

1 and disclosing to the government the contents of its customers' communications as well as detailed
2 communications records about millions of its customers, including Plaintiffs and class members.

3 7. This collaboration began before AT&T Corp. was acquired by AT&T Inc. (formerly
4 known as SBC Communications, Inc.). On information and belief, Defendants continue to assist the
5 government in its secret surveillance of millions of ordinary Americans.

6 8. Plaintiffs are suing to stop this illegal conduct and hold Defendants responsible for
7 their illegal collaboration in the surveillance program, which has violated the law and damaged the
8 fundamental freedoms of the American public.

9 JURISDICTION AND VENUE

10 9. This court has subject matter jurisdiction over the federal claims pursuant to Article
11 III of the United States Constitution and 28 U.S.C. §1331, 28 U.S.C. §2201, 50 U.S.C. §1810,
12 18 U.S.C. §§2520 and 2707, and 47 U.S.C. §605, and over the state claims pursuant to 28 U.S.C.
13 §§1332 and 1367.

14 10. Plaintiffs are informed, believe and thereon allege that Defendants have sufficient
15 contacts with this district generally and, in particular, with the events herein alleged, that Defendants
16 are subject to the exercise of jurisdiction of this court over the person of such Defendants and that
17 venue is proper in this judicial district pursuant to 28 U.S.C. §1391.

18 11. Plaintiffs are informed, believe and thereon allege that, based on the places of
19 business of the Defendants identified above and/or on the national reach of Defendants, a substantial
20 part of the events giving rise to the claims herein alleged occurred in this district and that Defendants
21 and/or agents of Defendants may be found in this district.

22 12. **Intradistrict Assignment**: Assignment to the San Francisco/Oakland division is
23 proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events and
24 omissions giving rise to this lawsuit occurred in this district and division.

25 PARTIES

26 13. Plaintiff Tash Hepting, a customer service manager, is an individual residing in San
27 Jose, California. Hepting has been a subscriber and user of AT&T Corp.'s residential long distance
28

1 telephone service since at least June 2004, and has used it to call internationally as well as
2 domestically.

3 14. Plaintiff Gregory Hicks is an individual residing in San Jose, California. Hicks, a
4 retired Naval Officer and systems engineer, has been a subscriber and user of AT&T Corp.'s
5 residential long distance telephone service since February 1995. He has regularly used this service
6 for calls to foreign countries including Korea, Japan and Spain.

7 15. Plaintiff Erik Knutzen is an individual residing in Los Angeles, California. Knutzen, a
8 photographer and land use researcher, was a subscriber and user of AT&T Corp.'s Worldnet dial-up
9 Internet service from at least October 2003 until May 2005. He used this service to send and receive
10 personal and professional emails, with both domestic and international correspondents, and for web
11 browsing, including visits to web sites hosted outside of the United States.

12 16. Defendant AT&T Corp. is a New York corporation with its principal place of
13 business in the State of New Jersey.

14 17. Defendant AT&T Inc. is a Delaware corporation with its principal place of business
15 in San Antonio, Texas.

16 18. Both AT&T Corp. and AT&T Inc. are telecommunications carriers, and both offer
17 electronic communications service(s) to the public and remote computing service(s).

18 19. On or around November 18, 2005, SBC Communications Inc. (SBC) acquired AT&T
19 Corp. At closing, a wholly-owned subsidiary of SBC merged with and into AT&T Corp., and thus
20 AT&T Corp. became a wholly-owned subsidiary of SBC. SBC adopted AT&T, Inc. as its name
21 following completion of its acquisition of AT&T Corp.

22 20. Prior to the acquisition and merger, AT&T Corp. and SBC both had a significant
23 business presence in California for many years. The new AT&T Inc. and its subsidiary, AT&T
24 Corp., continue to have a significant business presence in California.

25 21. AT&T Corp. operates through two principal divisions, its business services division
26 and its consumer services division. AT&T Business Services provides a variety of communications
27 services to domestic and multi-national businesses and government agencies. AT&T Consumer
28 Services provides a variety of communications services to mass-market customers. These services

1 include traditional long distance voice services such as domestic and international dial and toll-free
2 services, as well as operator-assisted services. In addition, AT&T Consumer Services provides
3 residential dial-up and DSL Internet services through its “Worldnet” service, as well as offering all-
4 distance services, which bundle AT&T’s facilities-based long distance services with local services.

5 22. AT&T Corp.’s communications facilities constitute one of the world’s most advanced
6 communications networks, spanning more than 50 countries.

7 23. By the end of 2004, on an average business day, AT&T Corp.’s network handled over
8 300 million voice calls as well as over 4,000 terabytes (million megabytes) of data, including traffic
9 from AT&T Business Services and AT&T Consumer Services, approximately 200 times the amount
10 of data contained in all the books in the Library of Congress.

11 24. By the end of 2004, AT&T Corp. provided long distance service (including both
12 stand-alone and bundled) to approximately 24.6 million residential customers. Before the
13 acquisition, AT&T Corp.’s bundled local and long distance service was available in 46 states,
14 covering more than 73 million households.

15 25. By the end of 2004, AT&T Corp. provided its residential Worldnet Internet services
16 to approximately 1.2 million customers. Even prior to its being acquired by SBC, AT&T Corp. was
17 the second largest Internet provider in the country, primarily serving businesses in addition to its
18 Worldnet customers.

