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19 IRINA MCKEEHAN

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **IN AND FOR THE COUNTY OF SAN DIEGO**  
22 **NORTH DIVISION**

23 IRINA MCKEEHAN, individually and on  
24 behalf of a class of similarly situated  
25 individuals,

26 Plaintiff,

27 v.

28 1-800-PACK-RAT, LLC; and DOES 1  
through 100, inclusive,

Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**09/27/2022** at 01:33:36 PM

Clerk of the Superior Court  
By Amy Woolf, Deputy Clerk

Case No: 37-2022-00038509-CU-BT-NC

CLASS ACTION

**COMPLAINT FOR DAMAGES**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

1  
2 Plaintiff Irina McKeehan (“Plaintiff”), on behalf of herself and a class of similarly  
3 situated individuals as defined below (the “PC § 632.7 Class”), alleges on information and belief  
4 as follows:

**INTRODUCTION**

5  
6 1. This class action lawsuit arises out of Defendant 1-800-PACK-RAT, LLC’s  
7 (“Defendant” or “Pack-Rat”) policy and practice of recording and/or monitoring,<sup>1</sup> without the  
8 consent of all parties, (1) California citizens’ telephone calls to Defendant’s customer service  
9 telephone numbers and, on information and belief, (2) Defendant’s return calls to California  
10 citizens. Defendant’s customer service telephone numbers may be referred to collectively as  
11 “Defendant’s customer service numbers.” Those numbers include but are not limited to (800)  
12 722-5728 [800-PACK-RAT].

13 2. Defendant is a portable storage and moving company with numerous storage  
14 facilities across the United States, including six storage locations in California. Defendant  
15 boasts three major offerings – local moving services, long-distance moving services, and  
16 temporary or long-term storage solutions – using its all-steel, weatherproof moving and storage  
17 containers.

18 3. During the relevant time period, Defendant intentionally and surreptitiously  
19 recorded and/or monitored telephone calls made or routed to Defendant’s customer service  
20 numbers. Defendant recorded and/or monitored calls without warning or disclosing to inbound  
21 callers and, on information and belief, recipients of outbound calls that their calls might be  
22 recorded or monitored.

23 4. Defendant’s policy and practice of recording and monitoring, without the consent  
24 of all parties, Defendant’s telephone conversations with California citizens who, while

25 \_\_\_\_\_  
26 <sup>1</sup> “Monitor,” as used in this complaint, includes both (a) the common understanding of a person  
27 listening in on a call and (b) “intercepting,” as that term is used in the California Invasion of  
28 Privacy Act (“CIPA”). Thus, “monitor” will be used in lieu of “intercept” throughout this  
complaint.

1 physically located in California, called one or more of Defendant’s customer service numbers or  
2 received a call from Defendant violates the California Invasion of Privacy Act (Penal Code §§  
3 630, *et seq.* (“CIPA”)). Specifically, Defendant’s policy and practice violate Penal Code §  
4 632.7, which prohibits the recording or monitoring of a communication made to or from a  
5 cellular or cordless telephone without the consent of all parties to the communication.

6 5. Because of Defendant’s violations, all individuals who called or were routed to  
7 one of Defendant’s customer service numbers, or who received a call from one of those  
8 numbers, while they were in California and were recorded or monitored by Defendant  
9 surreptitiously and without disclosure are entitled to an award of statutory damages.

10 **PARTIES**

11 6. Plaintiff Irina McKeehan is an individual and, during the relevant time period,  
12 was a resident of San Diego County, California.

13 7. Defendant 1-800-PACK-RAT, LLC is a limited liability company organized  
14 under the laws of the State of Delaware with its headquarters in Wake Forest, North Carolina.  
15 Pack-Rat systematically and continuously does business in California and with California  
16 citizens.

17 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
18 DOES 1 through 50, inclusive, and therefore sues those defendants by those fictitious names.  
19 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.  
20 Plaintiff is informed and believes, and on that ground alleges, that each of the fictitiously-named  
21 defendants is responsible in some manner for the occurrences alleged and that Plaintiff’s  
22 injuries and damages, as alleged, are proximately caused by those occurrences.

