

CLASS ACTION COMPLAINT

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

5 **INTRODUCTION**

6 1. This class action lawsuit arises out of Defendant Farfetch.com US, LLC’s
7 (“Defendant”) policy and practice of recording and/or monitoring,¹ without the consent of all
8 parties, (1) California citizens’ telephone calls to Defendants’ customer service telephone
9 numbers and, on information and belief, (2) Defendants’ return calls to California citizens.
10 Defendants’ customer service telephone numbers may be referred to collectively as “Defendants’
11 customer service numbers.” Those numbers include but are not limited to (646) 791-3768.

12 2. During the relevant time period, Defendants intentionally and surreptitiously
13 recorded and/or monitored telephone calls made or routed to Defendants’ customer service
14 numbers. Defendants recorded and/or monitored calls without warning or disclosing to inbound
15 callers and, on information and belief, recipients of outbound calls that their calls might be
16 recorded or monitored.

17 3. Defendants’ policy and practice of recording and monitoring, without the consent
18 of all parties, Defendants’ telephone conversations with California citizens who, while physically
19 located in California, called one or more of Defendants’ customer service numbers or received a
20 call from Defendants violates the California Invasion of Privacy Act (Penal Code §§ 630, *et seq.*
21 (“CIPA”). Specifically, Defendants’ policy and practice violate Penal Code § 632.7, which
22 prohibits the recording or monitoring of a communication made to or from a cellular or cordless
23 telephone without the consent of all parties to the communication.

24 4. Because of Defendants’ violations, all individuals who called or were routed to
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27 ¹ “Monitor,” as used in this complaint, includes both (a) the common understanding of a person
28 listening in on a call and (b) “intercepting,” as that term is used in the California Invasion of
Privacy Act (“CIPA”). Thus, “monitor” will be used in lieu of “intercept” throughout this
complaint.

1 one of Defendants' customer service numbers, or who received a call from one of those numbers,
2 while they were in California and were recorded or monitored by Defendants surreptitiously and
3 without disclosure are entitled to an award of statutory damages.

4 **PARTIES**

5 5. Plaintiff Nathan Walter is an individual and a resident of Orange County,
6 California.

7 6. Defendant Farfetch.com US, LLC is an LLC organized under the laws of the State
8 of California with its headquarters in Los Angeles, California. Farfetch.com US, LLC
9 systematically and continuously does business in California and with California citizens.

10 7. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
11 DOES 1 through 50, inclusive, and therefore sues those defendants by those fictitious names.
12 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
13 Plaintiff is informed and believes, and on that ground alleges, that each of the fictitiously-named
14 defendants is responsible in some manner for the occurrences alleged and that Plaintiff's injuries
15 and damages, as alleged, are proximately caused by those occurrences.

16 8. Plaintiff is informed and believes and, on that ground, alleges that, at all relevant
17 times, each named Defendant and the Doe Defendants were the principals, agents, partners, joint
18 venturers, officers, directors, controlling shareholders, subsidiaries, affiliates, parent
19 corporations, successors in interest, and/or predecessors in interest of some or all of the other
20 Defendants, were engaged with some or all of the other Defendants in a joint enterprise for profit,
21 and bore such other relationships to some or all of the other Defendants as to be liable for their
22 conduct with respect to the matters alleged below. Plaintiff is informed and believes, and on that
23 ground alleges, that each Defendant acted pursuant to and within the scope of the relationships
24 alleged above and that each knew or should have known about and that each authorized, ratified,
25 adopted, approved, controlled, aided and abetted the conduct of all Defendants.

JURISDICTION AND VENUE

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2 9. This Court has subject matter jurisdiction over this action under California Penal
3 Code §§ 632.7 and 637.2.

4 10. This Court has personal jurisdiction over Defendants because Farfetch.com US,
5 LLC is an LLC organized under the laws of the State of California and has its principal office in
6 Los Angeles, California; Defendants continuously and systematically have conducted business in
7 the State of California; and Plaintiff's rights were violated in the State of California and these
8 violations arose out of his contact with Defendants from and within California.

9 11. Venue is proper in Orange County because Defendants' violations of Plaintiff's
10 rights arose out of his telephone conversations with Defendants from and within Orange County.

11 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

12 12. Plaintiff is informed and believes and on that ground alleges that, at all relevant
13 times, Defendants' customer service numbers, including without limitation (646) 791-3768,
14 connected callers to Defendants' customer service representatives.

15 13. Plaintiff is informed and believes and on that ground alleges that, at all relevant
16 times, Defendants' employees and agents at the customer service call centers received incoming
17 calls from callers including California callers. Plaintiff is further informed and believes and on
18 that ground alleges that Defendants intentionally have used technology consisting of hardware
19 and/or software or other equipment to carry out a policy and practice of recording and/or
20 monitoring calls routed to Defendants' customer service representatives.

