

1 **KAZEROUNI LAW GROUP, APC**
 2 Abbas Kazerounian, Esq. (SBN: 249203)
 3 ak@kazlg.com
 4 Ryan L. McBride (SBN: 297557)
 5 ryan@kazlg.com
 6 245 Fischer Avenue, Unit D1
 7 Costa Mesa, CA 92626
 8 Telephone: (800) 400-6808
 9 Facsimile: (800) 520-5523

10 *Attorneys for Plaintiff*

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

13 GIOVANNI STEWART,
 14 individually and on behalf of all
 15 others similarly situated,

16 Plaintiffs,

17 v.

18 IQ Data International, Inc.,

19 Defendant.

20 Case No.:

21 **FIRST AMENDED COMPLAINT**
 22 **FOR DAMAGES AND**
 23 **INJUNCTIVE RELIEF FOR**
 24 **VIOLATIONS OF CALIFORNIA'S**
 25 **INVASION OF PRIVACY ACT,**
 26 **CAL. PEN. CODE §§ 630, ET SEQ.**

27 **JURY TRIAL DEMANDED**

28 Case No.:

Stewart, et al. v. IQ Data International, Inc.

COMPLAINT

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

INTRODUCTION

1. Plaintiff, GIOVANNI STEWART (“Plaintiff”), brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of defendant, IQ DATA INTERNATIONAL, INC., (“Defendant”), and its related entities, subsidiaries, and agents, in knowingly and/or willfully employing and/or causing to be employed certain recording equipment in order to record to the telephone conversations of Plaintiff and the putative class members without the knowledge or consent of Plaintiff and the putative class, in violation of California Penal Code §§ 630 *et seq.* (“CIPA”), thereby invading Plaintiff and the putative class members’ privacy.
2. Plaintiff alleges as follows upon personal knowledge as to himself and Plaintiff’s own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
3. California Penal Code § 632.7 prohibits one party to a telephone call from intentionally recording the conversation without the knowledge or consent of the other while the person being recorded is on a cellular phone. Penal Code § 632.7 is violated ***the moment the recording is made*** without the consent of all parties thereto, regardless of whether it is subsequently disclosed. The only intent required by Penal Code § 632 is that the act of recording itself be done intentionally. There is no requirement under California Penal Code § 632.7 that the communication be confidential. Plaintiff alleges that Defendant continues to violate Penal Code § 632.7 by impermissibly recording its telephone conversations with California residents while said residents are on cellular telephones.
4. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 5. All violations by Defendant were knowing, willful, and intentional, and
2 Defendant did not maintain procedures reasonably adapted to avoid any such
3 violation.

4 6. Unless otherwise indicated, the use of Defendant’s name in this Complaint
5 includes all agents, employees, officers, members, directors, heirs, successors,
6 assigns, principals, trustees, sureties, subrogees, representatives, and insurers
7 of the named Defendant.

8 **JURISDICTION AND VENUE**

9 7. Jurisdiction is proper under 28 U.S.C. § 1332(d) (“CAFA”), which provides
10 for original jurisdiction of the federal courts of any class action in which any
11 member of the class is a citizen of a state different from the defendant, and in
12 which the matter in controversy exceeds, in the aggregate, the sum of
13 \$5,000,000, exclusive of interest and costs.

14 8. The total claims of individual class members in this action are well in excess
15 of \$5,000,000, because Plaintiff seeks \$5,000 in damages for each violation
16 of the CIPA, which, when aggregated among a proposed class number in the
17 tens of thousands, exceeds the \$5,000,000 threshold. Further, on information
18 and belief, Defendant has made thousands of telephone calls in which
19 Defendant illegally recorded Plaintiff and the putative class members, without
20 their knowledge or consent, thereby satisfying the requirements under 28
21 U.S.C. § 1332(d)(2), (5).

22 9. Based on the belief that thousands of individuals in California would be
23 included in any certified class, the numerosity requirement, exceeding forty
24 members, is satisfied, pursuant to 28 U.S.C. § 1332(d)(5)(B).