23 9. Plaintiff is informed and believes and, on that ground, alleges that, at all relevant  
24 times, each named Defendant and the Doe Defendants were the principals, agents, partners,  
25 joint venturers, officers, directors, controlling shareholders, subsidiaries, affiliates, parent  
26 corporations, successors in interest, and/or predecessors in interest of some or all of the other  
27 Defendants, were engaged with some or all of the other Defendants in a joint enterprise for  
28 profit, and bore such other relationships to some or all of the other Defendants as to be liable for

1 their conduct with respect to the matters alleged below. Plaintiff is informed and believes and,  
2 on that ground, alleges that each Defendant acted pursuant to and within the scope of the  
3 relationships alleged above and that each knew or should have known about and that each  
4 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all  
5 Defendants.

6 **JURISDICTION AND VENUE**

7 10. This Court has subject matter jurisdiction over this action under California Penal  
8 Code §§ 632.7 and 637.2.

9 11. This Court has personal jurisdiction over the parties because Defendant  
10 continuously and systematically has conducted business in the State of California. Likewise,  
11 Plaintiff's rights were violated in the State of California and these violations arose out of her  
12 contact with Defendant from and within California.

13 12. Venue is proper in San Diego County because Defendant's violations of  
14 Plaintiff's rights arose out of her telephone conversations with Defendant from and within San  
15 Diego County.

16 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

17 13. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
18 times, Defendant's customer service numbers, including without limitation (800) 722-5728,  
19 connected callers to Defendant's customer service representatives.

20 14. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
21 times, Defendant's employees and agents at the customer service call centers received incoming  
22 calls from callers including California callers. Plaintiff is further informed and believes and on  
23 that ground alleges that Defendant intentionally has used technology consisting of hardware  
24 and/or software or other equipment to carry out a policy and practice of recording and/or  
25 monitoring calls routed to Defendant's customer service representatives.

26 15. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
27 times, Defendant's employees and agents at the customer service call centers made outbound  
28 calls to callers including California callers. Plaintiff is further informed and believes and on that

1 ground alleges that Defendant intentionally has used technology consisting of hardware and/or  
2 software or other equipment to carry out a policy and practice of recording and/or monitoring  
3 outbound calls made by Defendant’s customer service representatives.

4 16. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
5 times, Defendant’s employees and agents at or associated with the customer service call centers  
6 were and are directed, trained and instructed to, and did and do, record and/or monitor telephone  
7 calls between the customer service representatives and callers, including California callers.

8 17. Plaintiff has been a customer of Pack-Rat since 2014. Plaintiff has called  
9 Defendant’s customer service numbers – including (800) 722-5728 – many times between 2014  
10 and the present. During her most recent move in November 2021, Plaintiff called one of  
11 Defendant’s customer service numbers – specifically (800) 722-5728 – and engaged in  
12 conversations with Defendant’s employees or agents on at least 10 occasions in September,  
13 October, and November 2021. Plaintiff’s calls to and from Pack-Rat concerned setting up  
14 moving services and the delivery and/or pickup of the storage containers. Plaintiff made these  
15 telephone calls from a location within San Diego County, California while using her cellular  
16 telephone. Plaintiff made additional calls to Defendant’s customer service numbers in 2022 to  
17 arrange for the delivery of the storage containers to her new home.

18 18. During Plaintiff’s telephone conversations with Defendant’s employees or agents  
19 in September, October, and November 2021 and into August 2022, Defendant’s employees or  
20 agents failed to disclose to Plaintiff that her telephone conversations were being recorded and/or  
21 monitored. Plaintiff did not give and could not have given consent for her telephone calls to be  
22 recorded or monitored because the lack of warning or disclosure regarding call recording left her  
23 unaware during the telephone calls that Defendant was engaged, or might engage, in that  
24 practice.

25 19. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
26 times, other callers who called one or more of Defendant’s customer service numbers from a  
27 location in California were not informed at the call outset by Defendant or anyone else that their  
28 calls were being recorded and/or monitored. Thus, that recording and/or monitoring necessarily

1 occurred without the callers' knowledge or consent.

