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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 YEVGENIYA GRANINA, on Behalf of Herself)
13 and All Others Similarly Situated,

14 Plaintiff,

15 v.

16 EDDIE BAUER, LLC and DOES 1 through
17 100, inclusive,

18 Defendants.
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Case No: BC569111

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

**STATUTORY DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Yevgeniya Granina (“Plaintiff”), brings this action against Defendant Eddie
2 Bauer, LLC and DOES 1-100 (collectively “Eddie Bauer” or “Defendant”) on behalf of herself,
3 and all others similarly situated, upon information and belief, except as to her own actions, the
4 investigation of her counsel, and the facts that are a matter of public record, as follows:

5 INTRODUCTION

6 1. This class action arises out of Defendant’s unlawful recording of Plaintiff’s and
7 the Class members’ telephone communications without first providing notice and without first
8 obtaining caller consent to record the telephone communications in violation of California’s
9 Invasion of Privacy Act, California Penal Code § 630, *et seq.* As alleged herein, during the
10 proposed Class Period, Defendant had a policy and practice of intentionally and surreptitiously
11 recording telephone communications of consumers, including Plaintiff, without their consent.

12 2. Specifically, Defendant’s acts and practices violate Penal Code § 632, which
13 prohibits the recording of confidential communications made by telephone without the
14 knowledge or consent of all parties to the communication. Penal Code § 632 is violated the
15 moment the recording is made without the consent of all parties thereto, regardless of whether it
16 is subsequently disclosed. The only intent required is that the act of recording itself be done
17 intentionally. There is no requisite intent on behalf of the party doing the surreptitious recording
18 to break California law, or to invade the privacy rights of any other person.

19 3. Penal Code § 632 plays an important role in protecting the privacy of California
20 residents. As recognized by the California Supreme Court, secret recording “denies the speaker
21 an important aspect of privacy of communication – the right to control the nature and extent of
22 the firsthand dissemination of his statements.” *Ribas v. Clark*, 38 Cal. 3d 355, 361 (1985)
23 (citations omitted). The California Supreme Court has declared that California has a “strong and
24 continuing interest in the full and vigorous application” of the provisions that prohibit “the
25 recording of telephone conversations without the knowledge or consent of *all* parties to the
26 conversations.” *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 126 (2006) (italics in
27 original). In *Kearney*, the California Supreme Court explained that if a company wants to record
28 calls as part of its routine business activity, it can avoid liability by giving an appropriate

1 warning at the beginning of each call. "A business that adequately advises all parties to a
2 telephone call, at the outset of the conversation, of its intent to record the call would not violate
3 the provision." *Id* at 118. Furthermore, businesses can take unfair advantage of consumers if
4 they do not disclose that the calls are being recorded, by "selectively disclosing recordings when
5 disclosure serves the company's interest, but not volunteering the recordings' existence (or
6 quickly destroying them) when they would be detrimental to the company. . ." *Id* at 126.

7 4. Plaintiff does not seek any relief greater than or different from the relief sought for
8 the Class of which Plaintiff is a member. If successful, this action will enforce an important right
9 affecting the public interest and will confer a significant benefit, whether pecuniary or non-
10 pecuniary, on a large class of persons. Private enforcement is necessary and places a
11 disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in this matter.

12 **JURISDICTION AND VENUE**

13 5. This Court has subject matter jurisdiction over the cause of action asserted herein
14 pursuant to Article VI, § 10 of the California Constitution, California Penal Code § 632 and
15 637.2. In the aggregate, the damages caused to the members of the Class as defined below
16 exceed the jurisdictional minimum of this Court, but neither the Plaintiff nor any member of the
17 Class individually has suffered damages of, at least, \$75,000.

18 6. This Court has jurisdiction over the Defendant named herein because Defendant
19 does sufficient business in California, has sufficient minimum contacts with California or
20 otherwise intentionally avails itself of the markets within California through its sales, advertising
21 and marketing to render the exercise of jurisdiction by California courts and the application of
22 California law to the claims of the Plaintiff permissible under traditional notions of fair play and
23 substantial justice. Further, there is no federal question at issue as the claims herein are based
24 solely on California law.

25 7. Venue is proper in this Court since, as detailed below, the named Plaintiff is a
26 resident of this County, a substantial number of Defendant's acts occurred in this County, and
27 Defendant received substantial compensation from sales of its products in this County by doing
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1 business here. Thus, as to the named Plaintiff and other Class members, certain liability of the
2 Defendant arose in part in this County.

