

ORIGINAL

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**FILED**  
Superior Court of California  
County of Los Angeles

JAN 30 2020

Sherri R. Carter, Executive Officer/Clerk of Court  
By Isaac Lovs Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
UNLIMITED JURISDICTION**

DAVE VACCARO, on behalf of himself and  
all others similarly situated,  
Plaintiff,

vs.

SUPER CARE, INC. and DOES 1 through 10,  
inclusive,  
Defendants.

Case No.

**20STCV03833**

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF:**

- (1) California Penal Code § 632  
(2) Negligence Per Se

**DEMAND FOR JURY TRIAL**

(Amount to exceed \$25,000)

Plaintiff DAVE VACCARO ("Plaintiff"), on behalf of himself and all others similarly  
situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. This is a class action brought on behalf of all individuals in California whose  
telephone conversations with Defendant SUPER CARE, INC. ("Defendant") were recorded by  
Defendant without their knowledge or consent.

**JURISDICTION & VENUE**

2. Jurisdiction is proper since all claims arise under California law.  
3. Venue is proper in the Superior Court of California for the County of Los Angeles

**CLASS ACTION COMPLAINT**

BY FAX

1 because Defendant does business within the State of California and Plaintiff resides within the  
2 County of Los Angeles..

3 **PARTIES**

4 4. Plaintiff DAVE VACCARO ("Plaintiff") is a natural person residing in Los  
5 Angeles County in the State of California.

6 5. Plaintiff is informed and believe, and thereon alleges, that Defendant is, and at all  
7 times mentioned herein was, a corporation whose corporate headquarters is in Long Beach,  
8 California. Defendant, is and at all times mentioned herein was, a corporation. Plaintiff alleges  
9 that at all times relevant herein Defendant conducted business in the State of California and in  
10 the County of Los Angeles, and within this judicial district.

11 6. The above named Defendant, and its subsidiaries and agents, are collectively  
12 referred to as "Defendants." The true names and capacities of the Defendants sued herein as  
13 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore  
14 sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE  
15 is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to  
16 amend the Complaint to reflect the true names and capacities of the DOE Defendants when such  
17 identities become known.

18 7. Plaintiff is informed and believes that at all relevant times, each and every  
19 Defendant was acting as an agent and/or employee of each of the other Defendants and was acting  
20 within the course and scope of said agency and/or employment with the full knowledge and  
21 consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts  
22 and/or omissions complained of herein was made known to, and ratified by, each of the other  
23 Defendants.

24 **FACTUAL ALLEGATIONS**

25 8. At all times relevant Defendant conducted business in the State of California and  
26 in the County of Los Angeles, within this judicial district. Defendant's employees and agents are  
27 directed, trained and instructed to, and do, record, the telephone conversations with the public,  
28 including California residents.

1           9.     On or about June 6, 2019, Defendant contacted Plaintiff to inform him that his  
2 medical supplies order was approved.

3           10.    Defendant contacted Plaintiff on cellular telephone number ending in -3928.

4           11.    Defendant failed to disclose to Plaintiff that the call was being recorded.

5           12.    Immediately following the call, Plaintiff called Defendant back regarding the  
6 order.

7           13.    When Plaintiff called Defendant, he heard a pre-recorded warning that calls were  
8 monitored and recorded.

9           14.    Upon reaching Defendant's representative, Plaintiff asked whether all outbound  
10 calls were recorded. Defendant's representative confirmed all incoming and outgoing calls are  
11 monitored and recorded.

12          15.    At no time did Plaintiff ever provide actual or constructive consent to Defendant  
13 to record the telephone call.

14          16.    At no point did Plaintiff have a reasonable expectation that any of the calls  
15 initiated by Defendant were being recorded especially because such private and sensitive  
16 subjects, including but not limited to Plaintiff's private and sensitive information, including  
17 sensitive medical information, were discussed.

18          17.    It is Defendant's pattern and practice to record incoming calls made to by  
19 California residents. The calls involve sensitive information not intended for dissemination.  
20 Defendants do not inform, or warn, the California residents, including Plaintiff, that the telephone  
21 calls may be or will be recorded. Plaintiff were unaware that the phone calls between himself  
22 and Defendant were recorded. There was no pre-call recorded message. The Defendant's  
23 representatives never informed Plaintiff that the call was being recorded.

24          18.    Plaintiff did not learn that Defendants recorded the phone call between Plaintiff  
25 and Defendant until after the event occurred.

26  
27                   **ACCRUAL OF RIGHT TO PRIVACY CLAIMS, CONTINUING VIOLATION,**  
28                   **EQUITABLE TOLLING, AND FRAUDULENT CONCEALMENT**

19.   Plaintiff did not discover, and could not discover through the exercise of

1 reasonable diligence, the fact that Defendant was recording the phone calls it made to Plaintiff  
2 and members of The Class without their knowledge or consent.