2 20. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
3 times, persons located in California who received calls from Defendant's customer service call  
4 centers were not informed at the call outset by Defendant or anyone else that their calls were  
5 being recorded and/or monitored. Thus, that recording and/or monitoring necessarily occurred  
6 without the call recipients' knowledge or consent.

7 21. Because there was no warning that Plaintiff's calls would be recorded or  
8 monitored, Plaintiff had a reasonable expectation that her telephone conversations with  
9 Defendant's employees and agents were, and would remain, private and confined to the parties  
10 on the telephone. That recording and/or monitoring occurred without her consent, is highly  
11 offensive to Plaintiff and would be highly offensive to a reasonable person, including members  
12 of the proposed Plaintiff Class.

13 **CLASS ACTION ALLEGATIONS**

14 22. Plaintiff brings this action under California Code of Civil Procedure § 382 on  
15 behalf of herself and the class (the "PC § 632.7 Class") defined as follows:

16 All California citizens who, while located within California at any time during the  
17 applicable limitations period preceding the filing of the Complaint in this matter and  
18 through and including the date of resolution, and while one or both parties to the call  
19 were using a cellular or cordless telephone, engaged in a telephone conversation with  
20 Defendant's employee(s) or agent(s) and were recorded and/or monitored by  
21 Defendant without any warning or disclosure at the call outset.

22 23. The PC § 632.7 Class that Plaintiff seeks to represent contains numerous  
23 members and is clearly ascertainable including, without limitation, by using Defendant's  
24 records and/or Defendant's telephone company's and/or other telecommunications and service  
25 providers' records regarding calls to Defendant's customer service numbers to determine the  
26 size of the PC § 632.7 Class and to determine the identities of individual PC § 632.7 Class  
27 members. Plaintiff reserves the right to amend or modify the PC § 632.7 Class definition and/or  
28 to add subclasses or limitations to particular issues.

1           24. By its unlawful actions, Defendant has violated Plaintiff's and the PC § 632.7  
2 Class members' privacy rights under CIPA, California Penal Code §§ 630 *et seq.* The questions  
3 raised are, therefore, of common or general interest to the PC § 632.7 Class members, who have  
4 a well-defined community of interest in the questions of law and fact raised in this action.

5           25. Plaintiff's claims are typical of those of the PC § 632.7 Class, as Plaintiff now  
6 suffers and has suffered from the same violations of the law as other putative PC § 632.7 Class  
7 members. Plaintiff has retained counsel with substantial experience in prosecuting complex  
8 litigation and class actions to represent her and the PC § 632.7 Class, and Plaintiff will fairly  
9 and adequately represent the interests of the PC § 632.7 Class.

10           26. This action may properly be maintained as a class action under section 382 of the  
11 California Code of Civil Procedure because there is a well-defined community of interest in the  
12 litigation and the proposed PC § 632.7 Class is ascertainable.

13 **Numerosity**

14           27. Based on information and belief, the Class consists of at least seventy-five  
15 individuals, making joinder of individual cases impracticable.

16 **Typicality**

17           28. Plaintiff's claims are typical of the claims of all of the other members of the PC §  
18 632.7 Class. Plaintiff's claims and the PC § 632.7 Class members' claims are based on the same  
19 legal theories and arise from the same unlawful conduct, resulting in the same injury to Plaintiff  
20 and to all of the other PC § 632.7 Class members.

21 **Common Questions of Law and Fact**

22           29. There are questions of law and fact common to the PC § 632.7 Class that  
23 predominate over any questions affecting only individual PC § 632.7 Class members. Those  
24 common questions of law and fact include, without limitation, the following:

- 25           a. Whether Defendant had a policy or practice of recording and/or  
26 monitoring inbound telephone calls made to Defendant's customer service  
27 numbers;

