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8 UNITED STATES DISTRICT COURT
 9
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 (San Francisco Division)

12 IN RE NATIONAL SECURITY
 13 TELECOMMUNICATIONS
 14 RECORDS LITIGATION

MDL Docket No. 06-1791 (VRW)

15 _____
 16 THIS DOCUMENT RELATES
 17 TO: ALL CASES BROUGHT AGAINST
 18 DEFENDANTS AT&T MOBILITY LLC
 19 (f/k/a CINGULAR WIRELESS LLC),
 20 CINGULAR WIRELESS CORP., AND
 21 NEW CINGULAR WIRELESS
 22 SERVICES, INC.

FIRST AMENDED MASTER
 CONSOLIDATED COMPLAINT
 AGAINST DEFENDANTS AT&T MOBILITY
 LLC (f/k/a CINGULAR WIRELESS LLC),
 CINGULAR WIRELESS CORP., AND NEW
 CINGULAR WIRELESS SERVICES, INC. FOR
 DAMAGES, DECLARATORY AND
 EQUITABLE RELIEF
CLASS ACTION

JUDGE: Hon. Vaughn R. Walker

20 06-5452-VRW
 21 06-6222-VRW
 22 06-6224-VRW
 23 06-6253-VRW
 24 06-6254-VRW
 06-6570-VRW
 07-0464-VRW
 07-2538-VRW

DEMAND FOR JURY TRIAL

25 Plaintiffs, by their attorneys, for their First Amended Master Consolidated Complaint
 26 against **Defendants AT&T Mobility LLC (f/k/a Cingular Wireless, L.L.C.), Cingular**
 27 **Wireless Corp., and New Cingular Wireless Services, Inc.**, allege, upon information and
 28

1 belief, as follows:

2 **PRELIMINARY STATEMENT**

3 1. This First Amended Master Consolidated Complaint Against Defendants AT&T
4 Mobility LLC (f/k/a Cingular Wireless, L.L.C.), Cingular Wireless Corp., and New Cingular
5 Wireless Services, Inc., (“Cingular Master Complaint” or “Complaint”) is filed pursuant to the
6 Order of this Court and presents all claims brought against Defendants AT&T Mobility LLC
7 (f/k/a Cingular Wireless, LLC), Cingular Wireless Corp., and New Cingular Wireless Services,
8 Inc., (collectively “Defendants” or “Cingular”) in the separate cases transferred by the Panel on
9 Multidistrict Litigation in this matter (“transferred cases”). Unless otherwise ordered by this
10 Court, all claims presented in any case against Defendants AT&T Mobility LLC (f/k/a Cingular
11 Wireless, LLC), Cingular Wireless Corp., and New Cingular Wireless Services, Inc.,
12 subsequently transferred to this Court by the Panel on Multidistrict Litigation in this matter shall
13 be deemed to be included in this Cingular Master Complaint.
14

15
16 2. This Cingular Master Complaint is filed solely as an administrative device to
17 promote judicial efficiency and economy in the adjudication and resolution of pretrial matters and
18 is not intended to effect consolidation for trial of the transferred cases. Neither is this Cingular
19 Master Complaint intended to cause, nor to change the rights of the parties, nor to make those
20 who are parties in one transferred case parties in another.
21

22 3. This case challenges the legality of Defendants’ participation in a secret and
23 illegal government program to intercept and analyze vast quantities of Americans’ telephone
24 communications and records, surveillance done without any statutorily authorized permission,
25 customers’ knowledge or consent, or the authorization of a court, and in violation of federal
26 electronic surveillance and telecommunications statutes, as well as the First and Fourth
27 Amendments to the United States Constitution. In addition, Plaintiffs challenge Defendants’
28

1 conduct under state law.

2 **JURISDICTION AND VENUE**

3 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C.
4 § 1332(d), 18 U.S.C. § 2707, and 47 U.S.C. § 605. Supplemental jurisdiction over state law
5 claims is founded on 28 U.S.C. § 1367.

6 5. Venue is proper in this District pursuant to the order of the Panel on Multidistrict
7 Litigation.

8 **PARTIES**

9 6. Plaintiff Heather Derosier is an individual residing in Seattle, Washington.
10 Plaintiff is and has been a subscriber and user of Cingular's telephone service since at least 2004.

11 7. Plaintiff Sam Goldstein Insurance Agency, Inc. is a domestic corporation doing
12 business in Indianapolis, Indiana, and was formerly a subscriber and user of Cingular's cellular
13 services, and used Cingular to make wireless telephone calls.

14 8. Plaintiff Rabbi Steven Lebow, an individual residing in Marietta, Georgia, has
15 been a subscriber and user of Cingular's cell phone service. Rabbi Lebow has used such
16 electronic communications services to place domestic and international telephone calls and for
17 Internet and e-mail services. Many of Rabbi Lebow's communications with his congregant are
18 privileged pursuant to the clergyman-congregant privilege recognized under Federal Rule of
19 Evidence 501.

20 9. Plaintiffs Steven and Cathy Bruning, individuals residing in Marietta, Georgia,
21 have been subscribers to and users of Cingular cell phone services. The Brunings have used such
22 electronic communications services to place domestic and international telephone calls.

23 10. Plaintiff Anakalia Kaluna, is an individual residing in Honolulu, Hawaii, and has
24 been a subscriber and user of Cingular's cellular phone service, and has used it to make wireless
25

1 telephone calls.

2 11. Plaintiff Kim Coco Iwamoto is an individual residing in Honolulu, Hawaii, and
3 has been a subscriber and user of Cingular's cellular phone service, and has used it to make
4 wireless telephone calls. Iwamoto has a special interest in this action because she is an attorney
5 legally obligated to protect the confidentiality of communications with her clients.
6

7 12. Plaintiff Paul Robilotti is an individual residing in Englishtown, New Jersey.
8 Robilotti has been a subscriber and user of Cingular's wireless telephone services for some time
9 between September 11, 2001 and the present, and, has used them to make such local regional and
10 long distance calls.

11 13. Plaintiff Alan Toly Sapoznik is an individual residing in Manalapan, New Jersey.
12 Sapoznik has been a subscriber and user of Cingular's wireless telephone services since at least
13 approximately January 2006, and for some period of time prior and subsequent thereto through
14 the present, and, has used it to make local and regional long distance calls.
15

16 14. Plaintiff James C. Harrington is an individual residing in Travis County, Texas.
17 He is an attorney licensed in the State of Texas. He has had an account for telecommunications
18 services with Cingular during the last three years, and continues to have this account. As an
19 attorney, Harrington uses his mobile phone to communicate with clients and co-counsel.
20

21 15. Plaintiff Richard A. Grigg is an individual residing in Travis County, Texas. He is
22 an attorney licensed in the State of Texas. He has had an account for telecommunications
23 services with Cingular during the last three years, and continues to have this account. As an
24 attorney, Grigg uses his mobile phone and other telecommunications equipment and services to
25 communicate with clients and co-counsel. Grigg has represented and continues to represent
26 individuals detained in Guantanamo and though he may not communicate with his clients over
27 the phone, he used and uses his telecommunications equipment and services to communicate with
28

1 other habeas attorneys concerning his clients and his clients' cases.

2 16. Plaintiff Louis Black is an individual residing in Travis County, Texas. He is a
3 freelance reporter and editor of the *Austin Chronicle*. He has had an account for
4 telecommunications services with Cingular during the last three years, and continues to have this
5 account. He uses his Cingular telecommunications equipment and services to communicate with
6 news sources and informants, some of who wish to remain confidential.
7

8 17. Plaintiff *Austin Chronicle* is a publication whose primary place of business and
9 distributorship is Austin, Texas (Travis County). The *Austin Chronicle* has had an account for
10 telecommunications services with Cingular during the last three years, and continues to have this
11 account. *Austin Chronicle* contributors and staff use the Cingular equipment and services to
12 communicate with news sources and informants, some of who wish to remain confidential.
13

14 18. Plaintiff Michael Kentor is an individual residing in Travis County, Texas. He is a
15 financial advisor and founder of the Kentor Company, a financial firm. He has had an account for
16 telecommunications services with Cingular during the last three years, and continues to have this
17 account. He uses his Cingular telecommunications equipment and services to communicate with
18 clients, family, friends, and colleagues.

19 19. Plaintiff Howard Jacobs is an individual residing in Broward County, Florida. At
20 all times material hereto, Jacobs was a customer of Cingular. Jacobs purchased and used wireless
21 telecommunications service from Cingular and sent and received personal electronic
22 communications via Cingular's telecommunications networks.
23

24 20. Plaintiff Laurence Kornblum is an individual residing in Broward County, Florida.
25 At all times material hereto, Kornblum was a customer of Cingular. Kornblum purchased and
26 used wireless telecommunications service from Cingular and sent and received personal
27 electronic communications via Cingular's telecommunications networks.
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1 relationship” and data concerning service customers’ telephone calling histories (*i.e.*, date, time,
2 duration, and telephone numbers of calls placed or received) or call-detail records, and such
3 information constitutes “individually identifiable customer proprietary network information”
4 within the meaning of Section 222 of the Communications Act of 1934.

5
6 25. Federal law prohibits telecommunications providers such as Defendants from
7 disclosing customers’ call-detail records to the government without a court order, subpoena, or
8 other lawful authorization.

9
10 26. In the aftermath of September 11, 2001, Defendants commenced their programs of
11 providing the federal government with the telephone call contents and records of its customers
12 and subscribers. Defendants continue to provide this information to the federal government.

13
14 27. On December 16, 2005, in an article entitled “Bush Lets U.S. Spy on Callers
15 Without Courts,” *The New York Times* reported on an NSA program of eavesdropping on the
16 telephone conversations of Americans without court order as required by the Foreign Intelligence
17 Surveillance Act.

18
19 28. In a December 17, 2005 radio address, President Bush admitted that “[i]n the
20 weeks following the terrorist attacks on our nation, [he] authorized the National Security Agency,
21 consistent with U.S. law and the Constitution, to intercept the international communications of
22 people with known links to al Qaeda and related terrorist organizations.” President Bush further
23 stated that “the activities [he] authorized are reviewed approximately every 45 days”; that he had
24 “reauthorized this program more than 30 times since the September the 11th attacks”; and that he
25 intended to continue authorizing such activity “for as long as our nation faces a continuing threat
26 from al Qaeda and related groups.”

27
28 29. In a press briefing on December 19, 2005 by Attorney General Gonzales and
General Michael Hayden, Principal Deputy Director for National Intelligence, the government

1 claimed that the NSA Surveillance Program targets communications between a party outside the
2 United States and a party inside the United States when one of the parties of the communication is
3 believed to be “a member of al Qaeda, affiliated with al Qaeda, or a member of an organization
4 affiliated with al Qaeda, or working in support of al Qaeda.”

5
6 30. In a press release on December 19, 2005, Attorney General Alberto Gonzales
7 stated that the Program involved “intercepts of contents of communications . . .” While the
8 Attorney General’s description of the Program was limited to interception of communications
9 with individuals “outside the United States,” Attorney General Gonzales explained that his
10 discussion was limited to those parameters of the program already disclosed by the President and
11 that many other operational aspects of the program remained highly classified.

12
13 31. On December 24, 2005, *The New York Times* reported in an article entitled, “Spy
14 Agency Mined Vast Data Trove, Officials Report,” that:

15 [t]he National Security Agency has traced and analyzed large volumes of
16 telephone and Internet communications flowing into and out of the United States
17 as part of the eavesdropping program that President Bush approved after the Sept.
18 11, 2001, attacks to hunt for evidence of terrorist activity, according to current and
19 former government officials. The volume of information harvested from
telecommunication data and voice networks, without court-approved warrants, is
much larger than the White House has acknowledged, the officials said. It was
collected by tapping directly into some of the American telecommunication
system’s main arteries, they said.

20 The officials said that as part of the program, “the N.S.A. has gained the cooperation of American
21 telecommunications companies to obtain backdoor access to streams of domestic and
22 international communications” and that the program is a “large data-mining operation” in which
23 N.S.A. technicians have combed through large volumes of phone and Internet traffic in search of
24 patterns that might point to terrorism suspects. In addition, the article reports, “[s]everal officials
25 said that after President Bush’s order authorizing the N.S.A. program, senior government officials
26 arranged with officials of some of the nation’s largest telecommunications companies to gain
27 access to switches that act as gateways at the borders between the United States’ communication
28

1 networks and international networks.”

2 32. In a January 3, 2006 article entitled, “Tinker, Tailor, Miner, Spy” (available at
3 <http://www.slae.com/toolbar.aspx?action=print&id=2133564>), Slate.com reported, “[t]he agency
4 [the NSA] used to search the transmissions it monitors for key words, such as names and phone
5 numbers, which are supplied by other intelligence agencies that want to track certain individuals.
6 But now the NSA appears to be vacuuming up all data, generally without a particular phone line,
7 name, or e-mail address as a target. Reportedly, the agency is analyzing the length of a call, the
8 time it was placed, and the origin and destination of electronic transmissions.”

9
10 33. In a January 17, 2006 article, “Spy Agency Data After Sept. 11 Led F.B.I. to Dead
11 Ends,” *The New York Times* stated that officials who were brief on the N.S.A. program said that
12 “the agency collected much of the data passed on to the F.B.I. as tips by tracing phone numbers in
13 the United States called by suspects overseas, and then by following the domestic numbers to
14 other numbers called. In other cases, lists of phone numbers appeared to result from the agency’s
15 computerized scanning of communications coming into and going out of the country for names
16 and keywords that might be of interest.”

17
18 34. A January 20, 2006 article in the *National Journal*, “NSA spy program hinges on
19 state-of-the-art technology,” reported that “[o]fficials with some of the nation’s leading
20 telecommunications companies have said they gave the NSA access to their switches, the hubs
21 through which enormous volumes of phone and e-mail traffic pass every day, to aid the agency’s
22 effort to determine exactly whom suspected Qaeda figures were calling in the United States and
23 abroad and who else was calling those numbers. The NSA used the intercepts to construct webs
24 of potentially interrelated persons.”

