

1 R. James George, Jr.  
2 Texas Bar No. 07810000  
3 Douglas Brothers  
4 Texas Bar No. 03084500  
5 **GEORGE & BROTHERS, L.L.P.**  
6 1100 Norwood Tower  
7 114 W. 7th Street  
8 Austin, Texas 78701  
9 Telephone: (512) 495-1400  
10 Facsimile: (512) 499-0094  
11 [rjgeorge@georgeandbrothers.com](mailto:rjgeorge@georgeandbrothers.com)  
12 ATTORNEYS FOR PLAINTIFFS

Case M-06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 1 of 73

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

12 IN RE NATIONAL SECURITY  
13 TELECOMMUNICATIONS  
14 RECORDS LITIGATION

MDL Docket No. 06-1791 (VRW)

15  
16 MASTER CONSOLIDATED COMPLAINT  
17 AGAINST DEFENDANTS AT&T MOBILITY  
18 LLC (f/k/a CINGULAR WIRELESS LLC),  
19 CINGULAR WIRELESS CORP., AND NEW  
20 CINGULAR WIRELESS SERVICES, INC. FOR  
21 DAMAGES, DECLARATORY AND  
22 EQUITABLE RELIEF  
23 **CLASS ACTION**

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.

JUDGE: Hon. Vaughn R. Walker

**DEMAND FOR JURY TRIAL**

22 Plaintiffs, by their attorneys, for their Master Consolidated Complaint against **Defendants**  
23 **AT&T Mobility LLC (f/k/a Cingular Wireless, L.L.C.), Cingular Wireless Corp., and New**  
24 **Cingular Wireless Services, Inc.**, allege, upon information and belief, as follows:

25 **PRELIMINARY STATEMENT**

26 1. This Master Consolidated Complaint Against Defendants AT&T Mobility LLC  
27 (f/k/a Cingular Wireless, L.L.C.), Cingular Wireless Corp., and New Cingular Wireless Services,  
28

1 Inc., (“Cingular Master Complaint” or “Complaint”) is filed pursuant to the Order of this Court  
2 and presents all claims brought against Defendants AT&T Mobility LLC (f/k/a Cingular  
3 Wireless, LLC), Cingular Wireless Corp., and New Cingular Wireless Services, Inc., (collectively  
4 “Defendants” or “Cingular”) in the separate cases transferred by the Panel on Multidistrict  
5 Litigation in this matter in its orders dated August 14, 2006, and September 25, 2006  
6 (“transferred cases”). Unless otherwise ordered by this Court, all claims presented in any case  
7 against Defendants AT&T Mobility LLC (f/k/a Cingular Wireless, LLC), Cingular Wireless  
8 Corp., and New Cingular Wireless Services, Inc., subsequently transferred to this Court by the  
9 Panel on Multidistrict Litigation in this matter shall be deemed to be included in this Cingular  
10 Master Complaint.  
11

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

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

## JURISDICTION AND VENUE

1  
2           4.       This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C.  
3 § 1332(d), 18 U.S.C. § 2707, and 47 U.S.C. § 605. Supplemental jurisdiction over state law  
4 claims is founded on 28 U.S.C. § 1367.

5  
6           5.       Venue is proper in this District pursuant to the order of the Panel on Multidistrict  
7 Litigation.           Case M:06-cv-01791-VRW   Document 121   Filed 01/16/2007   Page 3 of 73

## PARTIES

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

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

25           10.      Plaintiff Brian Bradley, an individual residing in Atlanta, Georgia, is and has been  
26 a subscriber and user of Cingular's cellular phone service, and has used such electronic  
27 communications services to place domestic and international telephone calls.  
28

1           11. Plaintiff Anakalia Kaluna, is an individual residing in Honolulu, Hawaii, and has  
2 been a subscriber and user of Cingular's cellular phone service, and has used it to make wireless  
3 telephone calls.

4           12. Plaintiff Kim Coco Iwamoto is an individual residing in Honolulu, Hawaii, and  
5 has been a subscriber and user of Cingular's cellular phone service, and has used it to make  
6 wireless telephone calls. Iwamoto has a special interest in this action because she is an attorney  
7 legally obligated to protect the confidentiality of communications with her clients.  
8

9           13. Plaintiff Paul Robilotti is an individual residing in Englishtown, New Jersey.  
10 Robilotti has been a subscriber and user of Cingular's wireless telephone services for some time  
11 between September 11, 2001 and the present, and, has used them to make such local regional and  
12 long distance calls.  
13

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

18           15. Plaintiff James C. Harrington is an individual residing in Travis County, Texas.  
19 He is an attorney licensed in the State of Texas. He has had an account for telecommunications  
20 services with Cingular during the last three years, and continues to have this account. As an  
21 attorney, Harrington uses his mobile phone to communicate with clients and co-counsel.  
22

23           16. Plaintiff Richard A. Grigg is an individual residing in Travis County, Texas. He is  
24 an attorney licensed in the State of Texas. He has had an account for telecommunications  
25 services with Cingular during the last three years, and continues to have this account. As an  
26 attorney, Grigg uses his mobile phone and other telecommunications equipment and services to  
27 communicate with clients and co-counsel. Grigg has represented and continues to represent  
28

1 individuals detained in Guantanamo and though he may not communicate with his clients over  
2 the phone, he used and uses his telecommunications equipment and services to communicate with  
3 other habeas attorneys concerning his clients and his clients' cases.

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

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

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

22  
23 20. Defendant AT&T Mobility LLC (formerly known as Cingular Wireless LLC) is a  
24 Delaware LLC. AT&T Mobility LLC is a "telecommunication carrier" within the meaning of the  
25 Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.* and provides remote computing and  
26 electronic communications services to the public. On or about January 8, 2007, Cingular  
27 Wireless LLC changed its name to AT&T Mobility LLC. (For convenience, the newly-named  
28 "AT&T Mobility LLC" may be referred to using its prior name "Cingular Wireless LLC.")

1           21. Defendant Cingular Wireless Corp. is a Delaware corporation with its principal  
2 place of business in Atlanta Georgia. Defendant Cingular Wireless Corp., is a  
3 “telecommunication carrier” within the meaning of the Communications Act of 1934, 47 U.S.C.  
4 §§ 151, *et seq.* and provides remote computing and electronic communications services to the  
5 public.

6                           Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 6 of 73

7           22. Defendant New Cingular Wireless Services, Inc. is a for-profit corporation,  
8 incorporated in Delaware, with its principal place of business in Redmond, Washington. New  
9 Cingular Wireless Services, Inc. was formerly AT&T Wireless Services Inc. New Cingular  
10 Wireless Services, Inc. (under its current name or former name) is a “telecommunication carrier”  
11 within the meaning of the Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.* and provides  
12 remote computing and electronic communications services to the public.

13  
14                           **FACTUAL ALLEGATIONS**

15           23. In Section 222 of the Communications Act of 1934 (47 U.S.C. § 222(c)(1)),  
16 Congress imposed upon telecommunication carriers, such as Defendants, a duty to protect  
17 sensitive, personal customer information from disclosure. This information includes “information  
18 that relates to the quantity, technical configuration, type, destination, location, and amount of use  
19 of a telecommunications service subscribed to by any customer of a telecommunications carrier,  
20 and that is made available to the carrier by the customer solely by virtue of the carrier-customer  
21 relationship” and data concerning service customers’ telephone calling histories (*i.e.*, date, time,  
22 duration, and telephone numbers of calls placed or received) or call-detail records, and such  
23 information constitutes “individually identifiable customer proprietary network information”  
24 within the meaning of Section 222 of the Communications Act of 1934.

25  
26           24. Federal law prohibits telecommunications providers such as Defendants from  
27 disclosing customers’ call-detail records to the government without a court order, subpoena, or  
28

1 other lawful authorization.

2 25. In the aftermath of September 11, 2001, Defendants commenced their programs of  
3 providing the federal government with the telephone call contents and records of its customers  
4 and subscribers. Defendants continue to provide this information to the federal government.

5 26. On December 16, 2005, in an article entitled "Bush Lets U.S. Spy on Callers  
6 Without Courts," *The New York Times* reported on an NSA program of eavesdropping on the  
7 telephone conversations of Americans without court order as required by the Foreign Intelligence  
8 Surveillance Act.  
9

10 27. In a December 17, 2005 radio address, President Bush admitted that "[i]n the  
11 weeks following the terrorist attacks on our nation, [he] authorized the National Security Agency,  
12 consistent with U.S. law and the Constitution, to intercept the international communications of  
13 people with known links to al Qaeda and related terrorist organizations." President Bush further  
14 stated that "the activities [he] authorized are reviewed approximately every 45 days"; that he had  
15 "reauthorized this program more than 30 times since the September the 11<sup>th</sup> attacks"; and that he  
16 intended to continue authorizing such activity "for as long as our nation faces a continuing threat  
17 from al Qaeda and related groups."  
18

19 28. In a press briefing on December 19, 2005 by Attorney General Gonzales and  
20 General Michael Hayden, Principal Deputy Director for National Intelligence, the government  
21 claimed that the NSA Surveillance Program targets communications between a party outside the  
22 United States and a party inside the United States when one of the parties of the communication is  
23 believed to be "a member of al Qaeda, affiliated with al Qaeda, or a member of an organization  
24 affiliated with al Qaeda, or working in support of al Qaeda."  
25

26 29. In a press release on December 19, 2005, Attorney General Alberto Gonzales  
27 stated that the Program involved "intercepts of contents of communications . . . ." While the  
28

1 Attorney General's description of the Program was limited to interception of communications  
2 with individuals "outside the United States," Attorney General Gonzales explained that his  
3 discussion was limited to those parameters of the program already disclosed by the President and  
4 that many other operational aspects of the program remained highly classified.

5  
6 30. On December 24, 2005, *The New York Times* reported in an article entitled, "Spy  
7 Agency Mined Vast Data Trove, Officials Report," that:

8 [t]he National Security Agency has traced and analyzed large volumes of  
9 telephone and Internet communications flowing into and out of the United States  
10 as part of the eavesdropping program that President Bush approved after the Sept.  
11 11, 2001, attacks to hunt for evidence of terrorist activity, according to current and  
12 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.

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

22  
23 31. In a January 3, 2006 article entitled, "Tinker, Tailor, Miner, Spy" (available at  
24 <http://www.slae.com/toolbar.aspx?action=print&id=2133564>), Slate.com reported, "[t]he agency  
25 [the NSA] used to search the transmissions it monitors for key words, such as names and phone  
26 numbers, which are supplied by other intelligence agencies that want to track certain individuals.  
27 But now the NSA appears to be vacuuming up all data, generally without a particular phone line,  
28



1 name, or e-mail address as a target. Reportedly, the agency is analyzing the length of a call, the  
2 time it was placed, and the origin and destination of electronic transmissions.”

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

10  
11 33. A January 20, 2006 article in the *National Journal*, “NSA spy program hinges on  
12 state-of-the-art technology,” reported that “[o]fficials with some of the nation’s leading  
13 telecommunications companies have said they gave the NSA access to their switches, the hubs  
14 through which enormous volumes of phone and e-mail traffic pass every day, to aid the agency’s  
15 effort to determine exactly whom suspected Qaeda figures were calling in the United States and  
16 abroad and who else was calling those numbers. The NSA used the intercepts to construct webs  
17 of potentially interrelated persons.”

