class and to determine the identities of individual PC § 632.7 Class members.
8 Plaintiff reserves the right to amend or modify the PC § 632.7 Class definition and/or to add
9 subclasses or limitations to particular issues.

10 23. By its unlawful actions, Defendant has violated Plaintiff's and the PC § 632.7
11 Class members' privacy rights under CIPA, California Penal Code §§ 630 *et seq.* The questions
12 raised are, therefore, of common or general interest to the PC § 632.7 Class members, who have
13 a well-defined community of interest in the questions of law and fact raised in this action.

14 24. Plaintiff's claims are typical of those of the PC § 632.7 Class, as Plaintiff now
15 suffers and has suffered from the same violations of the law as other putative PC § 632.7 Class
16 members. Plaintiff has retained counsel with substantial experience in prosecuting complex
17 litigation and class actions to represent him and the PC § 632.7 Class, and Plaintiff will fairly and
18 adequately represent the interests of the PC § 632.7 Class.

19 25. This action may properly be maintained as a class action under section 382 of the
20 California Code of Civil Procedure because there is a well-defined community of interest in the
21 litigation and the proposed PC § 632.7 Class is ascertainable.

22 **Numerosity**

23 26. Based on information and belief, the Class consists of at least seventy-five
24 individuals, making joinder of individual cases impracticable.

25 **Typicality**

26 27. Plaintiff's claims are typical of the claims of all of the other members of the PC §
27 632.7 Class. Plaintiff's claims and the PC § 632.7 Class members' claims are based on the same
28 legal theories and arise from the same unlawful conduct, resulting in the same injury to Plaintiff

1 and to all of the other PC § 632.7 Class members.

2 **Common Questions of Law and Fact**

3 28. There are questions of law and fact common to the PC § 632.7 Class that
4 predominate over any questions affecting only individual PC § 632.7 Class members. Those
5 common questions of law and fact include, without limitation, the following:

- 6 a. Whether Defendant had a policy or practice of recording and/or monitoring
7 outbound telephone calls made by Defendant’s agents or employees;
- 8 b. Whether Defendant had a policy or practice of not disclosing to outbound call
9 recipients that their conversations with Defendant’s agents and employees would
10 be recorded and/or monitored;
- 11 c. Whether Defendant had a policy or practice of failing to obtain consent to record
12 and/or monitor conversations between Defendant’s employees or agents, on the one
13 hand, and outbound call recipients, on the other;
- 14 d. Whether Defendant violated California Penal Code § 632.7 by recording and/or
15 monitoring, surreptitiously and without disclosure at the call outset, telephone
16 conversations between Defendant’s employees and agents and outbound call
17 recipients where the communication was transmitted between two cellular radio
18 telephones, a cellular radio telephone and a landline telephone, two cordless
19 telephones, or a cordless telephone and a cellular radio telephone; and
- 20 e. Whether Class members are entitled to statutory damages of \$5,000 under Penal
21 Code § 637.2 for each violation of Penal Code § 632.7.

22 **Adequacy**

23 29. Plaintiff will fairly and adequately represent and protect the interests of the other
24 members of the PC § 632.7 Class. Plaintiff has retained counsel with substantial experience in
25 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to
26 prosecuting this action vigorously on behalf of the other PC § 632.7 Class members and have the
27 financial resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those
28 of the other PC § 632.7 Class members.

1 **Superiority**

2 30. A class action is superior to other available methods for the fair and efficient
 3 adjudication of this controversy because individual litigation of the claims of all PC § 632.7 Class
 4 members is impracticable and questions of law and fact common to the PC § 632.7 Class
 5 predominate over any questions affecting only individual members of the PC § 632.7 Class. Even
 6 if every individual PC § 632.7 Class member could afford individual litigation, the court system
 7 could not. It would be unduly burdensome to the courts if individual litigation of the numerous
 8 cases were to be required. Individualized litigation also would present the potential for varying,
 9 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
 10 and to the court system resulting from multiple trials of the same factual issues. By contrast, the
 11 conduct of this action as a class action with respect to some or all of the issues will present fewer
 12 management difficulties, conserve the resources of the court system and the parties and protect
 13 the rights of each PC § 632.7 Class member. Further, it will prevent the very real harm that would
 14 be suffered by numerous putative PC § 632.7 Class members who simply will be unable to enforce
 15 individual claims of this size on their own, and by Defendant's competitors, who will be placed
 16 at a competitive disadvantage as their punishment for obeying the law. Plaintiff anticipates no
 17 difficulty in the management of this case as a class action.

18 31. The prosecution of separate actions by individual PC § 632.7 Class members may
 19 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive
 20 of the interests of other PC § 632.7 Class members not parties to those adjudications or that would
 21 substantially impair or impede the ability of those non-party PC § 632.7 Class members to protect
 22 their interests.

23 32. The prosecution of individual actions by PC § 632.7 Class members would run the
 24 risk of establishing inconsistent standards of conduct for Defendant.