3 20. Defendant concealed from Plaintiff and members of The Class that it was  
4 recording the telephone calls between itself on the one hand and Plaintiff or other members of  
5 The Class on the other hand.

6 21. Defendant concealed the fact that it was recording the afore-mentioned phone  
7 calls to create the false impression in the minds of Plaintiff and members of The Class that they  
8 were not being recorded. At the outset of the phone calls there was no warning that the phone  
9 calls were, or even may, be recorded. Such warnings are ubiquitous today.

10 22. Plaintiff was justified in not bringing the claim earlier based on Defendant's  
11 failure to inform Plaintiff and other members of The Class that the phone calls were being  
12 recorded.

### 13 **CLASS ALLEGATIONS**

14 23. Plaintiff brings this action pursuant to Code of Civil Procedure section 382 and/or  
15 other applicable law on behalf of himself and all others similarly situated, as a member of the  
16 proposed class (hereafter "The Class") defined as follows:

17 All persons in California whose inbound and outbound telephone  
18 conversations were recorded without their consent by Defendant  
19 within the year prior to the filing of the original Complaint in this  
20 action.

21 24. Specifically excluded from the proposed Class are Defendant; any entities in  
22 which Defendant has a controlling interest; and the employees, officers, directors, affiliates, legal  
23 representatives, subsidiaries, and affiliates of Defendant. The Class' claims are based on Cal.  
24 Penal Code. § 632, *et seq.*

25 25. This action is brought and may be properly maintained as a class action. This  
26 action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements  
27 for a class action.

28 26. The Class is so numerous that the individual joinder of all of its members is  
impractical. While the exact number and identities of The Class members are unknown to

1 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
2 informed and believes and thereon alleges that The Class includes thousands of members.  
3 Plaintiff alleges that The Class members may be ascertained by the records maintained by  
4 Defendant.

5 27. Common questions of fact and law exist as to all members of The Class which  
6 predominate over any questions affecting only individual members of The Class. These common  
7 legal and factual questions, which do not vary between Class members, and which may be  
8 determined without reference to the individual circumstances of any Class members, include, but  
9 are not limited to, the following:

- 10 a. Whether Defendant has a policy of recording telephone conversations  
11 between its representatives and Class members;
- 12 b. Whether Defendant obtained consent from all parties to record telephone  
13 conversations between its representatives and Class members;
- 14 c. Whether the telephone conversations between Defendant's representatives  
15 and Class members were confidential communications;
- 16 d. Whether Defendant's conduct described herein was negligent; and
- 17 e. The nature and extent of damages and other remedies to which the conduct of  
18 Defendant entitles The Class members.

19 28. Plaintiff is asserting claims that are typical of The Class because every other  
20 member of The Class, like Plaintiff, were exposed to virtually identical conduct and are entitled  
21 to the grater of statutory damages of \$5,000 per violation or three times actual damages per  
22 violation pursuant to Penal Code § 637.2(a).

23 29. Plaintiff will fairly and adequately protect the interests of the members of The  
24 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

25 30. A class action is superior to other available methods of fair and efficient  
26 adjudication of this controversy, since individual litigation of the claims of all Class  
27 members is impracticable. Even if every Class member could afford individual litigation, the  
28 court system could not. It would be unduly burdensome to the courts in which individual

1 litigation of numerous issues would proceed. Individualized litigation would also present the  
2 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and  
3 expense to all parties and to the court system resulting from multiple trials of the same complex  
4 factual issues. By contrast, the conduct of this action as a class action presents fewer management  
5 difficulties, conserves the resources of the parties and of the court system, and protects the rights  
6 of each Class member.

7 31. The prosecution of separate actions by thousands of individual Class members  
8 would also create the risk of inconsistent or varying adjudications with respect to, among other  
9 things, the need for and the nature of proper notice which Defendant must provide to all Class  
10 members prior to recording telephone calls.

11 32. The prosecution of separate actions by individual Class members would create a  
12 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
13 interests of the other Class members not parties to such adjudications or that would substantially  
14 impair or impede the ability of such non-party Class members to protect their interests.

15 33. Defendant has acted or refused to act in respects generally applicable to The Class,  
16 thereby making appropriate final and injunctive relief with regard to the members of The Class  
17 as a whole.

18  
19 **FIRST CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA PENAL CODE §632**

20 (By Plaintiff and The Class Against All Defendants)

21 34. Plaintiff hereby incorporates the preceding paragraphs as if set forth in full.

