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Merced Superior Court
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Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

Attorney for Plaintiffs

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF MERCED**

LISA HAGGERTY and CHRIS)
SWEARENGIN, on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

vs.)

CONSUMER SAFETY TECHNOLOGY, LLC)
d/b/a/ INTOXALOCK and DOES 1 through 10,)

Defendants.)

Case No. 22CV-01414
CLASS ACTION COMPLAINT
Violation of California Penal Code § 632.7
DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Plaintiffs Lisa Haggerty and Chris Swearingin bring this class action on behalf of themselves and all others similarly situated against Defendant Consumer Safety Technology, LLC, an Iowa limited liability company that does business as Intoxalock (“Intoxalock”), and DOES 1 through 10, for the unauthorized recordings of conversations with Plaintiffs and Class Members on their respective cellular telephones without their knowledge or consent in violation of California Penal Code § 632.7.

2. In 1967, the California Legislature determined that California citizens’ privacy rights are essential and enacted the California Invasion of Privacy Act, California Penal Code § 630 et seq. (“CIPA”), to protect those rights. In 1992, the Legislature amended CIPA to add Section 632.7 and bring cellular and cordless telephone conversations within CIPA’s protections.

3. Under Section 632.7, recording any communication made during a telephone call where one of the parties is on a cellular telephone is prohibited unless all parties to the communication consent. Unlike Section 632, there is no requirement of confidentiality under Section 632.7 for the recorded communication to fall within CIPA’s protections. Under Section 637.2, a person whose communications are recorded in violation of Section 632.7 may bring a civil action for damages and injunctive relief.

4. As detailed below, Plaintiffs allege that Intoxalock, an Iowa-based company that sells, leases, and services ignition interlock devices, violated Section 632.7 by routinely and intentionally recording conversations with consumers on their cellular telephones, without their knowledge or consent.

5. Pursuant to Sections 632.7 and 637.2, Plaintiffs and Class Members are entitled to statutory damages and injunctive relief for Intoxalock’s violations.

///

1 Defendant aided and abetted each and every act or omission alleged herein. Likewise, Plaintiffs are
2 informed and believe, and based thereon allege, that each Defendant is in some manner intentionally,
3 negligently, or otherwise responsible for each and every act or omission alleged herein. Plaintiffs
4 will seek leave of this Court to amend this Complaint once the names and capacities of DOE 1
5 through DOE 10 become known.
6

7 **ALLEGATIONS CONCERNING INTOXALOCK'S UNLAWFUL RECORDING IN**
8 **VIOLATION OF PENAL CODE § 632.7**

9 12. Intoxalock sells, leases and services ignition interlock devices in 46 states, including
10 California.

11 13. Plaintiff Haggerty spoke with Intoxalock from approximately September 2020
12 through the present on her cellular telephone about every two months, including multiple times
13 during the last year. On information and belief, all of these calls were recorded. However, through
14 at least the end of February of 2022, Plaintiff Haggerty was never informed that her calls were being
15 recorded.

16 14. Plaintiff Haggerty's communications with Intoxalock were made while in San
17 Bernardino County, California, using her cellular telephone, with a number that begins with
18 California area code 909.

19 15. Plaintiff Swearingin spoke with Intoxalock on his cellular telephone from
20 approximately August 2021 to February 2022 on multiple occasions. On information and belief, all
21 of these calls were recorded. However, Mr. Swearingin was never informed that his calls were
22 being recorded.
23

24 16. Plaintiff Swearingin's communications with Intoxalock were made while in Merced
25 County, California, using his cellular telephone, with a number that begins with California area code
26 209.
27
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1 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
2 Intoxalock had and has a practice and policy of recording all incoming and outgoing telephone calls.
3 However, Intoxalock systematically failed to inform consumers, including Plaintiffs, that it was
4 secretly recording their telephone calls.
5

6 **CLASS-ACTION ALLEGATIONS**

7 18. Plaintiffs seek to represent the following Class under Section 382 of the Code of
8 Civil Procedure:

9 All persons who, while residing or located in California, had a telephone conversation
10 with Intoxalock on a cellular telephone that was recorded without first having
11 consented to recordation of the call within one year preceding the filing of this action
12 through the date of certification.

13 19. Excluded from the Class are (1) Intoxalock, any entity or division in which
14 Intoxalock has a controlling interest, and Intoxalock’s legal representatives, officers, directors,
15 assigns, and successors; (2) the Judge to whom this case is assigned and the Judge’s staff; and (3)
16 those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs
17 reserve the right to amend the Class definition, and to add subclasses, if discovery and further
18 investigation reveal that the Class should be expanded or otherwise modified.