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26 35. In a January 21, 2006 article in the *Bloomberg News* entitled “Lawmaker Queries
27 Microsoft, Other Companies on NSA Wiretaps,” Daniel Berninger, a senior analyst at Tier 1
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1 Research in Plymouth, Minnesota, said “[i]n the past, the NSA has gotten permission from phone
2 companies to gain access to so-called switches, high-powered computer into which phone traffic
3 flows and is redirected, at 600 locations across the nation. . . . From these corporate relationships,
4 the NSA can get the content of calls and records on their date, time, length, origin and
5 destination.”

6
7 36. On January 25, 2006, an article appearing in the *Reporter-Times* entitled “NSA
8 Data Mining is Legal, Necessary, Chertoff Says” stated that “while refusing to discuss how the
9 highly classified program works (Department of Homeland Security Secretary) Chertoff made it
10 pretty clear that it involves “data-mining” – collecting vast amounts of international
11 communications data, running it through computers to spot key words and honing in on potential
12 terrorists.” In that same interview Secretary Chertoff is quoted as saying “. . . if you’re trying to
13 sift through an enormous amount of data very quickly, I think it (obtaining a FISA warrant)
14 would be impractical”, and that getting an ordinary FISA warrant is “a voluminous, time-
15 consuming process” and “if you’re culling through literally thousands of phone numbers . . . you
16 could wind up with a huge problem managing the amount of paper you’d have to generate.”

17
18 37. On February 5, 2006, an article appearing in the *Washington Post* entitled
19 “Surveillance Net Yields Few Suspects” stated that officials said “[s]urveillance takes place in
20 several stages . . . the earliest by machine. Computer-controlled systems collect and sift basic
21 information about hundreds of thousands of faxes, e-mails and telephone calls into and out of the
22 United States before selecting the ones for scrutiny by human eyes and hears. Successive stages
23 of filtering grow more intrusive as artificial intelligence systems rank voice and data traffic in
24 order of likeliest interest to human analysts.” The article continues “[f]or years, including in
25 public testimony by Hayden, the agency [the NSA] has acknowledged use of automated
26 equipment to analyze the contents and guide analysts to the most important ones. According to
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1 one knowledgeable source, the warrantless program also uses those methods. That is significant .
2 . . because this kind of filtering intrudes into content, and machines 'listen' to more Americans
3 than humans do.”

4
5 38. On February 6, 2006, in an article entitled “Telecoms let NSA spy on calls,” the
6 nationwide newspaper *USA Today* reported that “[t]he National Security Agency has secured the
7 cooperation of large telecommunications companies, including AT&T, MCI and Sprint, in its
8 efforts to eavesdrop without warrants on international calls by suspected terrorists, according to
9 seven telecommunications executives.” The article acknowledged that *The New York Times* had
10 previously reported that the telecommunications companies had been cooperating with the
11 government but had not revealed the names of the companies involved. In addition, it stated that
12 long-distance carriers AT&T, MCI, and Sprint “all own ‘gateway’ switches capable of routing
13 calls to points around the globe, and that “[t]elecommunications executives say MCI, AT&T, and
14 Sprint grant the access to their systems without warrants or court orders. Instead, they are
15 cooperating on the basis of oral requests from senior government officials.”

17
18 39. On May 11, 2006, in an article entitled “NSA has massive database of Americans’
19 phone calls,” *USA Today* reported that “[t]he National Security Agency has been secretly
20 collecting the phone call records of tens of millions of Americans, using data provided by AT&T,
21 Verizon and Bellsouth,” according to multiple sources with “direct knowledge of the
22 arrangement.” One of the confidential sources for the article reported that the NSA’s goal is “to
23 create a database of every call ever made” within the United States. The confidential sources
24 reported that AT&T and the other carriers are working “under contract” with the NSA, which
25 launched the program in 2001 shortly after the September 11, 2001 terrorist attacks. At the U.S.
26 Senate confirmation hearing on his nomination to become Director of the Central Intelligence
27 Agency, General Michael Hayden, who was the Director of the NSA at the time, confirmed that
28

1 the program was “launched” on October 6, 2001.

2 40. The *USA Today* story was confirmed by a U.S. intelligence official familiar with
3 the program. The story reports that the NSA requested that AT&T, SBC, and the other carriers
4 “turn over their ‘call-detail records,’ a complete listing of the calling histories of their millions of
5 customers,” and provide the NSA with “updates” of the call-detail records. The confidential
6 sources for the story reported that the NSA informed the carriers that it was willing to pay for the
7 cooperation, and that both “AT&T, which at the time was headed by C. Michael Armstrong,” and
8 “SBC, headed by Ed Whitacre,” agreed to provide the NSA with the requested information.

9 41. The *USA Today* story reported that the NSA requested that Qwest
10 Communications, Inc. (“Qwest”), another telecommunications carrier, provide the NSA with its
11 customers’ call-detail records, but Qwest refused. Qwest requested that the NSA first obtain a
12 court order, a letter of authorization from the U.S. Attorney General’s office, or permission from
13 a Court operating under the Foreign Intelligence Surveillance Act (“FISA”), but the NSA refused,
14 because it was concerned that the FISA Court and the Attorney General would find the NSA’s
15 request unlawful.

16 42. As of the date of the filing of this Complaint, no part of the *USA Today* story has
17 been publicly denied by any representative of the federal government, including the NSA.

18 43. On May 16, 2006, in an article entitled “BellSouth Denies NSA Contract,”
19 eWeek.com reported that BellSouth’s vice president of corporate communications, Jeff Battcher,
20 in an interview disputed the accuracy of information contained in the May 11, 2006 *USA Today*
21 article but “note[d] that his company owns 40 percent of wireless carrier Cingular” and that he
22 “[didn’t] want to speak for Cingular”.

23 44. Qwest’s decision not to participate was also reported in an article from *The New*
24 *York Times* on May 13, 2006 entitled, “Questions Raised for Phone Giants in Spy Data Furor.”
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1 The article reported that Qwest's former CEO, Joseph Nacchio, "'made inquiry as to whether a
2 warrant or other legal process had been secured in support of that request. When he learned that
3 no such authority had been granted and that there was a disinclination on the part of the
4 authorities to use any legal process,' Nacchio concluded that the requests violated federal privacy
5 requirements 'and issued instructions to refuse to comply.'" According to the May 11, 2006 *USA*
6 *Today* article, "Nacchio's successor, Richard Notebaert, finally pulled the plug on the NSA talks
7 in late 2004."

9 45. Senator Christopher "Kit" Bond (R-MO), who also has received access to
10 information on warrantless surveillance operations, explained on May 11, 2006 on a PBS Online
11 NewsHour program entitled "NSA Wire Tapping Program Revealed" that "[t]he president's
12 program uses information collected from phone companies . . . what telephone number called
13 what other telephone number."

15 46. On May 14, 2006, when Senate Majority Leader William Frist (R-TN) was asked
16 on CNN Late Edition with Wolf Blitzer whether he was comfortable with the program described
17 in the *USA Today* article, he stated "Absolutely. I am one of the people who are briefed . . . I've
18 known about the program. I am absolutely convinced that you, your family, our families are safer
19 because of this particular program."

21 47. Senator Pat Roberts (R-KS), the chair of Senate Intelligence Committee, described
22 the program on "All Things Considered" on NPR on May 17, 2006. When asked about whether
23 he had been briefed that the NSA had collected millions of phone records for domestic calls,
24 Roberts stated: "Well, basically, if you want to get into that, we're talking about business
25 records."

27 48. On May 29, 2006, Seymour Hersh reported in *The New Yorker* in an article
28 entitled "Listening In" that a security consultant working with a major telecommunications carrier

1 “told me that his client set up a top-secret high-speed circuit between its main computer complex
2 and Quantico, Virginia, the site of a government-intelligence computer center. This link provided
3 direct access to the carrier’s network core – the critical area of its system, where all its data are
4 stored. ‘What the companies are doing is worse than turning over records,’ the consultant said.
5 ‘They’re providing total access to all the data.’”
6

7 49. A June 30, 2006 *USA Today* story reported that 19 Members of the intelligence
8 oversight committees of the U.S. Senate and House of Representatives “who had been briefed on
9 the program verified that the NSA has built a database that includes records of Americans’
10 domestic phone calls,” and that four of the committee Members confirmed that “MCI, the long-
11 distance carrier that Verizon acquired in January, did provide call records to the government.”
12

13 50. Defendants knowingly and intentionally provide the aforementioned telephone
14 contents and records to the federal government.

15 51. As part of the Program, NSA’s operational personnel identify particular individual
16 targets and their communications, through a software data mining process that NSA runs against
17 vast databases of the Defendants’ stored electronic records of their customers’ telephone
18 communications, in search of particular names, numbers, words or phrases, and patterns of
19 interest. Upon information and belief, NSA’s operational personnel also identify communications
20 of interest in real time through similar data-mining software functionality.
21

22 52. Besides actually eavesdropping on specific conversations, NSA personnel have
23 intercepted large volumes of domestic and international telephone and Internet traffic in search of
24 patterns of interest, in what has been described in press reports as a large “data mining” program.

25 53. As part of this data-mining program, the NSA intercepts millions of
26 communications made or received by people inside the United States and uses powerful
27 computers to scan their contents for particular names, numbers, words, or phrases.
28

1 54. Additionally, the NSA collects and analyzes a vast amount of communications
2 traffic data to identify persons whose communications patterns the government believes may link
3 them, even if indirectly, to investigatory targets.

4 55. The NSA has accomplished its massive surveillance operation by arranging with
5 some of the nation’s largest telecommunications companies to gain direct access to the telephone
6 and Internet communications transmitted via those companies’ domestic telecommunications
7 facilities, and to those companies’ records pertaining to the communications they transmit.

8 56. Defendants have intercepted and continue to provide the government with direct
9 access to all or a substantial number of the communications transmitted through its key domestic
10 telecommunications facilities, including direct access to streams of domestic, international, and
11 foreign telephone and Internet communications.

12 57. Since in or about October 2001, Defendants have disclosed and/or divulged the
13 “call-detail records” of all or substantially all of their customers including Plaintiffs to the NSA,
14 in violation of federal law, as more particularly set forth below.

15 58. Defendants have, since in or about October 2001, been disclosing to the NSA
16 “individually identifiable customer proprietary network information” belonging to all or
17 substantially all of their customers including Plaintiffs, in violation of federal law, as more
18 particularly set forth below.

19 59. Defendants have disclosed and continue to disclose and/or provide the government
20 with direct access to its databases of stored telephone records, which are updated with new
21 information in real time or near-real time.

22 60. Defendants have provided at all relevant times and continue to provide computer
23 or storage processing services to the public by means of wire, radio, electromagnetic, photo-
24 optical, or photo-electronic facilities for the transmission of wire or electronic communications,
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1 and/or by means of computer facilities or related electronic equipment for the electronic storage
2 of such communications.

3 61. Defendants have knowingly authorized, and continue to knowingly authorize,
4 NSA and affiliated governmental agencies to install and use, or have assisted government agents
5 in installing or using, interception devices and pen registers and/or trap and trace devices on the
6 Defendants' domestic telecommunications facilities in connection with the Program.
7

8 62. The interception devices and pen registers and/or trap and trace devices capture,
9 record or decode the various information pertaining to individual class member communications
10 including dialing, routing, addressing and/or signaling information ("DRAS information") for all
11 or a substantial number of all wire or electronic communications transferred through the
12 Defendants' domestic telecommunications facilities where those devices have been installed.
13

14 63. Using these devices, government agents have acquired and are acquiring wire or
15 electronic communications content and DRAS information directly via remote or local control of
16 the device, and/or the Defendants have disclosed and are disclosing those communications and
17 information to the government after interception, capture, recording, or decoding.
18

19 64. Defendants have knowingly authorized, and continue to knowingly authorize,
20 NSA and affiliated governmental agencies to directly access through the installed devices all
21 wireless telephone communications transmitted through the Defendants' domestic
22 telecommunications infrastructure and facilities for use in the Program.

23 65. Defendants intercept, divulge, and/or disclose to the federal government the
24 aforementioned telephone communications contents and records without probable cause.
25 Furthermore, Defendants have not received and/or are not acting within the scope of, in accord
26 with, or in good faith reliance on, any statutory authorization, legislative authorization, subpoena,
27 court order or warrant, nor any certification, request, or other lawful authorization under Chapter
28

1 119, 121, or 206 of Title 18 or Chapter 36 of Title 50, purporting to authorize the aforementioned
2 conduct.

3 66. To the best of Plaintiffs' counsel's knowledge, information, and belief, formed
4 after reasonable inquiry under the circumstances and likely to have evidentiary support after a
5 reasonable opportunity for further investigation and discovery, Defendants' interception,
6 divulgence and/or disclosure to the of the aforementioned telephone communications content and
7 records is willful, in bad faith, and done in collusion with the government, for purposes of direct
8 or indirect commercial advantage or private financial gain, and a failure to cooperate might have
9 jeopardized their ability to obtain lucrative government contracts.

10
11 67. Defendants did not disclose to its customers, including Plaintiffs, that it was
12 providing the aforementioned telephone contents and records to the federal government. Thus,
13 Defendants' customers, including Plaintiffs, had no opportunity to, and did not, consent to the
14 disclosure of their telephone contents and records.

15
16 68. The telephone contents and records intercepted and/or disclosed and/or divulged
17 by the Defendants to the federal government pursuant to the program challenged herein were not
18 divulged (a) pursuant to a law enforcement investigation concerning telemarketing fraud; (b) as a
19 necessary incident to the rendition of services to customers; (c) to protect the rights or property of
20 the Defendants; (d) based on a reasonable and/or good faith belief that an emergency involving
21 danger of death or serious physical injury required disclosure without delay; (e) to the National
22 Center for Missing and Exploited Children; or (f) to a non-governmental person or entity.

