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CLERK OF COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED

11 Attorneys for Plaintiff, Annette Jonczyk,
12 on behalf of herself and others similarly situated

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

15 ANNETTE JONCZYK, on behalf of herself
16 and others similarly situated,

17 Plaintiffs,

18 v.

19 FIRST NATIONAL CAPITAL
20 CORPORATION, a California corporation;
21 and KEITH DUGGAN, an individual ,

22 Defendants.

Case No. **SACV 13 - 00959 JST (AGRx)**

**CLASS ACTION COMPLAINT FOR
UNLAWFUL WIRETAPPING AND
RECORDING WITHOUT NOTICE
PHONE CALLS INVOLVING
CONFIDENTIAL INFORMATION,
CAL. PENAL CODE § 630 ET SEQ.**

DEMAND FOR JURY TRIAL

By Fax

1 Plaintiff ANNETTE JONCZYK (hereinafter "Plaintiff"), on behalf of herself and all
2 others similarly situated, alleges against Defendants FIRST NATIONAL CAPITAL
3 CORPORATION ("FIRST NATIONAL"), a California corporation, and KEITH
4 DUGGAN, an individual (collectively, "Defendants"), as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has subject-matter jurisdiction over these claims on the basis of the
7 Class Action Fairness Act (CAFA), 18 U.S.C. § 1332(d). This is a putative class action
8 whereby: (i) the proposed class consists of over 100 class members; (ii) at least some of the
9 proposed class members, including Plaintiff, have a different citizenship from Defendants;
10 and (iii) the claims of the proposed class exceed \$5,000,000.00 in the aggregate.

11 2. This Court has personal jurisdiction over Defendants because Defendants are
12 California residents, a substantial portion of the wrongdoing alleged in this Complaint
13 occurred in California, Defendants are authorized to do business in California, have
14 sufficient minimum contacts with California, and otherwise intentionally avail themselves
15 of the markets in California through the promotion, marketing, and sale of their loan
16 procurement services to render the exercise of jurisdiction by this Court permissible under
17 traditional notions of fair play and substantial justice.

18 3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a) and 1391 because
19 a substantial part of the events giving rise to this claim occurred in this judicial district,
20 Defendants conduct business in this judicial district, and Defendants reside in this judicial
21 district.

22 **PARTIES**

23 4. Plaintiff JONCZYK is and at all times relevant to this Complaint was a
24 resident of the STATE of MISSOURI.

25 5. Defendant FIRST NATIONAL is a California corporation doing business in
26 and headquartered in Orange County, California.

27 6. Defendant DUGGAN is an individual residing in Orange County, California
28 and is the owner and president of FIRST NATIONAL.

FACTS COMMON TO ALL COUNTS

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2 7. FIRST NATIONAL is an equipment finance company and claims to be the
3 fourth-largest independent finance company in the country. FIRST NATIONAL helps its
4 clients procure funding for equipment purchases of all types, from airplanes to heavy
5 manufacturing equipment.

6 8. One of the keys, if not the key, to FIRST NATIONAL's business model is its
7 team of sales personnel who each make many hundreds of calls per week, in part to
8 existing clients and known contacts and in part to prospective clients with whom FIRST
9 NATIONAL and its sales staff have no existing relationship. These sales calls concern
10 financing options available to FIRST NATIONAL's customers or prospective customers,
11 and thus these calls routinely involve confidential, business information of the customers
12 and prospective customers, including the customers' and prospective customers' financial
13 information and business goals.

14 9. FIRST NATIONAL has many dozens of employees working in its Orange
15 County, California headquarters. These employees are permitted to use the company's
16 telephone system to send and receive personal calls, and many of the employees do just
17 that, speaking to spouses, other family members, friends, and third parties, on FIRST
18 NATIONAL's phones. These calls routinely involve confidential information of the type
19 often conveyed between spouses, relatives, and close friends.

20 10. At DUGGAN's orders, FIRST NATIONAL intentionally records by
21 electronic computer-based devices or other such wire-tapping device every incoming and
22 outgoing phone call, and then saves those phone calls' recordings on a digital medium so
23 DUGGAN can, if he wishes, access and listen to them later. This is done without notice to
24 participants on the phone call and without consent of those recorded. This is a practice that
25 is not known to many FIRST NATIONAL employees, is known to even fewer spouses,
26 relatives, and friends who communicate with FIRST NATIONAL employees by telephone,
27 and is known by few if any customers and prospective customers. Indeed, DUGGAN often
28 misrepresents FIRST NATIONAL's telephone-recording practices when the issue arises.

1 Plaintiff's husband, for example, was told when he started at FIRST NATIONAL that
2 FIRST NATIONAL does not record phone conversations. Only later, after having used the
3 FIRST NATIONAL telephones for private and work-related phone calls involving
4 confidential information for months, did Plaintiff's husband discover that FIRST
5 NATIONAL recorded all phone calls, in direct contravention to DUGGAN's earlier
6 representation. Many of the confidential phone calls were with Plaintiff. In addition,
7 Plaintiff also received a phone call from FIRST NATIONAL informing her of concern over
8 her husband's medical condition, a call that involved confidential information and was
9 taped as were all other calls.