19 26. The new AT&T Inc. constitutes the largest telecommunications provider in the
20 United States and one of the largest in the world. AT&T Inc. is the largest U.S. provider of both
21 local and long distance services, serving millions of customers nationwide. AT&T Inc.’s
22 international voice service carries more than 18 billion minutes per year, reaching approximately 240
23 countries, linking approximately 400 carriers and offering remote access in approximately 149
24 countries around the globe.

25 27. AT&T Inc. is the country’s largest provider of broadband DSL Internet service, and
26 its backbone Internet network carries approximately 4,600 terabytes of data on an average business
27 day to nearly every continent and country.

28

1 28. According to the *Description of the Transaction, Public Interest Showing, and*
2 *Related Demonstrations* filed by AT&T Corp. and SBC with the Federal Communications
3 Commission in anticipation of the merger:

4 AT&T is a significant provider of telecommunications and information technology
5 services to the federal government. AT&T provides network services, systems
6 integration and engineering, and software development services to a broad range of
7 government agencies, including those involved in national defense, intelligence, and
8 homeland security. AT&T's federal customers include the White House, the State
9 Department, the Department of Homeland Security, the Department of Defense, the
10 Department of Justice, and most branches of the armed forces. AT&T's support of
11 the intelligence and defense communities includes the performance of various
classified contracts. To undertake this work, AT&T employs thousands of
individuals who hold government security clearances, and it maintains special secure
facilities for the performance of classified work and the safeguarding of classified
information. In addition to providing services to critical government agencies
responsible for national security, both AT&T and SBC support the national security
infrastructure through their participation in all of the key fora for supporting U.S.
government national security objectives.

12 29. On information and belief, this characterization was substantially correct when filed,
13 and is substantially correct as to the current AT&T Corp. and AT&T Inc.

14 30. Plaintiffs are currently unaware of the true names and capacities of Defendants sued
15 herein as Does 1-20, and therefore sue these Defendants by using fictitious names. Plaintiffs will
16 amend this complaint to allege their true names and capacities when ascertained. Upon information
17 and belief each fictitiously named Defendant is responsible in some manner for the occurrences
18 herein alleged and the injuries to Plaintiffs and class members herein alleged were proximately
19 caused in relation to the conduct of Does 1-20 as well as the named Defendants. Hereafter,
20 Defendants AT&T Corp. and Does 1-8 are referred to collectively as "AT&T Corp.," and
21 Defendants AT&T Inc. and Does 9-15 are referred to collectively as "AT&T Inc."

22 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

23 **THE NSA SURVEILLANCE PROGRAM**

24 31. The NSA began a classified surveillance program ("the Program") shortly after
25 September 11, 2001 to intercept the telephone and Internet communications of people inside the
26 United States without judicial authorization, a program that continues to this day.

1 32. The President has stated that he authorized the Program in 2001, that he has
2 reauthorized the Program more than 30 times since its inception, and that he intends to continue
3 doing so.

4 33. The Attorney General has admitted that, absent additional authority from Congress,
5 the electronic surveillance conducted by the Program requires a court order under the Foreign
6 Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801 et seq.).

7 34. The President and other government officials have admitted that the NSA does not
8 seek judicial review of the Program’s interceptions before or after the surveillance, whether by the
9 Foreign Intelligence Surveillance Court or any other court.

10 35. Neither the President nor the Attorney General personally approves the individual
11 targets of the Program’s electronic surveillance before communications are intercepted.

12 36. Instead, NSA operational personnel identify particular persons, telephone numbers or
13 Internet addresses as potential surveillance targets, and NSA shift supervisors approve those targets.

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

18 38. On information and belief, as part of this data-mining program, the NSA intercepts
19 millions of 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 39. Additionally, on information and belief, the NSA collects and analyzes a vast amount
22 of communications traffic data to identify persons whose communications patterns the government
23 believes may link them, even if indirectly, to investigatory targets.

24 40. On information and belief, the NSA has accomplished its massive surveillance
25 operation by arranging with some of the nation’s largest telecommunications companies, including
26 Defendants, to gain direct access to the telephone and Internet communications transmitted via those
27 companies’ domestic telecommunications facilities, and to those companies’ records pertaining to
28 the communications they transmit.

1 **AT&T PROVIDES THE GOVERNMENT WITH DIRECT**
2 **ACCESS TO ITS DOMESTIC TELECOMMUNICATIONS NETWORK**

3 41. On information and belief, AT&T Corp. has provided and continues to provide the
4 government with direct access to all or a substantial number of the communications transmitted
5 through its key domestic telecommunications facilities, including direct access to streams of
6 domestic, international and foreign telephone and Internet communications.

7 42. On information and belief, AT&T Corp. has installed and used, or assisted
8 government agents in installing or using, interception devices and pen registers and/or trap and trace
9 devices on or in a number of its key telecommunications facilities for use in the Program.

10 43. On information and belief, the interception devices acquire the content of all or a
11 substantial number of the wire or electronic communications transferred through the AT&T Corp.
12 facilities where they have been installed.

13 44. On information and belief, the pen registers and/or trap and trace devices capture,
14 record or decode the dialing, routing, addressing and/or signaling information (“DRAS information”)
15 for all or a substantial number of the wire or electronic communications transferred through the
16 AT&T Corp. facilities where they have been installed.

17 45. On information and belief, using these devices, government agents have acquired and
18 are acquiring wire or electronic communications content and DRAS information directly via remote
19 or local control of the device, and/or AT&T Corp. has disclosed and is disclosing those
20 communications and information to the government after interception, capture, recording or
21 decoding.

