

1 Joshua B. Swigart (SBN 225557)  
2 Josh@SwigartLawGroup.com  
3 Spencer L. Pfeiff (SBN 343305)  
4 Spencer@SwigartLawGroup.com  
5 **SWIGART LAW GROUP, APC**  
6 2221 Camino del Rio S, Ste 308  
7 San Diego, CA 92108  
8 P: 866-219-3343

9 *Attorneys for Plaintiff*

Daniel G. Shay (SBN 250548)  
DanielShay@TCPAFDCPA.com  
**LAW OFFICE OF DANIEL G. SHAY**  
2221 Camino del Rio S, Ste 308  
San Diego, CA 92108  
P: 619-222-7429

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

<p><b>JOHNNIE BRANCH, individually and on behalf of others similarly situated,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>MERIDIAN FINANCIAL SERVICES, INC.,</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p><b>Case No:</b></p> <p><b><u>CLASS ACTION</u></b></p> <p><b>COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR:</b></p> <p><b>UNLAWFUL RECORDING OF CELLULAR TELEPHONE CALLS, CAL. PEN. CODE § 632.7</b></p> <p><b>JURY TRIAL DEMANDED</b></p>
---	--

**INTRODUCTION**

1. Johnnie Branch (“Plaintiff”), individually and on behalf of all other similarly situated California residents (“Class Members”), brings this action for damages and injunctive relief against Meridian Financial Services, Inc. (“Defendant”), and its present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, related entities for unauthorized recordings of conversations with Plaintiff and Class Members without any notification nor warning to Plaintiff or Class Members in violation of the California Invasion of Privacy Act (“CIPA”), Cal. Pen. Code § 630, et seq.
2. The California State Legislature passed CIPA in 1967 to protect the privacy rights of Californians, replacing prior laws, which permitted the recording of telephone conversations without consent.
3. In addition to the general protections afforded to confidential telephonic communications by California Penal Code §632, California Penal Code § 632.7 was added to CIPA in 1992 due to specific privacy concerns over the increased use of cellular and cordless telephones. Section 632.7 prohibits secretly recording all communications involving cellular and cordless telephones, not just confidential communications. Penal Code 637.2 permits Plaintiff to bring this action for any violation of Penal Code § 632.7 and provides for statutory damages of \$5,000 for each violation.
4. Plaintiff brings this class action on behalf of all persons in California whose cellular telephone conversations were recorded by Defendant without their consent.
5. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which Plaintiff alleges on personal knowledge.

///

///

- 1 6. All the conduct engaged in by Defendant took place in California.
- 2 7. All violations by Defendant were knowing, willful, and intentional, and Defendant  
3 did not maintain procedures reasonably adapted to avoid any such violation.
- 4 8. The use of Defendant's name in this Complaint includes all agents, employees,  
5 officers, members, directors, heirs, successors, assigns, principals, trustees,  
6 sureties, subrogees, representatives, and insurers of the named Defendant.

7 **JURISDICTION & VENUE**

- 8 10. Jurisdiction is proper under the Class Action Fairness Act ("CAFA"), 28 U.S.C. §  
9 1332(d)(2), because Plaintiff, a resident of the State of California, seeks relief on  
10 behalf of a California class, which will result in at least one class member  
11 belonging to a different state than that of Defendant, a North Carolina Corporation  
12 headquartered in North Carolina.
- 13 11. Plaintiff is requesting statutory damages of \$5,000 per violation pursuant to Cal.  
14 Civ. Code § 1785.31, which, when aggregated among a proposed class number in  
15 the tens of thousands, exceeds the \$5,000,000 threshold for federal court  
16 jurisdiction.
- 17 12. Therefore, both diversity jurisdiction and the damages threshold under CAFA are  
18 present, and this Court has jurisdiction.
- 19 13. Because Defendant conducts business within the State of California, personal  
20 jurisdiction is established.
- 21 14. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons:  
22 (i) Plaintiff resides in the County of San Diego, State of California which is within  
23 this judicial district; (ii) the conduct complained of herein occurred within this  
24 judicial district; and (iii) Defendant conducted business within this judicial district  
25 at all times relevant.