3 **THE PARTIES**

4 **A. Plaintiff**

5 8. Plaintiff Yevgeniya Granina (herein referred to as "Plaintiff") is an individual
6 residing in Los Angeles County, California. It is alleged that on December 4, 2014 and
7 December 10, 2014, while Plaintiff resided in and was physically present in the State of
8 California, she had telephonic communications with live representatives of Defendant while
9 using a cellular telephone. Plaintiff is informed and believes and thereon alleges, that the
10 communications were secretly recorded by Defendant, without first providing her notice and
11 without first obtaining her consent to record the telephone communications. During the course of
12 the conversations with Defendant, Plaintiff disclosed sensitive personal identifying information
13 and confidential financial information.

14 **B. Defendant**

15 9. Defendant Eddie Bauer, LLC (herein referred to as "Eddie Bauer") is a Delaware
16 limited liability company, headquartered and with its principal place of business located in
17 Bellevue, Washington. Eddie Bauer systematically and continuously does business in California
18 and with California residents.

19 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant Eddie
20 Bauer owns and operates call center(s) located in the United States. Plaintiff is informed and
21 believes, and based thereon alleges, that at all times during the Class Period, Defendant's
22 employees, agents, and representatives at these call center(s) were directed, trained and instructed
23 to, and did, record incoming telephone communications from prospective customers, including
24 residents of California.

25 **C. Doe Defendants**

26 11. The true names and capacities of Defendants sued in this First Amended
27 Complaint as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore
28 sues such Defendants by such fictitious names. Plaintiff will amend this First Amended

1 Complaint to reflect the true names and capacities of the Defendants designated herein as DOES
2 1 through 100 when such identities become known.

3 **D. Agency/Aiding And Abetting**

4 12. At all times herein mentioned, Defendants, and each of them, were an agent or
5 joint venturer of each of the other Defendants, and in doing the acts alleged herein, were acting
6 within the course and scope of such agency. Each Defendant had actual and/or constructive
7 knowledge of the acts of each of the other Defendants, and ratified, approved, joined in,
8 acquiesced and/or authorized the wrongful acts of each co-defendant, and/or retained the benefits
9 of said wrongful acts.

10 13. Defendants, and each of them, aided and abetted, encouraged and rendered
11 substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the
12 Class, as alleged herein. In taking action, as particularized herein, to aid and abet and
13 substantially assist the commissions of these wrongful acts and other wrongdoings complained
14 of, each of the Defendants acted with an awareness of its primary wrongdoing and realized that
15 its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful
16 goals, and wrongdoing.

17 14. All allegations in this First Amended Complaint are based on information and
18 belief and/or are likely to have evidentiary support after a reasonable opportunity for further
19 investigation or discovery. Whenever allegations in this Complaint are contrary or inconsistent,
20 such allegations shall be deemed alternative.

21 **CONDUCT GIVING RISE TO THE VIOLATIONS OF THE LAW**

22 **A. Plaintiff's Contact with Defendant**

23 15. On December 4, 2014, and thereafter on December 10, 2014, Plaintiff placed calls
24 to Defendant from her home in the State of California and while using her cellular telephone. On
25 both occasions, Plaintiff called Eddie Bauer's toll-free telephone number at 1-800-426-8020,
26 listed on the Eddie Bauer website and spoke with employees, agents, or representatives of
27 Defendant. During the call on December 4, 2014 at approximately 2:43 p.m., Plaintiff obtained
28 information about merchandise and made a purchase with a live representative of Defendant.

1 During the call on December 10, 2014 at approximately 4:29 p.m., Plaintiff confirmed details of
2 the merchandise purchase order (Order # 73574475) with a live representative of Defendant.
3 Plaintiff is informed and believes, and based thereon alleges, that the telephone number
4 connected Plaintiff to a call center which is owned and operated by Defendant, and that Plaintiff
5 had telephone conversations.

6 16. During the initial inbound telephone communication on December 4, 2014,
7 Plaintiff revealed sensitive, private, and confidential financial information, including but not
8 limited to her first and last name, full residential address, cellular telephone number, credit card
9 number, expiration date, and email address. During the subsequent conversation on December
10 10, 2014, Plaintiff again revealed sensitive, private, and confidential information, including but
11 not limited to her first and last name, full residential address, cellular telephone number, and
12 email address. At no point during these inbound telephone communications was Plaintiff ever
13 informed that her communications were being recorded. At no point during these inbound
14 telephone communications did Plaintiff give her consent for the telephone communications to be
15 recorded, and she was entirely unaware that Defendant was engaged in that practice during the
16 telephone communications. On information and belief, these inbound telephone communications
17 were recorded by Defendant, without Plaintiff's knowledge or consent.