22 46. On information and belief, AT&T Corp. used or assisted in the use of these devices to
23 acquire wire or electronic communications to which Plaintiffs and class members were a party, and
24 to acquire DRAS information pertaining to those communications. On information and belief,
25 Defendants continue to do so.

1 **AT&T HAS PROVIDED AND CONTINUES TO PROVIDE THE**
2 **GOVERNMENT WITH DIRECT ACCESS TO DATABASES**
3 **CONTAINING ITS STORED TELEPHONE AND INTERNET RECORDS**

4 47. Defendants AT&T Corp. and AT&T Inc. have provided at all relevant times and
5 continue to provide electronic communication services to the public, i.e., services that provide to
6 users thereof the ability to send or receive wire or electronic communications.

7 48. Defendants AT&T Corp. and AT&T Inc. have provided at all relevant times and
8 continue to provide computer or storage processing services to the public, by means of wire, radio,
9 electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic
10 communications, and/or by means of computer facilities or related electronic equipment for the
11 electronic storage of such communications.

12 49. Plaintiffs and class members are, or at pertinent times were, subscribers to or
13 customers of one or more of those services.

14 50. On information and belief, AT&T Corp. has provided and continues to provide the
15 government with direct access to its databases of stored telephone and Internet records, which are
16 updated with new information in real time or near-real time.

17 51. On information and belief, AT&T Corp. has disclosed and is currently disclosing to
18 the government records concerning communications to which Plaintiffs and class members were a
19 party, and there is a strong likelihood that Defendants will disclose more of the same in the future.

20 52. As reported by the Los Angeles Times, “AT&T has a database code-named Daytona
21 that keeps track of telephone numbers on both ends of calls as well as the duration of all land-line
22 calls.... After Sept. 11, intelligence agencies began to view it as a potential investigative tool, and
23 the NSA has had a direct hookup into the database....” Joseph Menn and Josh Meyer, *U.S. Spying is*
24 *Much Wider, Some Suspect*, L.A. TIMES, Dec. 25, 2005, at A1. On information and belief, this
25 report is substantially correct.

26 53. Daytona is a database management technology originally developed and maintained
27 by the AT&T Laboratories division of AT&T Corp., and is used by AT&T Corp. to manage multiple
28 databases.

1 54. Daytona was designed to handle very large databases and is used to manage
2 “Hawkeye,” AT&T Corp.’s call detail record (“CDR”) database, which contains records of nearly
3 every telephone communication carried over its domestic network since approximately 2001, records
4 that include the originating and terminating telephone numbers and the time and length for each call.

5 55. On information and belief, this CDR database contains records pertaining to
6 Plaintiffs’ and class members’ use of AT&T Corp. long distance service and dial-up Internet service,
7 including but not limited to DRAS information and personally identifiable customer proprietary
8 network information (CPNI) that AT&T Corp. obtained by virtue of its provision of
9 telecommunications service.

10 56. As of September 2005, all of the CDR data managed by Daytona, when
11 uncompressed, totaled more than 312 terabytes.

12 57. The Daytona system’s speed and powerful query language allow users to quickly and
13 easily search the entire contents of a database to find records that match simple or complex search
14 parameters. For example, a Daytona user can query the Hawkeye database for all calls made to a
15 particular country from a specific area code during a specific month and receive information about
16 all such calls in about one minute.

17 58. Daytona is also used to manage AT&T Corp.’s huge network-security database,
18 known as Aurora, which has been used to store Internet traffic data since approximately 2003. The
19 Aurora database contains huge amounts of data acquired by firewalls, routers, honeypots and other
20 devices on AT&T Corp.’s global IP (Internet Protocol) network and other networks connected to
21 AT&T Corp.’s network, including but not limited to DRAS information and personally identifiable
22 CPNI that AT&T Corp. obtained by virtue of its provision of telecommunications service.

23 59. On information and belief, the Aurora database managed and/or accessed via Daytona
24 contains records or other information, including but not limited to DRAS information and CPNI,
25 pertaining to Plaintiffs’ and class members’ use of AT&T Corp.’s Internet services.

26 60. On information and belief, AT&T Corp. has provided the government with direct
27 access to the contents of the Hawkeye, Aurora and/or other databases that it manages using Daytona,
28 including all information, records, DRAS information and CPNI pertaining to Plaintiffs and class

1 members, by providing the government with copies of the information in the databases and/or by
2 giving the government access to Daytona's querying capabilities and/or some other technology
3 enabling the government agents to search the databases' contents.

4 61. AT&T Inc. has begun a transition process designed to integrate the former SBC's
5 telecommunications network with AT&T Corp.'s network, ultimately leading into unified IP-based
6 networks. AT&T Inc. intends to use AT&T Corp.'s IP network in place of the fee-based transiting
7 and backbone access arrangements it currently has with third parties. In addition, others aspects of
8 both companies will be integrated. For example, SBC Laboratories and AT&T Laboratories will be
9 combined into AT&T Labs to provide technology research and development exclusively to the
10 subsidiaries of AT&T Inc.

11 62. On information and belief, the facilities and technologies of AT&T Corp, including
12 without limitation the Daytona system and those transmission facilities to which the government has
13 been given direct access as alleged above, are being or will imminently be used by AT&T Inc. to
14 transmit the communications of its customers and to store DRAS information and other records
15 pertaining to those communications. Similarly, the facilities and technologies of the former SBC are
16 being or will imminently be used to transmit the communications of AT&T Corp. customers
17 including Plaintiffs and class members.