19 20. **Numerosity.** Although the exact number of Class Members is uncertain and can
20 only be ascertained through appropriate discovery, the number is great enough such that joinder
21 would be impracticable. The disposition of the claims of these Class Members in a single action
22 will provide substantial benefits to all parties and the Court. The Class Members are readily
23 identifiable from, inter alia, information and records in Intoxalock’s possession, custody, or control.

24 21. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class in that they, like
25 all Class Members, spoke with Intoxalock on their cellular telephones and their calls were recorded
26 without their knowledge or consent. Thus, Plaintiffs, like the Class, are entitled to statutory damages
27 of \$5,000 per violation pursuant to California Penal Code Sections 632.7 and 637.2. Further, the
28

1 factual bases of Intoxalock’s misconduct are common to all Class Members and resulted in injury
2 to all Class Members.

3 22. **Commonality.** There are numerous questions of law and fact common to Plaintiffs
4 and the Class that predominate over any question affecting only individual Class Members. These
5 common legal and factual questions include the following:

- 6 a) Whether Intoxalock had a policy of recording incoming or outgoing calls with
7 consumers during the class period;
- 8 b) Whether Intoxalock had a policy of not disclosing that calls with consumers are
9 being recorded during the class period; and
- 10 c) Whether Intoxalock’s failure to disclose that calls with consumers were being
11 recorded during the class period violated Section 632.7 of CIPA.

12 23. **Adequate Representation.** Plaintiffs will fairly and adequately protect the interests
13 of Class Members. They have retained attorneys experienced in the prosecution of class actions,
14 including consumer privacy class actions, and intend to prosecute this action vigorously.

15 24. **Predominance and Superiority.** Plaintiffs and the Class Members have all suffered
16 irreparable harm as a result of Intoxalock’s unlawful and wrongful conduct. Absent a class action,
17 most Class Members would likely find the cost of litigating their claims prohibitively high and
18 would therefore have no effective remedy at law. Because of the relatively small size of each
19 individual Class Member’s claim, it is likely that only a few Class Members could afford to seek
20 legal redress for Intoxalock’s misconduct. Absent a class action, Class Members will continue to
21 incur damages, and Intoxalock’s misconduct will continue without remedy. Class treatment of
22 common questions of law and fact would also be superior to multiple individual actions or piecemeal
23 litigation because class treatment will conserve the resources of the Court and the litigants and will
24 promote consistency and efficiency of adjudication.

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FIRST CAUSE OF ACTION

(Invasion of Privacy: Violation of Cal. Penal Code § 632.7)

25. Plaintiffs re-plead, re-allege, and incorporate by reference each and every allegation set forth above.

26. Penal Code section 632.7, in pertinent part, states that “[e]very person who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones [or] a cellular radio telephone and a landline telephone . . . shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year.” Cal. Penal Code § 632.7(a). Thus, on its face, Section 632.7 precludes the recording of any communications involving a cellular telephone without the consent of all parties to the communication.

27. Plaintiffs are informed and believe, and thereupon allege, that Intoxalock knowingly violated Section 632.7 by intentionally recording incoming calls made by consumers to Intoxalock, including calls with persons using cellular telephones who were physically present in California.

28. Penal Code Section 637.2 states that all persons whose respective communications have been recorded in violation of Section 632.7 “may bring a civil action against the person who committed the violation for . . . [f]ive thousand dollars (\$5,000) per violation,” as well as “an action to enjoin and restrain any [such] violation.” Based on the foregoing, Plaintiffs and Class Members are entitled to, and below herein do pray for, their statutory remedies and damages, including, but not limited to, those set forth in section 637.2.

29. Since this case is brought for the purpose of enforcing important rights affecting the public interest, Plaintiffs and the Class seek recovery of their attorneys’ fees pursuant to the private


1 attorney general doctrine codified in Code of Civil Procedure section 1021.5, or any other applicable
2 statutes.

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5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs prays for judgment as follows:

- 7 1. An order certifying the Class under California Code of Civil Procedure Section 382;
8 2. \$5,000 per violation of section 632.7 for Plaintiffs and each member of the Class;
9 3. Injunctive relief in the form of an order preliminarily and permanently enjoining
10 Defendant from recording telephone conversations with California residents, including Plaintiffs
11 and the Class, without their prior consent;
12 4. Exemplary or punitive damages;
13 5. An award of attorneys' fees and costs, as allowed by law, including, but not limited
14 to, pursuant to California Code of Civil Procedure Section 1021.5;
15 6. An award of pre-judgment and post-judgment interest, as provided by law;
16 7. Leave to amend the Complaint to conform to the evidence produced at trial; and
17 8. Such other relief as may be appropriate under the circumstances.
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20 Dated: May 17, 2022

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22 By: 
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DEMAND FOR TRIAL BY JURY

Plaintiffs request a trial by jury as to all causes of action.

Dated:

By: 
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