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9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF VENTURA

12 MICHAEL GALLARDO, HILDA
13 HERNANDEZ, AND SONIA NUNEZ, on
behalf of themselves and all others similarly
14 situated

15 Plaintiffs,

16 vs.

17
18 COUNTY OF VENTURA AND DOES 1-50,
ET AL..

19 Defendants
20
21

CASE NO:

CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA CONSTITUTION §§13C AND D
2. VIOLATION OF CALIFORNIA GOVT. CODE §11135
3. VIOLATION OF CALIFORNIA CIVIL CODE §52.1
4. VIOLATION OF ADDITIONAL PROVISIONS OF THE CALIFORNIA CONSTITUTION

JURY TRIAL DEMANDED

By FAX

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1 **I. INTRODUCTION**

2 1. Thousands of Ventura County jail inmates and their families, most of whom are
3 not convicted but facing charges, are held hostage to grossly unfair and excessive phone charges,
4 forcing them to pay these charges in order to maintain contact with their loved ones who are
5 incarcerated. These charges are nothing but money making schemes by Ventura County and its
6 jail to force family members desperately trying to maintain contact with their inmate husbands,
7 parents and children, to pay for totally unrelated jail expenses or give up their primary lifeline of
8 communication. Ventura County runs one of the largest jails in the US, and essentially extorts
9 monies from mostly poor and minority families trying to get by and stay in contact with loved
10 ones. It does so by establishing extortionate and outrageous "commissions" to be paid by this
vulnerable population to fund the jails.

11 2. The Federal Communications Commission ("FCC") has recently taken decisive
12 action. After many years of deliberation, on October 2, 2015, it reached the decision that it would
13 set standards for ICS rates in order "to rein in the excessive rates and egregious fees on phone
14 calls paid by some of society's most vulnerable: people trying to stay in touch with loved ones
15 serving time in jail or prison." FCC Press Release. [https://www.fcc.gov/document/fcc-takes-](https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates)
16 [next-big-steps-reducing-inmate-calling-rates](https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates). The FCC observed that "contact between inmates
17 and their loved ones has been shown to reduce the rate of recidivism," but "high inmate calling
18 rates have made that contact unaffordable for many families, who often live in poverty."
19 Reducing the cost of calls "measurably increases the amount of contact between inmates and
20 their loved ones, making an important contribution to the criminal justice reforms sweeping the
21 nation." As Federal Communications Commissioner Mignon Clyburn has said, this system "is
22 inequitable, it has preyed on our most vulnerable for too long, families are being further torn
23 apart, and the cycle of poverty is being perpetuated." She further added that the prison phone
24 industry was "the most egregious case of market failure" she has seen in her career. This lawsuit
25 seeks to put an end to this unconscionable practice by Ventura County.

26 3. On November 5, 2015, the FCC released a "Second Report and Order and Third
27 Further Notice of Proposed Rulemaking" (FCC-136) which establishes rate caps on interstate
28 and intrastate calling rates and either eliminates or restricts the fees inmate telephone providers
could charge in county jail facilities.

29 4. This action against the County of Ventura, along with actions against Orange
County, Los Angeles County, Riverside County, San Bernardino County, San Mateo County,

1 Santa Clara County, Contra Costa County, and Alameda County, specifically concern the role of
2 local California counties and jails, which collect unconscionable “commissions” as payment for
3 granting the exclusive telephone link through which inmates in their various jails can
4 communicate with the outside world, including family, friends, bailbondsmen, legal counsel and
5 others (hereafter collectively “Call Recipients”). That these counties fully understand the
6 injustice they are inflicting, even while they continue it, is captured by the statement of former
7 Los Angeles County Supervisor, Zev Zaroslavsky, “Everyone’s making a lot of money at the
8 expense of inmates’ families. They’re in jail. They’re paying their debt to society. *That doesn’t
9 give us the right to fleece them.*” (emphasis added).¹

9 5. Phone systems are commonly referred to as an Inmate Calling System (“ICS”),
10 which is the term used by the FCC when addressing them. Counties like the County of Ventura
11 enter into exclusive contracts granting to telecommunications companies, the most common of
12 which are Global Tel*Link Corporation (“GTL”) and Securus Technologies, Inc. (“Securus”)
13 (hereafter collectively the “telecommunications companies”), the exclusive right to establish a
14 phone system through which inmates – both pretrial and convicted – may communicate with Call
15 Recipients, who have to establish a pre-paid account with the telecommunications companies
16 and are charged unreasonable, unjust and exorbitant rates, the lion’s share of which are in turn
17 paid to the Ventura County as what are euphemistically referred to as “commissions.” Said
18 telecommunications companies are common carriers within the meaning of the Federal
19 Communications Act. Under this scheme, the County of Ventura and its jails receive a
20 **guaranteed \$600,000 annually**, which comprises the majority of the collected charges.