26 ///

27 ///

28 ///

1 **PARTIES & DEFINITIONS**

2 15. Plaintiff is, and at all times mentioned herein was, a natural person and resident of  
3 the State of California, County of San Diego, in this judicial district.

4 16. Defendant is, and at all times mentioned herein was, a North Carolina corporation  
5 with its headquarters located in North Carolina. Plaintiff alleges that at all times  
6 relevant herein Defendant conducted business in the State of California, in the  
7 County of San Diego, within this judicial district. Defendant is a “person” as  
8 defined by Cal. Pen. Code § 632(b).

9 **FACTS**

10 18. At some point prior to March 2022, Plaintiff allegedly became delinquent on debt.

11 19. Defendant acquired Plaintiff’s debt, prompting Defendant to begin calling Plaintiff  
12 to collect.

13 20. On March 22, 2022, an agent for Defendant called Plaintiff’s cellular telephone,  
14 leading to a conversation between Defendant’s agent and Plaintiff.

15 21. The agent did not advise Plaintiff that Defendant was recording the call or seek  
16 Plaintiff’s consent.

17 22. There was no beeping noise or any indication that Defendant was recording  
18 Plaintiff.

19 23. Defendant records all its calls, both inbound and outbound, like the one(s) it made  
20 to Plaintiff. Defendant does not advise anyone that it is recording.

21 24. California Penal Code § 632.7(a) is clear in its prohibition against such  
22 unauthorized recording of cellular communications without the consent of the  
23 other party to the conversation:

24 “Every person who, without the consent of all parties to a  
25 communication, intercepts or receives and intentionally  
26 records, or assists in the interception or reception and  
27 intentional recordation of, a communication transmitted  
28 between two cellular radio telephones, a cellular radio  
telephone and a landline telephone, two cordless telephones,  
a cordless telephone and a landline telephone, or a cordless

1 telephone and a cellular radio telephone [violates this  
2 section].” Cal. Pen. Code § 632.7(a)

3 25. California Penal Code § 637.2 permits Plaintiff to bring this action for any  
4 violation of California Penal Code § 632.7(a) and provides for statutory damages  
5 of \$5,000 for each violation.

6 26. Defendant recorded or otherwise made unauthorized connection(s) to Plaintiff’s  
7 conversation(s) with Defendant in violation of California’s statutory and common  
8 law against such unlawful intrusions into a person’s private affairs, including the  
9 California Constitution’s prohibition in Article 1, Section 1.

10 27. This suit seeks only statutory damages and injunctive relief for recovery of  
11 economic injury, and it expressly is not intended to request any recovery for  
12 personal injury and claims related thereto.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendant  
14 intentionally recorded communication(s) transmitted between “a cellular radio  
15 telephone and a landline telephone” without Plaintiff’s consent as prohibited by  
16 California Penal Code § 632.7(a).

17 29. Defendant violated Plaintiff’s constitutionally protected privacy rights by failing  
18 to advise or otherwise provide notice at the beginning of the conversation(s) with  
19 Plaintiff that the call(s) would be recorded, and Defendant did not try to obtain  
20 Plaintiff’s consent before such recording.

21 30. The recording or other unauthorized connections were done over the telephone,  
22 without Plaintiff’s prior knowledge or consent. Plaintiff was damaged thereby, as  
23 detailed herein, in at least an amount permitted by the statutory damages  
24 mandated by California Penal Code § 637.2(a).

25 ///

26 ///

27 ///

28

1 31. Defendant, its employees or agents, secretly recorded calls, or parts of calls, it  
2 placed to Plaintiff. Defendant did not warn Plaintiff at the outset of the call(s) that  
3 it was recording the call(s).

4 32. As a result thereof, Plaintiff has been damaged as set forth in the Prayer for Relief  
5 herein.

6 33. Plaintiff seeks statutory damages and injunctive relief under California Penal Code  
7 § 637.2.

#### 8 CLASS ACTION ALLEGATIONS

9 34. Plaintiff brings this lawsuit as a class action on behalf of Plaintiff and Class  
10 Members. This action satisfies the numerosity, commonality, typicality, adequacy,  
11 predominance, and superiority requirements of those provisions.