10 CLASS ALLEGATIONS

11 11. Plaintiff brings this action as a class action pursuant to Federal Rule of
12 Procedure 23(b)(2) and 23(b)(3). Plaintiff brings this action on her own behalf and as a
13 class action on behalf of all persons who were the victims of Defendants' recording of their
14 phone conversations involving confidential information, a group that includes current and
15 former employees of FIRST NATIONAL, family members, friends, and other third parties
16 who exchanged confidential information with FIRST NATIONAL employees over the
17 phone, as well as customers and prospective customers who shared confidential
18 information with FIRST NATIONAL over the phone within the longest time period
19 permissible pursuant to any and all statutes of limitation. Plaintiff reserves the right to
20 amend or modify the class description with greater specificity or divide into subclasses or
21 limitation to particular issues.

22 12. The classes exclude counsel representing the classes; governmental entities;
23 Defendants and any entity in which Defendants have a controlling interest; Defendants'
24 officers, directors, affiliates, legal representatives, co-conspirators, successors, subsidiaries,
25 and assigns; any judicial officer presiding over this matter and the members of their
26 immediate families and judicial staff; and any individual whose interests are antagonistic to
27 other putative class members.

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1 13. Numerosity: The proposed classes are so numerous and spread out to such a
2 degree across the United States that individual joinder of all its members is impracticable.
3 Upon information and belief the classes comprise many thousands of members. While the
4 exact number and identities of the putative class members are unknown at this time, such
5 information can be ascertained through appropriate investigation and discovery. The
6 disposition of the claims of the class members in a single class action will provide
7 substantial benefits to all parties and to the Court.

8 14. Typicality: Plaintiff's claims are typical of the claims of all putative class
9 members in that Plaintiff and putative class members suffered similar damages resulting
10 from a single, continuing course of conduct by Defendants.

11 15. Adequacy of Representation: Plaintiff will fairly and adequately represent and
12 protect the interests of the class. Plaintiff has retained counsel with substantial experience
13 in prosecuting complex lawsuits and class actions. Plaintiff and her counsel are committed
14 to vigorously prosecuting this action on behalf of the class and have the financial resources
15 to do so. Neither Plaintiff nor her counsel have any interests adverse to the class.

16 16. Superiority of Class Action and Impracticability of Individual Actions:
17 Plaintiff and the members of the putative class have suffered, and will continue to suffer,
18 harm as a result of Defendants' unlawful, fraudulent and unfair conduct. A class action is
19 superior to other available methods for the fair and efficient adjudication of the
20 controversy. Individual joinder of all members of the putative class is impractical. Even if
21 individual members of the putative class had the resources to pursue individual litigation, it
22 would be unduly burdensome to the courts to be faced with potentially hundreds of
23 thousands individual cases. Individual litigation magnifies the delay and expense to all
24 parties in the court system of resolving the controversies engendered by Defendants'
25 common course of conduct. The class action device allows a single court to provide the
26 benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all
27 claims of putative class members in a single forum. The conduct of this action as a class
28 action conserves the resources of the parties and of the judicial system, and protects the

1 rights of the putative class members.

2 17. Common Questions of Law and Fact Predominate: Questions of law and fact
3 common to the claims of Plaintiff and putative class members predominate over any
4 questions of law or fact affecting only individual members of the putative class. Common
5 questions of law and fact include but are not limited to the following:

- 6 a. Whether as matter of routine practice and policy Defendants are recording
7 all phone calls without notice or permission;
- 8 b. Whether the phone calls being recorded without notice or permission
9 involve confidential information;
- 10 c. Whether Defendants record phone calls involving confidential information
11 intentionally;
- 12 d. Whether Defendants' conduct is a violation of California Penal Code §§
13 630, 631 or 632, 632.5, 632.6 and/or 632.7, and are therefore liable for
14 monetary damages under § 637.2;
- 15 e. Whether Plaintiff and the members of the class sustained monetary loss.

16 18. Notice: Notice can be provided via publication, including but not limited to
17 Internet publication, and corrective advertising such as notification on FIRST
18 NATIONAL's website and other advertising materials.

19 **FIRST CAUSE OF ACTION FOR**
20 **UNLAWFUL WIRETAPPING AND RECORDING WITHOUT NOTICE PHONE**
21 **CALLS INVOLVING CONFIDENTIAL INFORMATION,**
22 **CAL. PENAL CODE § 630 ET SEQ.**

23 19. Plaintiff incorporates here by reference the allegations in paragraphs 1 through
24 18 above.

25 20. This cause of action is brought for violations of the California Penal Code,
26 Sections 630 *et seq.* Plaintiff brings her cause of action on her own behalf and on behalf of
27 all similarly situated persons.