18 **B. Defendant's Conduct Violated Penal Code § 632**

19 17. Plaintiff is informed and believes and thereon alleges, that Defendant recorded
20 said inbound telephone communications. Defendant failed to verbally warn Plaintiff, at the
21 outset of the telephone communications, of Defendant's intent to record the communications.
22 Defendant failed to provide an automated, pre-recorded warning or a periodically repeated,
23 audible "beep tone" or other sound throughout the duration of the telephone communications to
24 warn Plaintiff that the communications were being recorded. Because Defendant failed to warn
25 Plaintiff at the outset of the telephone communications that the communications were being
26 recorded and her consent for recording of the telephone communications never was sought,
27 Plaintiff had an objectively reasonable expectation that her telephone communications with
28 Defendant's employees, agents, or representatives were not being recorded. That recording

1 without her consent is highly offensive to Plaintiff and would be highly offensive to a reasonable
2 person, including members of the proposed Class. Moreover, as a result of Defendant's
3 surreptitious recording, Plaintiff, and other members of the Class, were deprived of the ability to
4 either decline to participate in a recorded communication, refuse to provide confidential
5 information, or modify the tone or speech to account for the fact that the communication was
6 being recorded. Plaintiff did not give, and could not have given consent for the telephone
7 communications to be recorded because she was entirely unaware that Defendant was engaged in
8 that practice during the telephone communications.

9 18. Plaintiff is further informed and believes and thereon alleges, that during the
10 Class Period, Defendant intentionally utilized certain computer hardware and software
11 technology ("Call Recording Technology") to execute a company-wide policy and practice of
12 recording inbound telephone communications with prospective customers, including California
13 customers.

14 19. Plaintiff is further informed and believes and thereon alleges, that Defendant
15 installed and/or utilized Call Recording Technology on its consumer-facing telephone lines. This
16 Call Recording Technology enabled Defendant to record telephone communications with
17 customers, and allowed them to store and listen to these recordings for various purposes.

18 20. Plaintiff is further informed and believes and thereon alleges, that Defendant's
19 employees, agents, and representatives were directed, trained, and instructed to, and did record
20 inbound telephone communications from California callers, including Plaintiff, without their
21 knowledge or consent.

22 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

23 21. Plaintiff brings this lawsuit on behalf of herself and an ascertainable statewide
24 class ("Class") defined as follows:

25 All individuals who, between July 1, 2014 and January 13, 2015, inclusive ("Class
26 Period"), while physically present in the State of California: (1) used a telephone to
27 participate in at least one inbound telephone communication with a live
28 representative of Eddie Bauer that was recorded by Eddie Bauer; (2) based on Eddie

1 Bauer's business records, resulted in a purchase; and (3) were not provided with a
2 warning or disclosure at the outset of the call by Eddie Bauer that their telephone
3 communication was being recorded.

4 22. Excluded from the Class are all employees of Defendant, all attorneys and
5 employees of Defendant's counsel, all attorneys and employees of Plaintiff's Counsel, and the
6 judicial officers to whom this matter is assigned and their staff.

7 23. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to
8 amend or otherwise alter the Class definition presented to the Court at the appropriate time, or
9 propose or eliminate subclasses, in response to facts learned through discovery, legal argument
10 advanced by Defendant, or otherwise.

11 24. This action has been brought and may properly be maintained as a class action
12 pursuant to California Code of Civil Procedure § 382, and case law thereunder, to which the
13 California trial courts have been directed by the California Supreme Court to look for guidance.

14 25. The members of the Class are so numerous that joinder of all members is
15 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
16 Plaintiff estimates that there are more than 100 persons. Moreover, Plaintiff alleges that the
17 precise number of Class members and their location can be ascertained through appropriate
18 discovery and records held by Defendant and/or third parties, including without limitation
19 Defendant's call records, purchase records, customer records, call lists, and the secret recordings
20 themselves. This information may then be used to contact potential Class members.

21 26. There is a well-defined community of interest in the questions law and fact
22 affecting the parties represented in this action.

23 27. Common questions of law and fact exist as to all members of the Class. These
24 common questions predominate over the questions affecting only individual members of the
25 Class.