12 35. Plaintiff proposes the following Class consisting of and defined as follows:

13 “All persons in California whose cellular telephone  
14 communications were recorded by Defendant or its  
15 agents.”

16 36. Excluded from the Class are: (1) Defendant, any entity or division in which  
17 Defendant has a controlling interest, and its legal representatives, officers,  
18 directors, assigns, and successors; (2) the Judge to whom this case is assigned and  
19 the Judge’s staff; and (3) those persons who have suffered personal injuries as a  
20 result of the facts alleged herein.

21 37. Plaintiff reserves the right to redefine the Class and to add subclasses as  
22 appropriate based on discovery and specific theories of liability.

23 38. Numerosity: The Class Members are so numerous that joinder of all members  
24 would be unfeasible and impractical. Given that, on information and belief,  
25 Defendant called thousands of class members statewide and recorded those calls  
26 during the class period, it is reasonable to presume that the members of the Class  
27 are so numerous that joinder of all members is impracticable. The disposition of  
28

1 their claims in a class action will provide substantial benefits to the parties and the  
2 Court.

3 39. Commonality: There are common questions of law and fact as to Class Members  
4 that predominate over questions affecting only individual members, including, but  
5 not limited to:

- 6 • Whether Defendant recorded calls with the Class Members;
- 7 • Whether Defendant had, and continues to have, a policy of recording  
8 telephone calls made to the Class Members;
- 9 • Whether Defendant's policy or practice of recording calls with Class  
10 Members constitutes a violation of Cal. Penal Code § 632.7;
- 11 • Whether Plaintiff and the Class Members were damaged thereby, and the  
12 extent of damages for such violations; and
- 13 • Whether Defendant should be enjoined from engaging in such conduct in  
14 the future.

15 40. Typicality: Plaintiff's conversations were unlawfully recorded without a warning  
16 of such recording at the outset, and thus, Plaintiff's injuries are typical to Class  
17 Members. Plaintiff and Class Members were harmed by the acts of Defendant  
18 because Defendant, either directly or through its agents, illegally recorded  
19 Plaintiff and Class Members' conversations with Defendant, invading the privacy  
20 of Plaintiff and the Class. Plaintiff and Class Members were damaged thereby.

21 41. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the  
22 interests of each Class Member with whom he is similarly situated, as  
23 demonstrated herein. Plaintiff acknowledges that he has an obligation to make  
24 known to the Court any relationships, conflicts, or differences with any Class  
25 Member. Plaintiff's attorneys, the proposed class counsel, are well versed in the  
26 rules governing class action discovery, certification, and settlement. In addition,  
27 the proposed class counselors are experienced in handling claims involving  
28 consumer actions and violations of the California Penal Code section 632.7.

1 Plaintiff has incurred, and throughout the duration of this action, will continue to  
2 incur costs and attorneys' fees that have been, are, and will be, necessarily  
3 expended for the prosecution of this action for the substantial benefit of each  
4 Class Member.

5 42. Predominance: Questions of law or fact common to the Class Members  
6 predominate over any questions affecting only individual members of the Class.  
7 The elements of the legal claims brought by Plaintiff and Class Members are  
8 capable of proof at trial through evidence that is common to the Class rather than  
9 individual to its members.

10 43. Superiority: A class action is a superior method for the fair and efficient  
11 adjudication of this controversy because:

- 12 a. Class-wide damages are essential to induce Defendant to comply with  
13 California law.
- 14 b. Because of the relatively small size of the individual Class Members'  
15 claims, it is likely that only a few Class Members could afford to seek  
16 legal redress for Defendant's misconduct.
- 17 c. Management of the claims here will present far fewer difficulties than  
18 those presented in many other class actions.
- 19 d. Absent a class action, most Class Members would likely find the cost  
20 of litigating their claims prohibitively high and would therefore have  
21 no effective remedy at law.
- 22 e. Class action treatment is manageable because it will permit a large  
23 number of similarly situated persons to prosecute their common claims  
24 in a single forum simultaneously, efficiently, and without the  
25 unnecessary duplication of effort and expense that numerous individual  
26 actions would create.
- 27 f. Absent a class action, Class Members will continue to incur damages,  
28 and Defendant's misconduct will continue without remedy.