21 6. Notably, the State of California provides a stark contrast to the practices of the
22 County of Ventura. California’s practice establishes that there is no meaningful basis to contend
23 that exorbitant phone rates and commissions are necessary to cover the costs of the service. In
24 August 2007, California began to phase out commissions at its state prisons, ultimately
25 eliminating them in 2010. Prior to August 2007, calls from California’s prisons were \$1.50 +
26 \$.15/minute for local calls, \$2.00 + \$.22/minute intrastate and \$3.95 + \$.89/minute interstate.
27 Now, with no commissions, current per minute rates for intrastate and local calls are \$0.135 and

28 ¹ See David Lazarus, *Gouging L.A. County Inmates With High Phone Fees*, The Ventura Times, September 8, 2014.

1 \$0.09, respectively, and the cost of an intrastate 15 minute call is \$2.03. Thus, the same 15-
2 minute intrastate call without the commissions is 61.70% less than when the State received
3 commissions (\$3.27 differential in the post commission fee divided by \$5.30 total fee when
4 commissions were used).

5 7. These payments, euphemistically called "commissions," are an integral part of a
6 scheme by virtue of which the County of Ventura and the telecommunications companies
7 conspire and share in charging Call Recipients unjust, unreasonable and exorbitant rates to
8 communicate with inmates, as well as fees that are illegal under California law. The rates
9 charged to inmates and their families, friends and associates are far greater than those paid for
10 ordinary telephone service.

11 8. These unjust, unreasonable, excessive and unlawful fees work a terrible hardship
12 on inmates, their families, friends and associates who bear the brunt of the charges. Most inmates
13 of Ventura County jails are relatively poor and lack significant financial resources; they are
14 disproportionately people of color, especially African-American and Latino; many suffer from
15 serious mental illness. Their families, friends and associates similarly are relatively poor, people
16 of color and lack significant financial resources. The charges at issue in this complaint
17 unlawfully put the burden on inmates' families, friends and associates of paying for County
18 services and costs that are rightfully the responsibility of the taxpayers and society at large.
19 These practices limit contact between inmates and their families, friends, associates and other
20 Call Recipients due to their exorbitant costs, resulting in greater isolation for inmates and
21 reduced support, and undermining the objective of returning inmates to the community with
22 greater and stronger ties. Many people are forced to limit their contact with inmates far more
23 than they would wish because of the cost.

24 9. Although the Complaint identifies Defendant County of Ventura, the Sheriff's
25 Department of Ventura County is a part of that County and, as the term "County" or "County
26 Defendants" is used in this Complaint, it encompasses the Sheriff's Department of Ventura
27 County as well as the County at large.

28 10. Plaintiffs seek damages and injunctive relief, including refunds of the unlawful
sums they paid described in this Complaint.

11. Defendant Ventura County's wrongful conduct involves relatively small amounts
of damages for each class member. Defendants are carrying out a scheme to deliberately collect
unlawful but small sums of money from large numbers of Call Recipient Class Members and

1 Inmate Class Members. Call Recipient Class Members are individuals who accept calls from the
2 incarcerated inmate, and set up an account with the third party phone providers. Inmate Class
3 Members are the incarcerated individuals who use the telephone to contact the Call Recipient
4 Class Members. The Defendants conduct unlawfully burdens Class Members' ability to
5 communicate with loved ones, friends, associates or persons important to their or their loved
6 ones' legal situation. Each class brings this action on their own behalf and on behalf of all others
7 similarly situated.