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- 1 28. Among the questions of law and fact common to the Class are, *inter alia*:
- 2 a. Whether Defendant had a policy and practice of recording inbound telephone
3 communications with customers in California;
- 4 b. Whether Defendant installed Call Recording Technology to implement their
5 policy of recording inbound telephone communications with their customers;
- 6 c. Whether Defendant's employees, agents, or representatives were directed, trained,
7 and instructed to, and did, record inbound telephone communications with customers in order to
8 implement the Defendant's policy and practice of recording telephone communications with
9 customers;
- 10 d. Whether Defendant's policy and practice of recording inbound telephone
11 communications included a policy and practice of warning Class members, including the
12 Plaintiff, at the outset of each recorded telephone communication that the telephone
13 communication was being recorded;
- 14 e. Whether Defendant failed to warn Class members who participated in an inbound
15 telephone communication with the Defendant that the telephone communication was being
16 recorded;
- 17 f. Whether Defendant's recording of Plaintiff's and Class members' inbound
18 telephone communications without warning constitutes violations of California Penal Code
19 § 632;
- 20 g. Whether Plaintiff and each Class member are entitled to statutory damages of five
21 thousand dollars (\$5,000) under California Penal Code § 637.2(a)(1) for every violation of
22 California Penal Code § 632; and
- 23 h. Whether Plaintiff and Class members are entitled to injunctive relief under
24 California Penal Code § 637.2(b) to enjoin or restrain the from committing further violations of
25 California Penal Code § 632.

26 29. The claims of Plaintiff are typical of those of the other Class members because
27 Plaintiff, like every other Class member, was exposed to virtually identical conduct. Plaintiff
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1 alleges that Defendant systematically and intentionally recorded inbound telephone
2 communications without warning all parties to these communications that the conversations were
3 being recorded, in violation of the privacy rights of the Plaintiff and the Class. The harm that
4 Plaintiff and all other Class members suffered arose from, and was caused by, the same conduct
5 by Defendant. Defendant has acted, or refused to act, on grounds generally applicable to the
6 Class, thereby making injunctive relief and statutory damages pursuant to California Penal Code
7 § 637.2 appropriate with respect to the Class as a whole. Likewise, Defendant's conduct as
8 described above is unlawful, capable of repetition, and could continue unless restrained and
9 enjoined by the Court.

10 30. Plaintiff can fairly and adequately represent the interests of the Class, she has no
11 conflicts of interest with other Class members, is subject to no unique defenses, and has retained
12 counsel competent and experienced in the prosecution of class actions.

13 31. A class action is superior to other available methods for the fair and efficient
14 adjudication of this controversy because joinder of all members is impracticable, the damages
15 suffered by each Class member are low, the likelihood of individual Class members prosecuting
16 separate claims is remote and individual Class members do not have a significant interest in
17 individually controlling the prosecution of separate actions. Moreover, because Defendant's
18 recording activity is not disclosed, Class members are unlikely to be aware of their claims, unless
19 notice is sent to each Class member. Relief concerning Plaintiff's rights under the laws alleged
20 herein and with respect to the Class as a whole would be appropriate. Plaintiff knows of no
21 difficulty to be encountered in the management of this action which would preclude its
22 maintenance as a class action.

23 32. Plaintiff explicitly reserves the right to add additional class representatives,
24 provided that Defendant is given an opportunity to conduct discovery on the chosen
25 representative(s). Plaintiff will identify and propose class representatives with the filing of
26 Plaintiff's motion for class certification.

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1 **FIRST CAUSE OF ACTION**

2 **FOR VIOLATIONS OF CALIFORNIA PENAL CODE § 632**

3 **(By Plaintiff and the Class Against Defendant Eddie Bauer, LLC and DOES 1**
4 **through 100, Inclusive)**

5 33. Plaintiff re-alleges and incorporates by reference the allegations contained in the
6 preceding paragraphs above as if fully set forth herein and further alleges as follows.

7 34. California Penal Code § 632 prohibits the intentional recording of a confidential
8 communication without the consent of all parties to the communication. Defendant has violated
9 Penal Code § 632 in its telephone communication with Plaintiff and the Class. During the
10 proposed Class Period, Defendant, as a standard business practice, has intentionally recorded
11 confidential communications with Plaintiff and other Class members alike without obtaining
12 their consent.

