

1 Jonathan Weiss – California State Bar #143895
2 Email: jw@lojw.com
3 LAW OFFICE OF JONATHAN WEISS
4 10576 Troon Avenue
5 Los Angeles, California 90064-4436
6 Telephone: (310) 558-0404

7 Attorneys for Plaintiffs, James E. Elias and James P. Kozik

8 [Additional Attorneys listed on Signature Page]

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

11
12 JAMES E. ELIAS and JAMES P. KOZIK,
13 individually and on behalf of others
14 similarly situated,

15 Plaintiffs,

16 v.

17
18 SYNCHRONY BANK, f/k/a GE
19 CAPITAL RETAIL BANK, a federally-
20 chartered savings association, and DOES
21 1-10, inclusive,

22 Defendants.

Case No.: BC555883

THIRD AMENDED CLASS ACTION
COMPLAINT FOR ILLEGAL
RECORDING

(Pen. Code, §§ 632; 632.7; 637.2)

[Hon. Kenneth R. Freeman – Dept. 310]

Original Filing Date: August 28, 2014
Trial Date: None

23 1. Plaintiffs allege the following based on their own knowledge, based on
24 information and belief, and from their counsel’s investigation.

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1 **PARTIES**

2 **Plaintiffs**

3 2. Plaintiff, **James E. Elias** is, and at all times herein mentioned was, a
4 California citizen residing in Sherman Oaks, Los Angeles County, California.

5 3. Plaintiff, **James P. Kozik** is, and at all times herein mentioned was, a
6 California citizen residing in Lodi, San Joaquin County, California.

7
8 **Defendant**

9 4. Defendant **Synchrony Bank** is a federally-chartered savings
10 association formerly known as GE Capital Retail Bank (GECRB) and GE Money
11 Bank.

12 5. Synchrony Bank claims to be the world's largest provider of retail
13 credit financing.

14
15 **GENERAL ALLEGATIONS**

16 6. Unless otherwise required by the context of the allegation, references to
17 Defendant(s) includes their parents, subsidiaries, affiliates, divisions, predecessors,
18 successors, assigns, administrators, associates, alter egos, joint ventures, joint
19 venturers, related or affiliated entities, partners, lenders, franchisors, franchisees,
20 owners, managers, contractors, agents, servants, employees, assistants, and/or consultants.

21 7. The true names and capacities, whether individual, corporate, associate,
22 or otherwise, of Defendants Does 1 through 10 are unknown to Plaintiffs, who
23 therefore sue Defendants by fictitious names and will amend this Complaint to show
24 their true names and capacities when ascertained.

25 8. Each of the Doe Defendants is responsible in some manner for the
26 injuries, damages, practices, and/or violations herein alleged.

27 9. Each Defendant when acting for the other was acting within the course,
28 scope, and authority of said position.

1 whom in one action is impractical.

2 17. *Ascertainability.* The Class is ascertainable and identifiable.
3 Membership in the Class can be determined easily from the Defendants' own
4 records and/or recordings, e.g., recordings during which consent can be heard being
5 given or is absent.

6 18. *Commonality.* Questions of law and fact common to the Class exist as
7 to all members of the Class and predominate over any questions affecting only
8 individual members of the Class.

9 19. *Common factual issues* for the Class include the following:

10 a. Whether Defendants have protocols in place to obtain consent
11 to recording when reaching cellular or cordless phones;

12 b. Whether a reasonable consumer receiving a debt collection
13 phone call would expect to be recorded absent an oral warning at the
14 beginning of the call; and

15 c. Whether Defendants recorded telephone calls.

16 20. *Common legal issues* for the Class include the following:

17 a. Whether Defendants' practices violated California's Invasion
18 of Privacy Act;

19 b. Whether Defendants should be required to provide oral notice
20 at the beginning of a telephone call they wish to record; and

21 c. Whether Defendants should be required to ascertain the type
22 of phone they have reached before recording;

23 21. *Typicality.* Plaintiffs' claims are typical of the Class Members' claims
24 as all such claims arise out of Defendants' unlawfully recording telephone calls with
25 Class Members.

26 22. *Adequacy of Representation.* Plaintiffs have retained counsel
27 experienced in class action litigation. Plaintiffs and their counsel will fairly and
28 adequately protect the Class' interests and have no interests antagonistic to the

1 Class.

2 23. *Predominance and Superiority.* This Class action is appropriate for
3 certification because questions of fact and law common to the members of the Class
4 predominate over questions affecting only individual members. And a Class action
5 is superior to other available methods for the fair and efficient adjudication of this
6 controversy, since individual joinder of all members of the Class is impracticable. If
7 individual Class Members were required to bring separate actions, this Court and
8 courts throughout California would be confronted with a multiplicity of lawsuits
9 burdening the court system while also creating the risk of inconsistent rulings and
10 contradictory judgments. In contrast to proceeding on a case-by-case basis, in which
11 inconsistent results could magnify the delay and expense to all parties and the court
12 system, this class action presents far fewer management difficulties while providing
13 unitary adjudication, economies of scale, and comprehensive supervision by a single
14 Court.