21 14. Plaintiff is informed and believes and on that ground alleges that, at all relevant
22 times, Defendants' employees and agents at the customer service call centers made outbound calls
23 to callers including California callers. Plaintiff is further informed and believes and on that ground
24 alleges that Defendants intentionally have used technology consisting of hardware and/or software
25 or other equipment to carry out a policy and practice of recording and/or monitoring outbound
26 calls made by Defendants' customer service representatives.

27 15. Plaintiff is informed and believes and on that ground alleges that, at all relevant
28 times, Defendants' employees and agents at or associated with the customer service call centers

1 were and are directed, trained and instructed to, and did and do, record and/or monitor telephone
2 calls between the customer service representatives and callers, including California callers.

3 16. On January 3, 16, 20, and 21, 2020, Plaintiff called one of Defendants' customer
4 service numbers – specifically (646) 791-3768 – and engaged in conversations with Defendants'
5 employees or agents. Plaintiff conducted all four telephone conversations from a location within
6 the State of California while using his cellular telephone.

7 17. During Plaintiff's telephone conversations with Defendants' employees or agents
8 on January 3, 16, 20, and 21, 2020, Defendants' employees or agents failed to disclose to Plaintiff
9 that his telephone conversations were being recorded and/or monitored. Plaintiff did not give and
10 could not have given consent for his telephone calls to be recorded or monitored because the lack
11 of warning or disclosure regarding call recording left him unaware during the telephone calls that
12 Defendants were engaged, or might engage, in that practice.

13 18. On January 22, 2020, Plaintiff again used his cellular telephone to call Defendants'
14 customer service number, (646) 791-3768, from a location within the State of California. After
15 several minutes of conversation with Defendants' agent or employee, Defendant's agent or
16 employee told Plaintiff that he (Defendant's agent or employee) was going to stop "the recording."
17 This was the first time that Plaintiff had heard of any recording and the first time that Plaintiff was
18 informed and became aware that his call had been recorded up to that point in time. Until the point
19 in the call when Defendants expressly discussed ceasing recording, Plaintiff had not given and
20 could not have given consent for his call to be recorded or monitored because the lack of warning
21 or disclosure regarding call recording left him unaware that Defendant was recording the call.

22 19. Plaintiff is informed and believes and on that ground alleges that, at all relevant
23 times, other callers who called one or more of Defendants' customer service numbers from a
24 location in California were not informed at the call outset by Defendants or anyone else that their
25 calls were being recorded and/or monitored. Thus, that recording and/or monitoring necessarily
26 occurred without the callers' knowledge or consent.

27 20. Plaintiff is informed and believes and on that ground alleges that, at all relevant
28 times, persons located in California who received calls from Defendants' customer service call

1 centers were not informed at the call outset by Defendants or anyone else that their calls were
2 being recorded and/or monitored. Thus, that recording and/or monitoring necessarily occurred
3 without the call recipients' knowledge or consent.

4 21. Because there was no warning that Plaintiff's first four calls and the first part of
5 his fifth call would be recorded or monitored, Plaintiff had a reasonable expectation that his
6 telephone conversations with Defendants' employees and agents were, and would remain, private
7 and confined to the parties on the telephone. That recording and/or monitoring occurred without
8 his consent, is highly offensive to Plaintiff and would be highly offensive to a reasonable person,
9 including members of the proposed Plaintiff Class.

10 **CLASS ACTION ALLEGATIONS**

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

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

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

26 24. By their unlawful actions, Defendants have violated Plaintiff's and the PC § 632.7
27 Class's privacy rights under CIPA, California Penal Code §§ 630 *et seq.* The questions raised
28 are, therefore, of common or general interest to the PC § 632.7 Class members, who have a well-

1 defined community of interest in the questions of law and fact raised in this action.

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

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

10 **Numerosity**

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

13 **Typicality**

14 28. Plaintiff's claims are typical of the claims of all of the other members of the PC §
15 632.7 Class. Plaintiff's claims and the PC § 632.7 Class members' claims are based on the same
16 legal theories and arise from the same unlawful conduct, resulting in the same injury to Plaintiff
17 and to all of the other PC § 632.7 Class members.

