



California Federal Court Requires Pre-Recording Notification of All Cell Phone Calls Under California Invasion of Privacy Act

A federal district court in the Northern District of California in March refused to dismiss a consumer class action against wireless telecommunications company Verizon alleging that a third-party collections agency hired by Verizon violated the state's unlawful recording statute. California Penal Code section 632.7 prohibits the recording of a telephone call with someone using a mobile phone without first notifying the person that the call will be recorded. The court concluded that, unlike the statutory requirements that apply to the recording of landline telephone calls, mobile phone conversations cannot be recorded without prior notification, regardless of whether the consumer has a "reasonable expectation" that the call will be private and not recorded or whether confidential information is discussed during the call.

In *Lofton v. Verizon Wireless (VAW) LLC*, plaintiff John Lofton alleged that he received two calls from Verizon's third-party collections agency, Collecto, to his cell phone. While Lofton, who is not a Verizon customer, claims he was eventually able to convince Collecto he was not the debtor the collections agency was trying to locate, he discovered during the second call that Collecto had recorded the calls. Lofton alleges that Collecto's recording of the calls placed to his cell phone without his knowledge or consent violated California's Invasion of Privacy Act. He also claims that Verizon is vicariously liable because, in certain scenarios, its call-monitoring disclosure policy allegedly instructed third-party vendors not to disclose that conversations were being recorded.

In a motion to dismiss the case, Verizon argued that the recordings did not violate section 632.7 of the California Invasion of Privacy Act because the recordings did not breach Lofton's privacy. The court disagreed, relying on a footnote from the California Supreme Court's 2002 ruling in *Flanagan v. Flanagan*. The Flanagan footnote distinguishes the section

of the California Invasion of Privacy Act that applies to landline calls, which prohibits the recording of calls without prior notification only where the parties have an expectation of privacy in the communication or are disclosing confidential information, from Section 632.7, which bans the recording of all cell phone conversations without prior notification.

Given that it is extremely difficult to determine accurately, in real time, without asking, whether a caller or call recipient is using a mobile device, the *Verizon* decision suggests that it is prudent to provide a warning that calls may be recorded at the outset of any inbound or outbound telephone communications that are recorded or monitored. In addition, businesses that employ third-party agencies for any calling (telemarketing, collections or customer service) or for the provision of customer call-center services should require that the third party provide the notifications.

For more information about the content of this alert, please contact [Michael Mallow](#) and [Christine Reilly](#).

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