15
16 **ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE**
17 **STATUTES OF LIMITATIONS**

18 24. Defendants are estopped from relying on any statutes of limitation by
19 virtue of their concealment and/or failure to comply with legal process.

20 a. Plaintiff Elias subpoenaed from Synchrony “[a]ll ...
21 electrically stored information ... related to James E. Elias” for production
22 on January 24, 2014; however, Synchrony did not produce any recording
23 of a phone call with James Elias until serving it by mail on June 20, 2014.

24 b. Plaintiff Kozik did not learn or have reason to suspect that his
25 phone calls from Defendants had been recorded until he received the
26 Court-approved *Belaire-West* notice (concerning discovery before Kozik
27 joined this case) which notice was mailed by the administrator on April 11,
28 2016.

1 **COUNT I**

2 **Violations of California Invasion of Privacy Act §§ 632 and/or 632.7**
3 **(Plaintiffs against Defendants Synchrony Bank and Does 1-10)**

4 25. Plaintiffs incorporate by reference the foregoing allegations.

5 26. At all times relevant herein, Plaintiffs used cordless phone systems for
6 phone calls at their home numbers.

7 27. According to records and a recording first disclosed to Plaintiff Elias in
8 June 2014 (despite their being subpoenaed for production in January 2014),
9 beginning in March 2013, Defendants surreptitiously, intentionally, and without
10 consent recorded communications with Plaintiff at his home number without
11 providing oral warnings at the beginning of the calls.

12 28. According to the records and recordings first produced by Defendant on
13 September 23, 2016, Defendants recorded Plaintiff Kozik at his home number
14 without providing oral warnings at the beginning of the calls.

15 29. Defendants' surreptitious, intentional, and consentless recording of
16 telephone communications was not unique to Plaintiffs. Instead, it is an inherent
17 part of their collection calls to Class Members.

18 30. Defendants recorded telephone calls without providing oral warnings
19 at the beginning of the calls with members of the class that the members of the class
20 received on their landline, cordless and /or cellular telephones.

21 31. If Defendants purport to be unable to determine in advance whether
22 Plaintiffs or Class Members receive communications on cordless or cellular
23 telephones, then it is incumbent on Defendants to disclose their intention to record
24 and to obtain the recipients' consent before recording.

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27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray that judgment be entered against Defendants,

1 on behalf of Plaintiffs and each Class member, as follows:
2

3 **COUNT I**

4 **Violations of California Invasion of Privacy Act**

- 5 1. Statutory damages in the amount of \$5,000 per violation for the
6 Plaintiffs and the Class (Pen. Code, § 637.2, subd. (a)(1));
7 2. Reasonable attorneys' fees (Code Civ. Proc., § 1021.5, and the
8 substantial benefit and common fund doctrines);
9 3. Interest at the legal rate according to proof (Civ. Code, § 3287);
10 4. Costs of litigation (Code Civ. Proc., § 1032, subd. (b)); and
11 5. Such other and further relief as may be just and proper.

12 **JURY TRIAL DEMAND**

13 Plaintiffs demand a trial by jury on all issues so triable.
14

15 Dated: March 17, 2017

/s/ _____

Jonathan Weiss
Attorneys for Plaintiffs

16 Scott C. Borison, SBN 289456
17 LEGG LAW FIRM, LLP.
18 1900 South Norfolk Street, Suite 350
19 San Mateo, California 94403-1171
20 Telephone: (301) 620-1016
21 Facsimile: (301) 620-1018
22 Email: borison@legglaw.com

Peter Holland, pro hac vice
THE HOLLAND LAW FIRM, P.C.
1910 Towne Centre Blvd., Ste. 250
Post Office Box 6268
Annapolis, Maryland 21401-0268
Telephone: (410) 280-6133
Facsimile: (410) 280-8650
Email: peter@hollandlawfirm.com

1 **ATTORNEY'S CERTIFICATE OF SERVICE**

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3 I, Jonathan Weiss, certify:

4 I am, and at all times mentioned herein was, an active member of the State Bar
5 of California and not a party to the above-entitled cause. My business address is
6 10576 Troon Avenue, Los Angeles, California 90064-4436. On April 10, 2017, I
7 served the foregoing THIRD AMENDED CLASS ACTION COMPLAINT FOR
8 ILLEGAL RECORDING by electronically transmitting a true and correct copy thereof
9 to Case Anywhere for dissemination to counsel of record listed as follows:

10
11 Perrie M. Weiner
12 Edward D. Totino
13 Monica D. Scott
14 DLA PIPER LLP (US)
15 2000 Avenue of Stars, Suite 400n
16 Los Angeles CA 90067-4735
17 Email: perrie.weiner@dlapiper.com; edward.totino@dlapiper.com;
18 monica.scott@dlapiper.com

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27
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Dated: April 10, 2017

/s/

Jonathan Weiss