23
24 69. According to the "Investor Relations" page of its website, "BellSouth's wireless
25 business consists of a 40 percent interest in Cingular Wireless. Cingular Wireless is a joint
26 venture that was formed by combining the former domestic wireless operations of BellSouth and
27 AT&T (formerly SBC). Cingular Wireless is operated independently from both parents, currently
28

1 with a six member Board of Directors comprised of three directors from each parent. *BellSouth*
2 *and AT&T share control of Cingular Wireless.*” (emphasis added)

3 70. In a press release dated March 5, 2005 announcing plans for a merger between
4 AT&T Inc. and BellSouth Corporation, the companies stated that “the merger would also give
5 business and government customers, including military and *national security agencies*, a reliable
6 U.S.-based provider of integrated, secure, high-quality and competitively priced services to meet
7 their needs anywhere in the world.” (emphasis added).
8

9 **CLASS ACTION ALLEGATIONS**

10 71. Plaintiff brings this action under Federal Rule of Civil Procedure 23 on behalf of
11 themselves and a Class, defined as:

12 All individuals and entities located in the United States that have been subscribers
13 or customers of Defendant’s wireless, wire and/or electronic communication
14 services at any time since October 6, 2001. Excluded from the Class are
15 Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and
16 directors; all federal, state, and local governmental entities; any and all judges and
17 justices assigned to hear any aspect of this litigation, their court staffs, their
18 spouses, any minor children residing in their households, and any persons within
19 the third degree of relationship to any judge or justice assigned to hear any aspect
20 of this litigation.

21 72. Plaintiff also brings this action, pursuant to Rule 23, on behalf of distinct state
22 subclasses, including: (a) State of Florida Subclass, (b) a State of Georgia Subclass, (c) a State of
23 Hawaii Subclass, (d) a State of Indiana Subclass, (e) a State of New Jersey Subclass, and (f) a
24 State of Texas Subclass.

25 73. The State of Florida Subclass is defined is defined as:

26 All individuals and entities located in Florida and that have been subscribers or customers
27 of Defendant’s wireless, wire and/or electronic communication services at any time since
28 October 6, 2001. Excluded from the Subclasses are Defendant, Defendant’s predecessors,
affiliates, parents, subsidiaries, officers and directors; all federal, state, and local
governmental entities; any and all judges and justices assigned to hear any aspect of this
litigation, their court staffs, their spouses, any minor children residing in their households,
and any persons within the third degree of relationship to any judge or justice assigned to
hear any aspect of this litigation.

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74. The State of Georgia Subclass is defined is defined as:

All individuals and entities located in Georgia and that have been subscribers or customers of Defendant’s wireless, wire and/or electronic communication services at any time since October 6, 2001. Excluded from the Subclasses are Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and directors; all federal, state, and local governmental entities; any and all judges and justices assigned to hear any aspect of this litigation, their court staffs, their spouses, any minor children residing in their households, and any persons within the third degree of relationship to any judge or justice assigned to hear any aspect of this litigation.

75. The State of Hawaii Subclass is defined is defined as:

All individuals and entities located in Hawaii and that have been subscribers or customers of Defendant’s wireless, wire and/or electronic communication services at any time since October 6, 2001. Excluded from the Subclasses are Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and directors; all federal, state, and local governmental entities; any and all judges and justices assigned to hear any aspect of this litigation, their court staffs, their spouses, any minor children residing in their households, and any persons within the third degree of relationship to any judge or justice assigned to hear any aspect of this litigation.

76. The State of Indiana Subclass is defined is defined as:

All individuals and entities located in Indiana and that have been subscribers or customers of Defendant’s wireless, wire and/or electronic communication services at any time since October 6, 2001. Excluded from the Subclasses are Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and directors; all federal, state, and local governmental entities; any and all judges and justices assigned to hear any aspect of this litigation, their court staffs, their spouses, any minor children residing in their households, and any persons within the third degree of relationship to any judge or justice assigned to hear any aspect of this litigation.

77. The State of New Jersey Subclass is defined is defined as:

All individuals and entities located in New Jersey and that have been subscribers or customers of Defendant’s wireless, wire and/or electronic communication services at any time since October 6, 2001. Excluded from the Subclasses are Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and directors; all federal, state, and local governmental entities; any and all judges and justices assigned to hear any aspect of this litigation, their court staffs, their spouses, any minor children residing in their households, and any persons within the third degree of relationship to any judge or justice assigned to hear any aspect of this litigation.

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78. The State of Texas Subclass is defined is defined as:

All individuals and entities located in Texas and that have been subscribers or customers of Defendant’s wireless, wire and/or electronic communication services at any time since October 6, 2001. Excluded from the Subclasses are Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and directors; all federal, state, and local governmental entities; any and all judges and justices assigned to hear any aspect of this litigation, their court staffs, their spouses, any minor children residing in their households, and any persons within the third degree of relationship to any judge or justice assigned to hear any aspect of this litigation.

79. Plaintiffs seek certification of the Class and the Subclasses under Federal Rule of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).

80. The Class and Subclasses number in the millions, so that joinder of all Members is impractical.

81. The claims of Plaintiffs are typical of the claims of the Class and the Subclasses. Plaintiffs will fairly and adequately protect the interests of the Class and the Subclasses. Plaintiffs have no conflicts with any other Class or Subclass member and have retained competent counsel experienced in class actions, consumer, telecommunications, and civil rights litigation.

82. Common questions of law and fact exist, including:

- a) Whether Defendants intercepted its customers’ wire and electronic communications;
- b) Whether Defendants disclosed and/or divulged its customers’ telephone records and content to the federal government;
- c) Whether the Defendants violated federal law in disclosing and/or divulging its customers’ telephone records and content to the federal government;
- d) Whether Plaintiffs and Class Members are entitled to damages; and
- e) Whether Plaintiffs and Class Members are entitled to equitable relief.

83. These and other questions of law and fact are common to the Class and the Subclasses and predominate over any questions affecting only individual Members.

1 84. A class action is a superior method for the fair and efficient adjudication of the
2 controversy described herein. A class action provides an efficient and manageable method to
3 enforce the rights of Plaintiff and member of the Class and the Subclasses.

4 85. The prosecution of separate actions by individual Members of the Class and
5 Subclasses would create a risk on inconsistent or varying adjudication, establishing incompatible
6 standards of conduct for Defendant.

7 86. Defendant has acted, and refused to act, on grounds generally applicable to the
8 Class and Subclasses, thereby making appropriate relief with respect to the Class and Subclasses
9 as a whole.

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11 **NECESSITY OF INJUNCTIVE RELIEF**

12 87. The named Plaintiffs and the Members of the Class and Subclasses will continue
13 in the future to use their telephones.

14 88. Unless this Court enjoins the Defendants' program challenged herein, the
15 Defendants will continue to engage in the program.

16 89. The named Plaintiffs and the Members of the Class and Subclasses will suffer
17 irreparable harm as a result of the continuation of the Defendants' program, and they have no
18 adequate remedy at law.

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20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **Violation of 18 U.S.C. §§ 2702(a)(1) and/or (a)(2)**

23 90. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
24 of this Complaint, as if set forth fully herein.

25 91. In relevant part, 18 U.S.C. § 2702 provides that:

26 a. Prohibitions. Except as provided in subsection (b) or (c) –
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- 1 (1) a person or entity providing an electronic communication
- 2 service to the public shall not knowingly divulge to any
- 3 person or entity the contents of a communication while in
- 4 electronic storage by that service; and
- 5 (2) a person or entity providing remote computing service to the
- 6 public shall not knowingly divulge to any person or entity
- 7 the contents of any communication which is carried or
- 8 maintained on that service
- 9 (A) on behalf of, and received by means of electronic
- 10 transmission from (or created by means of computer
- 11 processing of communications received by means of
- 12 electronic transmission from), a subscriber or
- 13 customer of such service;
- 14 (B) solely for the purpose of providing storage or
- 15 computer processing services to such subscriber or
- 16 customer, if the provider is not authorized to access
- 17 the contents of any such communications for
- 18 purposes of providing any services other than
- 19 storage or computer processing. . . .

14 92. Defendants knowingly divulged to one or more persons or entities the contents of
15 Plaintiffs' and Class Members' communications while in electronic storage by a Defendant
16 electronic communication service, and/or while carried or maintained by a Defendant remote
17 computing service, in violation of 18 U.S.C. §§ 2702(a)(1) and/or (a)(2).

18 93. On information and belief, Defendants knowingly divulged to one or more persons
19 or entities the contents of Plaintiffs' and Class Members' communications while in electronic
20 storage by a Defendant electronic communication service, and/or while carried or maintained by a
21 Defendant remote computing service, in violation of 18 U.S.C. §§ 2702(a)(1) and/or (a)(2).

22 94. Defendants did not notify Plaintiffs or Class Members of the divulgence of their
23 communications, nor did Plaintiffs or Class Members consent to such.

24 95. Neither the NSA nor any other governmental entity has obtained a warrant
25 authorizing the disclosures, pursuant to 18 U.S.C. § 2703(c)(1)(A).

26 96. Neither the NSA nor any other governmental entity has obtained a court order
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1 authorizing the disclosures, pursuant to 18 U.S.C. § 2703(c)(1)(B) and (d).

2 97. Neither the NSA nor any other governmental entity has issued or obtained an
3 administrative subpoena authorized by a federal or state statute authorizing such disclosures,
4 pursuant to 18 U.S.C. § 2703(c)(1)(E) and (c)(2).

5 98. Neither the NSA nor any other governmental entity has issued or obtained a
6 federal or state grand jury or trial subpoena authorizing such disclosures, pursuant to 18 U.S.C.
7 § 2703(c)(1)(E) and (c)(2).

8 99. Defendants have not been provided with a certification in writing by a person
9 specified in 18 U.S.C. § 2518(7) or by the Attorney General of the United States meeting the
10 requirements of 18 U.S.C. § 2511(2)(a)(ii)(B), *i.e.*, a certification that no warrant or court order
11 authorizing the disclosures is required by law, and that all statutory requirements have been met.
12

13 100. The disclosures were not and are not authorized by any statute or legislation.

14 101. Defendants' disclosures in violation of 18 U.S.C. § 2702(a)(3) were and are
15 knowing, intentional, and willful.
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17 102. There is a strong likelihood that Defendants are now engaging in and will continue
18 to engage in the above-described divulgence of Plaintiffs' and Class Members' communications
19 while in electronic storage by Defendants' electronic communication service(s), and/or while
20 carried or maintained by Defendants' remote computing service(s), and that likelihood represents
21 a credible threat of immediate future harm.
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23 103. Plaintiffs and Class Members have been and are aggrieved by Defendants' above-
24 described divulgence of the contents of their communications.

25 104. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person
26 aggrieved by knowing or intentional violation of 18 U.S.C. § 2702, Plaintiffs and Class Members
27 seek such preliminary and other equitable or declaratory relief as may be appropriate; statutory
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1 damages of no less than \$1,000 for each aggrieved Plaintiff or Class Member; punitive damages
2 as the Court considers just; and reasonable attorneys' fees and other litigation costs reasonably
3 incurred.

4 **SECOND CLAIM FOR RELIEF**
5 **Violation of 18 U.S.C. § 2702(a)(3)**

6 105. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
7 of this Complaint, as if set forth fully herein.

8 106. In relevant part, 18 U.S.C. § 2702 provides that:

9 a. Prohibitions. Except as provided in subsection . . . (c)

10 (3) a provider of . . . electronic communication service to the
11 public shall not knowingly divulge a record or other
12 information pertaining to a subscriber to or customer of such
13 service (not including the contents of communications
14 covered by paragraph (1) or (2)) to any governmental entity.

15 107. Defendants' telephone services are "electronic communication service[s]," as that
16 term is defined in 18 U.S.C. § 2510(15), provided to the public, including Plaintiffs and Class
17 Members.

18 108. Defendants violated 18 U.S.C. § 2702(a)(3) by knowingly and intentionally
19 divulging to the federal government records or other information pertaining to subscribers or
20 customers of the Defendants' remote computing and electronic services.

21 109. Defendants' challenged program of disclosing telephone records to the federal
22 government does not fall within any of the statutory exceptions or immunities set forth in 18
23 U.S.C. §§ 2702(c), 2703(c), or 2703(e).

24 110. Neither the NSA nor any other governmental entity has obtained a warrant
25 authorizing the disclosures, pursuant to 18 U.S.C. § 2703(c)(1)(A).

26 111. Neither the NSA nor any other governmental entity has obtained a court order
27 authorizing the disclosures, pursuant to 18 U.S.C. § 2703(c)(1)(B) and (d).
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1 112. Neither the NSA nor any other governmental entity has issued or obtained an
2 administrative subpoena authorized by a federal or state statute authorizing such disclosures,
3 pursuant to 18 U.S.C. § 2703(c)(1)(E) and (c)(2).

4 113. Neither the NSA nor any other governmental entity has issued or obtained a
5 federal or state grand jury or trial subpoena authorizing such disclosures, pursuant to 18 U.S.C.
6 § 2703(c)(1)(E) and (c)(2).

7 114. Defendant has not been provided with a certification in writing by a person
8 specified in 18 U.S.C. § 2518(7) or by the Attorney General of the United States meeting the
9 requirements of 18 U.S.C. § 2511(2)(a)(ii)(B), *i.e.*, a certification that no warrant or court order
10 authorizing the disclosures is required by law and that all statutory requirements have been met.

11 115. The disclosures were not and are not authorized by any statute or legislation.

12 116. Whether or how the NSA, or any other governmental entity, actually used the
13 records after they were divulged is irrelevant to whether Defendants violated 18 U.S.C. §
14 2702(a)(3).

