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

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

Plaintiff,

v.

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

Defendants.

CASE NO. SACV13-00959 JLS
(AGRx)

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S CLASS
ACTION COMPLAINT**

Hearing:

Date: November 15, 2013

Time: 2:30 p.m.

Place: Courtroom 10A

Complaint Filed: June 25, 2013

1 Defendants FIRST NATIONAL CAPITAL CORPORATION and KEITH
2 DUGGAN (“Defendants”) filed a Motion to Dismiss Plaintiff ANNETTE
3 JONCZYK’s Class Action Complaint (“Motion”) on or about October 2, 2013.
4 Having considered all of the papers filed in connection with the Motion and any
5 oral arguments by counsel thereon, and Good Cause appearing, the Court issues the
6 following Order:

7 1. Under the applicable choice of law analysis, California’s three-part
8 governmental interest test, Missouri law applies to Plaintiff’s claims. Missouri’s
9 call recording statute allows a party to record a conversation without the consent of
10 the other parties.

11 2. Defendant Keith Duggan, acting within the scope of his employment
12 for Defendant First National Capital Corporation, cannot be separately held liable
13 under California’s Invasion of Privacy Act (“CIPA”).

14 3. The application of CIPA to the interstate calls between Plaintiff and
15 Defendants is preempted by federal law.

16 4. Even if CIPA did apply, statutory damages for violations of CIPA are
17 \$5,000 per action, not per occurrence, and any claim for statutory damages of more
18 than \$5,000 in this action is dismissed.

19 IT IS HEREBY ORDERED that the Motion is GRANTED in its entirety and
20 Plaintiff’s Class Action Complaint is dismissed with prejudice.

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23 Dated: _____ Honorable Josephine L. Staton
24 U.S. District Court Judge