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*Attorneys for Plaintiff*

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

RUTH COLLINS, individually and on behalf of all others similarly situated,	)	Case No.
	)	
	)	<b><u>CLASS ACTION</u></b>
Plaintiff,	)	
	)	<b>COMPLAINT FOR VIOLATIONS</b>
vs.	)	<b>OF:</b>
	)	
PRICELINE.COM LLC, and DOES 1- 20, inclusive,	)	<b>(1) CALIFORNIA PENAL CODE</b>
	)	<b>§ 632 [CLASS CLAIM]</b>
	)	<b>(2) CALIFORNIA PENAL CODE</b>
Defendants.	)	<b>§ 632.7 [CLASS CLAIM]</b>
	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>

1. RUTH COLLINS (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of PRICELINE.COM LLC, (hereinafter “Defendants”), 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. Plaintiff alleges as follows upon personal knowledge

1 as to herself and her own acts and experiences, and, as to all other matters, upon  
2 information and belief, including investigation conducted by her attorneys.

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

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

23 **JURISDICTION AND VENUE**

24 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2)(A) because  
25 Plaintiff, a resident of the State of California, seeks relief on behalf of a California  
26 class, which will result in at least one class member belonging to a different state  
27 than that of Defendant PRICELINE.COM LLC, a company incorporated in the  
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1 State of Delaware with its principal place of business in Norwalk, Connecticut.  
2 Plaintiff also seeks the statutory damages of \$5,000 per violation pursuant to Penal  
3 Code § 637.2(a), which, when aggregated among a proposed class number in the  
4 tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction.  
5 Therefore, both diversity jurisdiction and the damages threshold under the Class  
6 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

7 5. Venue is proper in the United States District Court for the Central  
8 District of California pursuant to 18 U.S.C. § 1391(b)(2) because the Plaintiff  
9 resides in this judicial district of California, a substantial part of the events giving  
10 rise to Plaintiff’s causes of action against Defendants occurred within the Central  
11 District of California and Defendants conduct business in the City of Los Angeles,  
12 County of Los Angeles, California.

13 **PARTIES**

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

17 7. Plaintiff is informed and believes, and thereon alleges, that Defendant  
18 PRICELINE.COM LLC is, and at all times mentioned herein was, a company  
19 incorporated in the State of Delaware whose corporate headquarters is in Norwalk,  
20 Connecticut. Defendant, is and at all times mentioned herein was, a corporation  
21 and is a “person,” as defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all  
22 times relevant herein Defendant conducted business in the State of California and  
23 in the County of Los Angeles, and within this judicial district.

24 8. The above named Defendant, and its subsidiaries and agents, are  
25 collectively referred to as “Defendants.” The true names and capacities of the  
26 Defendants sued herein as DOE DEFENDANTS 1 through 20, inclusive, are  
27 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
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1 names. Each of the Defendants designated herein as a DOE is legally responsible  
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
3 Complaint to reflect the true names and capacities of the DOE Defendants when  
4 such identities become known.

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

12 **FACTUAL ALLEGATIONS**

13 10. At all times relevant Defendants conducted business in the State of  
14 California and in the County of Los Angeles, within this judicial district.  
15 Defendants' employees and agents are directed, trained and instructed to, and do,  
16 record, the telephone conversations with the public, including California residents.

17 11. On or about July of 2019, Defendant contacted Plaintiff via telephone  
18 regarding a Complaint filed by Plaintiff against Defendant with the Better Business  
19 Bureau.

20 12. Defendants made a recording of the call, failing to disclose to Plaintiff  
21 that the call was being recorded.

22 13. During the aforementioned communication, the parties discussed  
23 Plaintiff's personal and sensitive information.

24 14. At no time did Plaintiff ever provide actual or constructive consent to  
25 Defendants to record the telephone call.

1           15. The contents of the call/s between Defendants and Plaintiff that were  
2 recorded by Defendants were confidential in nature due to the fact that private  
3 information was discussed.

4           16. At no point did Plaintiff have a reasonable expectation that any of the  
5 calls with Defendants, that were initiated by Defendants, were being recorded  
6 especially because such private and sensitive subjects were discussed.

7           17. It is Defendants' pattern and practice to record incoming calls made to  
8 by California residents. The calls are about individuals' finances and debt.  
9 Defendants do not inform, or warn, the California residents, including Plaintiff,  
10 that the telephone calls may be or will be recorded. Plaintiff was unaware that the  
11 phone calls between herself and Defendants in California were recorded. There  
12 was no pre-call recorded message. The Defendants' representatives did not  
13 disclose or inform Plaintiff that the call was being recorded till nearly the end of  
14 the call.