15 117. Plaintiffs and their Class are aggrieved by the Defendants' knowing and
16 intentional past disclosure and/or imminent future disclosure of their records to the federal
17 government. Accordingly, plaintiffs may challenge this violation of 18 U.S.C. § 2702(a)(3)
18 pursuant to the cause of action created by 18 U.S.C. § 2707(a).

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22 **THIRD CLAIM FOR RELIEF**
23 **Violation of 18 U.S.C. §§ 2511(1)(a), (1)(c), (1)(d), and (3)(a)**

24 118. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
25 of this Complaint, as if set forth fully herein.

26 119. In relevant part, 18 U.S.C. § 2511 provides that:

- 27 (1) Except as otherwise specifically provided in this chapter, any
28 person who – (a) intentionally intercepts, endeavors to intercept, or

FOURTH CLAIM FOR RELIEF
Violation of 47 U.S.C. § 605

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3 124. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
4 of this Complaint, as if set forth fully herein.

5 125. In relevant part, 47 U.S.C. § 605 provides that:

- 6 (a) Practices prohibited – Except as authorized by chapter 119, Title 18,
7 no person receiving, assisting in receiving, transmitting, or assisting
8 in transmitting, any interstate or foreign communication by wire or
9 radio shall divulge or publish the existence . . . thereof, except
10 through authorized channels of transmission or reception, (1) to any
11 person other than the addressee, his agent, or attorney, (2) to a person
12 employed or authorized to forward such communication to its
13 destination, (3) to proper accounting or distributing officers of the
14 various communicating centers over which the communication may
15 be passed, (4) to the master of a ship under whom he is serving, (5) in
16 response to a subpoena issued by a court of competent jurisdiction, or
17 (6) on demand of other lawful authority.

18 126. Defendants received, assisted in receiving, transmitted, or assisted in transmitting,
19 Plaintiff’s and Class Members’ interstate communications by wire or radio.

20 127. Defendants violated 47 U.S.C. § 605 by divulging or publishing the “existence” of
21 Plaintiff’s and Class Members’ communications to the federal government by means other than
22 through authorized channels of transmission or reception. Defendants’ disclosure and publication
23 of the existence of Plaintiff’s and Class Members’ communications was not authorized by any
24 provision of 18 U.S.C. §§ 2510-2522.

25 128. Defendants’ disclosure and publication of the existence of Plaintiff’s and Class
26 Members’ communications was willful and for purposes of direct or indirect commercial
27 advantage or private financial gain as they were paid for their cooperation, and a failure to
28 cooperate might have jeopardized their ability to obtain lucrative government contracts.

129. Defendants failed to notify Plaintiff or Class Members of Defendants’ disclosure
and/or publication of the existence of Plaintiff’s and Class Members’ communications nor did
Plaintiffs or Class Members consent to such disclosure and publication.

1 130. Pursuant to 47 U.S.C. § 605(e)(3), Plaintiffs and Class Members seek:

- 2 a. A declaration that the disclosures are in violation of 47 U.S.C. § 605(a);
- 3 b. A preliminary injunction restraining Defendants from continuing to make
- 4 such unlawful disclosures;
- 5 c. A permanent injunction restraining Defendants from continuing to make
- 6 such unlawful disclosures;
- 7 d. Statutory damages of not less than \$1,000 or more than \$10,000 for each
- 8 violation, plus, in the Court’s discretion, an increase in the statutory damages of up
- 9 to \$100,000 for each violation; and
- e. Reasonable attorneys’ fees and reasonable costs of this litigation.

10 **FIFTH CLAIM FOR RELIEF**

11 **Violation of 50 U.S.C. § 1809**

12 131. Plaintiffs repeat and incorporate herein by reference the allegations in the

13 preceding paragraphs of this Complaint, as if set forth fully herein.

14 132. In relevant part, 50 U.S.C. §1809 provides that:

- 15 (a) Prohibited activities – A person is guilty of an offense if he
- 16 intentionally – (1) engages in electronic surveillance under color of
- 17 law except as authorized by statute; or (2) discloses or uses
- 18 information obtained under color of law by electronic surveillance,
- 19 knowing or having reason to know that the information was
- 20 obtained through electronic surveillance not authorized by statute.

21 133. In relevant part 50 U.S.C. §1801 provides that:

- 22 (f) “Electronic surveillance” means – (1) the acquisition by an electronic,
- 23 mechanical, or other surveillance device of the contents of any wire or
- 24 radio communication sent by or intended to be received by a particular,
- 25 known United States person who is in the United States, if the contents
- 26 are acquired by intentionally targeting that United States person, under
- 27 circumstances in which a person has a reasonable expectation of
- 28 privacy and a warrant would be required for law enforcement purposes;
- (2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511 (2)(i) of Title 18; (3) the intentional acquisition by an electronic, mechanical, or other

1 surveillance device of the contents of any radio communication, under
2 circumstances in which a person has a reasonable expectation of
3 privacy and a warrant would be required for law enforcement purposes,
4 and if both the sender and all intended recipients are located within the
5 United States; or (4) the installation or use of an electronic, mechanical,
6 or other surveillance device in the United States for monitoring to
acquire information, other than from a wire or radio communication,
under circumstances in which a person has a reasonable expectation of
privacy and a warrant would be required for law enforcement purposes.

7 134. Defendants have intentionally acquired by means of a surveillance device, the
8 contents of one or more wire communications to or from Plaintiffs and Class Members, or other
9 information in which Plaintiffs or Class Members have a reasonable expectation of privacy,
10 without the consent of any party thereto, and such acquisition occurred in the United States.

11 135. By the acts alleged herein, Defendants have intentionally engaged in electronic
12 surveillance (as defined by 50 U.S. C. §1801(f)) under color of law but which is not authorized by
13 any statute, and the Defendants have intentionally subjected Plaintiffs and Class Members to such
14 electronic surveillance, in violation of 50 U.S.C. § 1809.

15 136. Additionally, or in the alternative, by the acts alleged herein Defendants have
16 intentionally disclosed or used information obtained under color of law by electronic surveillance,
17 knowing or having reason to know that the information was obtained through electronic
18 surveillance not authorized by statute.

19 137. Defendants did not notify Plaintiffs or Class Members of the above-described
20 electronic surveillance, disclosure, and/or use, nor did Plaintiffs or Class Members consent to
21 such.

22 138. Defendants' challenged program of electronic surveillance does not fall within any
23 of the statutory exceptions or immunities set forth in 50 U.S.C. § 1809(b).

24 139. There is a strong likelihood that Defendants are now engaging in and will continue
25 to engage in the above-described electronic surveillance, disclosure, and/or use of Plaintiffs' and
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1 Class Members' wire communications described herein, and that likelihood represents a credible
2 threat of immediate future harm.

3 140. Plaintiffs and Class Members have been and are aggrieved by the Defendants'
4 electronic surveillance, disclosure, and/or use of their wire communications.

5 141. Pursuant to 50 U.S.C. § 1810, which provides a civil action for any person who
6 has been subjected to an electronic surveillance or about whom information obtained by
7 electronic surveillance of such person has been disclosed or used in violation of 50 U.S.C. §1809,
8 Plaintiffs and Class Members seek equitable and declaratory relief; statutory damages for each
9 Plaintiff and Class Member of whichever is the greater of \$100 a day for each day of violation or
10 \$1,000; punitive damages as appropriate; and reasonable attorneys' fees and other litigation costs
11 reasonably incurred.
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14 **SIXTH CLAIM FOR RELIEF**
15 **Violation of the First and Fourth**
16 **Amendments to the United States Constitution**

17 142. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
18 of this Complaint, as if set forth fully herein.

19 143. Plaintiffs and Class Members have a reasonable expectation of privacy in their
20 communications, contents of communications, and/or records pertaining to their communications
21 transmitted, collected, and/or stored by Defendants, which was violated by Defendants' above-
22 described actions as agents of the government, which constitute a search and seizure of Plaintiffs'
23 and Class Members' communications and records.

24 144. Plaintiffs and Class Members use the Defendants' services to speak or receive
25 speech anonymously and to associate privately.

26 145. The above-described acts of interception, disclosure, divulgence and/or use of
27 Plaintiffs' and Class Members' communications, contents of communications, and records
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1 pertaining to their communications occurred without judicial or other lawful authorization,
2 probable cause, and/or individualized suspicion.

3 146. At all relevant times, the federal government instigated, directed, and/or tacitly
4 approved all of the above-described acts of the Defendants.

5 147. At all relevant times, the federal government knew of and/or acquiesced in all of
6 the above-described acts of the Defendants and failed to protect the First and Fourth Amendment
7 rights of the Plaintiffs and Class Members by obtaining judicial authorization.

8 148. In performing the acts alleged herein, the Defendants had, at all relevant times, a
9 primary or significant intent to assist or purpose of assisting the government in carrying out the
10 Defendants' program and/or other government investigations, rather than to protect its own
11 property or rights.

12 149. By the acts alleged herein, Defendants acted as instruments or agents of the
13 government, and thereby violated Plaintiffs' and Class Members' reasonable expectations of
14 privacy and denied Plaintiffs and Class Members their right to be free from unreasonable searches
15 and seizures as guaranteed by the Fourth Amendment to the Constitution of the United States, and
16 additionally violated Plaintiffs' and Class Members' rights to speak and receive speech
17 anonymously and associate privately under the First Amendment.

18 150. By the acts alleged herein, Defendants' conduct proximately caused harm to
19 Plaintiffs and Class Members.

20 151. Defendants' conduct was done intentionally, with deliberate indifference, or with
21 reckless disregard of, Plaintiffs' and Class Members' constitutional rights.

22
23 **SEVENTH CLAIM FOR RELIEF**
24 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
25 **and the Florida State Subclass)**
26 **Intentional Interception of Wire or Electronic Communications:**
27 **Fla. Stat. §934.03(1)(a)**
28

1 152. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
2 of this Complaint, as if set forth fully herein.

3 153. By the acts alleged herein, Defendants have intentionally intercepted, endeavored
4 to intercept, or procured from another person to intercept or endeavor to intercept the wire or
5 electronic communications of Plaintiffs Howard Jacobs, Laurence Kornblum, and the Florida
6 Subclass Members (collectively “Florida Plaintiffs and Subclass Members”) in violation of
7 Florida Statute Section 934.03(1)(a).
8

9 154. Florida Plaintiffs and Subclass Members have been and are aggrieved by
10 Defendants’ intentional interception, disclosure, divulgence and/or use of their wire or electronic
11 communications.
12

13 155. Pursuant to Florida Section 934.10(1), which provides a civil action for any person
14 whose wire or electronic communications have been intercepted in violation of Florida Statute
15 Section 934.03(1)(a), Florida Plaintiffs and Subclass Members demand preliminary, equitable, or
16 declaratory relief as may be appropriate, actual damages but not less than \$100.00 a day for each
17 day of violation or \$1,000.00, whichever is greater, punitive damages as may be deemed
18 applicable, reasonable attorney’s fees and other litigation costs reasonable incurred pursuant to
19 Florida Statute Section 934.10(1)(d).
20

21 **EIGHTH CLAIM FOR RELIEF**
22 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
23 **and the Florida State Subclass)**
24 **Intentional Disclosure of Wire or Electronic Communications:**
25 **Fla. Stat. §934.03(1)(c)**

26 156. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
27 of this Complaint, as if set forth fully herein.

28 157. By the acts alleged herein, Defendants have disclosed or endeavored to disclose
the contents of the wire and electronic communications of Florida Plaintiffs and Subclass

1 Members, knowing or having reason to know that the information was obtained in violation of
2 Florida law and contrary to Florida Statute Section 934.03(1)(c).

3 158. Florida Plaintiffs and Subclass Members have been and are aggrieved by
4 Defendants' intentional interception, disclosure, divulgence and/or use of their wire or electronic
5 communications.

6
7 159. Pursuant to Florida Section 934.10(1), which provides a civil action for any person
8 whose wire or electronic communications have been disclosed in violation of Florida Statute
9 Section 934.03(1)(c), Florida Plaintiffs and Subclass Members demand preliminary, equitable, or
10 declaratory relief as may be appropriate, actual damages but not less than \$100.00 a day for each
11 day of violation or \$1,000.00, whichever is greater, punitive damages as may be deemed
12 applicable, reasonable attorney's fees and other litigation costs reasonable incurred pursuant to
13 Florida Statute Section 934.10(1)(d).
14

15 **NINTH CLAIM FOR RELIEF**
16 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
17 **and the Florida State Subclass)**
18 **Intentional Use of Wire or Electronic Communications: Fla. Stat. §934.03(1)(d)**

19 160. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
20 of this Complaint, as if set forth fully herein.

21 161. By the acts alleged herein, Defendants have used or endeavored to use the contents
22 of the wire and electronic communications of Florida Plaintiffs and Subclass Members, knowing
23 or having reason to know that the information was obtained in violation of Florida law and
24 contrary to Florida Statute Section 934.03(1)(d).

25 162. Florida Plaintiffs and Subclass Members have been and are aggrieved by
26 Defendants' intentional interception, disclosure, divulgence and/or use of their wire or electronic
27 communications.

28 163. Pursuant to Florida Section 934.10(1), which provides a civil action for any person

1 whose wire or electronic communications have been used in violation of Florida Statute Section
2 934.03(1)(d), Florida Plaintiffs and Subclass Members demand preliminary, equitable, or
3 declaratory relief as may be appropriate, actual damages but not less than \$100.00 a day for each
4 day of violation or \$1,000.00, whichever is greater, punitive damages as may be deemed
5 applicable, reasonable attorney's fees and other litigation costs reasonable incurred pursuant to
6 Florida Statute Section 934.10(1)(d).
7

8 **TENTH CLAIM FOR RELIEF**
9 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
10 **and the Florida State Subclass)**
11 **Illegally Divulging Content of Communications: Fla. Stat. §934.22(1)(a)(1)**

12 164. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
13 of this Complaint, as if set forth fully herein.

