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

15 SHEENA RAFFIN, individually and ) Case No. 2:15-cv-04912-CAS-PJW  
 16 on behalf of all others similarly )  
 17 situated, ) **CLASS ACTION**  
 18 Plaintiff, ) **FIRST AMENDED COMPLAINT**  
 19 ) **FOR VIOLATIONS OF:**

20 vs. )

21 MEDICREDIT, INC., THE ) (1) **CALIFORNIA PENAL CODE**  
 22 OUTSOURCE GROUP, INC., HCA ) **§ 632 [CLASS CLAIM]; AND**  
 23 HOLDINGS, INC., and ) (2) **CALIFORNIA PENAL CODE**  
 24 CLEARLIGHT PARTNERS, LLC ) **§ 632.7 [CLASS CLAIM]**

25 Defendants. ) **DEMAND FOR JURY TRIAL**  
 26 )  
 27 )  
 28 )

1. SHEENA RAFFIN (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of MEDICREDIT, INC., THE OUTSOURCE GROUP, INC., HCA HOLDINGS, INC., and

1 CLEARLIGHT PARTNERS, LLC (collectively “Defendants”), their related  
2 entities, subsidiaries and agents in knowingly, and/or willfully employing  
3 and/or causing to be employed certain recording equipment in order to  
4 record telephone conversation/s with Plaintiff without the knowledge or  
5 consent of Plaintiff, in violation of California Penal Code §§ 630 et seq.,  
6 thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon  
7 personal knowledge as to herself and her own acts and experiences, and, as  
8 to all other matters, upon information and belief, including investigation  
9 conducted by his attorneys.

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

21 3. California Penal Code § 632.7 prohibits one party to a telephone call from  
22 intentionally recording the conversation without the knowledge or consent of  
23 the other while the person being recorded is on a cellular telephone. Penal  
24 Code § 632.7 is violated the moment the recording is made without the  
25 consent of all parties thereto, regardless of whether it is subsequently  
26 disclosed. The only intent required by Penal Code § 632 is that the act of  
27 recording itself be done intentionally. There is no requirement under  
28 California Penal Code § 632.7 that the communication be confidential.

1 Plaintiff alleges that Defendants continue to violate Penal Code § 632.7 by  
2 impermissibly recording its telephone conversations with California  
3 residents while said residents are on cellular telephones.

#### 4 JURISDICTION AND VENUE

5 4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2)(A) because Plaintiff, a  
6 resident of the State of California, seeks relief on behalf of a California  
7 class, which will result in at least one class member belonging to a different  
8 state than that of Defendant Mediacredit, Inc., a company incorporated in the  
9 State of Missouri with its principal place of business in Nashville,  
10 Tennessee. Plaintiff also seeks the statutory damages of \$5,000 per violation  
11 pursuant to Penal Code § 637.2(a), which, when aggregated among a  
12 proposed class number in the tens of thousands, exceeds the \$5,000,000  
13 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction  
14 and the damages threshold under the Class Action Fairness Act of 2005  
15 (“CAFA”) are present, and this Court has jurisdiction.

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

#### 22 PARTIES

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

26 7. Plaintiff is informed and believes, and thereon alleges, that Defendant  
27 Mediacredit, Inc. is, and at all times mentioned herein was, a corporation  
28 whose corporate headquarters is in Nashville, Tennessee. Defendant, is and

1 at all times mentioned herein was, a corporation and is a “person,” as  
2 defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant  
3 herein Defendant conducted business in the State of California and in the  
4 County of Los Angeles, and within this judicial district.

5 8. Plaintiff is informed and believes, and thereon alleges, that Defendant The  
6 Outsource Group, Inc. is, and at all times mentioned herein was, a parent  
7 Corporation of Defendant Medicredit, Inc., whose corporate headquarters is  
8 in Nashville, Tennessee. Defendant, is and at all times mentioned herein  
9 was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (39).  
10 Plaintiff alleges that at all times relevant herein Defendant conducted  
11 business in the State of California and in the County of Los Angeles, and  
12 within this judicial district.

13 9. Plaintiff is informed and believes, and thereon alleges, that Defendant HCA  
14 Holdings, Inc. is, and at all times mentioned herein was, a parent  
15 Corporation of Defendants The Outsource Group, Inc. and Medicredit, Inc.,  
16 whose corporate headquarters is in Nashville, Tennessee. Defendant, is and  
17 at all times mentioned herein was, a corporation and is a “person,” as  
18 defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant  
19 herein Defendant conducted business in the State of California and in the  
20 County of Los Angeles, and within this judicial district.

21 10. Plaintiff is informed and believes, and thereon alleges, that Defendant  
22 Clearlight Partners, LLC is, and at all times mentioned herein was, a parent  
23 Corporation of Defendants The Outsource Group, Inc. and Medicredit, Inc.,  
24 whose corporate headquarters is in Newport Beach, California. Defendant,  
25 is and at all times mentioned herein was, a corporation and is a “person,” as  
26 defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant  
27 herein Defendant conducted business in the State of California and in the  
28 County of Los Angeles, and within this judicial district.

**FACTUAL ALLEGATIONS**

1  
2  
3 11. At all times relevant, Plaintiff was a citizen of the State of California.  
4 Plaintiff is, and at all times mentioned herein was, a “person” as defined by  
5 47 U.S.C. § 153 (39).

6 12. Defendants are, and at all times mentioned herein was, Corporations and  
7 “persons,” as defined by 47 U.S.C. § 153 (39).

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

13 14. Defendants contacted Plaintiff multiple times regarding an alleged debt.

