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10 SIGNATURE PAGE

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 (San Francisco Division)

14 IN RE NATIONAL SECURITY
15 TELECOMMUNICATIONS
16 RECORDS LITIGATION

MDL Docket No. 06-1791 (VRW)

MASTER CONSOLIDATED COMPLAINT
AGAINST DEFENDANT "BELLSOUTH" FOR
DAMAGES, DECLARATORY AND
EQUITABLE RELIEF

17 THIS DOCUMENT RELATES
18 TO: ALL CASES BROUGHT
19 AGAINST DEFENDANTS BELLSOUTH,
20 BELLSOUTH COMMUNICATIONS,
21 LLC, BELLSOUTH CORP,
22 BELLSOUTH CORP., BELLSOUTH
23 CORPORATION, AND BELLSOUTH
24 TELECOMMUNICATIONS, INC.

CLASS ACTION

JUDGE: Hon. Vaughn R. Walker

DEMAND FOR JURY TRIAL

25 Plaintiffs, by their attorneys, for their Master Consolidated Complaint against
26 Defendants BellSouth, BellSouth Communications, LLC, BellSouth Corp, BellSouth Corp.,
27 BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T Southeast (formerly
28 BellSouth Corporation) (hereafter "BellSouth") allege, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. This Master Consolidated Complaint Against Defendant BellSouth
(hereafter "BellSouth Master Complaint") is filed pursuant to the Order of this Court and presents

1 August, 2005. Reverend McMurray has used such electronic communications services to place
2 and receive telephone calls. Many of Reverend McMurray's communications with his
3 congregant are privileged pursuant to the clergyman-congregant privilege recognized under
4 Federal Rule of Evidence 501.

5 7. Plaintiff Rabbi Steven Lebow, an individual residing in Marietta, Georgia,
6 has been a subscriber and user of BellSouth's wireline local and long distance domestic and
7 international telephone service and DSL Internet service. Rabbi Lebow has used such electronic
8 communications services to place and receive domestic and international telephone calls for
9 Internet and e-mail services. Many of Rabbi Lebow's communications with his congregant are
10 privileged pursuant to the clergyman-congregant privilege recognized under Federal Rule of
11 Evidence 501.

12 8. Plaintiff Jim Nurkiewicz, an individual residing in Key West, Florida, is
13 and has been a subscriber and user of BellSouth's wireline residential telephone service since
14 January, 2000 and has used such electronic communications services to place and receive
15 telephone calls.

16 9. Plaintiffs Steven and Cathy Bruning, individuals residing in Marietta,
17 Georgia, have been subscribers to and users of BellSouth's wireline local and long distance
18 residential domestic and international telephone service and DSL Internet service. The Brunings
19 have used such electronic communications services to place and receive domestic and
20 international telephone calls and for Internet and e-mail services.

21 10. Plaintiff Jonnie Starkey, an individual residing in Covington, Georgia, has
22 been a subscriber to and user of BellSouth's wireline local and long distance residential domestic
23 telephone service and DSL Internet service. Ms. Starkey has used such electronic
24 communications services to place and receive domestic and international telephone calls and for
25 Internet and e-mail services.

26 11. Plaintiffs Barry and Meredith Kaltman, individuals residing in Marietta,
27 Georgia, have been subscribers to and users of BellSouth's wireline local and long distance
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1 residential domestic and international telephone service. The Kaltmans have used such electronic
2 communications services to place and receive domestic and international telephone calls and for
3 Internet and e-mail services.

4 12. Plaintiff Ilene Pruett, an individual residing in Anniston, Alabama, is and
5 has been during the relevant time period a subscriber to and user of BellSouth's wireline
6 residential telephone service. Ms. Pruett has used such electronic communications services to
7 place and receive domestic and international telephone calls.

8 13. Plaintiff Thomas Michael Fain, an individual residing in Raleigh, North
9 Carolina, is and has been during the relevant time period a subscriber to and user of BellSouth's
10 wireline residential telephone service. Mr. Fain has used such electronic communications
11 services to place and receive domestic and international telephone calls.

12 14. Plaintiff John Fitzpatrick, an individual residing in Boynton Beach,
13 Florida, is and has been during the relevant time period a subscriber to and user of BellSouth's
14 wireline residential telephone service. Mr. Fain has used such electronic communications
15 services to place and receive telephone calls.

16 15. Plaintiff Linda Gettier, an individual residing in Raleigh, North Carolina,
17 is and has been during the relevant time period a subscriber to and user of BellSouth's wireline
18 residential telephone service. Ms. Gettier has used such electronic communications services to
19 place and receive telephone calls.

20 16. Plaintiff Anthony Barthelemy, an individual residing in Miami, Florida, is
21 and has been during the relevant time period a subscriber to and user of BellSouth's wireline
22 residential telephone service. Mr. Barthelemy has used such electronic communications services
23 to place and receive telephone calls.

24 17. Plaintiff Jane Winston, an individual residing in Miami, Florida, is and has
25 been a subscriber to and user of BellSouth's wireline residential telephone service since 1999.
26 Ms. Winston has used such electronic communications services to place and receive telephone
27 calls.

1 18. Plaintiff John Clark, an individual residing in Yulee, Florida, is and has
2 been during the relevant time period a subscriber to and user of BellSouth's wireline residential
3 telephone services. Mr. Clark has used such electronic communications services to place and
4 receive telephone calls.

5 19. Plaintiffs Jane and Mark Youd, individuals residing in Ormond Beach,
6 Florida, are and have been subscribers to and user of BellSouth's wireline residential telephone
7 service since 1977. The Youds have used such electronic communications services to place and
8 receive telephone calls.

9 20. Plaintiffs Carolyn R. and Douglas S. Hensley, individuals residing in
10 Raleigh, North Carolina, are and have been subscribers to and user of BellSouth's wireline
11 residential telephone service since 1992. The Hensleys have used such electronic
12 communications services to place and receive telephone calls.

13 21. Plaintiffs Fred and Darlene Rogers, individuals residing in Rockmart,
14 Georgia, are and have been subscribers to and user of BellSouth's wireline residential telephone
15 service since February, 2005. The Rogers' have used such electronic communications services to
16 place and receive telephone calls.

17 22. Plaintiff Peter Hollings, an individual residing in Atlanta, Georgia, is and
18 has been during the relevant time period a subscriber to and user of BellSouth's wireline
19 residential telephone service. Mr. Hollings has used such electronic communications services to
20 place and receive telephone calls.