25 10. Plaintiff is a citizen of California and Defendant is a citizen of Washington.
26 Therefore, diversity of citizenship exists under CAFA as defined by 28 U.S.C.
27 § 1332(d)(2)(A).
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VENUE

11. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. § 1391(b)(2) because Plaintiff resides within this judicial district; a substantial part of the events giving rise to Plaintiff’s claims against Defendant occurred within this judicial district (Plaintiff’s telephone calls were illegally recorded while Plaintiff was in this judicial district); and Defendant conducts business in the County of Riverside, within this judicial district.

PARTIES

12. Plaintiff is, and at all times mentioned herein, was an individual citizen and resident of the City of Riverside, County of Riverside, State of California.

13. Defendant is, and at all times mentioned herein, is a Washington for profit corporation whose primary corporate address is located in Bothell, Washington.¹

14. Defendant is, and at all times mentioned herein, was a corporation and a “person,” as defined by California Penal Code § 632(b).

15. Defendant has a policy and practice of recording telephone conversations with the public, including California residents.

16. Defendant’s employees and agents are directed, trained, instructed to, and do record its telephone conversations with the public, including California residents.

17. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant placed calls to residents of the State of California, for the purpose of debt collection and therefore conducted business within the State of California.

FACTUAL ALLEGATIONS

¹ Washington Secretary of State, Business Search, <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation> (last date accessed April 7, 2022).

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 18. Between February 4, 2020 and April 14, 2020, Defendant placed three phone
2 calls to Plaintiff. Plaintiff is informed and believes the calls were made on
3 February 4, 2020, March 30, 2020, and April 14, 2020.

4 19. Plaintiff did not become aware the beginning of the three calls were being
5 recorded until Plaintiff received the recordings in relation to another unrelated
6 lawsuit on March 9, 2022.

7 20. Plaintiff is informed and believes that Defendant was attempting to collect a
8 debt from Plaintiff at the time of these phone calls.

9 21. Plaintiff had allegedly fallen behind on Plaintiff's rental payments and the
10 purpose of Defendant's phone calls was to collect payment from Plaintiff.

11 22. All three of the phone calls by Defendant were made to Plaintiff's cell phone
12 number ending 0978.

13 23. Plaintiff had a reasonable expectation that these telephone conversations with
14 Defendant would not be recorded due to the private subject matter being
15 discussed, which involved Plaintiff's personal financial affairs.

16 24. Defendant's representative did not inform Plaintiff that the telephone call was
17 being recorded until after all of the following happened on each of the three
18 calls: 1) Plaintiff provided his personal identification information and
19 confirmed his identity; 2) Defendant disclosed the original creditor and the
20 identity of Defendant calling; and 3) Defendant disclosed the amount of the
21 balance on the account that was in collection. Only after Defendant went
22 addressed the three issues in this paragraph did Defendant's representative
23 disclose that the call was being recorded.

24 25. Based on the three recordings, it is clear that Defendant used a standard script
25 to call Plaintiff that it uses with all of its collection calls with the putative class
26 members.
27
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 26. Plaintiff is informed and believes, and thereon alleges, that during the relevant
2 time period, Defendant had a policy and practice of recording all telephone
3 conversations with consumers.

4 27. Plaintiff was shocked to discover that Defendant began recordings its
5 conversations with Plaintiff at the outset of its calls prior to disclosing to
6 Plaintiff that the calls were being recorded.

7 28. Plaintiff is informed and believes, and thereon alleges, that during the relevant
8 time period, Defendant had a policy of using the same script in its
9 conversations with consumers. Plaintiff alleges Defendant uses the same script
10 on all other consumers. The script used in each recorded call with Plaintiff is
11 as follows:

We are required to notify on a recorded line that this is an attempt to collect a debt by a debt collector any and all information is obtained for that purpose. This call may be recorded. Mr. Stewart we would like to know what your intent is on recovery so we can stop collection action against you.

12
13
14
15
16
17 29. Plaintiff found Defendant’s secretive recording to be highly offensive.

18 30. Plaintiff was personally affected by Defendant’s aforementioned conduct in
19 that Plaintiff was shocked and upset that Defendant audio recorded one or
20 more cellular telephone conversations with Plaintiff, or portions thereof,
21 without Plaintiff’s knowledge or consent.

22 31. Plaintiff is informed and believes, and thereon alleges that presently,
23 Defendant installed and/or caused to be installed certain recording equipment
24 on its employees’ or agents’ telephone lines.