18 63. On information and belief, there is a strong likelihood that Defendants will continue
19 to intentionally intercept, disclose, divulge and use Plaintiffs' and class members' communications
20 and records in cooperation with the Program.

21 **CLASS ACTION ALLEGATIONS**

22 64. Pursuant to Federal Rules of Civil Procedure 23 (a) and (b), Plaintiffs Hepting, Hicks,
23 and Knutzen bring this action on behalf of themselves and a Nationwide Class of similarly situated
24 persons defined as:

25 All individuals in the United States that are current residential subscribers or
26 customers of Defendants' telephone services or Internet services, or that were
27 residential telephone or Internet subscribers or customers at any time after September
28 2001.

1 65. The Nationwide Class seeks certification of claims for declaratory relief, injunctive
2 relief and damages pursuant to 50 U.S.C. § 1810, 18 U.S.C. § 2520, 47 U.S.C. § 605, and 18 U.S.C.
3 § 2707, in addition to declaratory and injunctive relief for violations of the First and Fourth
4 Amendments.

5 66. Plaintiffs Hepting, Hicks, and Knutzen also bring certain of the claims, identified, on
6 behalf of the following California Subclass:

7 All individuals that are residents of the State of California and that are current
8 residential subscribers or customers of Defendants' telephone services or Internet
9 services, or that were residential telephone or Internet subscribers or customers at
any time after September 2001.

10 67. The California Subclass seeks certification of claims for declaratory and injunctive
11 relief, and for restitution pursuant to the Unfair Competition Law (Cal. Bus. and Prof. Code §17200
12 *et seq.*).

13 68. Excluded from the Nationwide Class and California Subclass are the officers,
14 directors, and employees of Defendants, and the legal representatives, heirs, successors, and assigns
15 of Defendants.

16 69. Also excluded from the Nationwide Class and California Subclass are any foreign
17 powers, as defined by 50 U.S.C. § 1801(a), or any agents of foreign powers, as defined by 50 U.S.C.
18 § 1801(b)(1)(A), including without limitation anyone who knowingly engages in sabotage or
19 international terrorism, or activities that are in preparation therefore.

20 70. This action is brought as a class action and may properly be so maintained pursuant to
21 the provisions of the Federal Rules of Civil Procedure 23. Plaintiffs reserve the right to modify the
22 Nationwide Class and the California Subclass definitions and the class period based on the results of
23 discovery.

24 71. **Numerosity of the Nationwide Class and California Subclass:** Members of the
25 Nationwide Class and California Subclass are so numerous that their individual joinder is
26 impracticable. The precise numbers and addresses of members of the Nationwide Class and
27 California Subclass are unknown to the Plaintiffs. Plaintiffs estimate that the Nationwide Class
28 consists of millions of members and the California Subclass consists of hundreds of thousands of

1 members. The precise number of persons in both the Nationwide Class and California Subclass and
2 their identities and addresses may be ascertained from Defendants' records.

3 72. **Existence of Common Questions of Fact and Law:** There is a well-defined
4 community of interest in the questions of law and fact involved affecting the members of the
5 Nationwide Class and California Subclass. These common legal and factual questions include:

6 (a) Whether Defendants, acting as agents or instruments of the government, have
7 violated the First and Fourth Amendment rights of Nationwide Class members, or are currently
8 doing so;

9 (b) Whether Defendants have subjected Nationwide Class members to electronic
10 surveillance, or have disclosed or used information obtained by electronic surveillance of the
11 Nationwide Class members, in violation of 50 U.S.C. § 1809, or are currently doing so;

12 (c) Whether Defendants have intercepted, used or disclosed Nationwide Class
13 members' communications in violation of 18 U.S.C. § 2511, or are currently doing so;

14 (d) Whether Defendants have divulged or published the existence, contents,
15 substance, purport, effect, or meaning of Nationwide Class members' communications in violation
16 of 47 U.S.C. § 605(a), or are currently doing so;

17 (e) Whether Defendants have divulged the contents of Nationwide Class
18 members' communications in violation of 18 U.S.C. § 2702(a)(1) or (a)(2), or are currently doing so;

19 (f) Whether Defendants have divulged subscriber information or other records
20 pertaining to Nationwide Class members in violation of 18 U.S.C. § 2702(a)(3), or are currently
21 doing so;

22 (g) Whether Defendants' interception, use or disclosure of California Subclass
23 members' communications, or the disclosure of subscriber information or other records pertaining to
24 California Subclass members, constitutes unfair, unlawful and/or fraudulent business practices in
25 violation of California's Unfair Competition Law;

26 (h) Whether Plaintiffs and California Subclass members are entitled to restitution,
27 disgorgement of profits, or other equitable relief to remedy Defendants' unfair, unlawful and/or
28 fraudulent business practices;

1 (i) Whether Plaintiffs and class members are entitled to recover compensatory,
2 statutory and punitive damages, whether as a result of Defendants' fraudulent, illegal and deceitful
3 conduct, and/or otherwise; and

4 (j) Whether Plaintiffs and class members are entitled to an award of reasonable
5 attorneys' fees, pre-judgment interest, and costs of this suit.

6 73. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the
7 Nationwide Class and California Subclass because Plaintiffs are or were subscribers to the Internet
8 and telephone services of Defendants. Plaintiffs and all members of the Nationwide Class and
9 California Subclass have similarly suffered harm arising from Defendants' violations of law, as
10 alleged herein.