8 12. The gravamen of this Complaint concerns the County of Ventura's liability for: 1)
9 violation of Article 13C of the California Constitution, as the "commissions", though
10 denominated as such, are actually an unlawful tax; 2) violation of Govt. Code §11135 because
11 the commissions have an unlawful disparate impact on African-Americans and Latinos; in
12 violation of Govt. Code §11135; 3) violation of California Civil Code §52.1 as the commissions
13 deprive the Plaintiffs of their rights through intimidation, threat or coercion; and 4) violations of
14 additional provisions of the California constitution, including that the commissions unlawfully
15 deprive inmates and their families and associates rights of association, and unconstitutionally
16 conditioning their use of the phones on such outrageous charges in violation of the due process
17 and unlawful takings provisions.

18 13. On November 19, 2015, Plaintiffs filed a complaint in federal court that included
19 the same causes of action pled in the instant lawsuit. On September 21, 2016, the federal court
20 ordered that these supplemental state law claims be dismissed without prejudice pursuant to 28
21 U.S.C. § 1367(c).

22 14. Plaintiffs anticipate that the Complaint will be amended to add additional Named
23 Plaintiff Class Representatives.

24 **II. JURISDICTION AND VENUE**

25 15. Plaintiffs' claims arise out of acts of the Defendants in Ventura County. All
26 Plaintiffs -- whether inmates for whom a third party ICS account was in the past or present
27 established, or will in the future be established, and Call Recipients who establish the ICS
28 account (defined more fully in ¶1, *supra*) -- have standing because both inmates and Call
Recipients suffered an injury in fact. Inmates, even if they did not pay or contribute to payment
for the ICS, were and will be injured because the unlawful conduct alleged herein restricted their
practical ability to communicate with the outside world. Call Recipients were injured both

1 because the unlawful conduct alleged herein restricted their practical ability to communicate with
2 inmates and because they paid for unlawful fees and charges.

3 **III. PARTIES**

4 **A. PLAINTIFFS**

5 16. Plaintiff Michael Gallardo was a male inmate at the Ventura County Central Jail
6 in Ventura, California from in or about 2011 through February, 2015.

7 17. Plaintiff Hilda Hernandez is Mr. Gallardo's mother and directly bore the cost of
8 the charges for telephone calls made by Mr. Gallardo. Therefore, she qualifies as the payor of
9 said fees. Ms. Hernandez is a resident of Ventura County.

10 18. Plaintiff Sonia Nunez has a son, whose father is currently an inmate at Santa
11 Paula Jail in Ventura County. He has been an inmate in Santa Paula Jail for approximately 11
12 months. Immediately prior to his incarceration in Santa Paula Jail, for approximately three years
13 he was an inmate at the Ventura County Central Jail. Throughout his incarceration in the
14 Ventura County jails, Ms. Nunez bore the charges made by her son's father for telephone calls to
15 her and her son. Therefore, Plaintiff Nunez qualifies as the payor of said fees. Ms. Nunez is a
16 resident of Ventura County. Ms. Nunez submitted a Cal. Govt. Code class § 910 claim on
17 October 15, 2015 by certified mail on January 20, 2016. Her claim was denied on March 4,
18 2016.

19 **B. DEFENDANTS**

20 19. Defendant Ventura County (hereafter "County") is a public entity organized and
21 existing under the laws of the State of California. The Ventura County Sheriff's Department
22 (hereafter "VCSD") is a public entity within the meaning of California law, and is an agency of
23 Ventura County (Defendants Ventura County and the Ventura County Sheriff's Department are
24 hereinafter collectively referred to as "County Defendants"). The County is sued in its own right
25 for a County and/or VCSD policy, practice or custom which caused Plaintiffs' injuries in
26 violation of California state law for violation of California constitutional guarantees, as well as
27 violations of Civil Code §52.1 and Govt. Code §11135

28 20. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein
as DOES 1 through 50, inclusive, and therefore sue these Defendants by such fictitious names.
Plaintiffs will give notice of this complaint, and of one of more DOES' true names and
capacities, when ascertained. Plaintiffs are informed and believe, and based thereon allege that

1 Defendants DOES 1 through 50 are responsible in some manner for the damages and injuries
2 hereinafter complained of.

3 21. Individual Defendants from Ventura County (although not currently named, but
4 who may be named in the future) may at times be referred to herein collectively as the
5 "Individual Defendants."