18  
19 34. In a January 21, 2006 article in the *Bloomberg News* entitled “Lawmaker Queries  
20 Microsoft, Other Companies on NSA Wiretaps,” Daniel Berninger, a senior analyst at Tier 1  
21 Research in Plymouth, Minnesota, said “[i]n the past, the NSA has gotten permission from phone  
22 companies to gain access to so-called switches, high-powered computer into which phone traffic  
23 flows and is redirected, at 600 locations across the nation. . . . From these corporate relationships,  
24 the NSA can get the content of calls and records on their date, time, length, origin and  
25 destination.”  
26  
27  
28

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

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

25           37. On February 6, 2006, in an article entitled “Telecoms let NSA spy on calls,” the  
26 nationwide newspaper *USA Today* reported that “[t]he National Security Agency has secured the  
27  
28

1 cooperation of large telecommunications companies, including AT&T, MCI and Sprint, in its  
2 efforts to eavesdrop without warrants on international calls by suspected terrorists, according to  
3 seven telecommunications executives.” The article acknowledged that *The New York Times* had  
4 previously reported that the telecommunications companies had been cooperating with the  
5 government but had not revealed the names of the companies involved. In addition, it stated that  
6 long-distance carriers AT&T, MCI, and Sprint “all own ‘gateway’ switches capable of routing  
7 calls to points around the globe, and that “[t]elecommunications executives say MCI, AT&T, and  
8 Sprint grant the access to their systems without warrants or court orders. Instead, they are  
9 cooperating on the basis of oral requests from senior government officials.”

11 38. On May 11, 2006, in an article entitled “NSA has massive database of Americans’  
12 phone calls,” *USA Today* reported that “[t]he National Security Agency has been secretly  
13 collecting the phone call records of tens of millions of Americans, using data provided by AT&T,  
14 Verizon and Bellsouth,” according to multiple sources with “direct knowledge of the  
15 arrangement.” One of the confidential sources for the article reported that the NSA’s goal is “to  
16 create a database of every call ever made” within the United States. The confidential sources  
17 reported that AT&T and the other carriers are working “under contract” with the NSA, which  
18 launched the program in 2001 shortly after the September 11, 2001 terrorist attacks. At the U.S.  
19 Senate confirmation hearing on his nomination to become Director of the Central Intelligence  
20 Agency, General Michael Hayden, who was the Director of the NSA at the time, confirmed that  
21 the program was “launched” on October 6, 2001.

24 39. The *USA Today* story was confirmed by a U.S. intelligence official familiar with  
25 the program. The story reports that the NSA requested that AT&T, SBC, and the other carriers  
26 “turn over their ‘call-detail records,’ a complete listing of the calling histories of their millions of  
27 customers,” and provide the NSA with “updates” of the call-detail records. The confidential  
28

1 sources for the story reported that the NSA informed the carriers that it was willing to pay for the  
2 cooperation, and that both “AT&T, which at the time was headed by C. Michael Armstrong,” and  
3 “SBC, headed by Ed Whitacre,” agreed to provide the NSA with the requested information.

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

12 41. As of the date of the filing of this Complaint, no part of the *USA Today* story has  
13 been publicly denied by any representative of the federal government, including the NSA.  
14

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

21 43. Qwest’s decision not to participate was also reported in an article from *The New*  
22 *York Times* on May 13, 2006 entitled, “Questions Raised for Phone Giants in Spy Data Furor.”  
23 The article reported that Qwest’s former CEO, Joseph Nacchio, “made inquiry as to whether a  
24 warrant or other legal process had been secured in support of that request. When he learned that  
25 no such authority had been granted and that there was a disinclination on the part of the  
26 authorities to use any legal process,’ Nacchio concluded that the requests violated federal privacy  
27 requirements ‘and issued instructions to refuse to comply.’” According to the May 11, 2006 *USA*  
28

1 Today article, “Nacchio’s successor, Richard Notebaert, finally pulled the plug on the NSA talks  
2 in late 2004.”

3 44. Senator Christopher “Kit” Bond (R-MO), who also has received access to  
4 information on warrantless surveillance operations, explained on May 11, 2006 on a PBS Online  
5 NewsHour program entitled “NSA Wire Tapping Program Revealed” that “[t]he president’s  
6 program uses information collected from phone companies . . . what telephone number called  
7 what other telephone number.”  
8

9 45. On May 14, 2006, when Senate Majority Leader William Frist (R-TN) was asked  
10 on CNN Late Edition with Wolf Blitzer whether he was comfortable with the program described  
11 in the *USA Today* article, he stated “Absolutely. I am one of the people who are briefed . . . I’ve  
12 known about the program. I am absolutely convinced that you, your family, our families are safer  
13 because of this particular program.”  
14

15 46. Senator Pat Roberts (R-KS), the chair of Senate Intelligence Committee, described  
16 the program on “All Things Considered” on NPR on May 17, 2006. When asked about whether  
17 he had been briefed that the NSA had collected millions of phone records for domestic calls,  
18 Roberts stated: “Well, basically, if you want to get into that, we’re talking about business  
19 records.”  
20

21 47. On May 29, 2006, Seymour Hersh reported in *The New Yorker* in an article  
22 entitled “Listening In” that a security consultant working with a major telecommunications carrier  
23 “told me that his client set up a top-secret high-speed circuit between its main computer complex  
24 and Quantico, Virginia, the site of a government-intelligence computer center. This link provided  
25 direct access to the carrier’s network core – the critical area of its system, where all its data are  
26 stored. ‘What the companies are doing is worse than turning over records,’ the consultant said.  
27 ‘They’re providing total access to all the data.’”  
28

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

6                     Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 14 of 73  
7           49.     Defendants knowingly and intentionally provide the aforementioned telephone  
8 contents and records to the federal government.

9           50.     As part of the Program, NSA’s operational personnel identify particular individual  
10 targets and their communications, through a software data mining process that NSA runs against  
11 vast databases of the Defendants’ stored electronic records of their customers’ telephone  
12 communications, in search of particular names, numbers, words or phrases, and patterns of  
13 interest. Upon information and belief, NSA’s operational personnel also identify communications  
14 of interest in real time through similar data-mining software functionality.

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

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

21           53.     Additionally, the NSA collects and analyzes a vast amount of communications  
22 traffic data to identify persons whose communications patterns the government believes may link  
23 them, even if indirectly, to investigatory targets.

24           54.     The NSA has accomplished its massive surveillance operation by arranging with  
25 some of the nation’s largest telecommunications companies to gain direct access to the telephone  
26  
27  
28

1 and Internet communications transmitted via those companies' domestic telecommunications  
2 facilities, and to those companies' records pertaining to the communications they transmit.

3 55. Defendants have intercepted and continue to provide the government with direct  
4 access to all or a substantial number of the communications transmitted through its key domestic  
5 telecommunications facilities, including direct access to streams of domestic, international, and  
6 foreign telephone and Internet communications. Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 15 of 7

7  
8 56. Since in or about October 2001, Defendants have disclosed and/or divulged the  
9 "call-detail records" of all or substantially all of their customers including Plaintiffs to the NSA,  
10 in violation of federal law, as more particularly set forth below.

11 57. Defendants have, since in or about October 2001, been disclosing to the NSA  
12 "individually identifiable customer proprietary network information" belonging to all or  
13 substantially all of their customers including Plaintiffs, in violation of federal law, as more  
14 particularly set forth below.

15  
16 58. Defendants have disclosed and continue to disclose and/or provide the government  
17 with direct access to its databases of stored telephone records, which are updated with new  
18 information in real time or near-real time.

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

24  
25 60. Defendants have knowingly authorized, and continue to knowingly authorize,  
26 NSA and affiliated governmental agencies to install and use, or have assisted government agents  
27 in installing or using, interception devices and pen registers and/or trap and trace devices on the  
28

1 Defendants' domestic telecommunications facilities in connection with the Program.

2 61. The interception devices and pen registers and/or trap and trace devices capture,  
3 record or decode the various information pertaining to individual class member communications  
4 including dialing, routing, addressing and/or signaling information ("DRAS information") for all  
5 or a substantial number of all wire or electronic communications transferred through the  
6 Defendants' domestic telecommunications facilities where those devices have been installed. Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 16 of 7

7  
8 62. Using these devices, government agents have acquired and are acquiring wire or  
9 electronic communications content and DRAS information directly via remote or local control of  
10 the device, and/or the Defendants have disclosed and are disclosing those communications and  
11 information to the government after interception, capture, recording, or decoding.

12 63. Defendants have knowingly authorized, and continue to knowingly authorize,  
13 NSA and affiliated governmental agencies to directly access through the installed devices all  
14 wireless telephone communications transmitted through the Defendants' domestic  
15 telecommunications infrastructure and facilities for use in the Program.

16  
17 64. Defendants intercept, divulge, and/or disclose to the federal government the  
18 aforementioned telephone communications contents and records without probable cause.  
19 Furthermore, Defendants have not received and/or are not acting within the scope of, in accord  
20 with, or in good faith reliance on, any statutory authorization, legislative authorization, subpoena,  
21 court order or warrant, nor any certification, request, or other lawful authorization under Chapter  
22 119, 121, or 206 of Title 18 or Chapter 36 of Title 50, purporting to authorize the aforementioned  
23 conduct.

24  
25 65. To the best of Plaintiffs' counsel's knowledge, information, and belief, formed  
26 after reasonable inquiry under the circumstances and likely to have evidentiary support after a  
27 reasonable opportunity for further investigation and discovery, Defendants' interception,  
28



1 divulgence and/or disclosure to the of the aforementioned telephone communications content and  
2 records is willful, in bad faith, and done in collusion with the government, for purposes of direct  
3 or indirect commercial advantage or private financial gain, and a failure to cooperate might have  
4 jeopardized their ability to obtain lucrative government contracts.

5  
6 66. Defendants did not disclose to its customers, including Plaintiffs, that it was  
7 providing the aforementioned telephone contents and records to the federal government. Thus,  
8 Defendants' customers, including Plaintiffs, had no opportunity to, and did not, consent to the  
9 disclosure of their telephone contents and records.

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

17  
18 68. According to the "Investor Relations" page of its website, "BellSouth's wireless  
19 business consists of a 40 percent interest in Cingular Wireless. Cingular Wireless is a joint  
20 venture that was formed by combining the former domestic wireless operations of BellSouth and  
21 AT&T (formerly SBC). Cingular Wireless is operated independently from both parents, currently  
22 with a six member Board of Directors comprised of three directors from each parent. *BellSouth  
23 and AT&T share control of Cingular Wireless.*" (emphasis added)

24  
25 69. In a press release dated March 5, 2005 announcing plans for a merger between  
26 AT&T Inc. and BellSouth Corporation, the companies stated that "the merger would also give  
27 business and government customers, including military and *national security agencies*, a reliable  
28

1 U.S.-based provider of integrated, secure, high-quality and competitively priced services to meet  
2 their needs anywhere in the world.” (emphasis added).

3 **CLASS ACTION ALLEGATIONS**

4  
5 70. Plaintiff brings this action under Federal Rule of Civil Procedure 23 on behalf of  
6 themselves and a Class, defined as:

7 **Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 18 of 73**  
8 All individuals and entities located in the United States that have been subscribers  
9 or customers of Defendant’s wireless, wire and/or electronic communication  
10 services at any time since October 6, 2001. Excluded from the Class are  
11 Defendant, Defendant’s predecessors, affiliates, parents, subsidiaries, officers and  
12 directors; all federal, state, and local governmental entities; any and all judges and  
13 justices assigned to hear any aspect of this litigation, their court staffs, their  
14 spouses, any minor children residing in their households, and any persons within  
15 the third degree of relationship to any judge or justice assigned to hear any aspect  
16 of this litigation.