21 23. Plaintiff Lisa Lockwood, an individual residing in Roswell, Georgia, is and
22 has been since 2005 a subscriber to and user of BellSouth's wireline residential telephone service.
23 Ms. Lockwood has used such electronic communications services to place and receive telephone
24 calls.

25 24. Plaintiff Clyde Michael Morgan, an individual residing in Swannanoa,
26 North Carolina, is and has been during the relevant time period a subscriber to and user of
27 BellSouth's wireline residential telephone service. Mr. Morgan has used such electronic
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1 communications services to place and receive telephone calls.

2 25. Plaintiff Simon Champagne, an individual residing in Lawrenceville,
3 Georgia, is and has been during the relevant time period a subscriber to and user of BellSouth's
4 wireline residential telephone service. Mr. Champagne has used such electronic communications
5 services to place and receive telephone calls.

6 26. Plaintiff Tina Herron, an individual residing in the Parish of La Fourche,
7 Louisiana, is and has been during the relevant time period a subscriber to and user of BellSouth's
8 wireline residential domestic and long distance telephone service. Ms. Herron has used such
9 electronic communications services to place and receive telephone calls.

10 27. Plaintiff Brandy Sergi, an individual residing in the Parish of La St.
11 Tammany, Louisiana, is and has been during the relevant time period a subscriber to and user of
12 BellSouth's wireline residential domestic and long distance telephone service and Internet
13 service. Ms. Sergi has used such electronic communications services to place and receive
14 telephone calls and e-mail messages.

15 28. Plaintiff Mike Haney, an individual residing in California was a subscriber
16 to and user of Cingular Wireless' telephone service during the class period. Mr. Haney has used
17 such electronic communications services to place and receive telephone calls.

18 29. Plaintiff Steve Kampmann, an individual residing in California is and was
19 during the class period a subscriber to and user of Cingular Wireless' telephone service. Mr.
20 Kampmann has used such electronic communications services to place and receive telephone
21 calls.

22 30. Plaintiff Janet Orlando, an individual residing in California is and was
23 during the class period a subscriber to and user of Cingular Wireless' telephone service. Ms.
24 Orlando has used such electronic communications services to place and receive telephone calls.

25 31. Plaintiff Melissa Scroggins, an individual residing in California is and was
26 during the class period a subscriber to and user of Cingular Wireless' telephone service. Ms.
27 Scroggins has used such electronic communications services to place and receive telephone calls.

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1 this information to the federal government.

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

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

14 40. In a press briefing on December 19, 2005 by Attorney General Alberto
15 Gonzales and General Michael Hayden, Principal Deputy Director for National Intelligence, the
16 government claimed that the NSA Surveillance Program targets communications between a party
17 outside the United States and a party inside the United States when one of the parties of the
18 communication is believed to be “a member of al Qaeda, affiliated with al Qaeda, or a member of
19 an organization affiliated with al Qaeda, or working in support of al Qaeda.”

20 41. In a press release on December 19, 2005, Attorney General Alberto
21 Gonzales stated that the Program involved “intercepts of contents of communications”
22 While the Attorney General’s description of the Program was limited to interception of
23 communications with individuals “outside the United States,” Attorney General Gonzales
24 explained that his discussion was limited to those parameters of the program already disclosed by
25 the President and that many other operational aspects of the program remained highly classified.

26 42. On December 24, 2005, *The New York Times* reported in an article entitled,
27 “Spy Agency Mined Vast Data Trove, Officials Report,” that:
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1 [t]he National Security Agency has traced and analyzed large
2 volumes of telephone and Internet communications flowing into
3 and out of the United States as part of the eavesdropping program
4 that President Bush approved after the Sept. 11, 2001, attacks to
5 hunt for evidence of terrorist activity, according to current and
6 former government officials. The volume of information harvested
7 from telecommunication data and voice networks, without court-
8 approved warrants, is much larger than the White House has
9 acknowledged, the officials said. It was collected by tapping
10 directly into some of the American telecommunication system's
11 main arteries, they said.

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

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

28 44. In a January 17, 2006 article, "Spy Agency Data After Sept. 11 Led F.B.I.
to Dead Ends," *The New York Times* stated that officials who were briefed on the N.S.A. program
said that "the agency collected much of the data passed on to the F.B.I. as tips by tracing phone
numbers in the United States called by suspects overseas, and then by following the domestic
numbers to other numbers called. In other cases, lists of phone numbers appeared to result from

1 the agency's computerized scanning of communications coming into and going out of the country
2 for names and keywords that might be of interest."

3 45. A January 20, 2006 article in the *National Journal*, "NSA Spy Program
4 Hinges On State-of-the-Art Technology," reported that "[o]fficials with some of the nation's
5 leading telecommunications companies have said they gave the NSA access to their switches, the
6 hubs through which enormous volumes of phone and e-mail traffic pass every day, to aid the
7 agency's effort to determine exactly whom suspected Qaeda figures were calling in the United
8 States and abroad and who else was calling those numbers. The NSA used the intercepts to
9 construct webs of potentially interrelated persons."

10 46. In a January 21, 2006 article in *Bloomberg News* entitled "Lawmaker
11 queries Microsoft, other companies on NSA wiretaps," Daniel Berninger, a senior analyst at Tier
12 1 Research in Plymouth, Minnesota, said, "[i]n the past, the NSA has gotten permission from
13 phone companies to gain access to so-called switches, high-powered computer into which phone
14 traffic flows and is redirected, at 600 locations across the nation. . . . From these corporate
15 relationships, the NSA can get the content of calls and records on their date, time, length, origin
16 and destination."

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

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

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

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

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

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

22 53. As of the date of the filing of this complaint, no part of the *USA Today*
23 story has been publicly denied by any representative of the federal government, including the
24 NSA.

25 54. On May 16, 2006, in an article entitled “BellSouth Denies NSA Contract,”
26 *eWeek.com* reported that BellSouth’s vice president of corporate communications, Jeff Battcher,
27 in an interview disputed the accuracy of information contained in the May 11, 2006 *USA Today*
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1 article but “note(d) that his company owns 40% of wireless carrier Cingular” and that he “(didn’t)
2 want to speak for Cingular”.