15           18. Plaintiff did not learn that Defendants recorded the phone call  
16 between Plaintiff and Defendants until after the event occurred and near the end of  
17 the call.

18  
19           **ACCRUAL OF RIGHTS TO PRIVACY CLAMS, CONTINUING VIOLATION,**  
20           **EQUITABLE TOLLING, AND FRAUDULENT CONCEALMENT**

21           19. Plaintiff did not discover, and could not discover through the exercise  
22 of reasonable diligence, the fact that Defendants were recording the phone calls  
23 between Plaintiff and members of the California Class and Defendants without  
24 their knowledge or consent.

25           20. Defendants concealed from Plaintiff and members of the California  
26 Class that it was recording the telephone calls between itself on the one hand and  
27 Plaintiff or other members of the California Class on the other hand.  
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1 21. Defendants concealed the fact that it was recording the afore-  
2 mentioned phone calls to create the false impression in the minds of Plaintiff and  
3 members of the California Class that they were not being recorded. At the outset  
4 of the phone calls there was no warning that the phone calls were, or even may, be  
5 recorded. Such warnings are ubiquitous today.

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

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10 **CLASS ACTION ALLEGATIONS**  
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12 23. Plaintiff brings this action on behalf of herself and on behalf of and all  
13 others similarly situated ("the Class").

14 24. Plaintiff represents, and is a member of, the Class, consisting of:

15 All persons in California whose inbound and  
16 outbound telephone conversations were recorded  
17 without their consent by Defendants or its agent/s  
18 within the one year prior to the filing of this action.

19 25. Defendants and their employees or agents are excluded from the  
20 Class. Plaintiff does not know the number of members in the Class, but believes  
21 the Class members number in the thousands, if not more. Thus, this matter should  
22 be certified as a Class action to assist in the expeditious litigation of this matter.

23 26. Plaintiff and members of the Class were harmed by the acts of  
24 Defendants in at least the following ways: Defendants, either directly or through  
25 its agents, illegally recording inbound and outbound cellular telephone  
26 conversations without their consent within the one year prior to the filing of the  
27 original Complaint in this action. Plaintiff and the Class members were damaged  
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1 thereby.

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

7 28. The joinder of the Class members is impractical and the disposition of  
8 their claims in the Class action will provide substantial benefits both to the parties  
9 and to the court. The Class can be identified through Defendants' records or  
10 Defendants' agents' records.

11 29. There is a well-defined community of interest in the questions of law  
12 and fact involved affecting the parties to be represented. The questions of law and  
13 fact to the Class predominate over questions which may affect individual Class  
14 members, including the following:

- 15 a. Whether Defendants have a policy of recording incoming and/or  
16 outgoing calls;
- 17 b. Whether Defendants have a policy of recording incoming and/or  
18 outgoing calls initiated to a cellular telephone;
- 19 c. Whether Defendants discloses to callers and/or obtains their  
20 consent that their incoming and/or outgoing telephone  
21 conversations were being recorded;
- 22 d. Whether Defendants' policy of recording incoming and/or  
23 outgoing calls to cellular telephones constituted a violation of  
24 California Penal Code §§632(a), 632.7; and 637;
- 25 e. Whether Plaintiff, and the Class were damaged thereby, and the  
26 extent of damages for such violations; and  
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1 f. Whether Defendants should be enjoined from engaging in such  
2 conduct in the future.

3 30. As a person whose telephone communications from Defendants were  
4 recorded without notice or consent, Plaintiff is asserting claims that are typical of  
5 the Class because every other member of the Class, like Plaintiff, was exposed to  
6 virtually identical conduct and are entitled to the greater of statutory damages of  
7 \$2,500 per violation pursuant to California Penal Code § 632.7.

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

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

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

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

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

5 36. Defendants have acted on grounds generally applicable to the Class,  
6 thereby making appropriate final injunctive relief and corresponding declaratory  
7 relief with respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION**

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

10 37. Plaintiff incorporates by reference all of the above paragraphs of this  
11 Complaint as though fully stated herein.

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

23 39. California Penal Code § 632 prohibits one party to a telephone call  
24 from intentionally recording the conversation without the knowledge or consent of  
25 the other party. Penal Code § 632 is violated the moment the recording is made  
26 without the consent of all parties thereto, regardless of whether it is subsequently  
27 disclosed that the telephone call was recorded. The only intent required by Penal  
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1 Code § 632 is that the act of recording itself be done intentionally. There is no  
2 requisite intent on behalf of the party doing the surreptitious recording to break  
3 California law or any other law, or to invade the privacy right of any other person.