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- b. Whether Defendant had a policy or practice of not disclosing to inbound callers that their conversations with Defendant’s employees and agents would be recorded and/or monitored;
- c. Whether Defendant had a policy or practice of not obtaining inbound callers’ consent to record and/or monitor conversations between Defendant’s agents and employees, on the one hand, and inbound callers, on the other;
- d. Whether Defendant violated California Penal Code § 632.7 by recording and/or monitoring, surreptitiously and without disclosure at the call outset, telephone conversations
  - i. between inbound callers using cellular and/or cordless telephones within California and Defendant’s agents and employees, and
  - ii. between inbound callers using landline telephones within California and Defendant’s agents and employees who were using cellular and/or cordless phones;
- e. Whether Defendant had a policy or practice of recording and/or monitoring outbound telephone calls made by Defendant’s agents or employees;
- f. Whether Defendant had a policy or practice of not disclosing to outbound call recipients that their conversations with Defendant’s agents and employees would be recorded and/or monitored;
- g. Whether Defendant had a policy or practice of failing to obtain consent to record and/or monitor conversations between Defendant’s employees or agents, on the one hand, and outbound call recipients, on the other;
- h. Whether Defendant violated California Penal Code § 632.7 by recording and/or monitoring, surreptitiously and without disclosure at the call outset, telephone conversations



- 1                   i. between Defendant’s agents and employees and outbound call  
2 recipients who were using cellular and/or cordless telephones  
3 within California, and  
4                   ii. between Defendant’s employees and agents using cellular and/or  
5 cordless telephones and outbound call recipients who were using  
6 landline telephones within California; and  
7                   i. Whether Class members are entitled to statutory damages of \$5,000 under  
8 Penal Code § 637.2 for each violation of Penal Code § 632.7.

9 **Adequacy**

10           30. Plaintiff will fairly and adequately represent and protect the interests of the other  
11 members of the PC § 632.7 Class. Plaintiff has retained counsel with substantial experience in  
12 prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to  
13 prosecuting this action vigorously on behalf of the other PC § 632.7 Class members and have the  
14 financial resources to do so. Neither Plaintiff nor her counsel have any interests adverse to those  
15 of the other PC § 632.7 Class members.

16 **Superiority**

17           31. A class action is superior to other available methods for the fair and efficient  
18 adjudication of this controversy because individual litigation of the claims of all PC § 632.7  
19 Class members is impracticable and questions of law and fact common to the PC § 632.7 Class  
20 predominate over any questions affecting only individual members of the PC § 632.7 Class.  
21 Even if every individual PC § 632.7 Class member could afford individual litigation, the court  
22 system could not. It would be unduly burdensome to the courts if individual litigation of the  
23 numerous cases were to be required. Individualized litigation also would present the potential  
24 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense  
25 to all parties and to the court system resulting from multiple trials of the same factual issues. By  
26 contrast, the conduct of this action as a class action with respect to some or all of the issues will  
27 present fewer management difficulties, conserve the resources of the court system and the  
28 parties and protect the rights of each PC § 632.7 Class member. Further, it will prevent the very

1 real harm that would be suffered by numerous putative PC § 632.7 Class members who simply  
2 will be unable to enforce individual claims of this size on their own, and by Defendant’s  
3 competitors, who will be placed at a competitive disadvantage as their punishment for obeying  
4 the law. Plaintiff anticipates no difficulty in the management of this case as a class action.

5 32. The prosecution of separate actions by individual PC § 632.7 Class members may  
6 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive  
7 of the interests of other PC § 632.7 Class members not parties to those adjudications or that  
8 would substantially impair or impede the ability of those non-party PC § 632.7 Class members to  
9 protect their interests.

10 33. The prosecution of individual actions by PC § 632.7 Class members would run the  
11 risk of establishing inconsistent standards of conduct for Defendant.

12  
13 **FIRST CAUSE OF ACTION**  
14 **Unlawful Recording and/or Monitoring of**  
15 **Cellular and Cordless Telephone Communications**  
16 **(Violation of California Penal Code § 632.7)**

17 34. Plaintiff incorporates each allegation set forth above as if fully set forth herein and  
18 further alleges as follows.

19 35. In September, October, and November 2021, while located in California, Plaintiff  
20 used a cellular telephone to call one of Defendant’s customer service numbers – (800) 722-5728  
21 – and participated in numerous telephone conversations with Defendant’s employees or agents.