3 55. Qwest’s decision not to participate was also reported in an article from *The*
4 *New York Times* on May 13, 2006, entitled, “Questions Raised For Phone Giants In Spy Data
5 Furor.” The article reported that Qwest’s former CEO, Joseph Nacchio, “made inquiry as to
6 whether a warrant or other legal process had been secured in support of that request. When he
7 learned that no such authority had been granted, and that there was a disinclination on the part of
8 the authorities to use any legal process,’ Nacchio concluded that the requests violated federal
9 privacy requirements ‘and issued instructions to refuse to comply.’” According to the May 11,
10 2006 USA Today article, “Nacchio’s successor, Richard Notebaert, finally pulled the plug on the
11 NSA talks in late 2004.”

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

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

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

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

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

13 61. BellSouth knowingly and intentionally provides the aforementioned
14 telephone [contents and] records to the federal government.

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

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

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

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

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

10 67. BellSouth has intercepted and continue to provide the government with
11 direct access to all or a substantial number of the communications transmitted through its key
12 domestic telecommunications facilities, including direct access to streams of domestic,
13 international, and foreign telephone and Internet communications.

14 68. Since on or about February 1, 2001, BellSouth has disclosed and/or
15 divulged the "call-detail records" of all or substantially all of their customers, including Plaintiffs,
16 to the NSA, in violation of federal law, as more particularly set forth below.

17 69. BellSouth has, since on or about February 1, 2001, been disclosing to the
18 NSA "individually identifiable customer proprietary network information" belonging to all or
19 substantially all of their customers, including Plaintiffs, in violation of federal law, as more
20 particularly set forth below.

21 70. BellSouth has disclosed and continues to disclose and/or provide the
22 government with direct access to its databases of stored telephone and Internet records, which are
23 updated with new information in real time or near-real time.

24 71. BellSouth has provided at all relevant times and continue to provide
25 computer or storage processing services to the public, by means of wire, radio, electromagnetic,
26 photo-optical, or photo-electronic facilities for the transmission of wire or electronic
27 communications, and/or by means of computer facilities or related electronic equipment for the
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1 electronic storage of such communications.

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

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

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

17 75. BellSouth has knowingly authorized, and continues to knowingly
18 authorize, NSA and affiliated governmental agencies to directly access through the installed
19 devices all domestic, international and foreign wireline and wireless telephone and Internet
20 communications transmitted through BellSouth's domestic telecommunications infrastructure and
21 facilities for use in the Program.

22 76. BellSouth provides the aforementioned telephone contents and records to
23 the federal government in the absence of judicial or other lawful authorization, probable cause,
24 and/or individualized suspicion, and/or without a court order, warrant, subpoena, statutory
25 authorization, or certification pursuant to Chapters 119 and 121 of Title 18 of the United States
26 Code.

27 77. BellSouth did not disclose to its customers, including Plaintiffs, that it was
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1 providing the aforementioned telephone contents and records to the federal government. Thus,
2 BellSouth's customers, including plaintiffs, had no opportunity to, and did not, consent to the
3 disclosure of their telephone contents and records.

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

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

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

23 81. On December 29, 2006, Reuters reported that "AT&T closed its \$86 billion
24 purchase of BellSouth Corp."

25 82. According to AT&T's website, "BellSouth and Cingular are now part of
26 the new AT&T"

27 83. According to an AT&T press release dated December 29, 2006, "AT&T
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1 Inc. closed its acquisition of BellSouth Corporation... (t)he transaction consolidates ownership
2 and management of Cingular Wireless... AT&T will immediately start to implement a carefully
3 planned integration process to converge the AT&T, BellSouth, and Cingular Wireless and
4 wireline Internet Protocol (IP) networks.” According to the same press release, BellSouth
5 Corporation is now or will be known as “AT&T Southeast”.

6 84. Defendant’s violations were done with knowledge of their illegality, and
7 therefore were done in bad faith.

8 85. Defendant acted in collusion with a federal governmental agency.

9
10 **CLASS ACTION ALLEGATIONS**

11 86. Plaintiffs bring this action under Federal Rule of Civil Procedure 23 on
12 behalf of themselves and a Class, defined as:

13 All individuals and entities located in the United States that have
14 been subscribers or customers of Defendant’s wireless, wireline
15 telephone, and/or Internet services at any time since February 1,
16 2001. Excluded from the Class are Defendant, Defendant’s
17 predecessors, affiliates, parents, subsidiaries, officers and directors;
18 all federal, state, and local governmental entities; any and all judges
19 and justices assigned to hear any aspect of this litigation, their court
20 staffs, their spouses, any minor children residing in their
21 households, and any persons within the third degree of relationship
22 to any judge or justice assigned to hear any aspect of this litigation.

23 87. Plaintiffs also bring this action, pursuant to Rule 23, on behalf of distinct
24 state subclasses, including: (a) a State of California Subclass, and (b) a State of Georgia
25 Subclass.

26 88. The State of California Subclass is defined as:

27 All individuals and entities located in California that have been
28 subscribers or customers of Defendant’s wireless, wireline
telephone, and/or Internet services at any time since February 1,
2001. Excluded from the Class are Defendant, Defendant’s
predecessors, affiliates, parents, subsidiaries, officers and directors;
all federal, state, and local governmental entities; any and all judges
and justices assigned to hear any aspect of this litigation, their court
staffs, their spouses, any minor children residing in their
households, and any persons within the third degree of relationship
to any judge or justice assigned to hear any aspect of this litigation.

1 89. The State of Georgia Subclass is defined as:

2 All individuals and entities located in Georgia that have been
3 subscribers or customers of Defendant's wireless, wireline
4 telephone, and/or Internet services at any time since February 1,
5 2001. Excluded from the Class are Defendant, Defendant's
6 predecessors, affiliates, parents, subsidiaries, officers and directors;
7 all federal, state, and local governmental entities; any and all judges
8 and justices assigned to hear any aspect of this litigation, their court
9 staffs, their spouses, any minor children residing in their
10 households, and any persons within the third degree of relationship
11 to any judge or justice assigned to hear any aspect of this litigation.

12 90. Plaintiffs seek certification of the Class and the Subclasses under Federal
13 Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).

14 91. The Class and Subclasses each number in the millions, so that joinder of all
15 members is impractical.