14 165. In relevant part, Florida Statute Section 934.22(1)(a)(1) provides: "...A provider
15 of electronic communication service to the public may not knowingly divulge to ... [a]ny person or
16 entity the contents of a communication while in electronic storage by that service...".

17 166. On information and belief, Defendants knowingly divulged to the NSA, an agency
18 of the federal government the electronic communications of, and/or records and information
19 pertaining to, Florida Plaintiffs and Subclass Members.

20 167. Defendants did not notify Florida Plaintiffs or Subclass Members of the
21 divulgence of said communications, and/or records and information, nor did Florida Plaintiffs or
22 Subclass Members consent to such divulgence.

23 168. Florida Plaintiffs and Subclass Members have been and are aggrieved by
24 Defendants' above-described divulgence of their communications and information.

25 169. Pursuant to Florida Statute Section 934.27(1) and (3), which provide for a civil
26 action for any person(s) aggrieved by knowing or intentional violation of Florida Statute Section
27 934.22, Florida Plaintiffs and Subclass Members demand preliminary, equitable, or declaratory
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1 relief, as is appropriate, actual damages suffered by Florida Plaintiffs and Subclass Members and
2 any profits made by Defendants as a result of their violations, but not less than \$1,000.00,
3 together with reasonable attorney's fees and other litigation costs, pursuant to Florida Statute
4 Section 934.27(2)(c).

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6 **ELEVENTH CLAIM FOR RELIEF**
7 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
8 **and the Florida State Subclass)**
9 **Illegally Divulging Records to a Governmental Entity: Fla. Stat. §934.22(1)(b)**

10 170. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
11 of this Complaint, as if set forth fully herein.

12 171. In relevant part, Florida Statute Section 934.22(1)(a)(2) provides: "...A provider
13 of electronic communication service to the public may not knowingly divulge to ... [a]ny
14 governmental entity a record or other information pertaining to a subscriber to or customers of
15 such service."

16 172. On information and belief, Defendants knowingly divulged to the NSA, an agency
17 of the federal government, the electronic communications of, and records and information
18 pertaining to, Florida Plaintiffs and Subclass Members.

19 173. Defendants did not notify Florida Plaintiffs or Subclass Members of the
20 divulgence of said communications, records and/or information, nor did Florida Plaintiffs or
21 Subclass Members consent to such divulgence.

22 174. Florida Plaintiffs and Subclass Members have been and are aggrieved by
23 Defendants' above-described divulgence of their communications and information.

24 175. Pursuant to Florida Statute Section 934.27(1) and (3), which provide for a civil
25 action for any person(s) aggrieved by knowing or intentional violation of Florida Statute Section
26 934.22, Florida Plaintiffs and Subclass Members demand preliminary, equitable or declaratory
27 relief, as is appropriate, actual damages suffered by Florida Plaintiffs and Subclass Members and
28

1 any profits made by Defendants as a result of their violations, but not less than \$1,000.00,
2 together with reasonable attorney's fee and other litigation costs reasonably incurred, pursuant to
3 Florida Statute Section 934.27(2)(c).

4
5 **TWELFTH CLAIM FOR RELIEF**
6 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
7 **and the Florida State Subclass)**
8 **Unfair and Deceptive Trade Practices: Fla. Stat. §501.204 et seq.**

9
10 176. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
11 of this Complaint, as if set forth fully herein.

12 177. By engaging in the acts and practices described herein, Defendants have engaged
13 in one or more unconscionable acts or practices, and/or unfair or deceptive acts or practices in the
14 conduct of any trade or commerce, pursuant to Florida Statute Section 501.204(1), including:

- 15 a. Intentionally intercepting, endeavoring to intercept, or procuring others to
16 intercept or endeavor to intercept the wire or electronic communications of
17 Florida Plaintiffs and Subclass Members, in violation of Florida Statute
18 Section 934.03, and doing so for pecuniary gain.
- 19 b. Intentionally disclosing or endeavoring to disclose to any person the
20 content of any wire or electronic communication, knowing or having
21 reason to know that the information was obtained through the interception
22 of a wire or electronic communication in violation of Florida Statute
23 Section 934.03, and doing so for pecuniary gain.
- 24 c. Intentionally using or endeavoring to use the content of any wire or
25 electronic communication, knowing or having reason to know that the
26 information was obtained through the interception of wire or electronic
27 communication in violation of Florida Statute Section 934.03, and doing so
28 for pecuniary gain.

- 1 d. Knowingly divulging to a governmental entity a record or other
- 2 information pertaining to its subscribers or customers, in violation of
- 3 Florida Statute Section 934.22, et seq., and doing so for pecuniary gain.
- 4
- 5 e. Deceiving and misleading, affirmatively or through omission, Florida
- 6 Plaintiffs and Subclass Members as to the terms and conditions of services
- 7 provided by Defendants.
- 8
- 9 f. Offending the public policies and safeguards guaranteed in the Florida
- 10 Constitution, Article 1, Section 12.
- 11
- 12 g. Failing to notify Florida Plaintiffs and Subclass Members of their intention
- 13 to intercept, disclose and/or divulge their private electronic communication
- 14 to the government.
- 15
- 16 h. Upon information and belief, installing and/or using a pen register or a trap
- 17 and trace device without first obtaining a court order.
- 18
- 19 i. Breaching their contracts of service to Florida Plaintiffs and Subclass
- 20 Members.
- 21
- 22 j. Committing fraud upon the Florida Plaintiffs and Subclass Members.
- 23
- 24 k. Engaging in a fundamental breach of the privacy rights and expectations of
- 25 its customers.
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178. Florida Plaintiffs and Subclass Members have suffered actual damages and have lost money or property as a result of such unconscionable acts or practices, and/or unfair or deceptive acts or practices in the conduct of trade or commerce. Such damages and losses include, but are not limited to, the subscription and service fees and other charges paid to Defendants. Neither the Florida Plaintiffs nor any reasonable Florida Subclass member would have paid such fees and charges for Defendants' services had they first known of Defendants'

1 unlawful acts and practices.

2 179. Defendants, by their violations of Florida law and their unfair and deceptive acts
3 and practices have been enriched and earned profits, which profits must be disgorged and
4 recovered by Florida Plaintiffs and Subclass Members.

5 180. Pursuant to Florida Statute Section 501.211, which provide for a civil action for
6 any person(s) aggrieved by a violation of Florida Statutes Chapter 501, Florida Plaintiffs and
7 Subclass Members demand equitable, declaratory and injunctive relief, actual damages suffered
8 by Florida Plaintiffs and Subclass Members and any profits made by Defendants as a result of
9 their violations, together with reasonable attorney's fees and other litigation costs, pursuant to
10 Florida Statute Section 501.211(2).
11

12 **THIRTEENTH CLAIM FOR RELIEF**
13 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
14 **and the Florida State Subclass)**
15 **Fraud**

16 181. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
17 of this Complaint, as if set forth fully herein.

18 182. On information and belief and at all times material hereto, Defendants knowingly
19 and/or recklessly made express and/or implied false representations of specific material facts to
20 Florida Plaintiffs and Subclass Members.

21 183. Defendants expressly and/or impliedly represented to Florida Plaintiffs and
22 Subclass Members that Defendants would protect the privacy and confidentiality of its customers'
23 information, identity, records, data, subscriptions, use details, and communication, and to abide
24 by the laws of Florida.

25 184. On information and belief and at all material times hereto, Defendants actually
26 and/or constructively knew that said representations were false.

27 185. On information and belief and at all times material hereto, Defendants made said
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1 material misrepresentations to Florida Plaintiffs and Subclass Members for the purpose of
2 inducing them to rely upon same in contracting and continuing to perform.

3 186. Florida Plaintiffs and Subclass Members did, in fact, rely upon Defendants'
4 material misrepresentations to their detriment and were injured, damaged and aggrieved thereby,
5 through and including disclosure of their confidential, private and protected electronic
6 communications to third-parties, including the government, without warrant, subpoena, or
7 permission.
8

9 **FOURTEENTH CLAIM FOR RELIEF**
10 **(On Behalf of Plaintiffs Howard Jacobs, Laurence Kornblum,**
11 **and the Florida State Subclass)**
12 **Invasion of Privacy**

13 187. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
14 of this Complaint, as if set forth fully herein.

15 188. On information and belief, Florida Plaintiffs and Subclass Members have a
16 reasonable expectation of privacy in their communications, contents of communications, and/or
17 records pertaining to their communications transmitted collected, and/or stored by Defendants,
18 pursuant to Article 1 Section 12 of the Florida Constitution.

19 189. On information and belief, Florida Plaintiffs and Subclass Members use
20 Defendants' services to speak or receive speech anonymously and to associate privately.

21 190. On information and belief, the above-described acts of interception, disclosure,
22 divulgence and/or use of Florida Plaintiffs' and Subclass Members' communications, contents of
23 communications, and/or records pertaining to their communications by Defendants occurred
24 without consent, judicial or other lawful authorization, probable cause, and/or individualized
25 suspicion.
26

27 191. On information and belief, the above-described acts of interception, disclosure,
28 divulgence and/or use of Florida Plaintiffs' and Subclass Members' communications, contents of

1 communications, and/or records pertaining to their communications by Defendants constituted
2 public disclosure of same, insofar as the said disclosure and/or divulgence was to an agency of the
3 federal government.

4 192. At all times material hereto, the communications, contents of communications,
5 and/or records pertaining to communications of Florida Plaintiffs and Subclass Members were
6 truthful information.
7

8 193. At all times material hereto, a reasonable person, including Florida Plaintiffs and
9 Subclass Members, would and do find the public disclosure of such information objectionable.
10

11 **FIFTEENTH CLAIM FOR RELIEF**
12 **(On Behalf of Plaintiffs Rabbi Steven Lebow, Steven Bruning, Cathy Bruning ,and**
13 **the Georgia State Subclass)**
14 **Electronic Surveillance: Unlawful Eavesdropping or Surveillance:**
15 **Georgia Code 16-11-62, et seq**

16 194. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
17 of this Complaint, as if set forth fully herein.

18 195. Plaintiffs Rabbi Steven Lebow, Steven Bruning, and Cathy Bruning (“Georgia
19 Plaintiffs”) and Georgia Subclass Members (collectively “Georgia Plaintiffs and Subclass
20 Members”) are permitted to maintain a civil action against Defendants pursuant to Georgia Code
21 § 16-11-62(4)(6)(7), which prohibits Defendants from intentionally and secretly intercepting
22 Georgia Plaintiffs’ and Subclass Members’ private communications by the use of any device,
23 instrument, or apparatus, and/or giving or distributing such communications, without legal
24 authority, to any person or entity.

25 196. Defendants were not provided with any proper legal authority permitting
26 Defendants to undertake the activities complained of above.

27 197. By the acts alleged herein, Defendants have intentionally and secretly intercepted
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1 Georgia Plaintiffs’ and Subclass Members’ private communications through the use of a
2 surveillance device and/or have provided the contents of such communications to third parties
3 without proper legal authority.

4 198. Defendants did not notify Georgia Plaintiffs or Subclass Members of either
5 Defendants’ interception of Georgia Plaintiffs’ or Subclass Members’ communications and/or
6 Defendants’ provision of the contents of such communications to third parties nor did Georgia
7 Plaintiffs or Subclass Members consent to such.

8 199. On information and belief, there is a strong likelihood that Defendants are now
9 engaging in, and will continue to intercept Georgia Plaintiffs’ and Subclass Members’
10 communications, and will continue to provide the contents of such communications to third
11 parties and that likelihood represents a credible threat of immediate future harm.

12 200. Georgia Plaintiffs and Subclass Members have been and are aggrieved by
13 Defendants’ above-described interception of Georgia Plaintiffs’ or Subclass Members’
14 communications and/or Defendants’ provision of the contents of such communications to third
15 parties.

16 201. Pursuant to Georgia Code § 6-11-62, Georgia Plaintiffs and Subclass Members are
17 entitled to obtain against Defendants damages and such relief as the Court considers just.

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21 **SIXTEENTH CLAIM FOR RELIEF**
22 **(On Behalf of Plaintiffs Anakalia Kaluna and**
23 **Kim Coco Iwamoto and the Hawaii State Subclass)**
24 **Violations of HRS § 803-48**

25 202. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
26 of this Complaint, as if set forth fully herein.

27 203. Plaintiffs Anakalia Kaluna and Kim Coco Iwamoto (“Hawaii Plaintiffs”) and
28 Hawaii Subclass Members (collectively “Hawaii Plaintiffs and Subclass Members”) are permitted

1 to maintain a civil action against Defendants pursuant to HRS 803-48 for Defendants' wrongful
2 disclosure and/or intentional use of Hawaii Plaintiffs' and Subclass Members' wire and/or
3 electronic communications.

4 204. Defendants were not provided with any signed court order, appropriate
5 certification, or other proper legal authority to undertake the activities complained of above and
6 Defendants nevertheless knowingly authorized the NSA to undertake such activities.
7

8 205. Defendants have intentionally and secretly intercepted Hawaii Plaintiffs' and
9 Subclass Members' private communications through the use of a surveillance device and/or have
10 provided the contents of such communications to third parties without proper legal authority.

11 206. Defendants did not notify Hawaii Plaintiffs or Subclass Members of either
12 Defendants' interception of Hawaii Plaintiffs' or Subclass Members' communications and/or
13 Defendants' provision of the contents of such communications to third parties nor did Hawaii
14 Plaintiffs or Subclass Members consent to such.
15

16 207. There is a strong likelihood that Defendants are now engaging in, and will
17 continue to intercept Hawaii Plaintiffs' and Subclass Members' communications, and will
18 continue to provide the contents of such communications to third parties and that likelihood
19 represents a credible that of immediate future harm.
20

21 208. Hawaii Plaintiffs and Subclass Members have been and are aggrieved by
22 Defendants' above-described interception of Hawaii Plaintiffs' or Subclass Members'
23 communications and/or Defendants' provision of the contents of such communications to third
24 parties.