22 36. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
23 times, Defendant had a policy and practice of using hardware and/or software or other equipment  
24 to surreptitiously record and/or monitor telephone conversations with Plaintiff and other PC §  
25 632.7 Class members who (a) used cellular and/or cordless telephones to make calls to  
26 Defendant’s customer service numbers, (b) used landline telephones to make calls to  
27 Defendant’s cellular and/or cordless telephones, (c) received calls on their cellular and/or  
28 cordless telephones from Defendant’s customer service agents or employees, and/or (d) received  
calls on their landline telephones from Defendant’s customer service agents or employees who  
were using cellular and/or cordless telephones.

1           37. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
2 times, Defendant had and followed a policy and practice of intentionally and surreptitiously  
3 recording and/or monitoring Plaintiff’s and PC § 632.7 Class members’ telephone conversations  
4 with Defendant’s employees and agents in which one or both parties to the call were using  
5 cellular and/or cordless telephones.

6           38. Plaintiff is informed and believes and on that ground alleges that, at all relevant  
7 times, Defendant had and followed a policy and practice of not advising or warning California  
8 citizens such as Plaintiff or PC § 632.7 Class members at the outset of inbound or outbound calls  
9 that their telephone communications with Defendant’s employees or agents, in which one or both  
10 parties to the call were using cellular and/or cordless telephones, would be recorded and/or  
11 monitored.

12           39. Because Defendant did not disclose to Plaintiff or PC § 632.7 Class members at  
13 the call outset that their calls were being recorded and/or monitored, Defendant did not obtain,  
14 and could not have obtained, Plaintiff’s or PC § 632.7 Class members’ express or implied  
15 advance consent to the recording or monitoring of those conversations. As a result, Plaintiff and  
16 PC § 632.7 Class members had an objectively reasonable expectation that their calls were not  
17 being recorded and/or monitored. That expectation and its objective reasonableness arise, in  
18 part, from the objective offensiveness of surreptitiously recording people’s conversations, the  
19 absence of even a simple pre-recorded message as short as four simple words – “calls may be  
20 recorded” – and the ease with which such a message could have been put in place. As the  
21 California Supreme Court has stated, “in light of the circumstance that California consumers are  
22 accustomed to being informed at the outset of a telephone call whenever a business entity intends  
23 to record the call, it appears equally plausible that, in the absence of such an advisement, a  
24 California consumer reasonably would anticipate that such a telephone call is not being recorded,  
25 particularly in view of the strong privacy interest most persons have with regard to the personal  
26 financial information frequently disclosed in such calls.” See *Kearney v. Salomon Smith Barney*  
27 (2006) 39 Cal. 4th 95.

28           40. Defendant’s conduct as described above violated California Penal Code §

1 632.7(a). Under Penal Code § 637.2, Plaintiff and PC § 632.7 Class members therefore are  
2 entitled to \$5,000 in statutory damages per violation, even in the absence of proof of actual  
3 damages, the amount deemed proper by the California Legislature.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, on behalf of herself and members of the Class, prays for the  
6 following relief:

- 7 a. An order certifying the PC § 632.7 Class, appointing Plaintiff Irina McKeehan as  
8 representative of the PC § 632.7 Class, and appointing counsel for Plaintiff as  
9 counsel for the PC § 632.7 Class;
- 10 b. An order declaring that Defendant's actions, as described above, violate  
11 California Penal Code § 632.7;
- 12 c. A judgment for and award of statutory damages of \$5,000 per violation under  
13 California Penal Code § 637.2 to Plaintiff and the members of the PC § 632.7  
14 Class;
- 15 d. Payment of costs of the suit;
- 16 e. Payment of attorneys' fees under California Code of Civil Procedure § 1021.5;
- 17 f. An award of pre- and post-judgment interest to the extent allowed by law; and  
18 g. Such other or further relief as the Court may deem proper.

19  
20 Respectfully submitted,

21 Dated: September 27, 2021

**KELLER GROVER LLP**

22  
23 By:  \_\_\_\_\_

24 **ERIC A. GROVER**  
*Attorneys for Plaintiff*

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**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: September 27, 2021

**KELLER GROVER LLP**

By:   
ERIC A. GROVER  
*Attorneys for Plaintiff*