17  
18 71. Plaintiff also brings this action, pursuant to Rule 23, on behalf of distinct state  
19 subclasses, including: (a) a State of Georgia Subclass, (b) a State of Hawaii Subclass, (c) a State  
20 of Indiana Subclass, (d) a State of New Jersey Subclass, and (e) a State of Texas Subclass.

21  
22 72. The State of Georgia Subclass is defined is defined as:

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

32  
33 73. The State of Hawaii Subclass is defined is defined as:

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

1 litigation.

2 74. The State of Indiana Subclass is defined is defined as:

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

12 75. The State of New Jersey Subclass is defined is defined as:

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

22 76. The State of Texas Subclass is defined is defined as:

23 All individuals and entities located in Texas and that have been subscribers or  
24 customers of Defendant's wireless, wire and/or electronic communication services  
25 at any time since October 6, 2001. Excluded from the Subclasses are Defendant,  
26 Defendant's predecessors, affiliates, parents, subsidiaries, officers and directors;  
27 all federal, state, and local governmental entities; any and all judges and justices  
28 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. 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).

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

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

5           80.     Common questions of law and fact exist, including:

6                     Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 20 of 73

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

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

17           82.     A class action is a superior method for the fair and efficient adjudication of the  
18 controversy described herein. A class action provides an efficient and manageable method to  
19 enforce the rights of Plaintiff and member of the Class and the Subclasses.

20           83.     The prosecution of separate actions by individual Members of the Class and  
21 Subclasses would create a risk on inconsistent or varying adjudication, establishing incompatible  
22 standards of conduct for Defendant.

23           84.     Defendant has acted, and refused to act, on grounds generally applicable to the  
24 Class and Subclasses, thereby making appropriate relief with respect to the Class and Subclasses  
25 as a whole.  
26

27                                     **NECESSITY OF INJUNCTIVE RELIEF**

28           85.     The named Plaintiffs and the Members of the Class and Subclasses will continue

1 in the future to use their telephones.

2 86. Unless this Court enjoins the Defendants' program challenged herein, the  
3 Defendants will continue to engage in the program.

4 87. The named Plaintiffs and the Members of the Class and Subclasses will suffer  
5 irreparable harm as a result of the continuation of the Defendants' program, and they have no  
6 adequate remedy at law.  
7

8 **CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

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

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

13 89. In relevant part, 18 U.S.C. § 2702 provides that:

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

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

5  
6           91. On information and belief, Defendants knowingly divulged to one or more persons  
7           Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 22 of 73  
8 or entities the contents of Plaintiffs' and Class Members' communications while in electronic  
9 storage by a Defendant electronic communication service, and/or while carried or maintained by a  
10 Defendant remote computing service, in violation of 18 U.S.C. §§ 2702(a)(1) and/or (a)(2).

11           92. Defendants did not notify Plaintiffs or Class Members of the divulgence of their  
12 communications, nor did Plaintiffs or Class Members consent to such.

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

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

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

20           96. Neither the NSA nor any other governmental entity has issued or obtained a  
21 federal or state grand jury or trial subpoena authorizing such disclosures, pursuant to 18 U.S.C.  
22 § 2703(c)(1)(E) and (c)(2).

23  
24           97. Defendants have not been provided with a certification in writing by a person  
25 specified in 18 U.S.C. § 2518(7) or by the Attorney General of the United States meeting the  
26 requirements of 18 U.S.C. § 2511(2)(a)(ii)(B), *i.e.*, a certification that no warrant or court order  
27 authorizing the disclosures is required by law, and that all statutory requirements have been met.  
28

1 98. The disclosures were not and are not authorized by any statute or legislation.

2 99. Defendants' disclosures in violation of 18 U.S.C. § 2702(a)(3) were and are  
3 knowing, intentional, and willful.

4 100. There is a strong likelihood that Defendants are now engaging in and will continue  
5 to engage in the above-described divulgence of Plaintiffs' and Class Members' communications  
6 while in electronic storage by Defendants' electronic communication service(s), and/or while  
7 carried or maintained by Defendants' remote computing service(s), and that likelihood represents  
8 a credible threat of immediate future harm.

9  
10 101. Plaintiffs and Class Members have been and are aggrieved by Defendants' above-  
11 described divulgence of the contents of their communications.

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

19  
20 **SECOND CLAIM FOR RELIEF**  
**Violation of 18 U.S.C. § 2702(a)(3)**

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

23 104. In relevant part, 18 U.S.C. § 2702 provides that:  
24  
25  
26  
27  
28

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

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

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

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

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

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

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

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

23 111. Neither the NSA nor any other governmental entity has issued or obtained a  
24 federal or state grand jury or trial subpoena authorizing such disclosures, pursuant to 18 U.S.C.  
25 § 2703(c)(1)(E) and (c)(2).  
26  
27  
28



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

5 113. The disclosures were not and are not authorized by any statute or legislation.

6 [Case M:06-cv-01791-VRW](#) [Document 121](#) [Filed 01/16/2007](#) [Page 25 of 73](#)  
7 114. Whether or how the NSA, or any other governmental entity, actually used the  
8 records after they were divulged is irrelevant to whether Defendants violated 18 U.S.C. §  
9 2702(a)(3).

10 115. Plaintiffs and their Class are aggrieved by the Defendants' knowing and  
11 intentional past disclosure and/or imminent future disclosure of their records to the federal  
12 government. Accordingly, plaintiffs may challenge this violation of 18 U.S.C. § 2702(a)(3)  
13 pursuant to the cause of action created by 18 U.S.C. § 2707(a).  
14

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

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

19 117. In relevant part, 18 U.S.C. § 2511 provides that:

- 20 (1) Except as otherwise specifically provided in this chapter, any  
21 person who – (a) intentionally intercepts, endeavors to intercept, or  
22 procures any other person to intercept or endeavor to intercept, any  
23 wire, oral or electronic communication. . . . (c) intentionally  
24 discloses, or endeavors to disclose, to any other person the contents  
25 of any wire, oral, or electronic communication, knowing or having  
26 reason to know that the information was obtained through the  
27 interception of a wire, oral, or electronic communication in  
28 violation of this subsection; (d) intentionally uses, or endeavors to  
disclose, to any other person the contents of any wire, oral, or  
electronic communication, knowing or having reason to know that  
the information was obtained through the interception of a wire,  
oral, or electronic communication in violation of this subsection. . .  
. . . (3)(a) Except as provided in paragraph (b) of this subsection, a

1 person or entity providing an electronic communication service to  
2 the public shall not intentionally divulge the contents of any  
3 communication (other than one to such person or entity, or an agent  
4 thereof) while in transmission on that service to any person or entity  
other than addressee or intended recipient of such communication  
or an agent of such addressee or intended recipient.

5 118. Defendants violated 18 U.S.C. §§ 2511(1)(a), (1)(c), (1)(d), and (3)(a) by  
6 intentionally intercepting and disclosing wire or electronic communications at the Federal Government's phone  
7 of the Defendants' customers.

8 119. Defendants violated 18 U.S.C. § 2511(1)(d) by intentionally using, or endeavoring  
9 to use, the contents of Plaintiffs' and Class Members' wire or electronic communications, while  
10 knowing or having reason to know that the information was obtained through the interception of  
11 wire or electronic communications.

12 120. Defendants' challenged program of intercepting and disclosing the contents of  
13 telephone calls to the federal government does not fall within any of the statutory exceptions or  
14 immunities set forth in 18 U.S.C. §§ 2511(2), 2511(3)(b), or 2520(d). Defendants acted on bad  
15 faith and/or acted without a facially valid court order or certification.

16 121. Plaintiffs and their Class are aggrieved by the Defendants' intentional past and/or  
17 imminent future interception and disclosure of telephone call contents to the federal government.  
18 Accordingly, Plaintiffs may challenge this violation of 18 U.S.C. §§ 2511(1)(a), (1)(c), (1)(d) and  
19 (3)(a) pursuant to the cause of action created by 18 U.S.C. § 2520(a).

20  
21  
22 **FOURTH CLAIM FOR RELIEF**  
23 **Violation of 47 U.S.C. § 605**

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

1           123. In relevant part, 47 U.S.C. § 605 provides that:

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

14           124. Defendants received, assisted in receiving, transmitted, or assisted in transmitting,  
15 Plaintiff's and Class Members' interstate communications by wire or radio.

16           125. Defendants violated 47 U.S.C. § 605 by divulging or publishing the "existence" of  
17 Plaintiff's and Class Members' communications to the federal government by means other than  
18 through authorized channels of transmission or reception. Defendants' disclosure and publication  
19 of the existence of Plaintiff's and Class Members' communications was not authorized by any  
20 provision of 18 U.S.C. §§ 2510-2522.

21           126. Defendants' disclosure and publication of the existence of Plaintiff's and Class  
22 Members' communications was willful and for purposes of direct or indirect commercial  
23 advantage or private financial gain as they were paid for their cooperation, and a failure to  
24 cooperate might have jeopardized their ability to obtain lucrative government contracts.

25           127. Defendants failed to notify Plaintiff or Class Members of Defendants' disclosure  
26 and/or publication of the existence of Plaintiff's and Class Members' communications nor did  
27 Plaintiff or Class Members consent to such disclosure and publication.

28           128. Pursuant to 47 U.S.C. § 605(e)(3), Plaintiff and Class Members seek:

- a. A declaration that the disclosures are in violation of 47 U.S.C. § 605(a);  
b. A preliminary injunction restraining Defendants from continuing to make  
such unlawful disclosures;

- 1 c. A permanent injunction restraining Defendants from continuing to make
- 2 such unlawful disclosures;
- 3 d. Statutory damages of not less than \$1,000 or more than \$10,000 for each
- 4 violation, plus, in the Court's discretion, an increase in the statutory damages of up
- 5 to \$100,000 for each violation; and
- 6 e. Reasonable attorneys' fees and reasonable costs of this litigation.

7 **FIFTH CLAIM FOR RELIEF** Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 28 of 73  
8 **Violation of 50 U.S.C. § 1809**

9 129. Plaintiffs repeat and incorporate herein by reference the allegations in the  
10 preceding paragraphs of this Complaint, as if set forth fully herein.

11 130. In relevant part, 50 U.S.C. §1809 provides that:

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

18 131. In relevant part 50 U.S.C. §1801 provides that:

- 19 (f) "Electronic surveillance" means – (1) the acquisition by an electronic,
- 20 mechanical, or other surveillance device of the contents of any wire or
- 21 radio communication sent by or intended to be received by a particular,
- 22 known United States person who is in the United States, if the contents
- 23 are acquired by intentionally targeting that United States person, under
- 24 circumstances in which a person has a reasonable expectation of
- 25 privacy and a warrant would be required for law enforcement purposes;
- 26 (2) the acquisition by an electronic, mechanical, or other surveillance
- 27 device of the contents of any wire communication to or from a person
- 28 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
- surveillance device of the contents of any radio communication, under
- circumstances in which a person has a reasonable expectation of
- privacy and a warrant would be required for law enforcement purposes,
- and if both the sender and all intended recipients are located within the
- United States; or (4) the installation or use of an electronic, mechanical,
- or other surveillance device in the United States for monitoring to
- acquire information, other than from a wire or radio communication,

1 under circumstances in which a person has a reasonable expectation of  
2 privacy and a warrant would be required for law enforcement purposes.