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

21 93. Common questions of law and fact exist, including:

- 22 a. Whether BellSouth intercepted its customers' wire and electronic
23 communications;
- 24 b. Whether BellSouth disclosed and/or divulged its customers'
25 telephone records and content to the federal government;
- 26 c. Whether BellSouth violated federal law in disclosing and/or
27 divulging its customers' telephone records and content to the
28 federal government;
- d. Whether Plaintiffs and Class members are entitled to damages; and
- e. Whether Plaintiffs and Class members are entitled to equitable
 relief.

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

1 public shall not knowingly divulge to any person or entity
2 the contents of any communication which is carried or
3 maintained on that service—

4 (A) on behalf of, and received by means of electronic
5 transmission from (or created by means of computer
6 processing of communications received by means of
7 electronic transmission from), a subscriber or
8 customer of such service;

9 (B) solely for the purpose of providing storage or
10 computer processing services to such subscriber or
11 customer, if the provider is not authorized to access
12 the contents of any such communications for
13 purposes of providing any services other than
14 storage or computer processing. . . .

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

19 104. BellSouth did not notify Plaintiffs or Class Members of the divulgence of
20 their communications, nor did Plaintiffs or Class Members consent to such.

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

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

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

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

109. Defendant has not been provided with a certification in writing by a person
specified in 18 U.S.C. § 2518(7) or by the Attorney General of the United States meeting the

1 requirements of 18 U.S.C. § 2511(2)(a)(ii)(B), *i.e.*, a certification that no warrant or court order
2 authorizing the disclosures is required by law, and that all statutory requirements have been met.

3 110. The disclosures were and are not authorized by any statute or legislation.

4 111. Defendant's disclosures in violation of 18 U.S.C. § 2702(a)(3) were and
5 are knowing, intentional, and willful.

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

11 113. Plaintiffs and Class members have been and are aggrieved by Defendants'
12 above-described divulgence of the contents of their communications.

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

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

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

23 116. In relevant part, 18 U.S.C. § 2702 provides that:

24 (a) Prohibitions. – Except as provided in subsection . . .(c)

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

117. Defendant's wireline telephone services are "electronic communication

1 service[s],” as that term is defined in 18 U.S.C. § 2510(15), provided to the public, including
2 Plaintiff and Class members.

3 118. BellSouth violated 18 U.S.C. § 2702(a)(3) by knowingly and intentionally
4 divulging to the federal government records or other information pertaining to subscribers or
5 customers of BellSouth’s remote computing and electronic services.

6 119. BellSouth’s challenged program of disclosing telephone records to the
7 federal government does not fall within any of the statutory exceptions or immunities set forth in
8 18 U.S.C. §§ 2702(c), 2703(c), or 2703(e).

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

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

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

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

19 124. Defendant has not been provided with a certification in writing by a person
20 specified in 18 U.S.C. § 2518(7), by the Director of the Federal Bureau of Investigation or his
21 designee or a Special Agent in Charge in a Bureau field office pursuant to 18 U.S.C. § 2709(b), or
22 by the Attorney General of the United States to meet the requirements of 18 U.S.C.
23 § 2511(2)(a)(ii)(B), *i.e.*, a certification that no warrant or court order authorizing the disclosures is
24 required by law, and that all statutory requirements have been met.

25 125. The disclosures were and are not authorized by any statute or legislation.

26 126. Plaintiffs and their Class are aggrieved by BellSouth’s knowing and
27 intentional past disclosure and/or imminent future disclosure of their records to the federal
28

1 government. Accordingly, plaintiffs may challenge this violation of 18 U.S.C. § 2702(a)(3)
2 pursuant to the cause of action created by 18 U.S.C. § 2707(a).

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

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

7 128. In relevant part, 18 U.S.C. § 2511 provides that:

- 8 (1) Except as otherwise specifically provided in this
9 chapter, any person who – (a) intentionally
10 intercepts, endeavors to intercept, or procures any
11 other person to intercept or endeavor to intercept,
12 any wire, oral or electronic communication. . . . (c)
13 intentionally discloses, or endeavors to disclose, to
14 any other person the contents of any wire, oral, or
15 electronic communication, knowing or having
16 reason to know that the information was obtained
17 through the interception of a wire, oral, or
18 electronic communication in violation of this
19 subsection; (d) intentionally uses, or endeavors to
20 disclose, to any other person the contents of any
21 wire, oral, or electronic communication, knowing
22 or having reason to know that the information was
23 obtained through the interception of a wire, oral, or
24 electronic communication in violation of this
25 subsection. . . . (3)(a) Except as provided in
26 paragraph (b) of this subsection, a person or entity
27 providing an electronic communication service to
28 the public shall not intentionally divulge the
contents of any communication (other than one to
such person or entity, or an agent 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.

22 129. BellSouth violated 18 U.S.C. §§ 2511(1)(a), (1)(c), (1)(d), and (3)(a) by
23 intentionally intercepting and disclosing to the federal government the contents of telephone calls
24 and Internet communications of BellSouth customers.

25 130. BellSouth violated 18 U.S.C. § 2511(1)(d) by intentionally using, or
26 endeavoring to use, the contents of Plaintiffs' and class members' wire or electronic
27 communications, while knowing or having reason to know that the information was obtained
28

1 through the interception of wire or electronic communications.

2 131. BellSouth's challenged program of intercepting and disclosing the
3 contents of telephone calls and Internet communications to the federal government does not fall
4 within any of the statutory exceptions or immunities set forth in 18 U.S.C. §§ 2511(2),
5 2511(3)(b), or 2520(d).

6 132. Plaintiffs and their Class are aggrieved by BellSouth's intentional past
7 and/or imminent future interception and disclosure of telephone call and Internet communication
8 contents to the federal government. Accordingly, plaintiffs may challenge this violation of 18
9 U.S.C. §§ 2511(1)(a), (1)(c), (1)(d) and (3)(a) pursuant to the cause of action created by 18
10 U.S.C. § 2520(a).

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

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

15 134. In relevant part, 47 U.S.C. § 605 provides that:

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

23 135. BellSouth received, assisted in receiving, transmitted, or assisted in
24 transmitting, Plaintiff's and Class members' interstate communications by wire.

25 136. BellSouth violated 47 U.S.C. § 605 by divulging or publishing the
26 "existence" of Plaintiff's and Class Members' communications to the federal government, by
27 means other than through authorized channels of transmission or reception. BellSouth's
28 disclosure and publication of the existence of Plaintiff's and Class Members' communications

1 was not authorized by any provision of 18 U.S.C. §§ 2510-2522.