1 44. Plaintiff and the Class Members have all suffered and will continue to suffer harm  
2 and damages as a result of Defendant's unlawful conduct. A class action is  
3 superior to other available methods because individual Class Members have no  
4 way of discovering that Defendant recorded their conversations without their  
5 knowledge or consent.

6 45. The Class should be certified because:

- 7 • The prosecution of separate actions by individual Class Members would  
8 create a risk of inconsistent or varying adjudication with respect to  
9 individual Class Members, which would establish incompatible standards  
10 of conduct for Defendant;
- 11 • The prosecution of separate actions by individual Class Members would  
12 create a risk of adjudications with respect to them that would, as a  
13 practical matter, be dispositive of the interests of other Class Members  
14 not parties to the adjudications, or substantially impair or impede their  
15 ability to protect their interests; and
- 16 • Defendant has acted or refused to act on grounds generally applicable to  
17 all Class Members, thereby making injunctive relief related to all Class  
18 Members appropriate.

19 46. This suit seeks only statutory damages and injunctive relief and does not request  
20 recovery for personal injury claims.

21 47. The Class Members can be identified through Defendant's records.

22 48. The joinder of the Class Members is impractical and the disposition of their claims  
23 in this action will provide substantial benefits to the parties and the court.

24 **CAUSE OF ACTION**

25 **RECORDING OF CELLULAR CALLS**

26 **UNDER CALIFORNIA PENAL CODE § 632.7**

27 49. At all relevant times hereto, Defendant had and followed a policy and practice of  
28 using a telecommunications system that enabled it to surreptitiously record

1 cellular telephone communications between Defendant and Class Members like  
2 Plaintiff.

3 50. Defendant intentionally and secretly recorded cellular telephone calls between  
4 Defendant and Class Members like Plaintiff.

5 51. Defendant had and followed a policy and practice of not advising or warning Class  
6 Members like Plaintiff that their cellular telephone communications with  
7 Defendant would be recorded.

8 52. Defendant failed to obtain consent from Class Members like Plaintiff prior to  
9 recording their cellular telephone conversations.

10 53. Defendant's conduct violated Section 632.7(a) of the California Penal Code.

11 54. Plaintiff and Class Members are entitled to statutory damages of \$5,000 per  
12 violation of Cal. Pen. Code § 632.7 under Cal. Pen Code § 637.2(a).

13 55. Plaintiff's counsel is entitled to attorneys' fees and costs pursuant to Cal. Code of  
14 Civ. Pro. § 1021.5.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff and Class Members pray for the following;

- 17 • Certification of the Class;
- 18 • Appointment of Plaintiff to serve as Class Representative;
- 19 • Appointment of Plaintiff's Counsel as Class Counsel;
- 20 • An award of \$5,000 for each violation of Cal. Pen. Code § 632.7 to Plaintiff and  
21 every Class Member pursuant to Cal. Pen. Code § 637.2(a);
- 22 • Injunctive relief to prevent the further occurrence of the illegal acts pursuant  
23 to Cal. Pen. Code § 637.2(b);
- 24 • Reasonable attorneys' fees and costs pursuant to Cal. Code of Civ. Proc. §  
25 1021.5;
- 26 • Any other relief the Court may deem just and proper including interest.

27 ///

28 ///

**TRIAL BY JURY**

87. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff and Class Members are entitled to, and demand, a trial by jury.

Respectfully submitted,

**SWIGART LAW GROUP**

Date: December 7, 2022

By: s/ Joshua Swigart  
Joshua B. Swigart, Esq.  
Josh@SwigartLawGroup.com  
Attorneys for Plaintiff

**LAW OFFICE OF DANIEL SHAY**

Date: December 7, 2022

By: s/ Daniel Shay  
Daniel G. Shay, Esq.  
DanielShay@TCPAFDCPA.com  
Attorneys for Plaintiff