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6 individually and on behalf of all others  
similarly situated and on behalf of the general  
7 public

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL

10 BRYCE COLEMAN, individually and as class  
11 representative,

12 Plaintiffs,

13 v.

14 FIRST AMERICAN HOME BUYERS  
15 PROTECTION CORPORATION, a California  
16 corporation; THE FIRST AMERICAN  
CORPORATION, a California corporation;  
and DOES 1 through 100, inclusive,

17 Defendants.

CASE NO.

BC420436

CLASS-ACTION COMPLAINT FOR:

1. STATUTORY INVASION OF  
PRIVACY IN VIOLATION OF PENAL  
CODE SECTION 632;
2. UNFAIR BUSINESS PRACTICES IN  
VIOLATION OF BUSINESS &  
PROFESSIONS CODE SECTION  
17200, ET SEQ

{JURY TRIAL DEMANDED}

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19 Plaintiffs hereby allege as follows:

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21 NATURE OF THE CASE

22 1. Plaintiff and the class of other similarly situated individuals (the "Class," "Class  
23 Members," or "Plaintiffs") are victims of a statutory invasion of privacy in violation of California  
24 Penal Code section 632 by Defendant First American Home Buyers Protection Corporation  
25 ("FAHBPC"), who surreptitiously and without disclosure or consent, regularly and as part of its  
26 business practices and company procedure, records all telephone communications with its  
27 customers, including, as relevant to this complaint, all outbound telephone calls to customers,  
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1 former customers, and/or potential customers within the State of California, in violation of  
2 California law.

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4 **JURISDICTION AND VENUE**

5 2. This Court is the proper Court, and this action is properly filed in Los Angeles  
6 County, because Defendants' obligations and liability arise therein, and because Defendant  
7 FAHBPC maintains its principal offices and transacts business within Los Angeles County.

8  
9 **THE PARTIES**

10 3. Plaintiff Bryce Coleman ("Named Plaintiff") is an individual residing in and  
11 around the City of Los Angeles, County of Los Angeles, State of California. Named Plaintiff is a  
12 customer of Defendant FAHBPC, and has been since approximately March 31, 2004.

13 4. Named Plaintiff bring this Class Action on behalf of himself and other current,  
14 former and prospective customers of Defendant FAHBPC who are similarly situated, to recover,  
15 statutory damages for Defendant FAHBPC's statutory invasion of their privacy, attorneys' fees,  
16 costs, and expenses. Named Plaintiff reserves the right to name additional class representatives.

17 5. Defendant FAHBPC who is a California corporation, headquartered at 7833  
18 Haskell Avenue, Van Nuys, California 91406. Defendant FAHBPC who markets itself as one of  
19 the nations leading and most experienced home warranty companies, providing one-year  
20 residential contracts that typically cover the major systems and appliances in homes. Defendant  
21 FAHBPC has over 475,000 contracts in force nationwide, and operates in 46 states, including  
22 California.

23 6. Defendant FAHBPC is part of the "First American Family of Companies," and is a  
24 wholly-owned subsidiary of Defendant The First American Corporation ("First American"), a  
25 Fortune 500 company in business since 1889. First American, on information and belief, operates  
26 approximately 2,100 offices throughout the United States and abroad, and had revenues of \$8.5  
27 billion in 2006 alone, and revenues of approximately \$6.2 billion in 2008, including by and  
28 through its subsidiary Defendant FAHBPC.



1 implemented by Defendants' call center locations in Santa Rosa, California and Odessa, Texas,  
2 from which communications were made to all of Defendant FAHBPC's current, former, and  
3 prospective customers nationwide, including California.

4 13. This full-time recording solution enabled Defendants to record all customer  
5 interactions—not just a sampling—and to store these recordings on Defendants' server in  
6 electronic digital format. By capturing all customer interactions, Defendants had the ability to  
7 refer to these recordings for liability management during disputes with warranty holders, and also  
8 share the recordings via email with anyone in the organization for quality assurance and training  
9 purposes. Defendants have admitted that implementation and use of this full-time call recording  
10 solution has given them a "competitive advantage."

11 14. When Defendants' customers initiate a call to Defendants using one of Defendants'  
12 toll-free numbers, the customer is played a recorded disclosure that the communication "may be  
13 monitored or recorded" for quality assurance purposes, which cannot be bypassed before being  
14 connected to a live representative of Defendants.