6 22. Upon information and belief, Plaintiffs further allege that, at all times relevant
7 herein, the Individual Defendants participated in, implemented, supervised, approved, and/or
8 ratified the unconstitutional or illegal acts undertaken on behalf of the County Defendants with
9 regard to which they are named as Individual Defendants.

10 23. Plaintiffs are informed and believe, and thereupon allege that, at all times relevant
11 herein, the Individual Defendants, and each of them, were the agents, servants and employees of
12 the County Defendants with regard to which they are named as Individual Defendants, and were
13 acting at all times within the scope of their agency and employment with the knowledge and
14 consent of their principals and employers. At all times herein, Defendants, and each of them,
15 were acting under the color of state law.

16 24. When a County Defendant is named on state law claims, it is named not only
17 under a theory of directly liability, but also as an entity responsible in respondeat superior for the
18 actions undertaken by its agents, servants and employees. Said respondeat superior liability
19 extends to and encompasses, but is not limited to, the ministerial acts of implementing the
20 contracts and ICS charges challenged in this Complaint.

21 25. When the phrase "Ventura County Defendants" is used in this Complaint, it refers
22 not only to the County Defendants, but to the Doe Defendants and to any Individual Defendants
23 who may be named with regard to that County.

24 **IV. CLAIMS OF CLASS REPRESENTATIVES**

25 26. Plaintiff Michael Gallardo is Latino. He was a male inmate at the Ventura
26 County Central Jail from in or about 2011 until February 2015. Mr. Gallardo. Mr. Gallardo
27 submitted a class claim for damages pursuant to California Government Code § 910 *et seq.* by
28 certified mail on January 6, 2016. Plaintiff Michael Gallardo brings this suit on his own behalf
and on behalf of a class of similarly situated persons, defined elsewhere in this Complaint.

29 27. Hilda Hernandez, Michael Gallardo's mother, is a Latina. She does all she can to
speak with her son. But, because of the cost of each call, plus associated costs and fees, she is
constantly depositing more of her hard earned money into her son's prepaid phone account. Mrs

1 Hernandez is a full time caretaker, and the cost of these calls has placed a significant burden
2 upon her. While Mr. Gallardo was in Ventura County Jail, Mrs. Hernandez paid hundreds, if not
3 thousands, of dollars to GTL. She submitted a class claim for damages pursuant to California
4 Government Code § 910 *et seq.* by certified mail on January 6, 2016. Plaintiff Hilda Hernandez
5 brings this suit on her own behalf and on behalf of a class of similarly situated persons, defined
elsewhere in this Complaint.

6 28. Sonia Nunez is a Latina. So that she and her son can maintain contact with her
7 son's father, Ms. Nunez is constantly depositing additional money into the prepaid phone
8 account. The costs of these calls has placed a significant burden upon her. Since her son's father
9 was incarcerated in Ventura County jails, Ms. Nunez has paid hundreds, if not thousands, of
10 dollars to GTL. She submitted a class claim for damages pursuant to California Government
11 Code § 910 *et seq.* by certified mail on January 20, 2016. Plaintiff Sonia Nunez brings this suit
12 on her own behalf and on behalf of a class of similarly situated persons, defined elsewhere in this
Complaint.

13 V. CLASS ACTION FACTUAL ALLEGATIONS

14 29. The County of Ventura entered into an exclusive contract with Public
15 Communications Services, Inc., a wholly owned subsidiary of GTL (hereinafter referred to as
16 "GTL"), to provide pay telephone services from Ventura County jails and other correctional
17 facilities, resulting in a monopoly for GTL. Because the County's contract is exclusive to GTL
18 and because inmates are literally a captive market with no ability to choose another telephone
company, there are no competitive market forces to constrain the prices set by GTL.²

19 30. In return for this monopoly power, however, GTL provides kickbacks,
20 masqueraded as "site commissions," to the County of Ventura. Indeed, the County of Ventura
21 selected GTL to be the third party phone provider based on the fact that it was the company that
22 agreed to pay the highest amount in annual commissions. In order to generate these sizable
23 kickbacks, "[f]amilies of incarcerated individuals often pay significantly more to receive a single
24 15-minute call from prison than for the basic monthly phone service."³ In addition, GTL imposes

25
26
27 ² See *In re Rates for Interstate Inmate Calling Servs.*, 28 FCC Red. 14107, 14129 (F.C.C. Sept.
26, 2013).