25 **FIRST CAUSE OF ACTION**
 26 **Unlawful Recording and/or Monitoring of**
 27 **Cellular and Cordless Telephone Communications**
 28 **(Violation of California Penal Code § 632.7)**

33. Plaintiff incorporates each allegation set forth above as if fully set forth herein and

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1 further alleges as follows.

2 34. In August and September 2022, while located in California, Plaintiff received
3 numerous telephone calls from Defendant’s customer service employees or agents to discuss the
4 repair or return of a gas weed eater that Plaintiff previously had purchased. Those outbound calls
5 were made from Defendant’s customer service numbers, including but not limited to (855) 284-
6 3349, (512) 977-2000, and (707) 464-9463, and were received on Plaintiff’s cellular telephone.

7 35. Plaintiff is informed and believes and on that ground alleges that, at all relevant
8 times, Defendant had a policy and practice of using hardware and/or software or other equipment
9 to surreptitiously record and/or monitor telephone conversations with Plaintiff and other PC §
10 632.7 Class members who received calls from Defendant’s employees or agents where the
11 communication was transmitted between two cellular radio telephones, a cellular radio telephone
12 and a landline telephone, two cordless telephones, or a cordless telephone and a cellular radio
13 telephone.

14 36. Plaintiff is informed and believes and on that ground alleges that, at all relevant
15 times, Defendant had and followed a policy and practice of intentionally and surreptitiously
16 recording and/or monitoring Plaintiff’s and PC § 632.7 Class members’ telephone conversations
17 with Defendant’s employees and agents where the communication was transmitted between two
18 cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless
19 telephones, or a cordless telephone and a cellular radio telephone.

20 37. Plaintiff is informed and believes and on that ground alleges that, at all relevant
21 times, Defendant had and followed a policy and practice of not advising or warning California
22 citizens such as Plaintiff or PC § 632.7 Class members at the outset of outbound calls that their
23 telephone communications with Defendant’s employees or agents where the communication was
24 transmitted between two cellular radio telephones, a cellular radio telephone and a landline
25 telephone, two cordless telephones, or a cordless telephone and a cellular radio telephone.

26 38. Because Defendant did not disclose to Plaintiff or PC § 632.7 Class members at
27 the call outset that their calls were being recorded and/or monitored, Defendant did not obtain,
28 and could not have obtained, Plaintiff’s or PC § 632.7 Class members’ express or implied advance

1 consent to the recording or monitoring of those conversations. As a result, Plaintiff and PC §
 2 632.7 Class members had an objectively reasonable expectation that their calls were not being
 3 recorded and/or monitored. That expectation and its objective reasonableness arise, in part, from
 4 the objective offensiveness of surreptitiously recording people’s conversations, the absence of
 5 even a simple pre-recorded message as short as four simple words – “calls may be recorded” –
 6 and the ease with which such a message could have been put in place. As the California Supreme
 7 Court has stated, “in light of the circumstance that California consumers are accustomed to being
 8 informed at the outset of a telephone call whenever a business entity intends to record the call, it
 9 appears equally plausible that, in the absence of such an advisement, a California consumer
 10 reasonably would anticipate that such a telephone call is not being recorded, particularly in view
 11 of the strong privacy interest most persons have with regard to the personal financial information
 12 frequently disclosed in such calls.” See *Kearney v. Salomon Smith Barney* (2006) 39 Cal. 4th 95.

13 39. Defendant’s conduct as described above violated California Penal Code §
 14 632.7(a). Under Penal Code § 637.2, Plaintiff and PC § 632.7 Class members therefore are
 15 entitled to \$5,000 in statutory damages per violation, even in the absence of proof of actual
 16 damages, the amount deemed proper by the California Legislature.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, on behalf of himself and members of the Class, prays for the
 19 following relief:

- 20 a. An order certifying the PC § 632.7 Class, appointing Plaintiff Mike Clark-Alonso
 21 as representative of the PC § 632.7 Class, and appointing counsel for Plaintiff as
 22 counsel for the PC § 632.7 Class;
- 23 b. An order declaring that Defendant’s actions, as described above, violate California
 24 Penal Code § 632.7;
- 25 c. A judgment for and award of statutory damages of \$5,000 per violation under
 26 California Penal Code § 637.2 to Plaintiff and the members of the PC § 632.7 Class;
- 27 d. Payment of costs of the suit;
- 28 e. Payment of attorneys’ fees under California Code of Civil Procedure § 1021.5;

- 1 f. An award of pre- and post-judgment interest to the extent allowed by law; and
- 2 g. Such other or further relief as the Court may deem proper.

3
4 Respectfully submitted,

5 Dated: October 19, 2022

KELLER GROVER LLP

6
7 By: 

8 ERIC A. GROVER

9 *Attorneys for Plaintiff*

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JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: October 19, 2022

KELLER GROVER LLP

By: 
ERIC A. GROVER
Attorneys for Plaintiff

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