15 15. In stark contrast, when Defendants initiate and make outbound calls to their former,  
16 current and/or prospective customers, there is no disclosure to the recipient of those calls at any  
17 time during the telephone conversation that the telephone conversation is being recorded for any  
18 purpose. There is also no audible beeping or other noise played throughout the conversation that  
19 has come to be associated with the recording of telephone conversations to put the customer on  
20 any notice that he or she is or may be being recorded.

21 16. The nature of these recorded conversations is objectively confidential, and include  
22 conversations concerning the customer, the customer's identity, the customer's contract, including  
23 their home address covered by the home warranty contract, financial and other payment  
24 information for purposes of renewing home warranty contracts and paying for said renewals, and  
25 other types of information Defendants expressly agree is confidential and non-public, as disclosed  
26 by Defendants' own privacy policy, which was created jointly by Defendants FAHBPC and First  
27 American.  
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1           17.     The recording is done intentionally as part of Defendants' policies and procedures  
2 to record 100% of customer interactions and, because the calls initiated by Defendants to their  
3 customers are done without the customers' knowledge or consent and/or without disclosure of the  
4 fact that the recording is taking place or has taken place, the majority of Defendants' customers  
5 have no knowledge and, thus, no discovery yet even as of the filing of this complaint, that they  
6 have been recorded without their knowledge or consent.

7           18.     Named Plaintiff was an ordinary customer of Defendants who, along with all Class  
8 Members, has been injured by the same wrongful acts and practices of Defendants as alleged  
9 herein. Specifically, Named Plaintiff was called in California by representatives of Defendant  
10 FAHBPC on at least two or more occasions within the four (4) months preceding the filing of this  
11 complaint alone from Defendants' Odessa, Texas call service center, including one telephone  
12 conversation with "Julie" of Defendant FAHBPC on July 9, 2009 at approximately 8:50 a.m. PST.  
13 Named Plaintiff's telephone conversations with the representatives of Defendant FAHBPC were  
14 all recorded without his knowledge or consent, and each of these telephone interactions initiated  
15 by Defendant FAHBPC involved confidential communications which were carried on in  
16 circumstances in which it was objectively reasonable that a party to the communication (the  
17 recipient of the telephone call) desired it to be confined to the parties thereto.

18           19.     Named Plaintiff learned on August 11, 2009 that Defendants had recorded Named  
19 Plaintiff's conversation with Defendants on July 9, 2009, and that this had occurred without his  
20 knowledge and/or consent. Named Plaintiff also learned that his wife had similarly been recorded  
21 on July 9, 2009, at approximately 8:55 a.m., which is how Named Plaintiff learned about  
22 Defendants' policy of recording all customer interactions. On August 11, 2009, Defendants  
23 disclosed to Named Plaintiff's wife during the course of attempting to resolve a dispute that they  
24 would have to "pull the tape" from the conversation to determine what was said. On August 12,  
25 2009, Defendants played the July 9, 2009 tape for Named Plaintiff's wife, which started with the  
26 ringing of the phone when the outbound call was initiated, and concluded when the two parties to  
27 the conversation hung up. At no time during Defendants' July 9, 2009 telephone conversation  
28 with Named Plaintiff's wife did Defendants disclose that the conversation was being recorded.



1 d. Whether Defendants' policy and practice did not include any requirement  
2 that Defendants disclose to the recipient Class Members of telephone calls from Defendants the  
3 fact that conversation was being recorded;

4 e. Whether Defendants' recording of communications it initiated to the Class  
5 Members violated California Penal Code section 632;

6 f. Whether the Class Members are entitled to the statutory damages/penalty  
7 mandated by California Penal Code section 637.2 of \$5,000.00 per violation of Penal Code section  
8 632 (each recorded telephone conversation).

9 g. Whether, as a result of Defendant's violation of California Penal Code  
10 section 632, Plaintiff and the Class are entitled an injunction to enjoin Defendants' further  
11 violations of Penal Code section 632, and/or other relief, and if so, the amount and nature of such  
12 relief or damages.