2 137. BellSouth's disclosure and publication of the existence of Plaintiff's and
3 Class Members' communications was willful and for purposes of direct or indirect commercial
4 advantage or private financial gain as they were paid for their cooperation, and a failure to
5 cooperate might have jeopardized their ability to obtain lucrative government contracts.

6 138. BellSouth failed to notify Plaintiffs or Class Members of the Defendant's
7 disclosure and/or publication of the existence of Plaintiff's and Class Members' communications,
8 nor did Plaintiff or Class Members consent to such disclosure and publication.

9 139. Pursuant to 47 U.S.C. § 605(e)(3), Plaintiff and Class Members seek: (a) a
10 declaration that the disclosures are in violation of 47 U.S.C. § 605(a); (b) a preliminary injunction
11 restraining Defendant from continuing to make such unlawful disclosures; (c) a permanent
12 injunction restraining Defendant from continuing to make such unlawful disclosures; (d) statutory
13 damages of not less than \$1,000 or more than \$10,000 for each violation, plus, in the Court's
14 discretion, an increase in the statutory damages of up to \$100,000 for each violation; and
15 (e) reasonable attorneys' fees and reasonable costs of this litigation.

16
17 **FIFTH CLAIM FOR RELIEF**
Violation of 50 U.S.C. § 1809

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

20 141. In relevant part, 50 U.S.C. §1809 provides that:

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

25 142. In relevant part 50 U.S.C. §1801 provides that:

- 26 (f) "Electronic surveillance" means - (1) the acquisition by an
27 electronic, mechanical, or other surveillance device of the
28 contents of any wire or radio communication sent by or
intended to be received by a particular, known United

1 States person who is in the United States, if the contents are
2 acquired by intentionally targeting that United States
3 person, under circumstances in which a person has a
4 reasonable expectation of privacy and a warrant would be
5 required for law enforcement purposes; (2) the acquisition
6 by an electronic, mechanical, or other surveillance device
7 of the contents of any wire communication to or from a
8 person in the United States, without the consent of any
9 party thereto, if such acquisition occurs in the United
10 States, but does not include the acquisition of those
11 communications of computer trespassers that would be
12 permissible under section 2511 (2)(i) of Title 18; (3) the
13 intentional acquisition by an electronic, mechanical, or
14 other surveillance device of the contents of any radio
15 communication, under circumstances in which a person has
16 a reasonable expectation of privacy and a warrant would be
17 required for law enforcement purposes, and if both the
18 sender and all intended recipients are located within the
19 United States; or (4) the installation or use of an electronic,
20 mechanical, or other surveillance device in the United
21 States for monitoring to acquire information, other than
22 from a wire or radio communication, under circumstances
23 in which a person has a reasonable expectation of privacy
24 and a warrant would be required for law enforcement
25 purposes.

14 143. BellSouth has intentionally acquired, by means of a surveillance device,
15 the contents of one or more wire communications to or from Plaintiffs and Class Members or
16 other information in which Plaintiffs or Class Members have a reasonable expectation of privacy,
17 without the consent of any party thereto, and such acquisition occurred in the United States.

18 144. By the acts alleged herein, BellSouth has intentionally engaged in
19 electronic surveillance (as defined by 50 U.S. C. §1801(f)) under color of law, but which is not
20 authorized by any statute, and BellSouth has intentionally subjected Plaintiffs and Class Members
21 to such electronic surveillance, in violation of 50 U.S.C. §1809.

22 145. Additionally or in the alternative, by the acts alleged herein, BellSouth has
23 intentionally disclosed or used information obtained under color of law by electronic surveillance,
24 knowing or having reason to know that the information was obtained through electronic
25 surveillance not authorized by statute.

26 146. BellSouth did not notify Plaintiffs or class members of the above-described
27 electronic surveillance, disclosure, and/or use, nor did Plaintiffs or Class Members consent to
28

1 such.

2 147. BellSouth's challenged program of electronic surveillance does not fall
3 within any of the statutory exceptions or immunities set forth in 50 U.S.C. § 1809(b).

4 148. There is a strong likelihood that BellSouth is now engaging in and will
5 continue to engage in the above-described electronic surveillance, disclosure, and/or use of
6 Plaintiffs' and Class Members' wire communications described herein, and that likelihood
7 represents a credible threat of immediate future harm.

8 149. Plaintiffs and Class Members have been and are aggrieved by BellSouth's
9 electronic surveillance, disclosure, and/or use of their wire communications.

10 150. Pursuant to 50 U.S.C. §1810, which provides a civil action for any person
11 who has been subjected to an electronic surveillance or about whom information obtained by
12 electronic surveillance of such person has been disclosed or used in violation of 50 U.S.C. §1809,
13 Plaintiffs and class members seek equitable and declaratory relief; statutory damages for each
14 Plaintiff and class member of whichever is the greater of \$100 a day for each day of violation or
15 \$1,000; punitive damages as appropriate; and reasonable attorneys' fees and other litigation costs
16 reasonably incurred.

17 **SIXTH CLAIM FOR RELIEF**
18 **Violation of the First and Fourth Amendments**
19 **to the United States Constitution**

20 151. Plaintiffs incorporate all of the allegations contained in the preceding
21 paragraphs of this complaint, as if set forth fully herein.

22 152. Plaintiffs and class members have a reasonable expectation of privacy in
23 their communications, contents of communications, and/or records pertaining to their
24 communications transmitted, collected, and/or stored by BellSouth, which was violated by
25 BellSouth's above-described actions as an agent of the government, which constitute a search and
26 seizure of plaintiffs' and class members' communications and records.

27 153. Plaintiffs and Class Members use BellSouth's services to speak or receive
28 speech anonymously and to associate privately.

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

5 155. At all relevant times, the federal government instigated, directed, and/or
6 tacitly approved all of the above-described acts of BellSouth.

7 156. At all relevant times, the federal government knew of and/or acquiesced in
8 all of the above-described acts of BellSouth, and failed to protect the First and Fourth
9 Amendment rights of the Plaintiffs and class members by obtaining judicial authorization.

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

14 158. By the acts alleged herein, BellSouth acted as an instrument or agent of the
15 government, and thereby violated Plaintiffs' and class members' reasonable expectations of
16 privacy and denied Plaintiffs and class members their right to be free from unreasonable searches
17 and seizures as guaranteed by the Fourth Amendment to the Constitution of the United States, and
18 additionally violated Plaintiffs' and class members' rights to speak and receive speech
19 anonymously and associate privately under the First Amendment.