25 32. Defendant used these recording devices to record each and every telephone
26 conversation on said telephone lines.
27
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 33. Plaintiff is informed and believes, and thereon alleges, that during the relevant
2 time period, Defendant caused all of its calls to the public, including those
3 made to California residents, to be recorded without the knowledge or consent
4 of the public, including Plaintiff and other California residents.

5 34. Furthermore, Plaintiff is informed and believes, and thereon alleges, that
6 during the relevant time period, Defendant uses the same generic transcript
7 coaching its employees to say the same thing to Plaintiff and other California
8 residents.

9 35. California Penal Code § 632.7(a) is very clear in its prohibition against such
10 unauthorized tape recording without the consent of the other party to the
11 conversation: “Every person who, without the consent of all parties to a
12 communication, intercepts or receives and intentionally records, or assists in
13 the interception or reception and intentional recordation of, a communication
14 transmitted between two cellular radio telephones, a cellular radio telephone
15 and a landline telephone, two cordless telephones, a cordless telephone and a
16 landline telephone, or a cordless telephone and a cellular radio telephone
17 [violates this section]”. California Penal Code § 637.2 permits Plaintiff to
18 bring this action for any violation of California Penal Code § 632.7(a) and
19 provides for statutory damages of \$5,000.00 for each violation.

20 36. Defendant violated Plaintiff’s constitutionally protected privacy rights by
21 failing to advise or otherwise provide notice at the beginning of the recorded
22 conversations with Plaintiff that the call would be recorded and Defendant did
23 not try to obtain the Plaintiff’s consent before such recording.

24 37. The recording or other unauthorized connection was done over the telephone,
25 without Plaintiff’s prior knowledge or consent. Plaintiff was damaged
26 thereby, as detailed herein, in at least an amount permitted by the statutory
27 damages mandated by California Penal Code § 637.2(a).
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 38. Defendant and its employees and agents surreptitiously recorded the calls
2 made by Defendant to Plaintiff. At no time before the calls or at the outset of
3 the calls was Plaintiff warned, told, advised, or otherwise given any indication
4 by Defendant, its employees or agents, that the calls were being recorded.

5 39. As a result, Plaintiff has been damaged as set forth in the Prayer for Relief
6 herein.

7 40. Plaintiff seeks statutory damages and injunctive relief under California Penal
8 Code § 637.2.

9 **CLASS ACTION ALLEGATIONS**

10 41. Plaintiff brings this action on behalf of himself and on behalf of all others
11 similarly situated (“the Class”).

12 42. Plaintiff represents, and is a member of, the Class, consisting of: All persons
13 in California whose cellular telephone conversations were recorded without
14 their consent by Defendant and/or its agent/s from February 4, 2020 through
15 the date of filing this Complaint.

16 43. Defendant and its employees or agents are excluded from the Class. Plaintiff
17 does not know the number of members in the Class, but believes the Class
18 members number in the tens of thousands, if not more. Thus, this matter
19 should be certified as a Class Action to assist in the expeditious litigation of
20 this matter.

21 44. This suit seeks only statutory damages and injunctive relief for recovery of
22 economic injury on behalf of the Class and it expressly is not intended to
23 request any recovery for personal injury and claims related thereto. Plaintiff
24 reserves the right to expand the Class definition to seek recovery on behalf of
25 additional persons as warranted as facts are learned in further investigation
26 and discovery.

27
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 45. The joinder of the Class members is impractical and the disposition of their
2 claims in the Class action will provide substantial benefits both to the parties
3 and to the court. The Class can be identified through Defendant’s records or
4 Defendants’ agent’s records.

5 46. There is a well-defined community of interest in the questions of law and fact
6 involved which affect the parties to be represented. The questions of law and
7 fact to the Class predominate over questions which may affect individual
8 Class members, including the following:

9 a. Whether Defendant has a policy of recording incoming and/or outgoing
10 calls;

11 b. Whether Defendant has a policy of using the same script for each
12 incoming and/or outgoing calls;

13 c. Whether Defendant has a policy of recording incoming and/or outgoing
14 calls initiated to a cellular telephone;

15 d. Whether Defendant discloses to callers and/or obtains their consent that
16 their incoming and/or outgoing telephone conversations are being recorded;

17 e. Whether Defendant’s policy of recording incoming and/or outgoing
18 calls to cellular telephones constitutes a violation of California Penal Code §
19 632.7;

20 f. Whether Plaintiff and the Class were damaged thereby, and the extent
21 of damages for such violations; and

22 g. Whether Defendant should be enjoined from engaging in such conduct
23 in the future.