25 209. Pursuant to HRS § 803-48, Hawaii Plaintiffs and Subclass Members are entitled to
26 obtain against Defendants an injunction by a court of record prohibiting further eavesdropping, all
27 actual damages against the person who eavesdrops or \$100 per day for each day of violation or
28

1 \$10,000, reasonable attorneys' fees and other litigation costs, and punitive damages as determined
2 by the court of by a jury.

3 **SEVENTEENTH CLAIM FOR RELIEF**
4 **(On Behalf of Plaintiffs Anakalia Kaluna and**
5 **Kim Coco Iwamoto and the Hawaii State Subclass)**
6 **Deceptive Acts and Practices by Defendants**

7 210. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
8 of this Complaint, as if set forth fully herein.

9 211. The subject matter of the transaction between the Hawaii Plaintiffs and Subclass
10 Members and the Defendants meets the definition of "Commodity" as that term is defined in HRS
11 § 408-2 as it includes, "but is not restricted to, goods, merchandise, produce, choses in action, and
12 any other article of commerce. It also includes trade or business in service trades, transportation,
13 insurance, banking, lending, advertising, bonding, and any other business."

14 212. Hawaii Plaintiffs and Subclass Members are consumers as that term is defined at
15 HRS § 408-2.

16 213. Defendants were a "person" or "persons" as that term is defined at HRS § 408-2.

17 214. The actions of Defendants as described above were unfair and/or deceptive acts or
18 practices as these terms are defined at HRS § 408-2.

19 215. The actions of Defendants harmed Hawaii Plaintiffs and Subclass Members in an
20 amount not capable of determination as of the date of filing of this Complaint.

21 **EIGHTEENTH CLAIM FOR RELIEF**
22 **(On Behalf of Plaintiffs Anakalia Kaluna and**
23 **Kim Coco Iwamoto and the Hawaii State Subclass)**
24 **The Constitution of the State of Hawaii, Article I, Section 6**

25 216. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
26 of this Complaint, as if set forth fully herein.

27 217. The Constitution of the State of Hawaii, Article I, Section 6 states "The right of the
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1 people to privacy is recognized and shall not be infringed without the showing of a compelling
2 state interest the legislature shall take affirmative steps to implement this right.”

3 218. The actions of the Defendants violate Hawaii Plaintiffs’ and Subclass Members’
4 rights under this Section.

5
6 **NINETEENTH CLAIM FOR RELIEF**
7 **(On Behalf of Plaintiff Sam Goldstein Insurance**
8 **Agency, Inc. and the Indiana State Subclass)**
9 **Wrongful Interception, Disclosure and/or Use of Plaintiffs’**
10 **and Indiana Class Members’ Wire and/or Electronic Communications**

11 219. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
12 of this Complaint, as if set forth fully herein.

13 220. Plaintiff Sam Goldstein Insurance Agency, Inc. (“Indiana Plaintiff”) and Indiana
14 Subclass Members (collectively “Indiana Plaintiff and Subclass Members”) are permitted to
15 maintain a civil action against Defendants pursuant to IC 35-33.5-5-4 *et seq* for Defendants’
16 wrongful interception, disclosure and/or intentional use of Indiana Plaintiff’s and Subclass
17 Members’ wire and/or electronic communications.

18 221. Defendants were not provided with any signed court order, appropriate
19 certification, or other proper legal authority to undertake the activities complained of above and
20 Defendants nevertheless knowingly authorized the NSA to undertake such activities.

21 222. By the acts alleged herein, Defendants have intentionally and secretly intercepted
22 Indiana Plaintiff’s and Subclass Members’ private communications through the use of a
23 surveillance device and/or have provided the contents of such communications to third parties
24 without proper legal authority.

25 223. Defendants did not notify Indiana Plaintiff or Subclass Members of either
26 Defendants’ interception of Indiana Plaintiff’s or Subclass Members’ communications and/or
27 Defendants’ provision of the contents of such communications to third parties, nor did Indiana
28

1 Plaintiff or Subclass Members consent to such.

2 224. There is a strong likelihood that Defendants are now engaging in, and will
3 continue to intercept Indiana Plaintiff's and Subclass Members' communications, and will
4 continue to provide the contents of such communications to third parties, and that likelihood
5 represents a credible threat of immediate future harm.

6
7 225. Indiana Plaintiff and Subclass Members have been and are aggrieved by
8 Defendants' above-described interception of Indiana Plaintiff's or Subclass Members'
9 communications and/or Defendants' provision of the contents of such communications to third
10 parties.

11 226. Pursuant to IC 35-33.5-5-4, Indiana Plaintiff and Subclass Members are entitled to
12 obtain against Defendants damages which are the greater of: (a) actual damages; (b) liquidated
13 damages computed at a rate of one hundred dollars (\$100) each day for each day of violation; or
14 (c) \$1000.

15
16 227. Also pursuant to IC 35-33.5-5-4, Indiana Plaintiff and Class Members are entitled
17 to court costs, punitive damages (when determined to be appropriate by the court) and reasonable
18 attorneys' fees.

19
20 **TWENTIETH CLAIM FOR RELIEF**
21 **(On Behalf of Plaintiffs Paul Robilotti and**
22 **Alan Toly Sapoznik and the New Jersey State Subclass)**
23 **Violations of New Jersey Wiretap Act, N.J.S.A. 2A:156A-1 et seq**

24 228. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
25 of this Complaint, as if set forth fully herein.

26 229. At all relevant times, Defendants purposefully intercepted, endeavored to
27 intercept, and/or procured other persons to intercept or endeavor to intercept the wire, electronic,
28 or oral communication of the Plaintiffs Paul Robilotti and Alan Toly Sapoznik ("New Jersey

1 Plaintiffs”) and New Jersey Subclass Members (collectively “New Jersey Plaintiffs and Subclass
2 Members”) contrary to N.J.S.A. 2A:156A-3(a).

3 230. At all relevant times, Defendants purposefully disclosed, and/or endeavored to
4 disclose to other persons, the contents of the New Jersey Plaintiffs’ and Subclass Members’ wire,
5 electronic or oral communication or evidence derived therefrom knowing, or having reason to
6 know, that the information was obtained through the interception of a wire, electronic, or oral
7 communication contrary to N.J.S.A. 2A: 156A-3(b).

8 231. At all relevant times, Defendants purposefully used, and/or endeavored to use, the
9 contents of the New Jersey Plaintiffs’ and Subclass Members’ wire, electronic, or oral
10 communication or evidence derived therefrom knowing, or having reason to know, that the
11 information was obtained through the interception of a wire, electronic, or oral communication
12 contrary to N.J.S.A. 2A:156A-3(c).

13 232. New Jersey Plaintiffs and Subclass Members are permitted to maintain a civil
14 action against Defendants pursuant to N.J.S.A. 2A: 156A-24 for Defendants’ unlawful
15 interception, endeavor to intercept, procurement of any other person to intercept, or endeavor to
16 intercept, disclosure, or endeavor to disclose, to any other person, use, or endeavor to use any
17 wire, electronic, or oral, communication, or evidence derived therefrom and/or intentional use of
18 New Jersey Plaintiffs’ and Subclass Members’ wire and/or electronic communications in
19 violation of the aforesaid provisions of the New Jersey Wiretap Act.

20 233. The New Jersey Wiretap Act proscribes the intentional interception, disclosure,
21 use and divulgence of New Jersey Plaintiffs’ and Subclass Members’ wire or electronic
22 communications absent a signed order or warrant from a court of competent jurisdiction.

23 234. At all relevant times, Defendants were not provided with any signed court order or
24 warrant to undertake the activities complained of above, and Defendants nevertheless knowingly
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1 authorized the NSA, its servants, agents, and/or employees to undertake such activities.

2 235. By the acts alleged herein, Defendants have intentionally divulged the contents of
3 New Jersey Plaintiffs' and Subclass Members' wire or electronic communications to persons or
4 entities other than the addressee or intended recipient, or the agents of same, or other providers of
5 wire or electronic communication service, while those communications were in transmission on
6 Defendants' electronic communications services, in violation of the New Jersey Wiretap Act.
7

8 236. Defendants did not notify New Jersey Plaintiffs or Subclass Members of the
9 above-described intentional interception, disclosure, divulgence, and/or use of New Jersey
10 Plaintiffs' or Subclass Members' wire or electronic communications, nor did New Jersey
11 Plaintiffs or Subclass Members consent to such.

12 237. New Jersey Plaintiffs and Subclass Members have been, and are aggrieved by,
13 Defendants' intentional interception, disclosure, divulgence, and/or use of their wire or electronic
14 communications in violation of all applicable provisions of the New Jersey Wiretap Act.
15

16 238. N.J.S.A. 2A:156A-27(a) prohibits the knowing access, without authorization, of a
17 facility through which an electronic communication service is provided, or exceeds an
18 authorization to access that facility, and thereby obtains, alters, or prevents authorized access to a
19 wire or electronic communication while that communication is in electronic storage.
20

21 239. At all relevant times and by their acts as alleged herein, the Defendants have
22 violated N.J.S.A. 2A: 156A-27(a).

23 240. N.J.S.A. 2A:156A-27(b) prohibits a person or entity for the purpose of commercial
24 gain from the knowing access, without authorization, or malicious destruction or damage of a
25 facility through which an electronic communication service is provided, or exceeds an
26 authorization to access that facility, and thereby obtains, alters, or prevents authorized access to a
27 wire or electronic communication while that communication is in electronic storage.
28

1 241. New Jersey Plaintiffs and Subclass Members are permitted to maintain a civil
2 action against Defendants pursuant to N.J.S.A. 2A: 156A-32 for Defendants' knowing divulgence
3 of the contents of New Jersey Plaintiffs and Subclass Members' communications while in
4 electronic storage by Defendants and/or carried or maintained by Defendants in connection with
5 their remote computing service, all in violation of N.J.S.A. 2A:156A-28.
6

7 242. New Jersey Plaintiffs and Subclass Members are permitted to maintain a civil
8 action against Defendants pursuant to N.J.S.A. 2A:156A-32 for Defendants' violations of
9 N.J.S.A. 2A:156A-27 as set forth herein.

10 243. At all relevant times herein, Defendants by their conduct as alleged herein have
11 violated, and continue to violate, the relevant provisions of the New Jersey Wiretap Act
12 including, but not limited to, all those referenced herein.

13 244. There is a strong likelihood that Defendants are now engaging in and will continue
14 to engage in the above-described intentional interception, disclosure, divulgence, and/or use of
15 New Jersey Plaintiffs' and Subclass Members' wire or electronic communications and that
16 likelihood represents a credible threat of immediate future harm.
17

18 245. Pursuant to N.J.S.A. 2A:156A-24, New Jersey Plaintiffs and Subclass Members
19 are entitled to obtain against Defendants actual damages, but not less than liquid damages,
20 computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
21 punitive damages; reasonable attorneys' fee and other litigation costs reasonably incurred.
22

23 246. Pursuant to N.J.S.A. 2A: 156A-32, New Jersey Plaintiffs and Subclass Members
24 are entitled to obtain against Defendants preliminary and other equitable and declaratory relief as
25 may be appropriate; actual damages suffered by the New Jersey Plaintiffs and Subclass Members
26 and any profits made by the Defendants as a result of the violation, but not less than \$1,000,
27 reasonable attorneys' fees and other litigation costs reasonably incurred.
28

1 **TWENTY-FIRST CLAIM FOR RELIEF**
2 **(On Behalf of Plaintiffs Paul Robilotti and**
3 **Alan Toly Sapoznik and the New Jersey State Subclass)**
4 **Violations of New Jersey Constitution**

5 247. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
6 of this Complaint, as if set forth fully herein.

7 248. New Jersey Plaintiffs and Subclass Members are permitted to maintain a civil
8 action against the Defendants for their wrongful interception, disclosure and use of New Jersey
9 Plaintiffs and Subclass Members' wire and electronic communications and/or any other
10 private/confidential information in violation of the New Jersey Constitution, including, but not
11 limited to, Article I.

12 249. At all times relevant herein, Defendants were subject to and New Jersey Plaintiffs
13 and Subclass Members were protected under the New Jersey Constitution.

14 250. More specifically, and not by way of limitation, New Jersey Plaintiffs and
15 Subclass Members were guaranteed the following rights under the New Jersey Constitution:
16

- 17 a. the right to acquire, possess, and protect property;
18 b. the right to be secure from unreasonable searches and seizures;
19 and,
20 c. the right to privacy.

21 251. At all relevant times herein, Defendants were not provided with any court order or
22 warrant to undertake the activities complained of and Defendants nevertheless knowingly and
23 voluntarily authorized, permitted, allowed, assisted, aided, and abetted the NSA to engage in such
24 activities as set forth herein.

25 252. By their actions as set forth herein, the Defendants are liable in tort for their
26 violations of the New Jersey Plaintiffs' and Subclass Members' aforesaid rights as guaranteed and
27 protected by the New Jersey Constitution. .
28

1 **TWENTY-SECOND CLAIM FOR RELIEF**
2 **(On Behalf of Plaintiffs Paul Robilotti and**
3 **Alan Toly Sapoznik and the New Jersey State Subclass)**
4 **Malicious Misrepresentation**

5 253. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
6 of this Complaint, as if set forth fully herein.

7 254. At all times relevant herein, Defendants agreed to provide for a subscription fee,
8 and New Jersey Plaintiffs and Subclass Members agreed to purchase from the Defendants various
9 telecommunication and electronic communication services.

10 255. At all times relevant herein, Defendants acknowledged their duty under the law to
11 protect the confidentiality of New Jersey Plaintiffs' and Subclass Members' telecommunications
12 service information, including, but not limited to, the type, technical arrangement, quantity,
13 destination, and amount of use of telecommunication services. Despite Defendants'
14 acknowledgment and continued false assurances, Defendants failed to comply with the terms and
15 conditions of their subscriber agreements, notices, and the law in that Defendants knowingly,
16 willfully, and voluntarily provided confidential, private, and protected information to
17 unauthorized third parties as set forth herein.