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

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

11 134. Additionally, or in the alternative, by the acts alleged herein Defendants have  
12 intentionally disclosed or used information obtained under color of law by electronic surveillance,  
13 knowing or having reason to know that the information was obtained through electronic  
14 surveillance not authorized by statute.

15 135. Defendants did not notify Plaintiffs or Class Members of the above-described  
16 electronic surveillance, disclosure, and/or use, nor did Plaintiffs or Class Members consent to  
17 such.

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

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

24 138. Plaintiffs and Class Members have been and are aggrieved by the Defendants'  
25 electronic surveillance, disclosure, and/or use of their wire communications.  
26  
27  
28





1 and Subclass Members”) are permitted to maintain a civil action against Defendants pursuant to  
2 Georgia Code § 16-11-62(4)(6)(7), which prohibits Defendants from intentionally and secretly  
3 intercepting Georgia Plaintiffs’ and Subclass Members’ private communications by the use of any  
4 device, instrument, or apparatus, and/or giving or distributing such communications, without legal  
5 authority, to any person or entity.

6 Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 32 of 73

7 152. Defendants were not provided with any proper legal authority permitting  
8 Defendants to undertake the activities complained of above.

9 153. By the acts alleged herein, Defendants have intentionally and secretly intercepted  
10 Georgia Plaintiffs’ and Subclass Members’ private communications through the use of a  
11 surveillance device and/or have provided the contents of such communications to third parties  
12 without proper legal authority.

13 154. Defendants did not notify Georgia Plaintiffs or Subclass Members of either  
14 Defendants’ interception of Georgia Plaintiffs’ or Subclass Members’ communications and/or  
15 Defendants’ provision of the contents of such communications to third parties nor did Georgia  
16 Plaintiffs or Subclass Members consent to such.

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

21 156. Georgia Plaintiffs and Subclass Members have been and are aggrieved by  
22 Defendants’ above-described interception of Georgia Plaintiffs’ or Subclass Members’  
23 communications and/or Defendants’ provision of the contents of such communications to third  
24 parties.  
25  
26  
27  
28





1 continue to provide the contents of such communications to third parties and that likelihood  
2 represents a credible that of immediate future harm.

3 164. Hawaii Plaintiffs and Subclass Members have been and are aggrieved by  
4 Defendants' above-described interception of Hawaii Plaintiffs' or Subclass Members'  
5 communications and/or Defendants' provision of the contents of such communications to third  
6 parties.  
7

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 34 of 73

8 165. Pursuant to HRS § 803-48, Hawaii Plaintiffs and Subclass Members are entitled to  
9 obtain against Defendants an injunction by a court of record prohibiting further eavesdropping, all  
10 actual damages against the person who eavesdrops or \$100 per day for each day of violation or  
11 \$10,000, reasonable attorneys' fees and other litigation costs, and punitive damages as determined  
12 by the court of by a jury.  
13

14 **NINTH CLAIM FOR RELIEF**  
15 **(On Behalf of Plaintiffs Anakalia Kaluna and**  
16 **Kim Coco Iwamoto and the Hawaii State Subclass)**  
17 **Deceptive Acts and Practices by Defendants**

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

20 167. The subject matter of the transaction between the Hawaii Plaintiffs and Subclass  
21 Members and the Defendants meets the definition of "Commodity" as that term is defined in HRS  
22 § 408-2 as it includes, "but is not restricted to, goods, merchandise, produce, choses in action, and  
23 any other article of commerce. It also includes trade or business in service trades, transportation,  
24 insurance, banking, lending, advertising, bonding, and any other business."

25 168. Hawaii Plaintiffs and Subclass Members are consumers as that term is defined at  
26 HRS § 408-2.

27 169. Defendants were a "person" or "persons" as that term is defined at HRS § 408-2.  
28



1 177. Defendants were not provided with any signed court order, appropriate  
2 certification, or other proper legal authority to undertake the activities complained of above and  
3 Defendants nevertheless knowingly authorized the NSA to undertake such activities.

4 178. By the acts alleged herein, Defendants have intentionally and secretly intercepted  
5 Indiana Plaintiff's and Subclass Members' private communications through the use of a  
6 surveillance device and/or have provided the contents of such communications to third parties  
7 without proper legal authority.  
8

9 179. Defendants did not notify Indiana Plaintiff or Subclass Members of either  
10 Defendants' interception of Indiana Plaintiff's or Subclass Members' communications and/or  
11 Defendants' provision of the contents of such communications to third parties, nor did Indiana  
12 Plaintiff or Subclass Members consent to such.

13 180. There is a strong likelihood that Defendants are now engaging in, and will  
14 continue to intercept Indiana Plaintiff's and Subclass Members' communications, and will  
15 continue to provide the contents of such communications to third parties, and that likelihood  
16 represents a credible threat of immediate future harm.  
17

18 181. Indiana Plaintiff and Subclass Members have been and are aggrieved by  
19 Defendants' above-described interception of Indiana Plaintiff's or Subclass Members'  
20 communications and/or Defendants' provision of the contents of such communications to third  
21 parties.  
22

23 182. Pursuant to IC 35-33.5-5-4, Indiana Plaintiff and Subclass Members are entitled to  
24 obtain against Defendants damages which are the greater of: (a) actual damages; (b) liquidated  
25 damages computed at a rate of one hundred dollars (\$100) each day for each day of violation; or  
26 (c) \$1000.  
27  
28

1 183. Also pursuant to IC 35-33.5-5-4, Indiana Plaintiff and Class Members are entitled  
2 to court costs, punitive damages (when determined to be appropriate by the court) and reasonable  
3 attorneys' fees.

4 **TWELFTH CLAIM FOR RELIEF**  
5 **(On Behalf of Plaintiffs Paul Robilotti and**  
6 **Alan Toly Sapoznik and the New Jersey State Subclass)**  
7 **Violations of New Jersey Wiretap Act, N.J.S.A. 2A:156A-1 et seq** Page 37 of 73  
8 Case No. 06-cv-01791-VRW Document 121 Filed 01/16/2007

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

10 185. At all relevant times, Defendants purposefully intercepted, endeavored to  
11 intercept, and/or procured other persons to intercept or endeavor to intercept the wire, electronic,  
12 or oral communication of the Plaintiffs Paul Robilotti and Alan Toly Sapoznik ("New Jersey  
13 Plaintiffs") and New Jersey Subclass Members (collectively "New Jersey Plaintiffs and Subclass  
14 Members") contrary to N.J.S.A. 2A:156A-3(a).

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

20 187. At all relevant times, Defendants purposefully used, and/or endeavored to use, the  
21 contents of the New Jersey Plaintiffs' and Subclass Members' wire, electronic, or oral  
22 communication or evidence derived therefrom knowing, or having reason to know, that the  
23 information was obtained through the interception of a wire, electronic, or oral communication  
24 contrary to N.J.S.A. 2A:156A-3(c).

25  
26  
27  
28

1 188. New Jersey Plaintiffs and Subclass Members are permitted to maintain a civil  
2 action against Defendants pursuant to N.J.S.A. 2A: 156A-24 for Defendants' unlawful  
3 interception, endeavor to intercept, procurement of any other person to intercept, or endeavor to  
4 intercept, disclosure, or endeavor to disclose, to any other person, use, or endeavor to use any  
5 wire, electronic, or oral, communication, or evidence derived therefrom and/or intentional use of  
6 New Jersey Plaintiffs' and Subclass Members' wire and/or electronic communications in  
7 violation of the aforesaid provisions of the New Jersey Wiretap Act.  
8

9 189. The New Jersey Wiretap Act proscribes the intentional interception, disclosure,  
10 use and divulgence of New Jersey Plaintiffs' and Subclass Members' wire or electronic  
11 communications absent a signed order or warrant from a court of competent jurisdiction.  
12

13 190. At all relevant times, Defendants were not provided with any signed court order or  
14 warrant to undertake the activities complained of above, and Defendants nevertheless knowingly  
15 authorized the NSA, its servants, agents, and/or employees to undertake such activities.  
16

17 191. By the acts alleged herein, Defendants have intentionally divulged the contents of  
18 New Jersey Plaintiffs' and Subclass Members' wire or electronic communications to persons or  
19 entities other than the addressee or intended recipient, or the agents of same, or other providers of  
20 wire or electronic communication service, while those communications were in transmission on  
21 Defendants' electronic communications services, in violation of the New Jersey Wiretap Act.  
22

23 192. Defendants did not notify New Jersey Plaintiffs or Subclass Members of the  
24 above-described intentional interception, disclosure, divulgence, and/or use of New Jersey  
25 Plaintiffs' or Subclass Members' wire or electronic communications, nor did New Jersey  
26 Plaintiffs or Subclass Members consent to such.  
27

28 193. New Jersey Plaintiffs and Subclass Members have been, and are aggrieved by,  
Defendants' intentional interception, disclosure, divulgence, and/or use of their wire or electronic

1 communications in violation of all applicable provisions of the New Jersey Wiretap Act.

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

6 Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 39 of 73

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

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

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

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

22 199. At all relevant times herein, Defendants by their conduct as alleged herein have  
23 violated, and continue to violate, the relevant provisions of the New Jersey Wiretap Act  
24 including, but not limited to, all those referenced herein.  
25  
26  
27  
28





1           205. At all times relevant herein, Defendants were subject to and New Jersey Plaintiffs  
2 and Subclass Members were protected under the New Jersey Constitution.

3           206. More specifically, and not by way of limitation, New Jersey Plaintiffs and  
4 Subclass Members were guaranteed the following rights under the New Jersey Constitution:

- 5                   a. the right to acquire, possess, and protect property;  
6                   Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 41 of 73  
7                   b. the right to be secure from unreasonable searches and seizures;  
8                   and,  
9                   c. the right to privacy.

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

14           208. By their actions as set forth herein, the Defendants are liable in tort for their  
15 violations of the New Jersey Plaintiffs' and Subclass Members' aforesaid rights as guaranteed and  
16 protected by the New Jersey Constitution. .

17  
18                   **FOURTEENTH CLAIM FOR RELIEF**  
19                   **(On Behalf of Plaintiffs Paul Robilotti and**  
20                   **Alan Toly Sapoznik and the New Jersey State Subclass)**  
21                   **Malicious Misrepresentation**

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

24           210. At all times relevant herein, Defendants agreed to provide for a subscription fee,  
25 and New Jersey Plaintiffs and Subclass Members agreed to purchase from the Defendants various  
26 telecommunication and electronic communication services.

27           211. At all times relevant herein, Defendants acknowledged their duty under the law to  
28 protect the confidentiality of New Jersey Plaintiffs' and Subclass Members' telecommunications

1 service information, including, but not limited to, the type, technical arrangement, quantity,  
2 destination, and amount of use of telecommunication services. Despite Defendants'  
3 acknowledgment and continued false assurances, Defendants failed to comply with the terms and  
4 conditions of their subscriber agreements, notices, and the law in that Defendants knowingly,  
5 willfully, and voluntarily provided confidential, private, and protected information to  
6 unauthorized third parties as set forth herein. Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 42 of 73

7  
8 212. At all relevant times, the New Jersey Plaintiffs and Subclass Members relied upon  
9 Defendants' misrepresentations of material facts that were made knowingly, without belief in its  
10 truth, or in reckless or careless disregard of the truth.

11 213. Defendants, upon information and belief, made these material misrepresentations  
12 with the purpose of inducing the New Jersey Plaintiffs and Subclass Members to rely upon and  
13 act upon the false representations.  
14

15 214. By their actions as set forth herein, the Defendants are liable to the New Jersey  
16 Plaintiffs and Subclass Members for damages including, but not limited to, compensatory and  
17 punitive damages.