24 47. Plaintiff is asserting claims that are typical of the Class because every other
25 member of the Class, like Plaintiff, were exposed to virtually identical conduct
26 and are entitled to the greater of statutory damages of \$5,000 per violation or
27
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 three times actual damages per violation pursuant to California Penal Code §
2 637.2(a).

3 48. Plaintiff will fairly and adequately represent and protect the interests of the
4 Class in that Plaintiff has no interest antagonistic to any member of the Class.

5 49. Plaintiff and the members of the Class have all suffered irreparable harm as a
6 result of the Defendant’s unlawful and wrongful conduct. Absent a class
7 action, the Class will continue to face the potential for irreparable harm. In
8 addition, these violations of law will be allowed to proceed without remedy
9 and Defendant will likely continue such illegal conduct. Because of the size
10 of the individual Class member’s claims, few, if any, Class members could
11 afford to seek legal redress for the wrongs complained of herein.

12 50. Plaintiff has retained counsel experienced in handling class action claims to
13 further ensure such protection.

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

22 52. Defendant has acted on grounds generally applicable to the Class, thereby
23 making appropriate final injunctive relief and corresponding declaratory relief
24 with respect to the Class as a whole.

25 **FIRST CAUSE OF ACTION:**
26 **ILLEGAL RECORDING OF CELLULAR PHONE CONVERSATIONS**
27 **PURSUANT TO CAL. PEN. CODE § 632.7**
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1 53. Plaintiff incorporates by reference all of the above paragraphs of this
2 Complaint as though fully stated herein.

3 54. At all relevant times hereto, Defendant has and follows a policy and practice
4 of using a telecommunications system that enabled it to surreptitiously record
5 cellular telephone communications between Defendant and Plaintiff and Class
6 Members.

7 55. At all relevant times hereto, Defendant intentionally and surreptitiously
8 recorded cellular telephone calls concerning confidential matters between
9 Defendant and Plaintiff and Class Members.

10 56. At all relevant times hereto, Defendant had and followed a policy and practice
11 of not advising or warning Plaintiff and Class Members that their cellular
12 telephone communications with Defendant would be recorded.

13 57. At all relevant times hereto, Defendant has and implements a script which is
14 only read to Plaintiff and Class Members regarding that the call is being
15 recorded only after Defendant obtains private, identifying information.

16 58. Defendant failed to obtain consent of Plaintiff and the Class Members prior to
17 the recording of their cellular telephone conversations.

18 59. This conduct by Defendant violated section 632.7(a) of the California Penal
19 Code.

20 60. Plaintiff and Class Members are entitled to recovery actual and statutory
21 damages in the amount of \$5,000.00 per violation of Cal. Pen. Code § 632.7.

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

26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiff respectfully requests that the Court grant Plaintiff and the
28

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Class members the following relief against Defendant:

- Certify the Class as requested herein;
- Appoint Plaintiff to serve as the Class Representative for the Class;
- Appoint Plaintiff’s Counsel as Class Counsel in this matter for the Class;
- Special, general, compensatory, and punitive damages;
- As a result of Defendant’s violation of California Penal Code Sections 630 *et seq.*, Plaintiff seeks statutory damages in the amount of \$5,000 per violation, pursuant to California Penal Code § 637.2(a);
- Reasonable attorneys’ fees pursuant to Cal. Code of Civ. Proc. § 1021.5;
- Injunctive relief to prevent the further occurrence of such illegal acts pursuant to California Penal Code § 637.2(b);
- An award of costs to Plaintiff, and;
- Any other relief the Court may deem just and proper including interest.

62. Trial By Jury

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

Respectfully Submitted,

Date: April 26, 2022

KAZEROUNI LAW GROUP, APC

By: /s/ Ryan L. McBride
Ryan L. McBride, Esq.
Attorneys for Plaintiff