18 **Common Questions of Law and Fact**

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

- 22 a. Whether Defendants had a policy or practice of recording and/or monitoring
23 inbound telephone calls made to Defendants' customer service numbers;
- 24 b. Whether Defendants had a policy or practice of not disclosing to inbound
25 callers that their conversations with Defendants' employees and agents
26 would be recorded and/or monitored;
- 27 c. Whether Defendants had a policy or practice of not obtaining inbound
28 callers' consent to record and/or monitor conversations between

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Defendants’ agents and employees, on the one hand, and inbound callers, on the other;

d. Whether Defendants 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 Defendants’ agents and employees, and

ii. between inbound callers using landline telephones within California and Defendants’ agents and employees using cellular and/or cordless phones;

e. Whether Defendants had a policy or practice of recording and/or monitoring outbound telephone calls made by Defendants’ agents or employees;

f. Whether Defendants had a policy or practice of not disclosing to outbound call recipients that their conversations with Defendants’ agents and employees would be recorded and/or monitored;

g. Whether Defendants had a policy or practice of failing to obtain consent to record and/or monitor conversations between Defendants’ employees or agents, on the one hand, and outbound call recipients, on the other;

h. Whether Defendants violated California Penal Code § 632.7 by recording and/or monitoring, surreptitiously and without disclosure at the call outset, telephone conversations

i. between Defendants’ agents and employees and outbound call recipients who were using cellular and/or cordless telephones within California, and

ii. between Defendants’ employees and agents using cellular and/or cordless telephones and outbound call recipients who were using landline telephones within California; and

1 i. Whether Class members are entitled to statutory damages of \$5,000 under
2 Penal Code § 637.2 for each violation of Penal Code § 632.7.

3 **Adequacy**

4 30. Plaintiff will fairly and adequately represent and protect the interests of the other
5 members of the PC § 632.7 Class. Plaintiff has retained counsel with substantial experience in
6 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to
7 prosecuting this action vigorously on behalf of the other PC § 632.7 Class members and have the
8 financial resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those
9 of the other PC § 632.7 Class members.

10 **Superiority**

11 31. A class action is superior to other available methods for the fair and efficient
12 adjudication of this controversy because individual litigation of the claims of all PC § 632.7 Class
13 members is impracticable and questions of law and fact common to the PC § 632.7 Class
14 predominate over any questions affecting only individual members of the PC § 632.7 Class. Even
15 if every individual PC § 632.7 Class member could afford individual litigation, the court system
16 could not. It would be unduly burdensome to the courts if individual litigation of the numerous
17 cases were to be required. Individualized litigation also would present the potential for varying,
18 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
19 and to the court system resulting from multiple trials of the same factual issues. By contrast, the
20 conduct of this action as a class action with respect to some or all of the issues will present fewer
21 management difficulties, conserve the resources of the court system and the parties and protect
22 the rights of each PC § 632.7 Class member. Further, it will prevent the very real harm that would
23 be suffered by numerous putative PC § 632.7 Class members who simply will be unable to enforce
24 individual claims of this size on their own, and by Defendants’ competitors, who will be placed
25 at a competitive disadvantage as their punishment for obeying the law. Plaintiff anticipates no
26 difficulty in the management of this case as a class action.

27 32. The prosecution of separate actions by individual PC § 632.7 Class members may
28 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive

1 of the interests of other PC § 632.7 Class members not parties to those adjudications or that would
2 substantially impair or impede the ability of those non-party PC § 632.7 Class members to protect
3 their interests.

4 33. The prosecution of individual actions by PC § 632.7 Class members would run the
5 risk of establishing inconsistent standards of conduct for Defendants.

6
7 **FIRST CAUSE OF ACTION**
8 **Unlawful Recording and/or Monitoring of**
9 **Cellular and Cordless Telephone Communications**
10 **(Violation of California Penal Code § 632.7)**
11 **Against All Defendants**

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

14 35. On January 3, 16, 20, 21 and 22, 2020, while located in California, Plaintiff used
15 a cellular telephone to call one of Defendants' customer service numbers ((646) 791-3768) and
16 participated in telephone conversations with Defendants' employees or agents.

17 36. Plaintiff is informed and believes and on that ground alleges that, at all relevant
18 times, Defendants had a policy and practice of using hardware and/or software or other equipment
19 to surreptitiously record and/or monitor telephone conversations with Plaintiff and other PC §
20 632.7 Class members who (a) used cellular and/or cordless telephones to make calls to Defendants'
21 customer service numbers, (b) used landline telephones to make calls to Defendants' cellular
22 and/or cordless telephones, (c) received calls on their cellular and/or cordless telephones from
23 Defendants' customer service agents or employees, and/or (d) received calls on their landline
24 telephones from Defendants' customer service agents or employees who were using cellular and/or
25 cordless telephones.

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

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

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

22 40. Defendants’ conduct as described above violated California Penal Code §
23 632.7(a). Under Penal Code § 637.2, Plaintiff and PC § 632.7 Class members therefore are
24 entitled to \$5,000 in statutory damages per violation, even in the absence of proof of actual
25 damages, the amount deemed proper by the California Legislature.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, on behalf of himself and members of the Class, prays for the
3 following relief:

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

15
16 Respectfully submitted,

17 Dated: April 1, 2020

KELLER GROVER LLP

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19 By: 

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JURY DEMAND

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

Respectfully submitted,

Dated: April 1, 2020

KELLER GROVER LLP

By: 

ERIC A. GROVER

Attorneys for Plaintiff