20 159. By the acts alleged herein, BellSouth's conduct proximately caused harm
21 to Plaintiffs and class members.

22 160. BellSouth's conduct was done intentionally, with deliberate indifference,
23 or with reckless disregard of, Plaintiffs' and Class Members' Constitutional rights.

24
25
26
27
28

1 parties.

2 168. Pursuant to Georgia Code § 16-11-62, Plaintiffs and Georgia Subclass
3 members are entitled to obtain against Defendants damages and such relief as the Court considers
4 just.

5
6 **EIGHTH CLAIM FOR RELIEF**
7 **(On Behalf of Plaintiffs Mike Haney, Steve Kampmann, Janet Orlando, Melissa Scroggins,**
8 **and the California State Subclass) The Constitution of the State of California**

9 169. Plaintiffs incorporate by reference the allegations contained in the
10 preceding paragraphs of this Complaint as if set forth fully herein.

11 170. By the acts alleged herein, Defendant violated Plaintiffs' and Class
12 Members' reasonable expectations of privacy and their right to speak and receive speech
13 anonymously and associate privately.

14 171. By the acts alleged herein, Defendant's conduct proximately caused harm
15 to the Plaintiffs and Class Members.

16 172. On information and belief, Defendant's conduct was done intentionally, in
17 conscious disregard or with reckless disregard of Plaintiffs' and Class Members' rights.

18 **NINTH CLAIM FOR RELIEF**
19 **(On Behalf of Plaintiffs Mike Haney, Steve Kampmann, Janet Orlando, Melissa Scroggins,**
20 **and the California State Subclass) Violation of Business and Professions Code Section**
21 **17200, et seq.**

22 173. Plaintiffs incorporate by reference the allegations contained in the
23 preceding paragraphs of this Complaint as if fully set forth herein.

24 174. California Business & Professions Code § 17200 defines unfair
25 competition as any unlawful, unfair, or fraudulent business act or practice.

26 175. Defendants and each of them have committed an unlawful, unfair and/or
27 fraudulent business act or practice by selling and disclosing private and confidential customer
28 information in violation of the Constitutional provisions and laws cited herein above.

176. California Business & Professions Code §17201 defines the term person as

1 all natural persons, corporations, firms, partnerships, stock companies, associations and other
2 organizations of persons.

3 177. California Business & Professions Code § 17203 provides as follows:

4 “Any person who engages, has engaged, or proposes to engage in
5 unfair competition will be enjoined in any court of common
6 jurisdiction. The court may make such orders or judgments
7 including the employment of a receiver, as may be necessary to
8 prevent the use or employment by any person of any practice
9 which constitutes unfair competition, as defined in this chapter, or
10 as it may be necessary to restore to any person in interest any
11 money or property real or personal, which may have been acquired
12 by means of such unfair competition. Any person may pursue
13 representative claims for relief on behalf of others only if the
14 claimant meets the standing requirements of §17204 and complies
15 with §§382 of the Code of Civil Procedure, but these limitations do
16 not apply to claims brought under this chapter by the attorney
17 general or the district attorney, county counsel, city attorney, or
18 city prosecutor in this state.”

13 178. Pursuant to Business and Professions Code §17203, Plaintiffs request that
14 the Court enjoin Defendants, and each of them, from continuing to sell and disclose the private
15 and confidential information of the Plaintiff and Class Members in violation of the Constitutional
16 provisions and laws cited herein above.

17
18 **TENTH CLAIM FOR RELIEF**

19 **(On Behalf of Plaintiffs Mike Haney, Steve Kampmann, Janet Orlando, Melissa Scroggins,
20 and the California State Subclass) Violation of Penal Code Section 11149.4.**

21 179. Plaintiffs incorporate by reference the allegations contained in the
22 preceding paragraphs of this Complaint as if set forth fully herein.

23 180. California Penal Code §11149.4 provides as follows:

24 “Any vendor or employee of a vendor who intentionally disclosed
25 information, not otherwise public, which that person knows or
26 should reasonably know was obtained from confidential
27 information, shall be subject to a civil action for invasion of
28 privacy by the individual to whom the information pertains. In any
successful action brought under this section, the complainant, in
addition to any special or general damages awarded, shall be
awarded a minimum of two thousand five hundred dollars (\$2,500)
in exemplary damages as well as attorney’s fees and other

1 litigation costs reasonably incurred in the suit. The right, remedy,
2 and cause of action set forth in this section shall be nonexclusive
3 and is in addition to all other rights, remedies, and causes of action
4 for invasion of privacy inherent in Section 1, Article I of the
5 California Constitution.”

6 181. Defendants, and each of them, intentionally disclosed the Plaintiffs’ and
7 Class Members’ information about the details of each and every one of their telephone calls and
8 Internet communications, including, but not limited to, whom they called, when the call was
9 placed, and how long the call lasted. This information is “not otherwise public”.

10 182. Defendants, and each of them, knew or reasonably should have known that
11 the disclosure of the specific details of their customers call records was confidential information.

12 183. Therefore, Defendants, and each of them, are liable to the Plaintiffs, and
13 each Class member, for exemplary damages in the amount of \$2,500 as well as an award of
14 reasonable attorney’s fees and costs.

15 **ELEVENTH CLAIM FOR RELIEF**
16 **Violation of State Surveillance Statutes**

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

19 185. Plaintiffs further state that Defendants have engaged and continue to
20 engage in the unlawful eavesdropping, surveillance, and/or interception of wire, oral, and/or
21 electronic communications, the disclosure and/or divulgence and/or use of the contents of such
22 communications, and/or the unlawful installation and/or use of pen registers or trap and trace
23 devices.