11 74. **Adequacy:** Plaintiffs are adequate representatives of the Nationwide Class and
12 California Subclass because their interests do not conflict with the interests of the members of the
13 classes they seek to represent. Plaintiffs have retained counsel competent and experienced in
14 complex class action litigation and Plaintiffs intends to prosecute this action vigorously. Plaintiffs
15 and their counsel will fairly and adequately protect the interests of the members of the Nationwide
16 Class and California Subclass.

17 75. This suit may also be maintained as a class action pursuant to Federal Rules of Civil
18 Procedure 23(b)(2) because Plaintiffs and both the Nationwide Class and California Subclass seek
19 declaratory and injunctive relief, and all of the above factors of numerosity, common questions of
20 fact and law, typicality and adequacy are present. Moreover, Defendants have acted on grounds
21 generally applicable to Plaintiffs and both the Nationwide Class and California Subclass as a whole,
22 thereby making declaratory and/or injunctive relief proper.

23 76. **Predominance and Superiority:** This suit may also be maintained as a class action
24 under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact common to the
25 Nationwide Class and California Subclass predominate over the questions affecting only individual
26 members of the classes and a class action is superior to other available means for the fair and
27 efficient adjudication of this dispute. The damages suffered by each individual class member may
28 be relatively small, especially given the burden and expense of individual prosecution of the

1 complex and extensive litigation necessitated by Defendants' conduct. Furthermore, it would be
2 virtually impossible for the class members, on an individual basis, to obtain effective redress for the
3 wrongs done to them. Moreover, even if class members themselves could afford such individual
4 litigation, the court system could not. Individual litigation presents a potential for inconsistent or
5 contradictory judgments. Individualized litigation increases the delay and expense to all parties and
6 the court system presented by the complex legal issue of the case. By contrast, the class action
7 device presents far fewer management difficulties, and provides the benefits of a single adjudication,
8 economy of scale and comprehensive supervision by a single court.

9 **COUNT I**

10 **Violation of Plaintiffs' and Class Members' Rights Under the**
11 **First and Fourth Amendments to the United States Constitution**
12 **(Plaintiffs Hepting, Hicks, and Knutzen and the Nationwide Class**
13 **[Including the California Subclass] vs. Defendants)**

14 77. Plaintiffs and class members repeat and incorporate herein by reference the
15 allegations in the preceding paragraphs of this complaint, as if set forth fully herein.

16 78. On information and belief, Plaintiffs and class members have a reasonable
17 expectation of privacy in their communications, contents of communications, and/or records
18 pertaining to their communications transmitted, collected, and/or stored by AT&T Corp.

19 79. On information and belief, Plaintiffs and class members use AT&T Corp.'s services
20 to speak or receive speech anonymously and to associate privately.

21 80. On information and belief, the above-described acts of interception, disclosure,
22 divulgence and/or use of Plaintiffs' and class members' communications, contents of
23 communications, and records pertaining to their communications occurred without judicial or other
24 lawful authorization, probable cause, and/or individualized suspicion.

25 81. On information and belief, at all relevant times, the government instigated, directed
26 and/or tacitly approved all of the above-described acts of AT&T Corp.

27 82. On information and belief, at all relevant times, the government knew of and/or
28 acquiesced in all of the above-described acts of AT&T Corp., and failed to protect the First and
Fourth Amendment rights of the Plaintiffs and class members by obtaining judicial authorization.

1 90. In relevant part, 50 U.S.C. § 1809 provides that:

2 (a) Prohibited activities--A person is guilty of an offense if he intentionally--(1)
3 engages in electronic surveillance under color of law except as authorized by statute;
4 or (2) discloses 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.

5 91. In relevant part 50 U.S.C. §1801 provides that:

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

26 92. On information and belief, AT&T Corp. has intentionally acquired, by means of a
27 surveillance device, the contents of one or more wire communications to or from Plaintiffs and class
28 members or other information in which Plaintiffs or class members have a reasonable expectation of
privacy, without the consent of any party thereto, and such acquisition occurred in the United States.

93. By the acts alleged herein, AT&T Corp. has intentionally engaged in electronic
surveillance (as defined by 50 U.S.C. § 1801(f)) under color of law, but which is not authorized by
any statute, and AT&T Corp. has intentionally subjected Plaintiffs and class members to such
electronic surveillance, in violation of 50 U.S.C. § 1809.

94. Additionally or in the alternative, by the acts alleged herein, AT&T Corp. has
intentionally disclosed or used 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.

1 95. AT&T Corp. did not notify Plaintiffs or class members of the above-described
2 electronic surveillance, disclosure, and/or use, nor did Plaintiffs or class members consent to such.

3 96. On information and belief, there is a strong likelihood that Defendants are now
4 engaging in and will continue to engage in the above-described electronic surveillance, disclosure,
5 and/or use of Plaintiffs' and class members' wire communications described herein, and that
6 likelihood represents a credible threat of immediate future harm.

7 97. Plaintiffs and class members have been and are aggrieved by Defendants' electronic
8 surveillance, disclosure, and/or use of their wire communications.