28 21. As set forth herein, Defendants violated and continue to violate California law

1 by wiretapping and recording phone calls that involve confidential information without
2 notice. The entirety of Defendants' business involves phone calls that require discussion of
3 sensitive financial information about financial issues, for which all persons reasonably
4 believe the information is confined to those on the phone and not recorded permanently.

5 22. Defendants do so intentionally, indeed, Defendants have a policy of recording
6 and saving all incoming and outgoing phone calls and misleading employees and others
7 about such practices. Defendants have further guaranteed that persons participating in
8 telephone calls involving confidential information will not know of the taping by giving
9 instructions to FIRST NATIONAL's internal IT personnel and outside phone company not
10 to provide the standard, electronic notice at the beginning of a call. Thus, not only are all
11 calls recorded without notice, but notice is intentionally withheld by Defendants despite
12 knowledge of the need to provide such notice if calls are to be recorded.

13 23. As a result of Defendants' violations, they are liable to each person who had a
14 telephone conversation involving confidential information wiretapped or recorded without
15 their knowledge such victim's actual damages or \$5,000 per occurrence, whichever is
16 greater.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. For an order certifying that this action may be maintained as a class action;
- b. For damages in an amount to be proven at trial;
- c. For an award of suitable equitable, injunctive and declaratory relief, including but not limited to ordering Defendants to provide proper notice to those who make calls to FIRST NATIONAL or receive from FIRST NATIONAL;
- d. For prejudgment and post-judgment interest;
- e. For reasonable attorneys' fees and costs; and
- f. For such other and further relief as is just and appropriate.

Dated: June 25, 2013

ONE LLP

Bv: 

Christopher W. Arledge
Attorneys for Plaintiff, Annette
Jonczyk, on behalf of herself and
others similarly situated

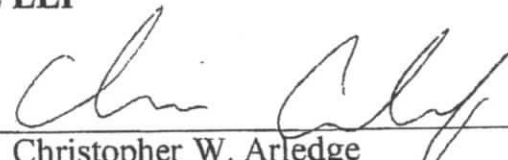
JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: June 25, 2013

ONE LLP

Bv:



Christopher W. Arledge
Attorneys for Plaintiff, Annette
Jonczyk, on behalf of herself and
others similarly situated

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

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Josephine Tucker and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

SACV13- 959 JST (AGR~~x~~)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

I. (a) PLAINTIFFS (Check box if you are representing yourself)
ANNETTE JONCZYK, on behalf of herself and others similarly situated

DEFENDANTS (Check box if you are representing yourself)
FIRST NATIONAL CAPITAL CORPORATION, a California corporation; and KEITH DUGGAN, an individual

COPY

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Christopher W. Arledge & Peter R. Afrasiabi of One LLP
4000 MacArthur Blvd., West Tower, Ste. 1100
Newport Beach, CA 92660; Tel.: (949) 502-2870

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1. U.S. Government Plaintiff
- 2. U.S. Government Defendant
- 3. Federal Question (U.S. Government Not a Party)
- 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|---------------------------------------|---|---|--------------------------------|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 | DEF <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- 1. Original Proceeding
- 2. Removed from State Court
- 3. Remanded from Appellate Court
- 4. Reinstated or Reopened
- 5. Transferred from Another District (See 28 USC 1412)
- 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ To be determined at trial

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Unlawful Wiretapping and Recording Without Notice of Phone Calls Involving Confidential Information under California Penal Code § 630, et seq.; Subject matter jurisdiction under the Class Action Fairness Act (CAFA), 18 U.S.C. § 1332(d).

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS	
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 820 Copyrights	
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 467 Alien Detainee	<input type="checkbox"/> 830 Patent	
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 290 All Other Real Property	TORTS		<input type="checkbox"/> 840 Trademark	
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Miller Act	PERSONAL INJURY		<input type="checkbox"/> 510 Motions to Vacate Sentence	SOCIAL SECURITY	
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 320 Other Fraud	<input type="checkbox"/> 530 General	<input type="checkbox"/> 861 HIA (1395ff)	
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 545 Death Penalty Other:	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))	
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY		<input type="checkbox"/> 865 RSI (405 (g))	
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	FEDERAL TAX SUITS	
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	FORFEITURE/PENALTY		<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 425 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		
<input type="checkbox"/> 895 Freedom of Info Act	<input type="checkbox"/> 2101 and Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	CIVIL RIGHTS			
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other		
<input type="checkbox"/> 899 Admin Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 441 Voting	LABOR		
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act		
			<input type="checkbox"/> 443 Housing Accommodations	<input type="checkbox"/> 720 Labor-Mgmt Relations		
			<input type="checkbox"/> 445 American with Disabilities Employment	<input type="checkbox"/> 740 Railway Labor Act		
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 750 Family and Medical Leave Act		
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 760 Other Labor Litigation		
				<input type="checkbox"/> 790 Employee Ret. Inc. Security Act		

FOR OFFICE USE ONLY: Case Number: SACV 13 - 00959 JST (AGRx)

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.