18 **FIFTEENTH CLAIM FOR RELIEF**  
19 **(On Behalf of Plaintiffs Paul Robilotti and**  
20 **Alan Toly Sapoznik and the New Jersey State Subclass)**  
21 **Invasion of Privacy**

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

24 216. By their actions as set forth herein, Defendants invaded the privacy of the New  
25 Jersey Plaintiffs and Subclass Members.

26 217. As a result, Defendants are liable in tort to the New Jersey Plaintiffs and Subclass  
27 Members for compensatory and punitive damages.  
28



1 regulations, as well as the New Jersey Constitution and common law, constitute unconscionable  
2 commercial practices, deception, fraud, false promises, false pretenses, and/or misrepresentations  
3 in violation of the CFA.

4 225. New Jersey Plaintiffs and Subclass Members suffered an ascertainable loss as a  
5 result of Defendants' violations of the CFA,

6 [Case M:06-cv-01791-VRW](#) [Document 121](#) [Filed 01/16/2007](#) [Page 44 of 73](#)  
7 226. As a result, New Jersey Plaintiffs and Subclass Members are entitled to the relief  
8 from Defendants as set forth in the CFA.

9 **SEVENTEENTH CLAIM FOR RELIEF**  
10 **(On Behalf of Plaintiffs Paul Robilotti and**  
11 **Alan Toly Sapoznik and the New Jersey State Subclass)**  
12 **Violations of the Truth-in-Consumer Contract,**  
13 **Warranty and Notice Act (TCCWNA)**

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

16 228. New Jersey Plaintiffs and Subclass Members fall within the definition of a  
17 consumer as defined in the Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A.  
18 56:12-14 *et seq.*

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

25 230. Defendants offered and/or entered into a written consumer contract and/or gave or  
26 displayed a written consumer warranty, notice or sign which included a provision that violated  
27 their clearly established responsibilities as established by state or federal law at the time the offer  
28

1 was made, the contract was signed, and the warranty was given.

2 231. Defendants failed to provide notice and obtain authorizations to disclose the CPNI  
3 of New Jersey Plaintiffs and Subclass Members to the NSA and/or other governmental entities in  
4 violation of Defendants' clearly established responsibilities as established by State or Federal law.

5 232. Defendants' aforesaid failure to provide notice and obtain authorizations to  
6 disclose the CPNI and/or other private/confidential information of New Jersey Plaintiffs and  
7 Subclass Members in violation of Federal or State law is a direct violation of TCCWNA.  
8

9 233. Defendants' violated of N.J.S.A. 2A:156A-27 and 28 which are clearly established  
10 rights of New Jersey Plaintiffs and Subclass Members.

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

13 235. Each of the aforesaid violations are individual and separate violations of the Truth-  
14 in-Consumer Contract, Warranty and Notice Act warranting a separate statutory award of  
15 damages for each violation and all other relief as permitted by law.  
16

17 **EIGHTEENTH CLAIM FOR RELIEF**  
18 **(On Behalf of Plaintiffs Paul Robilotti and**  
19 **Alan Toly Sapoznik and the New Jersey State Subclass)**  
20 **Violations of 2C:21-7 (Deceptive Business Practices) and**  
21 **2C:21-17.3 (Prohibiting the Fraudulent Use and Distribution**  
22 **of Items Containing the Personal Information of Another)**

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

25 237. At all relevant times and by their actions as set forth herein, Defendants, through  
26 their promotional literature and/or written notices and/or other written material provided to the  
27 public and/or the New Jersey Plaintiffs and Subclass Members, represented that the personal,  
28 private and confidential records and information of the New Jersey Plaintiffs and Subclass  
Members as set forth herein would be protected from disclosure to and use by governmental

1 authorities without appropriate consent and/or authorization and/or legal authority while at all  
2 relevant times Defendants knew such representations to be false.

3 238. At all relevant times, the New Jersey Plaintiffs and Subclass Members subscribed  
4 to and continued to utilize Defendants' various telecommunications services unaware that the  
5 Defendants were acting contrary to Defendants' aforesaid representations.

6 Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 46 of 73  
7 239. At all relevant times and by their actions as set forth herein, Defendants violated  
8 one or more of the provisions of N.J.S.A. 2C:21-7 (Deceptive Business Practices) which  
9 prohibits, *inter alia*, a person from making a false or misleading statement in any advertisement  
10 addressed to the public or to a substantial segment thereof for the purpose of promoting the sale  
11 of property or services and/or from making any false or misleading written statement for the  
12 purpose of obtaining property.

13 240. At all relevant times and by their actions as set forth herein, Defendants violated  
14 one or more of the provisions of N.J.S.A. 2C:21-17.3 which prohibits, *inter alia*, the fraudulent  
15 use and/or distribution of items containing personal identifying information of another.  
16 Defendants knowingly used and/or distributed one or more items containing personal identifying  
17 information pertaining to the New Jersey Plaintiffs and Subclass Members to the NSA and/or its  
18 affiliates without the authorization of the New Jersey Plaintiffs and Subclass Members. With the  
19 Defendants' knowledge, Defendants were perpetrating a fraud upon the New Jersey Plaintiffs and  
20 Subclass Members who the Defendants knew were unaware of and unsuspecting of such illegal  
21 activities.  
22

23 241. As a result of the Defendants' aforesaid violations of law, pursuant to N.J.S.A.  
24 2C:21-17.4, Defendants are liable to the New Jersey Plaintiffs and Subclass Members for all  
25 damages and relief allowable by law including, but not necessarily limited to, appropriate legal  
26 and equitable relief, an award of damages in the amount of three times the value of all costs  
27  
28

1 incurred by the New Jersey Plaintiffs and Subclass Members, attorneys' fees, court costs and any  
2 out-of-pocket losses, all such damages in addition to, and not in lieu of any other action,  
3 injunctive relief or any other remedy available at law.  
4

5 **NINETEENTH CLAIM FOR RELIEF**  
6 **(On Behalf of Plaintiffs Paul Robilotti and**  
7 **Case No. 06-cv-01791-RW Document 421 Filed 01/10/2007 Page 47 of 73**  
8 **Civil Remedies Available Pursuant to N.J.S.A. 2C:41-4 (N.J. Civil RICO)**

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

11 243. At all relevant times herein and by their conduct as aforesaid, the Defendants each  
12 committed two or more predicate criminal acts against the New Jersey Plaintiffs and Subclass  
13 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-  
14 17.3, all in violation of N.J.S.A. 2C:41-2 (prohibited acts pursuant to N.J. RICO).

15 244. As a result of the Defendants' aforesaid violations of law, the Defendants are  
16 liable to the New Jersey Plaintiffs and Subclass Members for all damages and relief allowable  
17 pursuant to N.J.S.A. 2C:41-4 (NJ Civil RICO).  
18

19 **TWENTIETH CLAIM FOR RELIEF**  
20 **(On Behalf of Plaintiffs James C. Harrington, Richard A. Grigg,**  
21 **Louis Black, the *Austin Chronicle*, Michael Kentor and the Texas State Subclass)**  
22 **Unauthorized Use of Pen Registers and Trap & Trace Devices**

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

25 246. Section 16.03 of the Texas Penal Code makes it a crime if a person "knowingly  
26 installs or uses a pen register or trap and trace device to record or decode electronic or other  
27 impulses for the purpose of identifying telephone numbers dialed or otherwise transmitted on a  
28 telephone line." TEX. PENAL CODE § 16.03 (2005). Defendants and their agents violated this

1 provision by disclosing telephone numbers dialed and other call information to the Government.

2 247. Section 16(a) of Article 18.20 of the Texas Code of Criminal Procedure provides  
3 a private cause of action for customers aggrieved by a violation of Chapter 16 of the Penal Code.  
4 Plaintiffs James C. Harrington, Richard A. Grigg, Louis Black, the *Austin Chronicle*, and Michael  
5 Kentor (“Texas Plaintiffs”) and Texas Subclass Members (collectively “Texas Plaintiffs and  
6 Subclass Members”) seek damages or \$100 per day per violation, punitive damages, and  
7 reasonable attorneys’ fees and costs. TEX. CODE CRIM. PROC. art. 18.20, § 16(a) (2005).  
8

9 248. Defendants’ acts and practices are unlawful because, as described above, they  
10 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),  
11 (1)(c), (1)(d), and (3)(a), 40 U.S.C. § 1809, and 47 U.S.C. § 605.  
12

13 249. Defendants’ acts and practices are also unlawful because they violate 18 U.S.C.  
14 § 3121. In relevant part, 18 U.S.C. § 3121 provides that:

15 In general – Except as provided in this section, no person may install or use a pen  
16 register or a trap and trace device without first obtaining a court order under  
17 section 3123 of this title or under the Foreign Intelligence Surveillance Act of  
18 1978 (50 U.S.C. 1801 *et seq.*)

19 250. As defined by 18 U.S.C. § 3127:

20 (3) the term “pen register” means a device or process which records or  
21 decodes dialing, routing, addressing, or signaling information  
22 transmitted by an instrument or facility from which a wire or  
23 electronic communication is transmitted, provided, however, that  
24 such information shall not include the contents of any  
25 communication, but such term does not include any device or  
26 process used by a provider or customer of a wire or electronic  
27 communication service for billing, or recording as an incident to  
28 billing, for communications services provided by such provider or  
any device or process used by a provider or customer of a wire  
communication service for cost accounting or other like purposes in  
the ordinary course of its business;

(4) the term “trap and trace device” means a device or process which  
captures the incoming electronic or other impulses which identify  
the originating number or other dialing, routing, addressing, and  
signaling information reasonably likely to identify the source of a



1 wire or electronic communication, provided, however, that such  
2 information shall not include the contents of any  
communication . . . .

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

5 252. The pen registers and/or trap and trace devices installed and used by Defendants  
6 have captured, recorded, or decoded, and continue to capture, record or decode, dialing, routing,  
7 addressing or signaling information pertaining to Texas Plaintiffs' and Subclass Members'  
8 telephone communications.  
9

10 253. Defendants did not notify Texas Plaintiffs and Subclass Members of the  
11 installation or use of pen registers and/or trap and trace devices. Texas Plaintiffs and Subclass  
12 Members have not consented to Defendant's installation or use of pen registers and/or trap and  
13 trace devices.  
14

15 254. Defendants are telecommunications carriers that obtain and have obtained  
16 customer proprietary network information by virtue of its provision of telecommunications  
17 service.

18 255. Defendants used and/or disclosed to the NSA, a government entity, individually  
19 identifiable customer proprietary network information pertaining to Texas Plaintiffs and Subclass  
20 Members.  
21

22 256. Defendants failed to notify Texas Plaintiffs and Subclass Members of the  
23 disclosure and/or divulgence of their personally identifiable customer proprietary network  
24 information to the NSA, nor did Texas Plaintiffs and Subclass Members consent to such.