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

15 **COUNT III**

16 **Interception, Disclosure and/or Use of Communications in Violation of 18 U.S.C. §2511**
17 **(Plaintiffs Hepting, Hicks, and Knutzen and the Nationwide Class**
[Including the California Subclass] vs. Defendants)

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

20 100. In relevant part, 18 U.S.C. § 2511 provides that:

21 (1) Except as otherwise specifically provided in this chapter any person who--(a)
22 intentionally intercepts, endeavors to intercept, or procures any other person to
23 intercept or endeavor to intercept, any wire, oral, or electronic communication... (c)
24 intentionally discloses, or endeavors to disclose, to any other person the contents of
25 any wire, oral, or electronic communication, knowing or having reason to know that
26 the information was obtained through the interception of a wire, oral, or electronic
27 communication in violation of this subsection... [or](d) intentionally uses, or
28 endeavors to use, 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... shall be punished as provided in subsection (4) or shall be subject to
suit as provided in subsection (5).

1 18 U.S.C. § 2511 further provides that:

2 (3)(a) Except as provided in paragraph (b) of this subsection, a person or entity
3 providing an electronic communication service to the public shall not intentionally
4 divulge the contents of any communication (other than one to such person or entity,
5 or an agent thereof) while in transmission on that service to any person or entity
6 other than an addressee or intended recipient of such communication or an agent of
7 such addressee or intended recipient.

8 101. By the acts alleged herein, AT&T Corp. has intentionally intercepted, endeavored to
9 intercept, or procured another person to intercept or endeavor to intercept, Plaintiffs' and class
10 members' wire or electronic communications in violation of 18 U.S.C. § 2511(1)(a); and/or

11 102. By the acts alleged herein, AT&T Corp. has intentionally disclosed, or endeavored to
12 disclose, to another person the contents of Plaintiffs' and class members' wire or electronic
13 communications, knowing or having reason to know that the information was obtained through the
14 interception of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(c); and/or

15 103. By the acts alleged herein, AT&T Corp. has intentionally used, or endeavored to use,
16 the contents of Plaintiffs' and class members' wire or electronic communications, while knowing or
17 having reason to know that the information was obtained through the interception of wire or
18 electronic communications in violation of 18 U.S.C. § 2511(1)(d); and/or

19 104. On information and belief, AT&T Corp. has intentionally divulged the contents of
20 Plaintiffs' and class members' wire or electronic communications to persons or entities other than
21 the addressee or intended recipient, or the agents of same, or other providers of wire or electronic
22 communication service, while those communications were in transmission on AT&T Corp.'s
23 electronic communications services, in violation of 18 U.S.C. § 2511(3)(a).

24 105. AT&T Corp. did not notify Plaintiffs or class members of the above-described
25 intentional interception, disclosure, divulgence and/or use of their wire or electronic
26 communications, nor did Plaintiffs or class members consent to such.

27 106. On information and belief, there is a strong likelihood that Defendants are now
28 engaging in and will continue to engage in the above-described intentional interception, disclosure,
divulgence and/or use of Plaintiffs' and class members' wire or electronic communications, and that
likelihood represents a credible threat of immediate future harm.

1 114. AT&T Corp. did not notify Plaintiffs or class members of the divulgence or
2 publication of their communications, nor did Plaintiffs or class members consent to such.

3 115. On information and belief, there is a strong likelihood that Defendants are now
4 engaging in and will continue to engage in the above-described divulgence or publication of
5 Plaintiffs' and class members' wire or radio communications, and that likelihood represents a
6 credible threat of immediate future harm.

7 116. Plaintiffs and class members have been and are aggrieved by Defendants' divulgence
8 or publication of their wire or radio communications.

9 117. Pursuant to 47 U.S.C. § 605(e)(3)(A), which provides a civil action for any person
10 whose wire or electronic communications have been divulged or published in violation of 47 U.S.C.
11 § 605(a), Plaintiffs and class members seek temporary and final injunctions on such terms as the
12 Court deems reasonable to prevent or restrain such violations; statutory damages of not less than
13 \$1,000 or more than \$10,000 for each violation aggrieving each Plaintiff and class member, as the
14 Court considers just; in the Court's discretion, an increase in the reward of damages to each Plaintiff
15 and class member by an amount of not more than \$100,000 for each violation; and the recovery of
16 full costs, including reasonable attorneys' fees.

17 **COUNT IV**

18 **Divulgence of Communications Contents in Violation of 18 U.S.C. § 2702(a)(1)** 19 **and/or (a)(2) (Plaintiffs Hepting, Hicks, and Knutzen and the Nationwide Class** **[Including the California Subclass] vs. Defendants)**

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

22 119. In relevant part, 18 U.S.C. § 2702 provides that:

23 (a) Prohibitions.--Except as provided in subsection (b)--(1) a person or entity
24 providing an electronic communication service to the public shall not knowingly
25 divulge to any person or entity the contents of a communication while in electronic
26 storage by that service; and (2) a person or entity providing remote computing
27 service to the public shall not knowingly divulge to any person or entity the contents
28 of any communication which is carried or maintained on that service--(A) on behalf
of, and received by means of electronic transmission from (or created by means of
computer processing of communications received by means of electronic
transmission from), a subscriber or 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

1 communications for purposes of providing any services other than storage or
2 computer processing....

3 120. On information and belief, AT&T Corp. knowingly divulged to one or more persons
4 or entities the contents of Plaintiffs' and class members' communications while in electronic storage
5 by an AT&T Corp. electronic communication service, and/or while carried or maintained by an
6 AT&T Corp. remote computing service, in violation of 18 U.S.C. § 2702(a)(1) and/or (a)(2).

7 121. AT&T Corp. did not notify Plaintiffs or class members of the divulgence of their
8 communications, nor did Plaintiffs or class members consent to such.