24 186. The foregoing conduct violates the following state statutes:

- 25 a. Ala. Code §§ 13A-11-30, 13A-11-31 (2006)
- 26 b. Alaska Stat. § 42.20.310 (2005)
- 27 c. Ariz. Rev. Stat. Ann. § 13-3005 (2006)
- 28 d. Ark. Code Ann. § 5-60-120 (2005)
- e. Cal. Penal Code § 630 *et seq.* (2006)

- 1 f. Colo. Rev. Stat. §§ 18-9-301, 18-9-303 (2006)
- 2 g. Conn. Gen. Stat. § 52-570d (2006)
- 3 h. Del. Code Ann. Tit. 11, § 2402 (2005)
- 4 i. D.C. Code §§ 23-541, 23-542 (2006)
- 5 j. Fla. Stat. §§ 934.01-03 (2005)
- 6 k. Ga. Code Ann. §§ 16-11-62 *et seq.* (2005)
- 7 l. Haw. Rev. Stat. § 803-42, 803-48 (2005)
- 8 m. Idaho Code Ann. § 18-6702 (2005)
- 9 n. 720 Ill. Comp. Stat. 5/14-1, -2 (2006)
- 10 o. Ind. Code § 35-33.5-1 *et seq.* (2005)
- 11 p. Iowa Code § 727.8 (2005)
- 12 q. Kan. Stat. Ann. §§ 21-4001, 21-4002 (2004)
- 13 r. Ky. Rev. Stat. Ann. §§ 526.010-.020 (2005)
- 14 s. La. Rev. Stat. Ann. § 15:1303 (2005)
- 15 t. Me. Rev. Stat. Ann. Tit. 15, §§ 709-710 (2006)
- 16 u. Md. Code Ann. Cts. & Jud. Proc. § 10-402 *et seq.*; § 10- 4A-4B
- 17 *et seq.* (2006)
- 18 v. Mass. Gen. Laws ch. 272, § 99 (2006)
- 19 w. Mich. Comp. Laws § 750.539 *et seq.* (2006)
- 20 x. Minn. Stat. §§ 626A.01, .02 (2005)
- 21 y. Miss. Code Ann. § 41-29-501 *et seq.* (2006)
- 22 z. Mo. Rev. Stat. §§ 392.170, .350, 542.402, .418 (2006)
- 23 aa. Mont. Code Ann. § 45-8-213 (2006)
- 24 bb. Neb. Rev. Stat. § 86-290 (2006)
- 25 cc. Nev. Rev. Stat. 200.610-.620 (2006)
- 26 dd. N.H. Rev. Stat. Ann. §§ 570-A:1, -A:2 (2005)
- 27 ee. N.J. Stat. Ann. § 2A:156A-1 *et seq.* (2006)
- 28

- 1 ff. N.M. Stat. § 30-12-1 (2006)
- 2 gg. N.Y. Penal Law §§ 250.00, .05 (2006)
- 3 hh. N.C. Gen. Stat. § 15A-287 (2006)
- 4 ii. N.D. Cent. Code § 12.1-15-02 (2006)
- 5 jj. Ohio Rev. Code Ann. § 2933.51 *et seq.* (2006)
- 6 kk. Okla. Stat. tit. 13, § 176.1 *et seq.* (2006)
- 7 ll. Or. Rev. Stat. §§ 165.540, .543 (2006)
- 8 mm. 18 Pa. Cons. Stat. § 5701 *et seq.* (2005)
- 9 nn. R.I. Gen. Laws § 11-35-21 (2005)
- 10 oo. S.C. Code Ann. §§ 17-30-20, -30 (2005)
- 11 pp. S.D. Codified Laws §§ 23A-35A-1, 23A-35A-20 (2006)
- 12 qq. Tenn. Code Ann. § 39-13-601 (2006)
- 13 rr. Tex. Penal Code Ann. § 16.02 *et seq.*; Tex. Code Crim. Proc.
14 art. 18.20 § 16(a) (2005)
- 15 ss. Utah Code Ann. § 77-23a-1 *et seq.* (2005)
- 16 tt. Va. Code Ann. §§ 19.2-61, -62 (2006)
- 17 uu. Wash. Rev. Code § 9.73.030 (2006)
- 18 vv. W. Va. Code § 62-1D-1 *et seq.* (2006)
- 19 ww. Wis. Stat. §§ 968.27, .31 (2005)
- 20 xx. Wyo. Stat. Ann. §§ 7-3-701, -702 (2005)

21
22 **TWELFTH CLAIM FOR RELIEF**
Violation of State Consumer Protection Statutes

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

25 188. Plaintiffs further state that Defendants violated and continue to violate state
26 consumer protection statutes by divulging records or other information pertaining to subscribers
27 and customers to a governmental entity, specifically the NSA, without Class members'
28

1 knowledge or consent.

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

4 190. Defendants' actions and failure to act, including the false and misleading
5 representations and omissions of material facts regarding the protection and use of Class
6 members' private information, constitute unfair competition and/or unfair and/or deceptive acts or
7 practices and/or false representations, in violation of the following state consumer protection
8 statutes:

- 9 a. Ala. Code § 8-19-1 *et seq.*;
- 10 b. Alaska Stat. § 45.50.531(a);
- 11 c. Ariz. Rev. Stat. § 44-1522 *et seq.*;
- 12 d. Ark. Code § 4-88-101 *et seq.*;
- 13 e. Cal. Bus. & Prof. Code § 17200 *et seq.*;
- 14 f. Colo. Rev. Stat. § 6-1-105 *et seq.*;
- 15 g. Conn. Gen. Stat. § 42-110b *et seq.*;
- 16 h. 6 Del. Code § 2511 *et seq.*;
- 17 i. D.C. Code Ann. § 28-3901 *et seq.*;
- 18 j. Fla. Stat. § 501.201 *et seq.*;
- 19 k. Ga. Stat. § 10-1-392 *et seq.*;
- 20 l. Haw. Rev. Stat. § 480 *et seq.*;
- 21 m. Idaho Code § 48-601 *et seq.*;
- 22 n. 815 Ill. Comp. Stat. § 505.1 *et seq.*;
- 23 o. Ind. Code § 24-5-0.5 *et seq.*;
- 24 p. Iowa Code § 714.16 *et seq.*;
- 25 q. Kan. Stat. Ann. § 50-623 *et seq.*;
- 26 r. Ky. Rev. Stat. § 367.1 10 *et seq.*;
- 27 s. La. Rev. Stat. § 51:1401 *et seq.*;
- 28