18 256. At all relevant times, the New Jersey Plaintiffs and Subclass Members relied upon
19 Defendants' misrepresentations of material facts that were made knowingly, without belief in its
20 truth, or in reckless or careless disregard of the truth.

21 257. Defendants, upon information and belief, made these material misrepresentations
22 with the purpose of inducing the New Jersey Plaintiffs and Subclass Members to rely upon and
23 act upon the false representations.

24 258. By their actions as set forth herein, the Defendants are liable to the New Jersey
25 Plaintiffs and Subclass Members for damages including, but not limited to, compensatory and
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1 punitive damages.

2 **TWENTY-THIRD CLAIM FOR RELIEF**
3 **(On Behalf of Plaintiffs Paul Robilotti and**
4 **Alan Toly Sapoznik and the New Jersey State Subclass)**
5 **Invasion of Privacy**

6 259. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
7 of this Complaint, as if set forth fully herein.

8 260. By their actions as set forth herein, Defendants invaded the privacy of the New
9 Jersey Plaintiffs and Subclass Members.

10 261. As a result, Defendants are liable in tort to the New Jersey Plaintiffs and Subclass
11 Members for compensatory and punitive damages.

12 **TWENTY-FOURTH CLAIM FOR RELIEF**
13 **(On Behalf of Plaintiffs Paul Robilotti and**
14 **Alan Toly Sapoznik and the New Jersey State Subclass)**
15 **Violations of the New Jersey Consumer Fraud Act**

16 262. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
17 of this Complaint, as if set forth fully herein.

18 263. Defendants have engaged in unconscionable commercial practices, deception,
19 fraud, false promises, false pretenses, and/or misrepresentations, as specified above, in its
20 interactions with New Jersey Plaintiffs and Subclass Members in violation of the New Jersey
21 Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq* (“CFA”).

22 264. Defendants knowingly and with intent concealed, suppressed, or omitted material
23 facts, as specified above, in its interactions with New Jersey Plaintiffs and Subclass Members in
24 violation of the CFA.

25 265. Defendant’s violations of state and federal statutes and regulations, as well as the
26 New Jersey Constitutions and common law as set forth above, to New Jersey Plaintiffs and
27 Subclass Members constitute misrepresentations, deceptive practices, and/or unconscionable
28

1 business practices under the CFA.

2 266. Defendants violated the Federal Telecommunications Act by failing to safeguard
3 the CPNI and other private/confidential information of New Jersey Plaintiffs and Subclass
4 Members.

5 267. Defendants violated the Federal Telecommunications Act and other statutes and
6 regulations by failing to provide proper notice and failing to obtain specific authorization from
7 New Jersey Plaintiffs and Subclass Members prior to disclosing their CPNI to the NSA and/or
8 other government entities.

9 268. The violations of the Federal Telecommunications Act and other statutes and
10 regulations, as well as the New Jersey Constitution and common law, constitute unconscionable
11 commercial practices, deception, fraud, false promises, false pretenses, and/or misrepresentations
12 in violation of the CFA.

13 269. New Jersey Plaintiffs and Subclass Members suffered an ascertainable loss as a
14 result of Defendants' violations of the CFA,

15 270. As a result, New Jersey Plaintiffs and Subclass Members are entitled to the relief
16 from Defendants as set forth in the CFA.

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19 **TWENTY-FIFTH CLAIM FOR RELIEF**
20 **(On Behalf of Plaintiffs Paul Robilotti and**
21 **Alan Toly Sapoznik and the New Jersey State Subclass)**
22 **Violations of the Truth-in-Consumer Contract,**
23 **Warranty and Notice Act (TCCWNA)**

24 271. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
25 of this Complaint, as if set forth fully herein.

26 272. New Jersey Plaintiffs and Subclass Members fall within the definition of a
27 consumer as defined in the Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A.
28 56:12-14 *et seq.*

1 273. Defendants violated the Truth-in-Consumer Contract, Warranty and Notice Act,
2 N.J.S.A. 11 56:12-14 *et seq.* Defendants offered and/or entered into a written consumer contract
3 and/or gave or displayed a written consumer warranty, notice or sign which included a provision
4 that violated a clearly established right of New Jersey Plaintiffs and Subclass Members as
5 established by state or federal law at the time the offer was made, the contract was signed, and the
6 warranty was given.
7

8 274. Defendants offered and/or entered into a written consumer contract and/or gave or
9 displayed a written consumer warranty, notice or sign which included a provision that violated
10 their clearly established responsibilities as established by state or federal law at the time the offer
11 was made, the contract was signed, and the warranty was given.
12

13 275. Defendants failed to provide notice and obtain authorizations to disclose the CPNI
14 of New Jersey Plaintiffs and Subclass Members to the NSA and/or other governmental entities in
15 violation of Defendants' clearly established responsibilities as established by State or Federal law.
16

17 276. Defendants' aforesaid failure to provide notice and obtain authorizations to
18 disclose the CPNI and/or other private/confidential information of New Jersey Plaintiffs and
19 Subclass Members in violation of Federal or State law is a direct violation of TCCWNA.
20

21 277. Defendants' violated of N.J.S.A. 2A:156A-27 and 28 which are clearly established
22 rights of New Jersey Plaintiffs and Subclass Members.
23

24 278. Defendants' violations of N.J.S.A. 2A: 156A-27 and 28 -26C.2(a)3(1) are
25 violations of TCCWNA.
26

27 279. Each of the aforesaid violations are individual and separate violations of the Truth-
28 in-Consumer Contract, Warranty and Notice Act warranting a separate statutory award of
damages for each violation and all other relief as permitted by law.

1 **TWENTY-SIXTH CLAIM FOR RELIEF**
2 **(On Behalf of Plaintiffs Paul Robilotti and**
3 **Alan Toly Sapoznik and the New Jersey State Subclass)**
4 **Violations of 2C:21-7 (Deceptive Business Practices) and**
5 **2C:21-17.3 (Prohibiting the Fraudulent Use and Distribution**
6 **of Items Containing the Personal Information of Another)**

7 280. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
8 of this Complaint, as if set forth fully herein.

9 281. At all relevant times and by their actions as set forth herein, Defendants, through
10 their promotional literature and/or written notices and/or other written material provided to the
11 public and/or the New Jersey Plaintiffs and Subclass Members, represented that the personal,
12 private and confidential records and information of the New Jersey Plaintiffs and Subclass
13 Members as set forth herein would be protected from disclosure to and use by governmental
14 authorities without appropriate consent and/or authorization and/or legal authority while at all
15 relevant times Defendants knew such representations to be false.

16 282. At all relevant times, the New Jersey Plaintiffs and Subclass Members subscribed
17 to and continued to utilize Defendants' various telecommunications services unaware that the
18 Defendants were acting contrary to Defendants' aforesaid representations.

19 283. At all relevant times and by their actions as set forth herein, Defendants violated
20 one or more of the provisions of N.J.S.A. 2C:21-7 (Deceptive Business Practices) which
21 prohibits, *inter alia*, a person from making a false or misleading statement in any advertisement
22 addressed to the public or to a substantial segment thereof for the purpose of promoting the sale
23 of property or services and/or from making any false or misleading written statement for the
24 purpose of obtaining property.

25 284. At all relevant times and by their actions as set forth herein, Defendants violated
26 one or more of the provisions of N.J.S.A. 2C:21-17.3 which prohibits, *inter alia*, the fraudulent
27 use and/or distribution of items containing personal identifying information of another.
28

1 Defendants knowingly used and/or distributed one or more items containing personal identifying
2 information pertaining to the New Jersey Plaintiffs and Subclass Members to the NSA and/or its
3 affiliates without the authorization of the New Jersey Plaintiffs and Subclass Members. With the
4 Defendants' knowledge, Defendants were perpetrating a fraud upon the New Jersey Plaintiffs and
5 Subclass Members who the Defendants knew were unaware of and unsuspecting of such illegal
6 activities.
7

8 285. As a result of the Defendants' aforesaid violations of law, pursuant to N.J.S.A.
9 2C:21-17.4, Defendants are liable to the New Jersey Plaintiffs and Subclass Members for all
10 damages and relief allowable by law including, but not necessarily limited to, appropriate legal
11 and equitable relief, an award of damages in the amount of three times the value of all costs
12 incurred by the New Jersey Plaintiffs and Subclass Members, attorneys' fees, court costs and any
13 out-of-pocket losses, all such damages in addition to, and not in lieu of any other action,
14 injunctive relief or any other remedy available at law.
15

16
17 **TWENTY-SEVENTH CLAIM FOR RELIEF**
18 **(On Behalf of Plaintiffs Paul Robilotti and**
19 **Alan Toly Sapoznik and the New Jersey State Subclass)**
20 **Civil Remedies Available Pursuant to N.J.S.A. 2C:41-4 (N.J. Civil RICO)**

21 286. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
22 of this Complaint, as if set forth fully herein.

23 287. At all relevant times herein and by their conduct as aforesaid, the Defendants each
24 committed two or more predicate criminal acts against the New Jersey Plaintiffs and Subclass
25 Members, to wit, by violating one or more provisions of N.J.S.A. 2C:21-7 and/or N.J.S.A. 2C:21-
26 17.3, all in violation of N.J.S.A. 2C:41-2 (prohibited acts pursuant to N.J. RICO).

27 288. As a result of the Defendants' aforesaid violations of law, the Defendants are
28 liable to the New Jersey Plaintiffs and Subclass Members for all damages and relief allowable

1 pursuant to N.J.S.A. 2C:41-4 (NJ Civil RICO).

2 **TWENTY-EIGHTH CLAIM FOR RELIEF**
3 **(On Behalf of Plaintiffs James C. Harrington, Richard A. Grigg,**
4 **Louis Black, the *Austin Chronicle*, Michael Kentor and the Texas State Subclass)**
5 **Unauthorized Use of Pen Registers and Trap & Trace Devices**

6 289. Plaintiffs incorporate all of the allegations contained in the preceding paragraphs
7 of this Complaint, as if set forth fully herein.

8 290. Section 16.03 of the Texas Penal Code makes it a crime if a person “knowingly
9 installs or uses a pen register or trap and trace device to record or decode electronic or other
10 impulses for the purpose of identifying telephone numbers dialed or otherwise transmitted on a
11 telephone line.” TEX. PENAL CODE § 16.03 (2005). Defendants and their agents violated this
12 provision by disclosing telephone numbers dialed and other call information to the Government.

13 291. Section 16(a) of Article 18.20 of the Texas Code of Criminal Procedure provides
14 a private cause of action for customers aggrieved by a violation of Chapter 16 of the Penal Code.
15 Plaintiffs James C. Harrington, Richard A. Grigg, Louis Black, the *Austin Chronicle*, and Michael
16 Kentor (“Texas Plaintiffs”) and Texas Subclass Members (collectively “Texas Plaintiffs and
17 Subclass Members”) seek damages or \$100 per day per violation, punitive damages, and
18 reasonable attorneys’ fees and costs. TEX. CODE CRIM. PROC. art. 18.20, § 16(a) (2005).

19 292. Defendants’ acts and practices are unlawful because, as described above, they
20 violate 47 U.S.C. § 222, 18 U.S.C. §§ 2702(a)(1), (a)(2), and (a)(3), 18 U.S.C. §§ 2511(1)(a),
21 (1)(c), (1)(d), and (3)(a), 40 U.S.C. § 1809, and 47 U.S.C. § 605.

22 293. Defendants’ acts and practices are also unlawful because they violate 18 U.S.C.
23 § 3121. In relevant part, 18 U.S.C. § 3121 provides that:
24

25
26 In general – Except as provided in this section, no person may install or use a pen
27 register or a trap and trace device without first obtaining a court order under
28 section 3123 of this title or under the Foreign Intelligence Surveillance Act of
1978 (50 U.S.C. 1801 *et seq*).

1 294. As defined by 18 U.S.C. § 3127:

2 (3) the term “pen register” means a device or process which records or
3 decodes dialing, routing, addressing, or signaling information
4 transmitted by an instrument or facility from which a wire or
5 electronic communication is transmitted, provided, however, that
6 such information shall not include the contents of any
7 communication, but such term does not include any device or
8 process used by a provider or customer of a wire or electronic
9 communication service for billing, or recording as an incident to
10 billing, for communications services provided by such provider or
11 any device or process used by a provider or customer of a wire
12 communication service for cost accounting or other like purposes in
13 the ordinary course of its business;

14 (4) the term “trap and trace device” means a device or process which
15 captures the incoming electronic or other impulses which identify
16 the originating number or other dialing, routing, addressing, and
17 signaling information reasonably likely to identify the source of a
18 wire or electronic communication, provided, however, that such
19 information shall not include the contents of any
20 communication

21 295. Defendants have installed or used pen registers and/or trap and trace devices
22 without first obtaining a valid court order under 18 U.S.C. § 3123 or a subpoena.

23 296. The pen registers and/or trap and trace devices installed and used by Defendants
24 have captured, recorded, or decoded, and continue to capture, record or decode, dialing, routing,
25 addressing or signaling information pertaining to Texas Plaintiffs’ and Subclass Members’
26 telephone communications.

27 297. Defendants did not notify Texas Plaintiffs and Subclass Members of the
28 installation or use of pen registers and/or trap and trace devices. Texas Plaintiffs and Subclass
29 Members have not consented to Defendant’s installation or use of pen registers and/or trap and
30 trace devices.

31 298. Defendants are telecommunications carriers that obtain and have obtained
32 customer proprietary network information by virtue of its provision of telecommunications
33 service.

1 299. Defendants used and/or disclosed to the NSA, a government entity, individually
2 identifiable customer proprietary network information pertaining to Texas Plaintiffs and Subclass
3 Members.