25 **TWENTY-FIRST CLAIM FOR RELIEF**  
26 **(On Behalf of Plaintiffs James C. Harrington, Richard A. Grigg,**  
27 **Louis Black, the *Austin Chronicle*, Michael Kentor and the Texas State Subclass)**  
28 **Invasion of Privacy**

257. Plaintiffs hereby reaffirm and reallege the allegations in the previous paragraphs.



- 1 k. Ga. Code Ann. §§ 16-11-62, 16-11-66 (2005)
- 2 l. Haw. Rev. Stat. § 803-42 (2005)
- 3 m. Idaho code Ann. § 18-6702 (2005)
- 4 n. 720 Ill. Comp. Stat. 5/14-1, -2 (2006)
- 5 o. Ind. Code § 35-33.5-1 *et seq.* (2005)
- 6 p. Iowa Code § 727.8 (2005)
- 7 q. Kan. Stat. Ann. §§ 21-4001, 21-4002 (2004)
- 8 r. Ky. Rev. Stat. Ann. §§ 526.010-.020 (2005)
- 9 s. La. Rev. Stat. Ann. § 15:1303 (2005)
- 10 t. Me. Rev. Stat. Ann. Tit. 15, §§ 709-710 (2006)
- 11 u. Md. Code Ann. Cts. & Jud. Proc. § 10-402 (2006)
- 12 v. Mass. Gen. Laws ch. 727, § 99 (2006)
- 13 w. Mich. Comp. Laws § 750.539c (2006)
- 14 x. Minn. Stat. §§ 626A.01, .02 (2005)
- 15 y. Miss. Code Ann. § 41-29-501 *et seq.* (2006)
- 16 z. Mo. Rev. Stat. § 542.402 (2006)
- 17 aa. Mont. Code Ann. § 45-8-213 (2006)
- 18 bb. Neb. Rev. Stat. § 86-290 (2006)
- 19 cc. Nev. Rev. Stat 200.610-.620 (2006)
- 20 dd. N.H. Rev. Stat. Ann. §§ 570-A:1, -A:2 (2005)
- 21 ee. N.J. Stat. Ann. § 2A:256A-1 *et seq.* (2006)
- 22 ff. N.M. Stat. § 30-12-1 (2006)
- 23 gg. N.Y. Penal Law §§ 250.00, .05 (2006)
- 24 hh. N.C. Gen. Stat. § 15A-287 (2006)
- 25 ii. N.D. Cent. Code § 12.1-15-02 (2006)
- 26 jj. Ohio Rev. Code Ann. § 2933.51 *et seq.* (2006)
- 27 kk. Okla. Stat. tit. 13, § 176.1 *et seq.* (2006)
- 28 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)
- oo. S.C. Code Ann. §§ 17-30-20, -30 (2005)
- pp. S.D. Codified Laws §§ 23A-35A-1, 23A-35A-20 (2006)
- qq. Tenn. Code Ann. § 29-13-601 (2006)
- rr. Tex. Penal Code Ann. § 16.02 (2005)
- ss. Utah Code Ann. § 77-23a-1 *et seq.* (2005)
- tt. Va. Code Ann. §§ 19.2-61, -62 (2006)
- uu. Wash. Rev. Code § 9.73.030 (2006)
- vv. W. Va. Code § 62-1D-1 *et seq.* (2006)
- ww. Wis. Stat. §§ 968.27, .31 (2005)
- xx. Wyo. Stat. Ann. §§ 7-3-701, -702 (2005).

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

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

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

4           264. The unfair and deceptive trade acts and practices of Defendants directly,  
5 foreseeably, and proximately cause damages and injury to Plaintiffs and the Class.

6           265. The actions and failures to act of Defendants, including the false and misleading  
7 representations and omissions of material facts regarding the protection and use of Class  
8 Members' private information, constitute an unfair method and unfair and/or deceptive acts in  
9 violation of the following state consumer protection statutes:  
10

- 11           a. Ala. Code § 8-19-1 *et seq.*;  
12           b. Alaska Stat. § 45.50.471 *et seq.*;  
13           c. Ariz. Rev. Stat. § 44-1522 *et seq.*;  
14           d. Ark. Code § 4-88-101 *et seq.*;  
15           e. Cal. Bus. & Prof. Code § 17200 *et seq.*;  
16           f. Colo. Rev. Stat. § 6-1-105 *et seq.*;  
17           g. Conn. Gen. Stat. § 42-110b *et seq.*;  
18           h. 6 Del. Code § 2511 *et seq.*;  
19           i. D.C. Code Ann. § 28-3901 *et seq.*;  
20           j. Fla. Stat. § 501.201 *et seq.*;  
21           k. Ga. Stat. § 10-1-392 *et seq.*;  
22           l. Haw. Rev. Stat. § 480 *et seq.*;  
23           m. Idaho Code § 48-601 *et seq.*;  
24           n. 815 Ill. Comp. Stat. § 505.1 *et seq.*;  
25           o. Ind. Code § 24-5-0.5 *et seq.*;  
26           p. Iowa Code § 714.16 *et seq.*;  
27           q. Kan. Stat. Ann. § 50-623 *et seq.*;  
28           r. Ky. Rev. Stat. § 367.1 10 *et seq.*;  
          s. La. Rev. Stat. § 51:1401 *et seq.*;  
          t. 5 Me. Rev. Stat. Ann. § 207 *et seq.*;  
          u. Massachusetts General Laws Ch. 93A *et seq.*;  
          v. Md. Com. Law Code § 13-101 *et seq.*  
          w. Mich. Stat. § 445.901 *et seq.*;  
          x. Minn. Stat. § 8.31 *et seq.*;  
          y. Miss. Code Ann. § 75-24-1 *et seq.*;  
          z. Mo. Ann. Stat. § 407.010 *et seq.*;  
          aa. Mont. Code § 30-14-101 *et seq.*;  
          bb. Neb. Rev. Stat. § 59-1601 *et seq.*;  
          cc. Nev. Rev. Stat. § 598.0903 *et seq.*;  
          dd. N.H. Rev. Stat. § 358-A:1 *et seq.*

- 1 ee. N.J. Rev. Stat. § 56:8-1 *et seq.*;
- 2 ff. N.M. Stat. § 57-12-1 *et seq.*;
- 3 gg. N.Y. Gen. Bus. Law § 349 *et seq.*;
- 4 hh. N.C. Gen. Stat. §§ 75-1.1 *et seq.*;
- 5 ii. N.D. Cent. Code § 51-15-01 *et seq.*;
- 6 jj. Ohio Rev. Stat. § 1345.01 *et seq.*;
- 7 kk. Okla. Stat. 15 § 751 *et seq.*;
- 8 ll. Or. Rev. Stat. § 646.605 *et seq.*;
- 9 mm. 73 Pa. Stat. § 201-1 *et seq.*;
- 10 nn. R.I. Gen. Laws § 6-13-1 *et seq.*;
- 11 oo. S.C. Code Laws § 39-5-10 *et seq.*;
- 12 pp. S.D. Code Laws § 37-241 *et seq.*;
- 13 qq. Tenn. Code Ann. § 47-18-101 *et seq.*;
- 14 rr. Tex. Bus. & Com. Code § 17.41 *et seq.*;
- 15 ss. Utah Code § 13-11-1 *et seq.*;
- 16 tt. 9 Vt. Stat. § 2451 *et seq.*;
- 17 uu. Va. Code § 59.1-196 *et seq.*;
- 18 vv. Wash. Rev. Code § 19.86.010 *et seq.*;
- 19 ww. W. Va. Code § 46A-6-101 *et seq.*;
- 20 xx. Wis. Stat. § 100.18 *et seq.*; and
- 21 yy. Wyo. Stat. Ann. § 40-12-101 *et seq.*

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

24 **TWENTY-FOURTH CLAIM FOR RELIEF**  
25 **On Behalf of the Class Members for Breach of Contract**

26 267. Plaintiffs repeat and incorporate herein by reference the allegations in the  
27 preceding paragraphs of this Complaint, as if set forth fully herein.

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

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

270. Defendants by their conduct as alleged, breached their contract with the Plaintiffs  
and Class Members. (Defendants have also by their conduct as alleged breached the implied

1 covenant of good faith.)

2 271. As a result of Defendants' breach of contractual duties owed to the Plaintiffs and  
3 Class Members, Defendants are liable for damages including, but not limited to nominal and  
4 consequential damages.

5 **TWENTY-FIFTH CLAIM FOR RELIEF**

6 **On Behalf of the Class Members for Breach of Warranty**

Case No. 06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 54 of 73

7 272. Plaintiffs repeat and incorporate herein by reference the allegations in the  
8 preceding paragraphs of this complaint, as if set forth fully herein.

9 273. At all times relevant herein, Defendants agreed to provide for a subscription fee,  
10 and Plaintiffs and Class Members agreed to purchase from the Defendants various  
11 telecommunication and electronic communication services and/or devices.

12 274. At all times relevant herein, Defendants impliedly and expressly warranted or  
13 otherwise represented to Plaintiffs and Class Members that Defendants would safeguard, protect,  
14 and maintain the privacy and confidentiality of its customers' information, identity, records,  
15 subscription, use details, and communications, and to abide by all applicable law.

16 275. Plaintiffs and Class Members relied upon these express and implied warranties and  
17 representations in entering into their subscriptions with Defendants.

18 276. At all times relevant, Defendants by their conduct as alleged, breached these  
19 warranties and representations.

20 277. As a direct and proximate result of Defendants' breaches of warranty as detailed  
21 herein, Plaintiffs and Class Members have suffered damages including, but not limited to,  
22 nominal and consequential damages.  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

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

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

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 55 of 73

Dated: January 16, 2007.

Respectfully submitted,

/s/ R. James George, Jr.

R. James George, Jr.  
Texas Bar No. 07810000  
Douglas Brothers  
Texas Bar No. 03084500  
**GEORGE & BROTHERS, L.L.P.**  
1100 Norwood Tower  
114 W. 7th Street  
Austin, Texas 78701  
Telephone: (512) 495-1400  
Facsimile: (512) 499-0094

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on January 16, 2007, I electronically filed the foregoing **Master**  
3 **Complaint Against Cingular Wireless** with the Clerk of the court using the CM/ECF system  
4 which will send notification of such filing to the email addresses noted on the attached Electronic  
5 Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the  
6 United States Postal Service to the non-CM/ECF participants with addresses indicated on the  
7 attached manual list.  
8

9 /s/ R. James George, Jr.  
10 R. James George, Jr.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 **M:06-cv-1791 Notice will be electronically mailed to:**