28 ³ *Id.*, 28 FCC Red. at 14130.

1 unnecessary and unconscionable fees and charges on accounts used for inmate telephone calls,
2 all of which “inflicts substantial and clear harm on the general public,”⁴ including Plaintiffs.

3 31. Since County Defendants’ commission contracts provide a substantial minimum
4 guaranteed fee against an identified percentage of the ICS charges for the County of Ventura
5 after which GTL still makes a substantial profit, it is obvious that, without the commissions, the
6 charges would be substantially lower, and they bear no reasonable relationship to the actual cost
7 of providing the ICS service.

8 32. County Defendants use their annual commissions as provided by Penal Code
9 §4025(c-d), which states that any money or commission collected by a jail for the use of pay
10 phones primarily used by incarcerated inmates shall be deposited in the Inmate Welfare Fund
11 and used first for the benefit, education and welfare of inmates and, to the extent not needed for
12 that purpose, may be used for the maintenance of county jail facilities. Nonetheless, rather than
13 using the money primarily for vocational and educational programs, or other programs designed
14 for the rehabilitation of inmates, much, if not most, of the money deposited in the Inmate
15 Welfare fund is spent on general jails issues, including maintenance, equipment, office furniture,
16 salaries and, in some instances, food. The demographics of the jail population of County
17 Defendants’ jails are highly disproportionate to the demographics of Ventura County as a whole.
18 While Plaintiffs do not currently have statistical breakdown of Ventura County, there are readily
19 available statistics available on the demographics of the California prison population which, on
20 information and belief, mirrors that of the County jails. While approximately 29% of the
21 California male prison population is African-American, less than 7% of the California population
22 is African American. In 2013, 4.367 % of all African-American males (4.367 out of every
23 100,000) in California were imprisoned, compared to .922 % (922 out of every hundred
24 thousand) for Latinos, and .488% (488 out of every hundred thousand) for whites. Said another
25 way, African-Americans are imprisoned at almost 10 times the rate of whites, and Latinos are
26 imprisoned at almost twice the rate of whites.

27 33. The jail population is similarly disproportionately composed of persons with
28 mental illnesses or drug addiction, both of which qualify as disabilities. A 2006 study by the U.S.
Department of Justice found that more than half of all prison and jail inmates have a mental

⁴ *In re Rates for Interstate Calling Servs.* 11, 40, 15929, 15938 (F.C.C. Nov. 21, 2013).

1 health problem compared with 11 percent of the general population, yet only one in three prison
2 inmates and one in six jail inmates receive any form of mental health treatment. Other data
3 indicate that approximately 20% of incarcerated inmates have a serious mental illness, and 30 to
4 60 % have substance abuse problems. The percentages increase significantly when including
5 broad-based mental illnesses. For example, 50 percent of males and 75 percent of female inmates
6 in state prisons, and 75 percent of females and 63 percent of male inmates in jails, will
7 experience a mental health problem requiring mental health services in any given year.

7 **A. FACTUAL ALLEGATIONS**

8 34. Beginning in 2009, Ventura County has had a written agreement with GTL to
9 provide ICS for the Ventura County Sheriff's Office and Ventura County Probation Department.
10 Under the terms of the GTL agreement, the County Sheriff's Department receives 63% of GTL's
11 annual revenue from calls made through the County's ICS with a Minimum Annual Guaranty of
12 \$550,000 and the County's Probation Department receives 63% of GTL's annual revenue for
13 calls made through the County's Probation Department with a Minimum Annual Guaranty of
14 \$50,000. In sum, through its contract with GTL, Ventura County receives a total minimum
15 guaranteed \$600,000 annually from GTL.

15 35. The County's original 2009 Agreement was renewed effective August 31, 2014.
16 The current agreement is set to expire on August 30, 2016.

17 36. Upon information and belief, the County has an additional agreement with GTL
18 or another company, the details of which, including the annual commission rates, are currently
19 unknown to Plaintiffs, but which generally involve the sale of prepaid direct call phone cards
20 directly to inmates. This is in contrast to the GTL arrangement in which Call Recipients (e.g.
21 inmate counselors, family, associates, counsel, and friends) establish accounts in to which they
22 deposit funds that are then applies to calls they accept from inmates. Where inmates do not have
23 enough money in their account to make a call, the GTL arrangement also allows inmates to make
24 collect calls.