- 1 t. 5 Me. Rev. Stat. Ann. § 207 *et seq.*;
- 2 u. Massachusetts General Laws Ch. 93A *et seq.*;
- 3 v. Md. Com. Law Code § 13-101 *et seq.*
- 4 w. Mich. Stat. § 445.901 *et seq.*;
- 5 x. Minn. Stat. § 8.31 *et seq.*;
- 6 y. Miss. Code Ann. § 75-24-1 *et seq.*;
- 7 z. Mo. Ann. Stat. § 407.010 *et seq.*;
- 8 aa. Mont. Code § 30-14-101 *et seq.*;
- 9 bb. Neb. Rev. Stat. § 59-1601 *et seq.*;
- 10 cc. Nev. Rev. Stat. § 598.0903 *et seq.*;
- 11 dd. N.H. Rev. Stat. § 358-A:1 *et seq.*;
- 12 ee. N.J. Rev. Stat. § 56:8-1 *et seq.*;
- 13 ff. N.M. Stat. § 57-12-1 *et seq.*;
- 14 gg. N.Y. Gen. Bus. Law § 349 *et seq.*;
- 15 hh. N.C. Gen. Stat. §§ 75-1.1 *et seq.*;
- 16 ii. N.D. Cent. Code § 51-15-01 *et seq.*;
- 17 jj. Ohio Rev. Stat. § 1345.01 *et seq.*;
- 18 kk. Okla. Stat. 15 § 751 *et seq.*;
- 19 ll. Or. Rev. Stat. § 646.605 *et seq.*;
- 20 mm. 73 Pa. Stat. § 201-1 *et seq.*;
- 21 nn. R.I. Gen. Laws § 6-13.1-1 *et seq.*;
- 22 oo. S.C. Code Laws § 39-5-10 *et seq.*;
- 23 pp. S.D. Code Laws § 37-241 *et seq.*;
- 24 qq. Tenn. Code Ann. § 47-18-101 *et seq.*;
- 25 rr. Tex. Bus. & Com. Code § 17.41 *et seq.*;
- 26 ss. Utah Code § 13-11-1 *et seq.*;
- 27 tt. 9 Vt. Stat. § 2451 *et seq.*;
- 28

- 1 uu. Va. Code § 59.1-196 *et seq.*;
- 2 vv. Wash. Rev. Code § 19.86.010 *et seq.*;
- 3 ww. W. Va. Code § 46A-6-101 *et seq.*;
- 4 xx. Wis. Stat. § 100.18 *et seq.*; and
- 5 yy. Wyo. Stat. Ann. § 40-12-101 *et seq.*

6 191. This injury is of the type the state consumer protection and deceptive
7 practices statutes were designed to prevent and directly results from Defendants' unlawful
8 conduct.

9 **THIRTEENTH CLAIM FOR RELIEF**
10 **(On Behalf of Plaintiff and the California State Subclass)**
11 **Unlawful and Unfair Business Practices in Violation of the**
12 **State Law**

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

15 193. By engaging in the acts and practices described herein, Defendant has
16 engaged in unlawful and unfair business practices in violation of California's Unfair Competition
17 Law, Business & Professions Code §§ 17200, *et seq.*

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

21 195. Defendant's acts and practices are also unlawful because they violate
22 18 U.S.C. § 3121. In relevant part, 18 U.S.C. § 3121 provides that:

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

28 196. As defined by 18 U.S.C. § 3127:

(3) the term "pen register" means a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication, but such term does not

1 include any device or process used by a provider or
2 customer of a wire or electronic communication service for
3 billing, or recording as an incident to billing, for
4 communications services provided by such provider or any
5 device or process used by a provider or customer of a wire
6 communication service for cost accounting or other like
7 purposes in the ordinary course of its business;

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

16 197. Defendant has installed or used pen registers and/or trap and trace devices
17 without first obtaining a valid court order under 18 U.S.C. § 3123 or a subpoena.

18 198. The pen registers and/or trap and trace devices installed and used by
19 Defendant have captured, recorded, or decoded, and continue to capture, record or decode,
20 dialing, routing, addressing or signaling information pertaining to Plaintiffs and/or California
21 Subclass Members’ wireline telephone, wireless telephone, and Internet communications.

22 199. Defendant did not notify Plaintiffs or California Subclass Members of the
23 installation or use of pen registers and/or trap and trace devices. Plaintiff and California Subclass
24 Members have not consented to Defendant’s installation or use of pen registers and/or trap and
25 trace devices.

26 200. Defendant is a telecommunications carrier that obtains and has obtained
27 customer proprietary network information by virtue of its provision of telecommunications
28 service.

29 201. Defendant used and/or disclosed to the NSA, a government entity,
30 individually identifiable customer proprietary network information pertaining to Plaintiff and
31 California Subclass Members.

32 202. Defendant failed to notify Plaintiff or California Subclass Members of the
33 disclosure and/or divulgence of their personally identifiable customer proprietary network
34 information to the NSA, nor did Plaintiff or California Subclass Members consent to such.

1 Plaintiffs and Class members, Defendants are liable for damages including, but not limited to
2 nominal and consequential damages.

3
4 **FIFTEENTH CLAIM FOR RELIEF**
5 **On Behalf of the Class Members for Breach of Warranty**

6 211. Plaintiffs repeat and incorporate herein by reference the allegations in the
7 preceding paragraphs of this Complaint, as if set forth fully herein.

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

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

15 214. Plaintiffs and Class members relied upon these express and implied
16 warranties and representations in entering into their subscriptions with Defendants.

17 215. At all times relevant, Defendants by their conduct as alleged, breached
18 those warranties and representations.

19 216. As a direct and proximate result of Defendants' breaches of warranty as
20 detailed herein, Plaintiffs and Class Members have suffered damages including, but not limited
21 to, nominal and consequential damages.

22 **PRAYER FOR RELIEF**

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

- 25 A. Declare that Defendant's conduct as alleged herein violates applicable law;
26 B. Award statutory damages to Plaintiff and the Class;
27 C. Award punitive damages to Plaintiff and the Class;
28 D. Award Plaintiff's reasonable attorneys' fees and costs of suit;

- 1 E. Award restitution and all other relief allowed under State law claims;
2 F. Enjoin Defendant's continuing violations of applicable law; and
3 Grant such other and further relief as the Court deems just and proper.
4
5

6 Dated: January 16, 2007

Respectfully submitted,

7 THE LAW OFFICES OF STEVEN E.
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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2006, I electronically filed the foregoing Master Complaint Against BellSouth with the Clerk of the court using the CM/ECF system which will send notification of such filing to the email addresses noted on the attached Electronic Mail Notice List

/s/ Steven E. Schwarz
Steven E. Schwarz

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