2 Timothy L. Alger timalger@quinnemanuel.com, albertvillamil@quinnemanuel.com

3 Sam Jonathan Alton salton@stoneleyton.com, usdc@stoneleyton.com

4 David L. Anderson ,

5 Marc H. Axelbaum marc.axelbaum@pillsburylaw.com

6 Kevin Stuart Bankston bankston@eff.org

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 57 of 73

7 Alexander E Barnett abarnett@masonlawdc.com, mdicocco@masonlawdc.com

8 Timothy M. Bechtold tim@rossbachlaw.com

9 Bradford Allan Berenson bberenson@sidley.com, vshort@sidley.com

10 E. Garth Black GBlack@cwclaw.com, cwadia@cwclaw.com; clee@cwclaw.com

11 John David Blair-Loy dblairloy@aclusandiego.org

12 Brian Matthew Boynton brian.boynton@wilmerhale.com

13 Ann Brick abrick@aclunc.org, lcerri@aclunc.org

14 James J. Brosnahan jbroshahan@mofocom, bkeaton@mofocom

15 D. Douglas Brothers dbrothers@georgeandbrothers.com, receptionist@georgeandbrothers.com

16 Thomas R. Burke thomasburke@dwt.com, natashamajorko@dwt.com

17 Adam S. Caldwell adamcaldwell@dwt.com, tracyjohnson@dwt.com

18 David William Carpenter dcarpenter@sidley.com, efilenotice@sidley.com

19 Myron Milton Cherry mcherry@cherry-law.com, jzolna@cherry-law.com

20 Cindy Ann Cohn cindy@eff.org, rebecca@eff.org

21 Anthony Joseph Coppolino tony.coppolino@usdoj.gov,

22 Elena Maria DiMuzio Elena.DiMuzio@hellerehrman.com

23 Elizabeth A. Drogula ldrogula@crblaw.com

24 Joseph Richard Dulle jdulle@stoneleyton.com, usdc@stoneleyton.com

25 Jon B. Eisenberg jon@eandhlaw.com

26 Peter Jay Eliasberg peliasberg@aclu-sc.org, ereyes@aclu-sc.org

27 Derek John Emge derek@inthelaw.com

28 Bruce A. Ericson bruce.ericson@pillsburylaw.com

- 1 Val Patrick Exnicios vpexnicios@exnicioslaw.com, bsergi@exnicioslaw.com  
2 Eric B. Fastiff efastiff@lchb.com  
3 James M. Finberg JFinberg@altshulerberzon.com, smendez@altshulerberzon.com  
4 Mark D. Flanagan mark.flanagan@wilmerhale.com  
5 Amy Collins Fontenot afontenot@exnicioslaw.com  
6 Robert D. Fram rfram@hewm.com, mawilliams@hewm.com,  
kim.sydorak@hellerehrman.com, audrey.michalski@hellerehrman.com  
7 Jeff D Friedman JFried!man@lerachlaw.com  
8 R. James George, Jr rjgeorge@georgeandbrothers.com, fjordan@georgeandbrothers.com  
9 Jennifer Stisa Granick JENNIFER@LAW.STANFORD.EDU,  
10 Terry Gross terry@grossbelsky.com, mara@grossbelsky.com  
11 Harvey Michael Grossman hgrossman@aclu-il.org, rhughes@aclu-il.org  
12 Alexander Kenneth Haas Alexander.Haas@usdoj.gov,  
13 Robert Carl Hilliard bobh@hilliardandmunoz.com, dee@hilliardandmunoz.com  
14 Barry R. Himmelstein bhimmelstein@lchb.com  
15 Eric A. Isaacson erici@lerachlaw.com  
16 Samir Chandra Jain samir.jain@wilmerhale.com, alicia.hunt@wilmerhale.com  
17 Reed R. Kathrein reedk@lerachlaw.com, e\_file\_sf@lerachlaw.com; e\_file\_sd@lerachlaw.com  
18 Michael P. Kenny mike.kenny@alston.com  
19 John G. Kester jkester@wc.com, ggreenman@wc.com; idelawala@wc.com  
20 Craig Allen Knot cknot@sidley.com, efilenotice@sidley.com  
21 Clinton Arthur Krislov clint@krislovlaw.com, ro@krislovlaw.com  
22 Michael M. Markman mmarkman@hewm.com  
23 Brian Martinez brianmartinez@mofa.com  
24 Gary E. Mason gmason@masonlawdc.com  
25 Edward Robert McNicholas emcnicholas@sidley.com, vshort@sidley.com  
26 Corynne McSherry corynne@eff.org  
27 Gerald E Meunier gmeunier@gainsben.com, jwoods@gainsben.com  
28

1 Candace J. Morey cmorey@fenwick.com,  
2 Maria V. Morris mariam@lerachlaw.com, e\_file\_sf@lerachlaw.com  
3 Roger R. Myers roger.myers@hro.com, adam.brezine@hro.com; nancy.burnett@hro.com  
4 Karl Olson ko@lrolaw.com, amw@lrolaw.com  
5 Kurt Opsahl kurt@eff.org  
6 Renee S. Orleans renee.orleans@usdoj.gov,  
7 Nicole A. Ozer nozer@aclunc.org, mpham@aclunc.org  
8 Clare Pastore cpastore@aclu-sc.org, jbradberg@aclu-sc.org  
9 Jacob B. Perkinson jperkinson@jpclasslaw.com,  
10 Laurence F. Pulgram lpulgram@fenwick.com, mburt@fenwick.com  
11 Daniel John Richert daniel.richert@pillsburylaw.com, susan.hersom@pillsburylaw.com  
12 Elizabeth I. Rogers elizabeth.rogers@wilmerhale.com, rebecca.mcnew@wilmerhale.com  
13 John Andrew Rogovin john.rogovin@wilmerhale.com  
14 Shana Eve Scarlett shanas@lerachlaw.com, e\_file\_sd@lerachlaw.com; e\_file\_sf@lerachlaw.  
15 com  
16 Steven Edward Schwarz stevenschwarz23@yahoo.com  
17 Eric Alan Shumsky eshumsky@sidley.com  
18 W. Russell Sipes wrs@lgrslaw.com, sg@lgrslaw.com  
19 Christopher Slater cslater@slaterross.com, mjross@slaterross.com  
20 Michael W. Sobol msobol@lchb.com  
21 Jacob R. Sorensen jake.sorensen@pillsburylaw.com  
22 Christopher Leo Soriano csoriano@wolfblock.com  
23 Michael Alan St. Pierre mikeesp@rrsplaw.com  
24 Lauren A Stern las@skchung.com  
25 Andrew H Tannenbaum an!drew.tannenbaum@usdoj.gov  
26 Tze Lee Tien tien@eff.org, jason@eff.org; vkhall@aol.com; eff-mdl@eff.org  
27 Theresa M. Traber, Esq tmt@tvlegal.com,  
28 James Samuel Tyre jstyre@jstyre.com, jstyre@eff.org

1 Marc Van Der Hout ndca@vblaw.com  
2 William Joel Vander Vliet joel@krislovlaw.com, ecf@krislovlaw.com  
3 Bert Voorhees bv@tvlegal.com  
4 James P. Walsh budwalsh@dwt.com, pamelabaron@dwt.com; allanpatterson@dwt.com  
5 Joshua Graeme Whitaker joshuawhitaker@griffinwhitaker.com,  
griffinwhitaker@griffinwhitaker.com  
6 Richard Roy Wiebe wiebe@pacbell.net, Document 121 Filed 01/16/2007 Page 60 of 73  
7 Martin Darren Woodward mwoodward@smi-law.com  
8 Shira R Yoshor shira.yoshor@bakerbotts.com  
9 Matthew J. Zevin mzevin@smi-law.com  
10

11 **M:06-cv-1791 Notice will be delivered by other means to:**

12 Bruce Ira Afran  
13 Bruce Afran, Attorney at Law  
10 Braeburn Drive  
Princeton, NJ 08540  
14 Jessica Ashlee Albies  
15 Law Office of J. Ashlee Albies  
621 SW Alder Street  
Suite 621  
16 Portland, OR 97205  
17 Ron Antosko  
18 ,  
19 Stephen E. Arthur  
Harrison & Moberly  
135 North Pennsylvania Street  
20 Suite 2100  
Indianapolis, IN 46204  
21 Sidney M. Bach  
22 Sidney M. Back, Attorney at Law  
5917 Constance Street  
23 New Orleans, LA 70115  
24 Darrell Lee Barger  
Hartline acus et all  
25 800 N. Shoreline Blvd.  
Suite 2000N  
26 Corpus Christi, TX 78401  
27 Todd C. Barnes  
George & Sipes  
28 156 East Market Street

1 Suite 600  
Indianapolis, IN 46204

2  
3 Raymond A . Basile  
Harrison & Moberly  
135 North Pennsylvania  
4 Suite 2100  
Indianapolis, IN 46204

5  
6 Daniel J. Becka  
Beigel Schy Lasky Rifkind Goldberg & Fertik Ltd  
311 So Wacker Dr 65th Fl  
7 Chicago, IL 60606

8 Marc Oliver Beem  
Miller Shakman & Hamilton, LLP  
9 180 North LaSalle Street  
Suite 3600  
10 Chicago, IL 60601

11 John Beisner  
O'Melveny & Myers LLP  
12 555 13th Street, N.W.  
Suite 500 West  
13 Washington, DC 20004-1109

14 Matthew Phineas Bergman  
Law Office of Matthew Bergman  
15 705 2nd Avenue  
Suite 1601  
16 Seattle, WA 98104

17 Steven K. Blackhurst  
Ater Wynne Hewitt Dodson & Skerritt  
18 222 S.W. Columbia Ste 1800  
Portland, OR 97201-6618

19  
20 Ari Y. Brown  
Bergman & Frockt  
705 Second Avenue  
21 Suite 1601  
Seattle, WA 98104

22  
23 James M. Carlson  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
24 Chicago, IL 60602

25 David R. Carpenter  
Sidley Austin LLP  
26 One South Dearborn Street  
Chicago, IL 60603

27  
28 Edward Morgan Carstarphen , III  
Ellis Carstarphen et al

Case M-06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 61 of 73

1 5847 San Felipe  
Suite 1900  
2 Houston, TX 77057

3 Catherine J. Casey  
DLA Piper rudnick Gray Cary US LLP  
4 203 North LaSalle Street  
#1900  
5 Chicago, IL 60601

6 James E. Chadden, Sr

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 62 of 73

7  
8 Kalea Seitz Clark  
Wilmer Cutler Pickering Hale and Door LLC  
1875 Pennsylvania Avenue NW  
9 Washington, DC 20006

10 Amato A. DeLuca  
DeLuca & Weizenbaum, Ltd.  
11 19! 9 North Main Street  
Providence, RI 02903

12 Nancy Scott Degan  
13 Baker Donelson Bearman Caldwell & Berkowitz, PC  
201 St. Charle Avenue  
14 Suite 3600  
New Orleans, LA 70170

15 Michael D. Donovan  
16 Law Offices of Michael D. Donovan  
1608 Walnut Street  
17 Suite 1400  
Philadelphia, PA 19103

18 Emilie K. Edling  
19 Stoel Rives, LLP  
900 SW Fifth Avenue  
20 Suite 2600  
Portland, OR 97204

21 Tyrone C. Fahner  
22 Mayer, Brown, Rowe & Maw LLP  
71 South Wacker Drive  
23 Chicago, IL 60606

24 Daniel Martin Feeney  
Miller Shakman & Beem LLP  
25 180 North LaSalle Street  
Suite 3600  
26 Chicago, IL 60601

27 Sheila Marie Finnegan  
Mayer, Brown, Rowe & Maw LLP  
28 71 South Wacker Drive

1 Chicago, IL 60606

2 Jodi W. Flowers  
3 Motley Rice, LLC  
4 28 Bridgeside Boulevard  
5 P.O. Box 1792  
6 Mount Pleasant, SC 29465

7 F. Larkin Fore  
8 Fore, Miller & Schwartz  
9 200 S. Fifth Street  
10 Suite 700N, First Trust Centre  
11 Louisville, KY 40202-3204

12 Sarah M. Fore  
13 Fore, Miller & Schwartz  
14 200 S. Fifth Street  
15 Suite 700N, First Trust Centre  
16 Louisville, KY 40202-3204

17 Zachary J. Freeman  
18 Miller Shakman & Beem LLP  
19 180 N. La Salle Street  
20 Suite 3600  
21 Chicago, IL 60601

22 Susan A. Freiwald  
23 USF School of LAW  
24 2130 Fulton St  
25 San Francisco, CA 94117

26 Albert L. Frevola, Jr.  
27 Gordon Hargrove & James  
28 2400 East Commercial Blvd.  
Suite 1100  
Fort Lauderdale, FL 33308-3092

Michael R. Fruehwald  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, IN 46204-3535

Jason L. Fulk  
Hoover Hull LLP  
111 Monument Circle  
Suite 4400  
P.O. Box 44989  
Indianapolis, IN 46244-0989