22 35. Californians have a constitutional right to privacy. Moreover, the California  
23 Supreme Court has definitively linked the constitutionally protected right to privacy within the  
24 purpose, intent and specific protections of the Privacy Act, including specifically, Penal Code §  
25 632. "In addition, California's explicit constitutional privacy provision (Cal. Const., 1 § 1) was  
26 enacted in part specifically to protect California from overly intrusive business practices that  
27 were seen to pose a significant and increasing threat to personal privacy. (Citations omitted).  
28 Thus, we believe that California must be viewed as having a strong and continuing interest in the



1 full and vigorous application of the provisions of section 632 prohibiting the recording of  
2 telephone conversations without the knowledge or consent of all parties to the conversation.  
3 *Kearney v. Salmon Smith Barney, Inc.*, (2006) 39 Cal. 4<sup>th</sup> 95, 125.

4 36. California Penal Code § 632 prohibits the intentional eavesdropping or recording  
5 by means of an electronic amplifying or recording device, of confidential telephonic  
6 communications without the consent of all parties to the communication.

7 37. Plaintiff is informed and believes and thereon alleges that Defendant violated and  
8 continues to violate California Penal Code § 632 by recording confidential telephonic  
9 communications between its representatives and Class members without obtaining their consent.

10 38. Pursuant to California Penal Code § 632, the telephonic conversations between  
11 Defendant's representatives and Class members are "confidential" because they are carried on in  
12 circumstances as may reasonably indicate that any party to the communication desires it to be  
13 confided to the parties thereto.

14 39. As a direct and proximate result of Defendant's violations of California Penal  
15 Code § 632, Plaintiff and the members of The Class have suffered injury, and may recover from  
16 Defendant five thousand dollars (\$5,000.00) for each violation of California Penal Code § 632  
17 pursuant to California Penal Code § 637.2(a).

18 40. The violations of California Penal Code § 632 described herein present a  
19 continuing threat to members of The Class and members of the general public in that Plaintiff is  
20 informed and believes and thereon alleges that Defendant continues to engage in these practices,  
21 and will not cease doing so unless and until forced to do so by this Court. Plaintiff is informed  
22 and believes and thereon alleges that Defendant's conduct will continue to cause irreparable  
23 injury to The Class unless enjoined or restrained pursuant to Penal Code § 637.2(a).

24 **SECOND CAUSE OF ACTION**  
**NEGLIGENCE PER SE**

25 (By Plaintiff and The Class Against All Defendants)

26 41. Plaintiff hereby incorporates the preceding paragraphs as if set forth in full.

27 42. Defendant violated applicable statutory law, including but not limited to  
28 California Penal Code § 632, which precludes the recording of telephone calls without all parties'

1 consent to and knowledge of the recording.

2 43. The foregoing statute(s) were designed to protect the class of persons which  
3 includes Plaintiff and The Class. It was for Plaintiff and The Class members' protection that said  
4 statute was adopted, and the statute was designed to protect against the very kind of conduct  
5 perpetrated by Defendant as against Plaintiff and The Class. Furthermore, the resulting harm  
6 suffered by Plaintiff and The Class herein was caused by violation of the aforementioned statute.

7 44. Thus, in acting and in failing to act as aforementioned, in violation of the  
8 aforementioned statute, Defendant was negligent per se.

9 45. As a direct and proximate result of Defendant's violations of California Penal  
10 Code § 632, Plaintiff and the members of The Class have suffered injury, and may recover from  
11 Defendant five thousand dollars (\$5,000.00) for each violation of California Penal Code § 632  
12 pursuant to California Penal Code § 637.2(a).

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class  
15 members the following relief against Defendants, and each of them:

- 16 1. That this action be certified as a class action on behalf of The Class and  
17 Plaintiff be appointed as the representative of The Class;
- 18 2. For the greater of statutory damages of \$5,000 per violation or three times  
19 actual damage per violation pursuant to Penal Code § 637.2(a) for Plaintiff  
20 and each member of The Class;
- 21 3. Injunctive relief in the form of an order requiring Defendant to disgorge all  
22 ill-gotten gains and awarding Plaintiff and The Class full restitution of all  
23 monies wrongfully acquired by Defendant by means of such unfair and  
24 unlawful conduct;
- 25 4. That the Court preliminarily and permanently enjoin Defendant from  
26 overhearing, recording, and listening to each and every oncoming and  
27 outgoing telephone conversation with California residents including Plaintiff  
28



1 and The Class, without their prior consent, as required by California Penal  
2 Code § 630, *et seq.*, and to maintain the confidentiality of the information of  
3 Plaintiff and The Class;

- 4 5. For general damages according to proof;  
5 6. For special damages according to proof;  
6 7. For exemplary or punitive damages;  
7 8. For costs of suit;  
8 9. For prejudgment interest at the legal rate; and  
9 10. For such further relief as this Court deems necessary, just, and proper.


10  
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands a trial by jury of each and every claim so triable.

13  
14 Respectfully submitted,

15 Dated: January 29, 2020

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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19 Todd M. Friedman  
20 Attorneys for Plaintiff DAVE VACCARO  
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