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

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

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

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

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

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

4           46. Because this case is brought for the purposes of enforcing important  
5 rights affecting the public interest, Plaintiff and The Class seek recovery of their  
6 attorney’s fees pursuant to the private attorney general doctrine codified in Code of  
7 Civil Procedure § 1021.5, or any other statutory basis.

8   **SECOND CAUSE OF ACTION**

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

10           47. Plaintiff incorporates by reference all of the above paragraphs of this  
11 Complaint as stated herein.

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

23           49. California Penal Code § 632.7 prohibits in pertinent part “[e]very  
24 person who, without the consent of all parties to a communication...intentionally  
25 records, or assists in the...intentional recordation of, a communication transmitted  
26 between...a cellular radio telephone and a landline telephone.” Thus, on its face,  
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1 California Penal Code § 632.7 precludes the recording of all communications  
2 involving a cellular telephone.

3 50. Though similar, California Penal Code § 632 and 632.7 are not  
4 duplicative and protect separate rights. California Penal Code § 632.7 grants a  
5 wider range of protection to conversations where one participant uses a cellular  
6 phone or cordless phone. For example, the “confidential communication”  
7 requirement of California Penal Code § 632 is absent from California Penal Code §  
8 632.7.

9 51. Defendants caused to be employed certain recording equipment on the  
10 telephone lines of all employees, officers, directors, and managers of Defendants.

11 52. Plaintiff is informed and believes, and thereupon alleges, that all these  
12 devices were maintained and utilized to record each and every outgoing telephone  
13 conversation over said telephone lines.

14 53. Said recording equipment was used to record the telephone  
15 conversations of Plaintiff and the members of the Class utilizing cellular  
16 telephones, all in violation of California Penal Code § 632.7.

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

21 55. Because this case is brought for the purposes of enforcing important  
22 rights affecting the public interest, Plaintiffs and the Class seek recovery of their  
23 attorney’s fees pursuant to the private attorney general doctrine codified in Code of  
24 Civil Procedure § 1021.5, or any other statutory basis.

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**PRAYER FOR RELIEF**

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

**FIRST CAUSE OF ACTION FOR INVASION OF PRIVACY:  
VIOLATION OF PENAL CODE § 632**

- That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;
- For the greater of statutory damages of \$5,000 per violation or three times actual damage per violation pursuant to Penal Code § 637.2(a) for Plaintiff and each member of The Class;
- Injunctive relief in the form of an order requiring Defendants to disgorge all ill-gotten gains and awarding Plaintiff and The Class full restitution of all monies wrongfully acquired by Defendants by means of such unfair and unlawful conduct;
- That the Court preliminarily and permanently enjoin Defendants from recording each and every oncoming and outgoing telephone conversation with California resident, including Plaintiff and The Class, without their prior consent, as required by California Penal Code § 630, *et seq.*, and to maintain the confidentiality of the information of Plaintiff and The Class;
- For exemplary or treble damages;
- For costs of suit;
- For prejudgment interest at the legal rate; and
- For such further relief as this Court deems necessary, just, and proper.

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

- That this action be certified as a class action on behalf of the Class and Plaintiff be appointed as the representative of the Class;
- For statutory damages of \$5,000 per violation pursuant to Penal Code § 637.2(a) for Plaintiff and each member of the Class;
- For \$2,500 per violation of California Penal Code § 632.7 for Plaintiff and each member of the Class;
- Injunctive relief in the form of an order prohibiting Defendants from unilaterally recording telephone conversations, without first informing and receiving consent from the other party to the conversation.
- That the Court preliminarily and permanently enjoin Defendants from overhearing, recording, and listening to each and every oncoming and outgoing telephone conversation with California resident, including Plaintiff and the Class, without their prior consent, as required by California Penal Code § 630, *et seq.*, and to maintain the confidentiality of the information of Plaintiff and the Class.
- For general damages according to proof;
- For costs of suit;
- For prejudgment interest at the legal rate;
- For attorney’s fees and costs, pursuant to Cal. Code of Civ. Proc. § 1021.5; and,
- For such further relief as this Court deems necessary, just, and proper.

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**TRIAL BY JURY**

56. 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: March 10, 2020

**LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

BY: /s/ TODD M. FRIEDMAN

TODD M. FRIEDMAN, ESQ.

ATTORNEYS FOR PLAINTIFF

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