

1 **EUGENE G. IREDALE, ESQ. (SBN: 75292)**
2 **JULIA YOO, ESQ. (SBN: 231163)**
3 LAW OFFICES OF EUGENE G. IREDALE
105 West "F" Street, 4th Floor
San Diego, California 92101-6036
4 TEL: (619) 233-1525 FAX: (619) 233-3221

5 Attorneys for plaintiff, Juan Carlos Vera

FILED
10 JUL -8 AM 11:42
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

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8 **UNITED STATES DISTRICT COURT**
9 **IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 JUAN CARLOS VERA, an individual,)
11 Plaintiff,)

12 v.)

13 JAMES O'KEEFE III, an individual,)
14 HANNA GILES, an individual, and DOES)
1-20 inclusive,)

15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Defendants.

Case No.

10 CV 1422 L

JMA

COMPLAINT FOR:

DAMAGES FOR VIOLATION OF
CALIFORNIA PENAL CODE §632
et seq.

JURY TRIAL DEMANDED

20 COMES NOW, JUAN CARLOS VERA, by and through his attorneys of record, and
21 alleges and complains as follows:

22 I.

23 **GENERAL ALLEGATIONS**

24 1. Jurisdiction is proper in the United States District Court for the Southern District
25 of California pursuant to 28 U.S.C. §1332.

26 2. Venue is proper in the Southern District of California because the acts or
27 omissions which form the basis of the Plaintiff's claims occurred in San Diego, California.
28

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1 3. The matter in controversy exceeds, exclusive of interest and costs, the sum or value
2 of SEVENTY FIVE THOUSAND (\$75,000.00) DOLLARS.

3 4. At all times relevant to this complaint, Plaintiff was an individual residing in San
4 Diego County, California.

5 5. At all times relevant to this complaint, James O'Keefe III was an individual
6 residing in Westwood, New Jersey.

7 6. At all times relevant to this complaint, Hannah Giles was an individual residing in
8 Florida.

9 7. Plaintiff is truly ignorant of the true names and capacities of DOES 1 through 20,
10 inclusive, and/or is truly ignorant of the facts giving rise to their liability and will amend this
11 complaint once their identities have been ascertained.

12 **II.**

13 **FACTS**

14 8. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same
15 herein by this reference as if those paragraphs were set forth in full herein.

16 9. At the time of the incident, Plaintiff Juan Carlos Vera was an employee of
17 ACORN.

18 10. On August 18, 2009, at approximately 5:00 p.m., Defendants O'Keefe and Giles
19 visited the ACORN office in National City, California.

20 11. O'Keefe was wearing a hidden camera and recorded audio and video of the visit.

21 12. Defendants O'Keefe and Giles conspired to secretly videotape and audiotape Mr.
22 Vera.

23 13. Defendants went into Mr. Vera's office, sat down, and began a conversation.

24 14. O'Keefe and Giles asked whether the conversation would be kept confidential and
25 Mr. Vera agreed.

26 15. By this time, Defendants O'Keefe and Giles had already secretly videotaped
27 employees of other ACORN offices in California and other states.
28

1 III.

2 **FIRST CAUSE OF ACTION**

3 Invasion of Privacy Act, Penal Code 630-638

4 16. Plaintiff realleges all prior paragraphs of this complaint and incorporates the same
5 herein by this reference as if those paragraphs were set forth in full herein.

6 17. California law prohibits the recording of confidential communications without the
7 consent of all participants where there is an objectively reasonable expectation that the
8 conversation is not being overheard or recorded.

9 18. In 1967, the California Legislature adopted the Invasion of Privacy Act, codified at
10 Penal Code sections 630 through 638.

11 19. The Act is designed to protect the right of privacy by requiring the consent of all
12 parties before a confidential conversation is recorded.

13 20. The eavesdropping and recording provision, section 632, provides that any person
14 who intentionally and without consent of all parties to a confidential communication records such
15 conversation is guilty of a crime, punishable by imprisonment in state prison or county jail. (Penal
16 Code, § 632(a).)

17 21. A private cause of action exists for any person injured by a violation of the Act.
18 (*Id.*, § 637.2.)

19 22. Section 632 defines confidential communication to include “any communication
20 carried on in circumstances as may reasonably indicate that any party to the communication
21 desires it to be confined to the parties thereto.” (*Id.*, § 632(c).)

22 23. Confidentiality requires nothing more than the existence of a reasonable
23 expectation by one of the parties that the conversation is not being recorded.

24 24. The fact that the subject matter of the conversation might later be discussed with a
25 third party has no bearing on a finding of confidentiality under the statute.

26 25. Although the Act contains exemptions for particular individuals or circumstances,
27 no exemption exists for filmmakers, the media, or journalists.

28

1 26. Aggrieved parties are authorized by statute to bring a civil action for \$5,000 or
2 three times the amount of actual damages. (Penal Code, § 637.2)

3 27. Defendants secretly recorded Plaintiff Mr. Vera who had a reasonable expectation
4 of privacy.
5

6 28. Defendants edited the video and audio of Mr. Vera and released the tape on the
7 Internet.

8 29. As a result, Plaintiff suffered harm in the amount to be proven at trial.
9

10 IV.

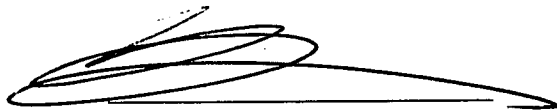
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays as follows:

- 13 1. General damages according to proof at the time of trial;
14 2. Special damages according to proof at the time of trial;
15 3. Any further declaratory relief as this Court deems just;
16 4. Costs of suit and attorney's fees; and
17 5. A permanent order enjoining defendants from any further violations of Penal Code
18 § 632.
19

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21
22 DATED: July 7, 2010

Respectfully submitted,

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25 

26 EUGENE G. IREDALE
27 JULIA YOO
28 Attorneys for Plaintiff
JUAN CARLOS VERA

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Juan Carlos Vera

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Eugene G. Iredale, 105 West F St., 4th Fl., San Diego, CA 92101.
Ph. (619) 233-1525

DEFENDANTS

James O'Keefe III, Hanna Giles

10 JUL -8 AM 11:42

County of Residence of First Listed Defendant Bergen County, NJ
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10 CV 1422 L ✓ JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Sec. 1332, diversity jurisdiction 28:1331

Brief description of cause:
Defendants violated California Penal Code Sec. 632, et. seq.

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$**
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 07/08/2010 SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # 15494 AMOUNT \$350 APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS015494
Cashier ID: bhartman
Transaction Date: 07/08/2010
Payer Name: EUGENE IREDALE LAW OFFICE

CIVIL FILING FEE
For: VERA V D KEEFE ET AL
Case/Party: D-CAS-3-10-CV-001422-001
Amount: \$350.00

CHECK
Check/Money Order Num: 2508
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.