13 24. **Typicality.** Named Plaintiff's claims are typical of the claims of the Class. Named  
14 Plaintiff was an ordinary customer of Defendants who, along with all Class Members, has been  
15 injured by the same wrongful acts and practices of Defendants as alleged herein, and in the same  
16 manner. Specifically, Named Plaintiff was called in California by representatives of Defendant  
17 FAHBPC, his telephone conversations with the representatives of Defendant FAHBPC were all  
18 recorded without his knowledge or consent, and each of these telephone interactions initiated by  
19 Defendant FAHBPC involved confidential communications which were carried on in  
20 circumstances as in which it was objectively reasonable that a party to the communication (the  
21 recipient of the telephone call) desired it to be confined to the parties thereto, and these telephone  
22 communications initiated by Defendant FAHBPC to Named Plaintiff were typical of the telephone  
23 communications initiated by Defendant FAHBPC to the other Class Members, and Named  
24 Plaintiff has suffered a violation of his privacy rights in the same manner as the other Class  
25 Members.

26 25. **Adequacy.** Named Plaintiff will fairly and adequately protect the interests of the  
27 Class Members. Named Plaintiff has no interests that are antagonistic to or in conflict with the  
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1 interests of the Class as a whole, and Named Plaintiff has engaged competent counsel experienced  
2 in the prosecution of complex and class litigation.

3 26. **Superiority.** A class action is superior to the alternatives, if any, for the fair and  
4 efficient adjudication of the controversy alleged herein, because such treatment will permit a large  
5 number of similarly situated individuals residing in California to prosecute their common claims  
6 in a single forum simultaneously, efficiently, and without duplication of evidence, effort, and  
7 expense that numerous individual actions would engender. This action will result in the orderly  
8 and expeditious administration of Class claims. Uniformity of decisions will be assured, thereby  
9 avoiding the risk of inconsistent and varying determinations. This action will also result in those  
10 similarly situated individuals discovering that they have claims against Defendants because,  
11 absent this class action and ensuing notices to the Class, the nature of Defendants' statutory  
12 violations are such that the majority of the Class does not know that Defendants have recorded  
13 conversations with them and violated their rights to privacy.

14 27. Plaintiff knows of no difficulty that will be encountered in the management of this  
15 litigation which would preclude its maintenance as a class action.

16 28. **Predominance.** Questions of law and fact common to members of the Class  
17 predominate over any questions affecting only individual members.

18 29. Notice to the members of the Class may be accomplished inexpensively,  
19 efficiently, and in a manner best designed to protect the rights of all Class Members.

20 30. Despite at least some of Defendants' call centers being out-of-state, California law,  
21 including the Penal Code sections at issue in this action, applies to all calls made to individuals  
22 residing in California.

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1 Members seek the statutory minimum of \$5,000.00 for each of Defendants' discrete violations of  
2 Penal Code section 632.

3 36. Because this case is brought for the purposes of enforcing important rights  
4 affecting the public interest, the Class Members seek recovery of their attorney's fees pursuant to  
5 the private attorney general doctrine codified in Code of Civil Procedure section 1021.5, or any  
6 other statutory basis.

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**SECOND CAUSE OF ACTION**  
**FOR UNFAIR COMPETITION**  
**CALIFORNIA BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**  
**AGAINST ALL DEFENDANTS**

12 37. Named Plaintiff realleges and incorporates herein by this reference Paragraphs 1  
13 through 36, inclusive, as though set forth in full herein.

14 38. Defendants' systematic violation of Penal Code section 632 constitutes an unfair  
15 business practices in violation of California *Business & Professions Code* §§17200, *et seq.*  
16 Indeed, Defendants admit that their conduct in violation of Penal Code section 632 gives  
17 Defendants a "competitive advantage" in their industry.

18 39. Defendants' unfair business practices entitle the Class Members, including Named  
19 Plaintiff, to seek preliminary and permanent injunctive relief, including but not limited to orders  
20 that Defendants immediately cease and desist their practice of recording telephone  
21 communications with California residents without the consent of all participants.

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**PRAYER FOR RELIEF**

24 WHEREFORE, Named Plaintiff Bryce Coleman, individually and on behalf of all others  
25 similarly situated, hereby prays that the Court enter judgment in their favor and against  
26 Defendants, and each of them, as follows:

27 1. For statutory penalties pursuant to California Penal Code section 632 in the amount  
28 of \$5,000.00 per violation of Penal Code section 632;