9 122. On information and belief, there is a strong likelihood that Defendants are now
10 engaging in and will continue to engage in the above-described divulgence of Plaintiffs' and class
11 members' communications while in electronic storage by Defendants' electronic communication
12 service(s), and/or while carried or maintained by Defendants' remote computing service(s), and that
13 likelihood represents a credible threat of immediate future harm.

14 123. Plaintiffs and class members have been and are aggrieved by Defendants' above-
15 described divulgence of the contents of their communications.

16 124. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved
17 by knowing or intentional violation of 18 U.S.C. § 2702, Plaintiffs and class members seek such
18 preliminary and other equitable or declaratory relief as may be appropriate; statutory damages of no
19 less than \$1000 for each aggrieved Plaintiff or class member; punitive damages as the Court
20 considers just; and reasonable attorneys' fees and other litigation costs reasonably incurred.

21 **COUNT V**

22 **Divulgence Of Communications Records In Violation Of 18 U.S.C. § 2702(A)(3)**
23 **(Plaintiffs Hepting, Hicks, and Knutzen and the Nationwide Class**
24 **[Including the California Subclass] vs. Defendants)**

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

27 126. In relevant part, 18 U.S.C. § 2702 provides that:

28 (a) Prohibitions.--Except as provided in subsection (b)-- (3) a provider of remote
computing service or electronic communication service to the public shall not
knowingly divulge a record or other information pertaining to a subscriber to or

1 customer of such service (not including the contents of communications covered by
2 paragraph (1) or (2)) to any governmental entity.

3 127. On information and belief, AT&T Corp., a provider of remote computing service and
4 electronic communication service to the public, knowingly divulged records or other information
5 pertaining to Plaintiffs and class members to a governmental entity in violation of 18 U.S.C. §
6 2702(a)(3).

7 128. AT&T Corp. did not notify Plaintiffs or class members of the divulgence of these
8 records and other information pertaining to them and their use of AT&T Corp. services, nor did
9 Plaintiffs or class members consent to such.

10 129. On information and belief, there is a strong likelihood that Defendants are now
11 engaging in and will continue to engage in the above-described divulgence of records or other
12 information pertaining to Plaintiffs and class members, and that likelihood represents a credible
13 threat of immediate future harm.

14 130. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved
15 by knowing or intentional violation of 18 U.S.C. § 2702, Plaintiffs and class members seek such
16 preliminary and other equitable or declaratory relief as may be appropriate; statutory damages of no
17 less than \$1000 for each aggrieved Plaintiff or class member; punitive damages as the Court
18 considers just; and reasonable attorneys' fee and other litigation costs reasonably incurred.

19 **COUNT VI**

20 **Unfair, Unlawful And Deceptive Business Practices (Plaintiffs Hepting, Hicks, and Knutzen and the California Subclass vs. Defendants)**

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

23 132. Defendants have engaged in unfair, unlawful and/or fraudulent business practices as
24 set forth above.

25 133. By engaging in the acts and practices described herein, Defendants have committed
26 one or more unfair business practices within the meaning of Bus. & Prof. Code §17200, et seq.
27 Specifically, Defendants' business practices offend the public policies set forth in California
28 Constitution Art. 1, section 1.

1 134. Defendants' above-described deceptive and misleading acts and practices have
2 deceived and/or are likely to deceive Plaintiffs and other California Subclass members. Plaintiffs
3 were, in fact, deceived as to the terms and conditions of services provided by defendants. Plaintiffs
4 and California Subclass members have suffered harm as a result of Defendants' misrepresentations
5 and/or omissions.

6 135. Defendants' acts and practices are also unlawful because, as described above, they
7 violate the First and Fourth Amendments to the United States Constitution, 50 U.S.C. § 1809, 18
8 U.S.C. § 2511, 47 U.S.C. § 605, 18 U.S.C. § 2702(a)(1) and/or (a)(2), and 18 U.S.C. § 2702(a)(3).

9 136. AT&T Corp.'s acts and practices are also unlawful because they violate 18 U.S.C. §
10 3121.

11 137. In relevant part, 18 U.S.C. § 3121 provides that:

12 (a) In general.--Except as provided in this section, no person may install or use a pen
13 register or a trap and trace device without first obtaining a court order under section
14 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1801 et seq.).

16 As defined by 18 U.S.C. § 3127:

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

26 (4) the term "trap and trace device" means a device or process which captures the
27 incoming electronic or other impulses which identify the originating number or other
28 dialing, routing, addressing, and signaling information reasonably likely to identify
the source of a wire or electronic communication, provided, however, that such
information shall not include the contents of any communication;

138. On information and belief, AT&T Corp. installed or used pen registers and/or trap
and trace devices without first obtaining a court order under 18 U.S.C. § 3123 or under the Foreign
Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801 et seq.), and continue to do so.

139. On information and belief, the pen registers and/or trap and trace devices installed
and used by AT&T Corp. have captured, recorded, or decoded, and continue to capture, record or

1 decode, dialing, routing, addressing or signaling information pertaining to Plaintiff and/or California
2 Subclass members' wire or electronic communications.

3 140. AT&T Corp. did not notify Plaintiffs or California Subclass members of the
4 installation or use of pen registers and/or trap and trace devices, nor did Plaintiffs or California
5 Subclass members consent to such.