Andrea Marie Gacki  
US Department of Justice  
20 Massachusetts Avenue, NW  
Room 7334  
Washington, DC 20001

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 63 of 73

1 Daniel N. Gall  
2 c/o Luna Innocations  
2851 Commerce Street  
Blacksburg, VA 24060

3 Linda S. George  
4 Laudig George Rutherford & Sipes  
156 East Market Street  
5 Suite 600  
Indianapolis, IN 46204

6 John Richard Gillespie  
7 Broad & Cassel  
100 SE 3rd Avenue  
8 Suite 2700  
One Financial Plaza  
9 Fort Lauderdale, FL 33394

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 Cary Neal Goldberg  
2 Law Offices of Cary N. Goldberg  
3 30 North LaSalle Street  
4 Suite 2300  
5 Chicago, IL 60602

6 Steven Goldberg  
7 American Bank Building  
8 621 S.W. Morrison  
9 Suite 1450  
10 Portland, OR 97205

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 65 of 73

11 M. Norman Goldberger  
12 Wolf Block Schorr and Solis-Cohen, LLP  
13 1650 Arch Street  
14 22nd Floor  
15 Philadelphia, PA 19103

16 Edward Nelson Griffin  
17 Griffin Whitaker LLP  
18 8730 Georgia Avenue  
19 Suite LL100  
20 Silver Spring, MD 20910

21 Mark E. Guzzi  
22 271 Providence Oaks Circle  
23 Alpharetta, GA 30004

24 Zaha S. Hassan  
25 Attorney at Law  
26 14614 NW Seward Rd  
27 Vancouver, WA 98685

28 F. Thomas Hecht  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
Chicago, IL 60602

William J. Heller  
McCarter & English, LLP  
Four Gateway Center  
100 ! Mulberry Street  
P.O. Box 652  
Newark, NJ 07102-0652

23  
24  
25  
26  
27  
28

1 Amanda J. Hettinger  
2 Thompson Coburn LLP  
3 One US Bank Plaza  
4 St. Louis, MO 63101

5 Charles F. Hinkle  
6 Stoel Rives, LLP  
7 900 SW Fifth Avenue  
8 Suite 2600  
9 Portland, OR 97204

10 Andrew W. Hull  
11 Hoover Hull LLP  
12 111 Monument Circle  
13 Suite 4400  
14 P.O. Box 44989  
15 Indianapolis, IN 46244-0989

16 Anthony D. Irpino  
17 Irpino Law Firm  
18 365 Canal Street  
19 22nd Floor  
20 New Orleans, LA 70130

21 Lisa Robin Jaskol  
22 Horvitz & Levy LLP  
23 15760 Ventura Blvd 18FL  
24 Encino, CA 91436

25 Joseph G. Jevic, III  
26 St. Martin & Williams  
27 4084 Highway 311  
28 P.O. Box 2017  
Houma, LA 70361-2017

Philip J. John, Jr.  
Baker & Botts  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002

C. J. Johnson  
Kalkstein Law Firm  
P.O. Box 8568  
Missoula, MT 59807

Kelly Overstreet Johnson  
215 S. Monroe Street  
Suite 400  
P.O. Box 11300  
Tallahassee, FL 32302

Joshua Karsh  
Gessler Hughes Piers Resnick & Dym Ltd.  
Three First National Plaza

1 70 West Madison Street, Suite 4000  
Chicago, IL 60602

2  
3 Peter D. Keisler  
4 United States Department of Justice  
5 Assistant Attorney General  
6 20 Massachusetts Avenue, NW  
7 Room 7312  
8 Washington, DC 20530

9 Andrew Kierstead  
10 1001 S.W. Fifth Avenue  
11 Suite 1100  
12 Portland, OR 97204

13 Jonathan D. King  
14 DLA Piper Rudnick Gray Cary US LLP  
15 203 North LaSalle Street, #1900  
16 Chicago, IL 60601-1293

17 Michael E. Kipling  
18 Kipling Law Group PLLC  
19 3601 Fremont Avenue N.  
20 Suite 414  
21 Seattle, WA 98103

22 Joseph R. Knight  
23 Baker Botts LLP  
24 98 San Jacinto Blvd.  
25 Suite 1500  
26 Austin, TX 78701-4039

27 Leondra Kruger  
28 Wilmer Cutler Pickering Hale & Dorr LLP  
1875 Pennsylvania NW Avenue  
Washington, DC 20006-3642

Melanie G. Lagarde  
St. Martin & Williams  
4084 Highway 311  
Houma, LA 70360

Stephen Laudig  
2440 Campus Road, #429  
Honolulu, HI 96822

David L. Lawson  
Sidley Austin Brown & Wood  
172 Eye Street, N.W.  
Washington, DC 20006

Roger L. Mandel  
Stanley Mandel & Iola LLP  
3100 Monticello ave  
Suite 750

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 67 of 73

- 1 Dallas, TX 75205
- 2 Lori McAllister  
Dykema Gossett PLLC
- 3 201 Townsend Street  
Suite 900
- 4 Lansing, MI 48933
- 5 Howard A. Merten  
Partridge, Snow & Hahn LLP
- 6 180 South Main Street  
Providence, RI 02905
- 7 Donald A. Migliori  
Motley Rice LLC
- 8 321 South Main Street  
Providence, RI 02940
- 9 Benjamin C. Mizer  
1875 Pennsylvania Ave., N.W.  
Washington, DC 20006
- 10 Alice McKenzie Morical  
Hoover Hull LLP
- 11 111 Monument Circle  
Suite 4400  
P.O. Box 44989  
Indianapolis, IN 46244-0989
- 12 Randolph D. Moss  
Wilmer, Cutler, Pickering, Hale & Dorr LLP
- 13 1875 Pennsylvania Avenue, N.W.  
Washington, DC 20006
- 14 Thomas H. Nelson  
Thomas H. Nelson & Associates
- 15 825 NE Multnomah  
Suite 925  
Portland, OR 97232
- 16 Michael C. O'Malley  
Siben & Siben, LLP
- 17 90 East Main Street  
BayShore, NY 11706
- 18 Michele L. Odorizzi  
Mayer Brown Rowe & Maw
- 19 190 South LaSalle Street  
Chicago, IL 60603
- 20 Wendy Sangbee Park  
Roger Baldwin Foundation of ACLU, Inc.
- 21 180 North Michigan Avenue  
Suite 2300  
Chicago, IL 60601
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 68 of 73

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Robert J. Patterson  
Watts Law Firm LLP  
555 N. Carancahua Street  
Twr II Bldg 14th Floor  
Corpus Christi, TX 78401

Paul Lee Peyronnin  
Baker donelson Bearman Caldwell & Berkowitz, PC  
201 St. Charles Ave.  
Suite 3600  
New Orleans, LA 70170

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 69 of 73

Michael James Philippi  
Ungaretti & Harris LLP  
3500 Three First National Plaza  
Chicago, IL 60602

1 Jason S. Ritchie  
Holland & Hart  
2 P.O. Box 639  
Billings, MT 59103

3  
4 Harry Rosenberg  
Phelps Dunbar, LLP  
Canal Place  
5 365 Canal Street  
Suite 2000  
6 New Orleans, LA 70130-6534

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 70 of 73

7 Michael J. Ross  
Slater Ross  
8 1850 Benjamin Franklin Plaza  
1 S.W. Columbia Street  
9 Portland, OR 97258

10 William A. Rossbach  
Rossbach & Whiston  
11 401 North Washington Street  
P.O. Box 8988  
12 Missoula, MT 59807-8988

13 Alan Norris Salpeter  
Mayer, Brown, Rowe & Maw  
14 190 South LaSalle Street  
Chicago, IL 60603

15 Ronald P. Schiller  
16 DLA Piper Rudnick Gray Cary US LLP  
One Liberty Place  
17 Suite 4900  
1650 Market Street  
18 Philadelphia, PA 19103

19 Mark Schlosberg  
American Civil Liberties Union Fndt.  
20 1663 Mission Street, Suite 460  
San Francisco, CA 94103

21 Eric Schneider  
22 1730 South Federal Hwy. #104  
Delray Beach, FL 33483

23  
24  
25  
26  
27  
28

1 Adam D. Schwartz  
2 Roger Baldwin Foundation of ACLU, Inc.  
3 180 North Michigan Avenue  
4 Suite 2300  
5 Chicago, IL 60601-7401

6 John D. Seiver  
7 Cole Raywid & Braverman, LLP  
8 1919 Pennsylvania Ave., N.W.  
9 Suite 200  
10 Washington, DC 20006

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 71 of 73

11 Donald A. Statland  
12 Attorney at Law  
13 55 West Monroe St  
14 Ste 1200  
15 Chicago, IL 60603

16 David H. Sternlieb  
17 Shapiro & Sternlieb, LLC  
18 800 Tennent Road  
19 Manalapan, NJ 07726

20 A. David Stippler  
21 Bingham McHale, LLP  
22 2701 0 Market Tower  
23 10 West Market Street  
24 Indianapolis, IN 46204

25 Ted W. Stroud  
26 Oade Stroud & Kleiman PC  
27 200 Woodland Pass  
28 P.O. Box 1296  
East Lansing, MI 48826-1296

Brendan V. Sullivan  
Williams & Connolly  
725 12th St N.W.  
Washington, DC 20005

Davis Wright Tremaine  
Attorney at Law  
101 California Street  
Ste 3275  
San Francisco, CA 94111

M. Stephen Turner  
Broad & Cassel  
215 South Monroe Street  
Suite 400  
P.O. Box 11300  
Tallahassee, FL 32302

Marc Ver Der Hout  
Ver Der Hout & Brigagliano

1 180 Sutter Street, 5th Floor  
2 San Francisco, CA 94123

3 Nicholas Wagner  
4 Law Offices of Wagner & Jones  
5 1111 East Herndon, Suite 317  
6 Fresno, CA 93720

7 Thomas P. Walsh  
8 United States Attorney's Office NDIL  
9 219 South Dearborn Street  
10 Suite 500  
11 Chicago, IL 60604

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 72 of 73

12 Peter Wasylyk  
13 Law Offices of Peter Wasylyk  
14 1307 Chalkstone Avenue  
15 Providence, RI 02908

16 Mikal C. Watts  
17 Watts Law Firm, LLP  
18 Bank of America Plaza  
19 300 Convent Street  
20 Suite 100  
21 San Antonio, TX 78205

22 Brian W. Welch  
23 Bingham McHale, LLP  
24 10 West Market Street  
25 Market Tower, Suite 2700  
26 Indianapolis, IN 46204

27 John C. Whitfield  
28 Whitfield & Cox PSC  
29 29 East Center Street  
30 Madisonville, KY 42431

31 Conrad S.P. Williams, III  
32 St. Martin, Williams & Bourque  
33 P.O. Box 2017  
34 Houma, LA 70361

35 Daniel D. Williams  
36 Williams & Connolly LLP  
37 725 Twelfth Street, NW  
38 Washington, DC 20005

39 Matthew A. Woolf  
40 Baker Donelson Bearman Caldwell & Berkowitz, PC  
41 201 St. Charles Ave.  
42 Suite 3600  
43 New Orleans, LA 70170

44 Anthony J. Zarillo, Jr  
45 Courter, Kobert & Cohen, PC



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1001 Route 517  
Hackettstown, NJ 07840  
  
Jacie C. Zolna  
Myron M. Cherry & Associates  
30 North LaSalle Street  
Suite 2300  
Chicago, IL 60602

Case M:06-cv-01791-VRW Document 121 Filed 01/16/2007 Page 73 of 73