14 15. On numerous occasions, Plaintiff told Defendants’ agents to stop calling  
15 her.

16 16. On one occasion, Defendants called Plaintiff on her cell phone about an  
17 alleged debt, and she asked Defendants to stop calling her. Defendants  
18 made a recording of the call, failing to disclose to Plaintiff that the call was  
19 being recorded.

20 17. During the aforementioned communication, the parties discussed personal  
21 and sensitive information including Plaintiff’s alleged debt, the status of her  
22 pending litigation, and the nature of conversations she had with her attorney.

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

25 19. The contents of the call/s between Defendants and Plaintiff that were  
26 recorded by Defendants were confidential in nature due to the fact that  
27 private financial information and the status of a legal matter between the  
28 Parties was discussed.

1 20. At no point did Plaintiff have a reasonable expectation that any of the calls  
2 with Defendants, that were initiated by Defendants, were being recorded  
3 especially because such private and sensitive subjects, including but not  
4 limited to Plaintiff's alleged debt, were discussed.

5 21. It is Defendants' pattern and practice to record incoming calls made to by  
6 California residents. The calls are about individuals' finances and debt.  
7 Defendants do not inform, or warn, the California residents, including  
8 Plaintiff, that the telephone calls may be or will be recorded. Plaintiff was  
9 unaware that the phone calls between herself and Defendants in California  
10 were recorded. There was no pre-call recorded message. The Defendants'  
11 representatives never informed Plaintiff that the calls were being recorded.

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

14 **ACCRUAL OF RIGHTS TO PRIVACY CLAIMS, CONTINUING VIOLATION,**  
15 **EQUITABLE TOLLING, AND FRAUDULENT CONCEALMENT**

16  
17 23. Plaintiff did not discover, and could not discover through the exercise of  
18 reasonable diligence, the fact that Defendants were recording the phone calls  
19 between Plaintiff and members of the California Class and Defendants  
20 without their knowledge or consent.

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

24 25. Defendants concealed the fact that it was recording the afore-mentioned  
25 phone calls to create the false impression in the minds of Plaintiff and  
26 members of the California Class that they were not being recorded. At the  
27





1 right to expand the Class definition to seek recovery on behalf of additional  
2 persons as warranted as facts are learned in further investigation and  
3 discovery.

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

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

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

26 34. As a person whose telephone communications from Defendants were  
27 recorded without notice or consent, Plaintiff is asserting claims that are  
28 typical of the Class because every other member of the Class, like Plaintiff,



1 was exposed to virtually identical conduct and are entitled to the greater of  
2 statutory damages of \$2,500 per violation pursuant to California Penal Code  
3 § 632.7.

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

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

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

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

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

28 40. Defendants have acted on grounds generally applicable to the Class, thereby

1 making appropriate final injunctive relief and corresponding declaratory  
2 relief with respect to the Class as a whole.

3 **FIRST CAUSE OF ACTION**

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

5 41. Plaintiff incorporates by reference all of the above paragraphs of this  
6 Complaint as though fully stated herein.

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

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

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

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

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

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

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

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

27 50. Because this case is brought for the purposes of enforcing important rights  
28 affecting the public interest, Plaintiff and The Class seek recovery of their

1 attorney's fees pursuant to the private attorney general doctrine codified in  
2 Code of Civil Procedure § 1021.5, or any other statutory basis.

3 **SECOND CAUSE OF ACTION**

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

5 49. Plaintiff incorporates by reference all of the above paragraphs of this  
6 Complaint as stated herein.

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

19 51. California Penal Code § 632.7 prohibits in pertinent part "[e]very person  
20 who, without the consent of all parties to a communication...intentionally  
21 records, or assists in the...intentional recordation of, a communication  
22 transmitted between...a cellular radio telephone and a landline telephone."  
23 Thus, on its face, California Penal Code § 632.7 precludes the recording of  
24 all communications involving a cellular telephone.

25 52. Though similar, California Penal Code § 632 and 632.7 are not duplicative  
26 and protect separate rights. California Penal Code § 632.7 grants a wider  
27 range of protection to conversations where one participant uses a cellular  
28 phone or cordless phone. For example, the "confidential communication"

1 requirement of California Penal Code § 632 is absent from California Penal  
2 Code § 632.7.

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

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

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

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

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

20  
21 **PRAYER FOR RELIEF**

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

23 **VIOLATION OF PENAL CODE § 632**

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

26 58. That this action be certified as a class action on behalf of The Class and  
27 Plaintiff be appointed as the representative of The Class;  
28

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

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

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

13 62. For exemplary or treble damages;

14 63. For costs of suit;

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

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

17  
18 SECOND CAUSE OF ACTION FOR INVASION OF PRIVACY:  
19 VIOLATION OF PENAL CODE § 632.7

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

22 57. For statutory damages of \$5,000 per violation pursuant to Penal Code §  
23 637.2(a) for Plaintiff and each member of the Class;

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

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

1 70. That the Court preliminarily and permanently enjoin Defendants from  
2 overbearing, recording, and listening to each and every oncoming and outgoing  
3 telephone conversation with California resident, including Plaintiff and the  
4 Class, without their prior consent, as required by California Penal Code § 630,  
5 et seq., and to maintain the confidentiality of the information of Plaintiff and the  
6 Class.

7 71. For general damages according to proof;

8 72. For costs of suit;

9 73. For prejudgment interest at the legal rate;

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

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

13 **Trial By Jury**

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

16  
17 Dated: June 30, 2015 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

18 BY: /s/ TODD M. FRIEDMAN

19 TODD M. FRIEDMAN, ESQ.

20 ATTORNEYS FOR PLAINTIFF