4 300. Defendants failed to notify Texas Plaintiffs and Subclass Members of the
5 disclosure and/or divulgence of their personally identifiable customer proprietary network
6 information to the NSA, nor did Texas Plaintiffs and Subclass Members consent to such.
7

8 **TWENTY-NINTH CLAIM FOR RELIEF**
9 **(On Behalf of Plaintiffs James C. Harrington, Richard A. Grigg,**
10 **Louis Black, the *Austin Chronicle*, Michael Kentor and the Texas State Subclass)**
11 **Invasion of Privacy**

12 301. Plaintiffs hereby reaffirm and reallege the allegations in the previous paragraphs.

13 302. Defendants intentionally intruded on Texas Plaintiffs' and Subclass Members'
14 solitude, seclusion, or private affairs by disclosing call records to the Government. Such
15 disclosure is highly offensive to a reasonable person and is an actionable invasion of privacy
16 under Texas law. The intrusion is particularly egregious for Texas Plaintiffs James C. Harrington
17 and Richard A. Grigg who are attorneys because it amounts to disclosure of facts pertaining to
18 attorney-client communications and other communications in preparation of litigation or criminal
19 trial. Similarly, the intrusion is particularly egregious for Texas Plaintiffs Louis Black and the
20 *Austin Chronicle* because it infringes on these plaintiffs' confidential relationship with sources
21 and informants. Texas Plaintiffs and Subclass Members thus seek damages and court costs.

22 **THIRTIETH CLAIM FOR RELIEF**
23 **On Behalf of the Class Members for Violations of**
24 **Various State Privacy Statutes**

25 303. Plaintiffs incorporate by reference the paragraphs above and further state that
26 Defendants violate various state privacy statutes as set out below by one or more of the following
27 acts without justification: intercepting wire or oral communications; eavesdropping on
28 communications; disclosing communications; recording conversations; wiretapping; using or

1 installing a pen register; and/or using or installing a trap and trace device.

2 304. The acts and practices of Defendants directly, foreseeably, and proximately cause
3 damages and injury to Plaintiffs and the Class.

4 305. The actions of Defendants are in violation of the following state statutes:

- 5
6 a. Ala. Code §§ 13A-11-30; 13A-11-31 (2006)
7 b. Alaska Stat. § 42.20.310 (2005)
8 c. Ariz. Rev. Stat. Ann. § 13-3005 (2006)
9 d. Ark. Code Ann. § 5-60-120 (2005)
10 e. Cal. Penal Code § 630 *et seq.* (2006)
11 f. Colo. Rev. Stat. §§ 18-9-301, 18-9-303 (2006)
12 g. Conn. Gen. Stat. § 52-570d (2006)
13 h. Del. Code Ann. Tit. 11 § 2402 (2005)
14 i. D.C. Code §§ 23-541, 23-542 (2006)
15 j. Fla. Stat. §§ 934.01 to .03 (2005)
16 k. Ga. Code Ann. §§ 16-11-62, 16-11-66 (2005)
17 l. Haw. Rev. Stat. § 803-42 (2005)
18 m. Idaho code Ann. § 18-6702 (2005)
19 n. 720 Ill. Comp. Stat. 5/14-1, -2 (2006)
20 o. Ind. Code § 35-33.5-1 *et seq.* (2005)
21 p. Iowa Code § 727.8 (2005)
22 q. Kan. Stat. Ann. §§ 21-4001, 21-4002 (2004)
23 r. Ky. Rev. Stat. Ann. §§ 526.010-.020 (2005)
24 s. La. Rev. Stat. Ann. § 15:1303 (2005)
25 t. Me. Rev. Stat. Ann. Tit. 15, §§ 709-710 (2006)
26 u. Md. Code Ann. Cts. & Jud. Proc. § 10-402 (2006)
27 v. Mass. Gen. Laws ch. 727, § 99 (2006)
28 w. Mich. Comp. Laws § 750.539c (2006)
x. Minn. Stat. §§ 626A.01, .02 (2005)
y. Miss. Code Ann. § 41-29-501 *et seq.* (2006)
z. Mo. Rev. Stat. § 542.402 (2006)
aa. Mont. Code Ann. § 45-8-213 (2006)
bb. Neb. Rev. Stat. § 86-290 (2006)
cc. Nev. Rev. Stat 200.610-.620 (2006)
dd. N.H. Rev. Stat. Ann. §§ 570-A:1, -A:2 (2005)
ee. N.J. Stat. Ann. § 2A:256A-1 *et seq.* (2006)
ff. N.M. Stat. § 30-12-1 (2006)
gg. N.Y. Penal Law §§ 250.00, .05 (2006)
hh. N.C. Gen. Stat. § 15A-287 (2006)
ii. N.D. Cent. Code § 12.1-15-02 (2006)
jj. Ohio Rev. Code Ann. § 2933.51 *et seq.* (2006)
kk. Okla. Stat. tit. 13, § 176.1 *et seq.* (2006)
ll. Or. Rev. Stat. §§ 165.540, .543 (2006)
mm. 18 Pa. Cons. Stat. § 5701 *et seq.* (2005)
nn. R.I. Gen. Laws § 11-35-21 (2005)

- 1 oo. S.C. Code Ann. §§ 17-30-20, -30 (2005)
- 2 pp. S.D. Codified Laws §§ 23A-35A-1, 23A-35A-20 (2006)
- 3 qq. Tenn. Code Ann. § 29-13-601 (2006)
- 4 rr. Tex. Penal Code Ann. § 16.02 (2005)
- 5 ss. Utah Code Ann. § 77-23a-1 *et seq.* (2005)
- 6 tt. Va. Code Ann. §§ 19.2-61, -62 (2006)
- 7 uu. Wash. Rev. Code § 9.73.030 (2006)
- 8 vv. W. Va. Code § 62-1D-1 *et seq.* (2006)
- 9 ww. Wis. Stat. §§ 968.27, .31 (2005)
- 10 xx. Wyo. Stat. Ann. §§ 7-3-701, -702 (2005).

**THIRTY-FIRST CLAIM FOR RELIEF
On Behalf of the Class Members for Violations of
Various State Consumer Protection Statutes**

11 306. Plaintiffs repeat and incorporate herein by reference the allegations in the
12 preceding paragraphs of this complaint, as if set forth fully herein.

13 307. Plaintiffs further state that Defendants violate state consumer protection statutes by
14 divulging records or other information pertaining to subscribers and customers to a governmental
15 entity, specifically, the NSA, without Class Members' knowledge or consent.

16 308. The unfair and deceptive trade acts and practices of Defendants directly,
17 foreseeably, and proximately cause damages and injury to Plaintiffs and the Class.

18 309. The actions and failures to act of Defendants, including the false and misleading
19 representations and omissions of material facts regarding the protection and use of Class
20 Members' private information, constitute an unfair method and unfair and/or deceptive acts in
21 violation of the following state consumer protection statutes:

- 22 a. Ala. Code § 8-19-1 *et seq.*;
- 23 b. Alaska Stat. § 45.50.471 *et seq.*;
- 24 c. Ariz. Rev. Stat. § 44-1522 *et seq.*;
- 25 d. Ark. Code § 4-88-101 *et seq.*;
- 26 e. Cal. Bus. & Prof. Code § 17200 *et seq.*;
- 27 f. Colo. Rev. Stat. § 6-1-105 *et seq.*;
- 28 g. Conn. Gen. Stat. § 42-110b *et seq.*;
- h. 6 Del. Code § 2511 *et seq.*;
- i. D.C. Code Ann. § 28-3901 *et seq.*;
- j. Fla. Stat. § 501.201 *et seq.*;
- k. Ga. Stat. § 10-1-392 *et seq.*;
- l. Haw. Rev. Stat. § 480 *et seq.*;

- 1 m. Idaho Code § 48-601 *et seq.*;
- 2 n. 815 Ill. Comp. Stat. § 505.1 *et seq.*;
- 3 o. Ind. Code § 24-5-0.5 *et seq.*;
- 4 p. Iowa Code § 714.16 *et seq.*;
- 5 q. Kan. Stat. Ann. § 50-623 *et seq.*;
- 6 r. Ky. Rev. Stat. § 367.1 10 *et seq.*;
- 7 s. La. Rev. Stat. § 51:1401 *et seq.*;
- 8 t. 5 Me. Rev. Stat. Ann. § 207 *et seq.*;
- 9 u. Massachusetts General Laws Ch. 93A *et seq.*;
- 10 v. Md. Com. Law Code § 13-101 *et seq.*
- 11 w. Mich. Stat. § 445.901 *et seq.*;
- 12 x. Minn. Stat. § 8.31 *et seq.*;
- 13 y. Miss. Code Ann. § 75-24-1 *et seq.*;
- 14 z. Mo. Ann. Stat. § 407.010 *et seq.*;
- 15 aa. Mont. Code § 30-14-101 *et seq.*;
- 16 bb. Neb. Rev. Stat. § 59-1601 *et seq.*;
- 17 cc. Nev. Rev. Stat. § 598.0903 *et seq.*;
- 18 dd. N.H. Rev. Stat. § 358-A:1 *et seq.*;
- 19 ee. N.J. Rev. Stat. § 56:8-1 *et seq.*;
- 20 ff. N.M. Stat. § 57-12-1 *et seq.*;
- 21 gg. N.Y. Gen. Bus. Law § 349 *et seq.*;
- 22 hh. N.C. Gen. Stat. §§ 75-1.1 *et seq.*;
- 23 ii. N.D. Cent. Code § 51-15-01 *et seq.*;
- 24 jj. Ohio Rev. Stat. § 1345.01 *et seq.*;
- 25 kk. Okla. Stat. 15 § 751 *et seq.*;
- 26 ll. Or. Rev. Stat. § 646.605 *et seq.*;
- 27 mm. 73 Pa. Stat. § 201-1 *et seq.*;
- 28 nn. R.I. Gen. Laws § 6-13.1-1 *et seq.*;
- oo. S.C. Code Laws § 39-5-10 *et seq.*;
- pp. S.D. Code Laws § 37-241 *et seq.*;
- qq. Tenn. Code Ann. § 47-18-101 *et seq.*;
- rr. Tex. Bus. & Com. Code § 17.41 *et seq.*;
- ss. Utah Code § 13-11-1 *et seq.*;
- tt. 9 Vt. Stat. § 2451 *et seq.*;
- uu. Va. Code § 59.1-196 *et seq.*;
- vv. Wash. Rev. Code § 19.86.010 *et seq.*;
- ww. W. Va. Code § 46A-6-101 *et seq.*;
- xx. Wis. Stat. § 100.18 *et seq.*; and
- yy. Wyo. Stat. Ann. § 40-12-101 *et seq.*

310. This injury is of the type the state consumer protection and deceptive practices statutes were designed to prevent and directly results from Defendants’ unlawful conduct.

THIRTY-SECOND CLAIM FOR RELIEF
On Behalf of the Class Members for Breach of Contract

311. Plaintiffs repeat and incorporate herein by reference the allegations in the

1 preceding paragraphs of this Complaint, as if set forth fully herein.

2 312. At all times relevant herein, Defendants agreed to provide for a subscription fee,
3 and Plaintiffs and Class Members agreed to purchase from the Defendants various
4 telecommunication and electronic communication services and/or devices.

5 313. At all times relevant herein, Defendants impliedly and expressly promised to
6 protect the privacy and confidentiality of its customers' information, identity, records,
7 subscription, use details, and communications, and, to abide by federal and state law.
8

9 314. Defendants by their conduct as alleged, breached their contract with the Plaintiffs
10 and Class Members. (Defendants have also by their conduct as alleged breached the implied
11 covenant of good faith.)

12 315. As a result of Defendants' breach of contractual duties owed to the Plaintiffs and
13 Class Members, Defendants are liable for damages including, but not limited to nominal and
14 consequential damages.
15

16 **THIRTY-THIRD CLAIM FOR RELIEF**
17 **On Behalf of the Class Members for Breach of Warranty**

18 316. Plaintiffs repeat and incorporate herein by reference the allegations in the
19 preceding paragraphs of this complaint, as if set forth fully herein.

20 317. At all times relevant herein, Defendants agreed to provide for a subscription fee,
21 and Plaintiffs and Class Members agreed to purchase from the Defendants various
22 telecommunication and electronic communication services and/or devices.

23 318. At all times relevant herein, Defendants impliedly and expressly warranted or
24 otherwise represented to Plaintiffs and Class Members that Defendants would safeguard, protect,
25 and maintain the privacy and confidentiality of its customers' information, identity, records,
26 subscription, use details, and communications, and to abide by all applicable law.
27

28 319. Plaintiffs and Class Members relied upon these express and implied warranties and

1 representations in entering into their subscriptions with Defendants.

2 320. At all times relevant, Defendants by their conduct as alleged, breached these
3 warranties and representations.

4 321. As a direct and proximate result of Defendants' breaches of warranty as detailed
5 herein, Plaintiffs and Class Members have suffered damages including, but not limited to,
6 nominal and consequential damages.
7

8 **PRAYER FOR RELIEF**

9
10 WHEREFORE, Plaintiffs on behalf of themselves and for all others similarly situated,
11 respectfully requests that the Court:

- 12 A. Declare that Defendants' conduct as alleged herein violates applicable law;
13 B. Award statutory damages to Plaintiffs and the Class;
14 C. Award punitive damages to Plaintiffs and the Class;
15 D. Award Plaintiffs' reasonable attorneys' fees and costs of suit;
16 E. Award restitution, damages, and all other relief allowed under State law claims;
17 F. Enjoin Defendants' continuing violations of applicable law; and
18 G. Grant such other and further relief as the Court deems just and proper.
19

20
21 Dated: July __, 2008.

22
23 Respectfully submitted,

24 /s/ R. James George, Jr.
25 R. James George, Jr.
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