13 35. These telephone communications have all been “confidential communications”
14 within the meaning of Penal Code § 632(c) in that Plaintiff and the Class desired and expected
15 the telephone communications as a whole (*i.e.*, both sides of the conversation, taken together) to
16 be confined to the parties thereto and not overheard or recorded. Indeed, Plaintiff and the Class
17 had an objectively reasonable expectation that their conversations were not being recorded. The
18 existence of an objectively reasonable expectation of privacy is supported by the fact that: (1)
19 Defendant is required by law to inform persons it receives calls from, at the outset of the
20 communication, of its intent to record the calls; (2) Businesses that record telephone calls
21 customarily do so inform the persons they call or receive calls from, at the outset of the
22 communication; and (3) Defendant did not inform Plaintiff and Class members who were located
23 in California, at the outset of the communications, that their telephone communications were
24 being recorded, nor did Defendant seek to obtain their consent to record. Moreover, the
25 objectively reasonable expectation that these telephone communications were, and would remain,
26 confidential and would not be recorded is further supported by the fact that the telephone
27 communications pertained to sensitive personally-identifiable information and confidential
28 financial information (including, but not limited to credit card and/or debit card information). As

1 the California Supreme Court has stated, “in light of the circumstances that California consumers
2 are accustomed to being informed at the outset of a telephone call whenever a business entity
3 intends to record the call, it appears equally plausible that, in the absence of such an advisement,
4 a California consumer reasonably would anticipate that such a telephone call is not being
5 recorded, particularly in view of the strong privacy interest most persons have with regard to the
6 personal financial information frequently disclosed in such calls.” *Kearney v. Salomon Smith*
7 *Barney, Inc.*, 39 Cal. 4th 95, 118 (2006).

8 36. Plaintiff is informed and believes and thereon alleges, that Defendant installed
9 and/or caused to be installed Call Recording Technology on the telephone lines of its employees,
10 agents, or representatives who received consumer-facing telephone calls.

11 37. Plaintiff is informed and believes and thereon alleges, that Defendant maintained
12 and utilized this Call Recording Technology with the intent to record telephone communications
13 with customers, and carry out Defendant’s policy of recording telephone communications with
14 customers.

15 38. Plaintiff is informed and believes and thereon alleges, that Defendant directed,
16 trained, and instructed its employees, agents, or representatives to record telephone
17 communications with customers in order to carry out this policy and practice.

18 39. Plaintiff is informed and believes and thereon alleges, that Defendant’s policy and
19 practice of intentionally recording telephone communications with customers failed to include a
20 policy and practice that its employees, agents, or representatives warn Class members, including
21 Plaintiff, who participated in telephone communications with Defendant, at the outset of each
22 communication, that the telephone communication was being recorded by Defendant.

23 40. Plaintiff is informed and believes and thereon alleges, that Defendant
24 failed to warn the Class members, including the Plaintiff, who while residing in and physically
25 present in the State of California, at the outset of each and every telephone communication
26 received by a live representative of Defendant that the telephone communication was recorded.

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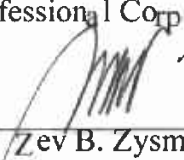
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for Plaintiff and the Class on all claims so triable.

Dated: December 31, 2015

LAW OFFICES OF ZEV B. ZYSMAN
A Professional Corporation

By: _____


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*Attorneys for Plaintiff and
the Proposed Class*

1 **PROOF OF SERVICE**

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3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) ss.:

5 I am employed in the county of Los Angeles, State of California, I am over the age of 18
6 and not a party to the within action; my business address is 15760 Ventura Boulevard, 16th
7 Floor, Encino, CA 91436.

8 On December 31, 2015, pursuant to the Court's Order Authorizing Electronic Service
9 dated May 27, 2015, I instituted service of the document described as:

10 **FIRST AMENDED CLASS ACTION COMPLAINT**

11 on the interested parties by:

12 **BY ELECTRONIC TRANSMISSION THROUGH CASE ANYWHERE.** Submitting
13 the above-described document electronically to CASE ANYWHERE pursuant to the
14 Court's Order Authorizing Electronic Service, on the parties at the respective email
15 addresses listed on the Case Anywhere Service List as set forth below.

16 Edward D. Totino
17 Monica Scott
18 DLA Piper LLP
19 2000 Avenue of the Stars,
20 Suite 400 North Tower
21 Los Angeles, CA 90067-4704

22 Service is deemed effective as provided for in the Electronic Case Management Order.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct. Executed this 31st day of December 2015, at Encino, California.

25 /s/ Zev B. Zysman
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