6 141. AT&T Corp.'s acts and practices are also unlawful because they violate 47 U.S.C. §
7 222, which in relevant part provides that:

8 (c) Confidentiality of customer proprietary network information--(1) Privacy
9 requirements for telecommunications carriers--Except as required by law or with the
10 approval of the customer, a telecommunications carrier that receives or obtains
11 customer proprietary network information by virtue of its provision of a
12 telecommunications service shall only use, disclose, or permit access to individually
13 identifiable customer proprietary network information in its provision of (A) the
14 telecommunications service from which such information is derived, or (B) services
15 necessary to, or used in, the provision of such telecommunications service, including
16 the publishing of directories.

17 142. AT&T Corp. is a telecommunications carrier that obtains and has obtained customer
18 proprietary network information by virtue of its provision of telecommunications service.

19 143. On information and belief, AT&T Corp. used, disclosed and/or provided to
20 government entities individually identifiable customer proprietary network information pertaining to
21 Plaintiffs and California Subclass members, and continue to do so.

22 144. AT&T Corp. did not notify Plaintiffs or California Subclass members of the
23 disclosure and/or provision of their personally identifiable customer proprietary network information
24 to government entities, nor did Plaintiffs or California Subclass members consent to such.

25 145. Plaintiffs and the California Subclass have suffered injury in fact and have lost money
26 or property as a result of such unfair and unlawful business practices. Such injuries and losses
27 include, but are not limited to, the service fees and other fees and charges paid to AT&T Corp.
28 Neither the Plaintiffs nor any reasonable California Subclass member would have paid such fees and
charges for AT&T Corp. services had they first known of AT&T Corp.'s unlawful acts and
practices.

146. On information and belief, there is a strong likelihood that Defendants are now
engaging in and will continue to engage in the above-described electronic surveillance, disclosure,

1 and/or use of Plaintiffs' and class members' wire communications, and that likelihood represents a
2 credible threat of immediate future harm.

3 147. Plaintiffs and the California Subclass seek restitution, disgorgement, injunctive relief
4 and all other relief from Defendants allowed under §17200, et seq. Plaintiffs and the California
5 Subclass also seek attorneys' fees pursuant to Cal. Code Civ. Proc. §1021.5, as well as such other
6 and further relief as the Court deems just and proper.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Plaintiffs for themselves and all others similarly situated respectfully
9 request that the Court:

10 A. Declare that Defendants' participation in the Program as alleged herein violates
11 applicable law including without limitation:

12 (i) The First and Fourth Amendments to the United States Constitution, 50
13 U.S.C. § 1809, 18 U.S.C. § 2511, 47 U.S.C. § 605, and 18 U.S.C. § 2702, as to Plaintiffs and the
14 Nationwide Class; and

15 (ii) Cal. Bus. & Prof. Code §17200 as to Plaintiffs and the California Subclass.

16 B. Award equitable relief, including without limitation, a permanent injunction
17 prohibiting Defendants' continued or future participation in the Program:

18 (i) Pursuant to the First and Fourth Amendments to the United States
19 Constitution, 50 U.S.C. § 1810, 18 U.S.C. § 2520(b)(1), 47 U.S.C. § 605(e)(3)(b)(i), and 18 U.S.C. §
20 2707(b)(1), as to the Plaintiffs and the Nationwide Class; and

21 (ii) Pursuant to Cal. Bus. & Prof. Code §17200, as to Plaintiffs and California
22 Subclass;

23 C. Award statutory damages to the extent permitted by law to each Plaintiff and class
24 member in the sum of:

25 (i) \$100 per day for each day of violation of 50 U.S.C. § 1809 aggrieving that
26 Plaintiff or class member or \$1,000, whichever is greater, pursuant to 50 U.S.C. § 1810(a);

27 (ii) \$100 a day for each violation of 18 U.S.C. § 2511 aggrieving that Plaintiff or
28 class member or \$10,000, whichever is greater, pursuant to 18 U.S.C. § 2520(c)(2)(A);

1 (iii) Not less than \$1,000 or more than \$10,000 for each violation aggrieving that
2 Plaintiff or class member, as the court considers just, pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II); and

3 (iv) \$1000 pursuant to 18 U.S.C. § 2707(c);

4 D. Award punitive damages to the extent permitted by law to each Plaintiff and class
5 member, including without limitation:

6 (i) An appropriate sum pursuant to 50 U.S.C. § 1810(b);

7 (ii) An appropriate sum pursuant to 18 U.S.C. § 2520(b)(2); and

8 (iii) Not more than \$100,000 per violation of 47 U.S.C. § 605(a) aggrieving that
9 Plaintiff or class member, in the court's discretion, pursuant to 47 U.S.C. § 605(e)(3)(C)(ii);

10 E. Award to Plaintiffs attorneys' fees and other costs of suit to the extent permitted by
11 law, including without limitation pursuant to 50 U.S.C. § 1810(c), 18 U.S.C. § 2520(b)(3), 47 U.S.C.
12 § 605(e)(3)(B)(iii), 18 U.S.C. § 2707(b)(3), and Cal. Code Civ. Proc. §1021.5;

13 F. Award restitution, disgorgement, injunctive relief and all other relief allowed under
14 §17200, et seq. to Plaintiffs and the California Subclass;

15 G. Grant such other and further relief as the Court deems just and proper.

16 **JURY DEMAND**

17 Plaintiffs hereby request a jury trial for all issues triable by jury including, but not limited to,
18 those issues and claims set forth in any amended complaint or consolidated action.

19 DATED: January 31, 2006

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