25 37. The inmates initiate the calls, subject to similar unreasonable, unjust and grossly
26 excessive rates, with a connection fee and a rate per minute far exceeding the standard rate for
27 local calls, or those of the Ventura County region. As with the GTL charges, the charges were
28 unjust, unreasonable and grossly excessive, and bore no reasonable relationship to the County's
share of providing the service. Although the costs were not directly charged by the County, the
cost to telephone companies of the payments to the County based on its agreement with the

1 foregoing telephone companies was built into the charges, and paid directly to the County by the
2 telephone companies.

3 38. At no time did the County's residents vote to approve the foregoing commissions
4 paid by GTL to the County or the rates charged to inmates and/or Call Recipients pursuant to the
5 County's agreement with GTL.

6 **VI. CLASS DEFINITIONS**

7 39. The Named Plaintiffs bring this action on their own behalf, and on behalf of all
8 other persons similarly situated, pursuant to Section 382 of the California Code of Civil
9 Procedure.

10 40. Because there is a race/ethnicity disparate impact claim in the case, and because
11 Plaintiffs' contention that persons not part of the protected disparate impact categories (i.e.,
12 African-American and Latino) are appropriate class members for a disparate impact claim may
13 be disputed, Plaintiffs have defined a sub-class for the disparate impact claims composed of
14 African-Americans and Latinos only. This sub-class would only apply in the event the Court
15 were ultimately to conclude that a) persons who are not African-American or Latino (e.g., white
16 inmates and their families) do not have standing to assert a disparate impact claim, or are not
17 members of a disparate impact class, even though they suffered the same injuries as African-
18 Americans and Latinos, and b) the disparate impact classes must accordingly be limited to
19 African-Americans and Latinos. This alternative sub-class applies only to the disparate impact
20 claims and is referred to as the Limited Disparate Impact Sub-Class.

21 41. The Named Plaintiffs for the General Class of Ventura County are as follows:

- 22 a. Michael Gallardo (former inmate);
- 23 b. Hilda Hernandez (Michael Gallardo's mother, who has established and paid for a
24 pre-paid ICS account to allow her to communicate with her son); and
- 25 c. Sonia Nunez (who established and paid for a pre-paid ICS account to allow her
26 and her son to communicate with her son's father).

27 42. The Proposed Named Plaintiffs for the Limited Disparate Impact Sub-Class of
28 Ventura County are as follows:

- a. Michael Gallardo (former Latino inmate);
- b. Hilda Hernandez (Latina mother of Michael Gallardo, who has established and
paid for a pre-paid ICS account);
- c. Sonia Nunez (Latina, who established and paid for a pre-paid ICS account).

1 43. At times in this Complaint the General Class Named Plaintiffs may be referred to
2 collectively by that title. Similarly, at times in this Complaint, the Limited Disparate Impact Sub-
3 Class Named Plaintiffs may be referred to collectively by that title.

4 44. Additionally, at times in this complaint, the General Class and Limited Disparate
5 Impact Sub-Class Named Plaintiffs who were or are inmates are referred to collectively as the
6 "Named Inmate Plaintiffs", and the General Class and Limited Disparate Impact Sub-Class
7 Named Plaintiffs who were Call Recipients are referred to collectively as the "Named Call
8 Recipient Plaintiffs."

9 45. Also, the General and Limited Disparate Impact Sub-Class Members who qualify
10 as Call Recipients at times may be referred to collectively as "Call Recipient Class Members,"
11 and the General and Limited Disparate Impact Sub-Class Members who qualify as inmates at
12 times may be referred to collectively as "Inmate Class Members."

13 **A. GENERAL CLASS DEFINED**

14 46. The Injunctive Relief Class (referring to the class of people seeking purely
15 injunctive relief) of Ventura County is generally defined as follows:

16 Those individuals or entities that qualify as either a) a past, present or future
17 Ventura County Jail inmate for whom a third party ICS account was in the past or
18 present, or in the future will be, established, or b) a Call Recipient, i.e., inmates' family,
19 friends, bailbondsmen, legal counsel, or others, who in the past or present has established,
20 or will in the future establish, a pre-paid ICS account with a telecommunications
21 company (currently GTL) that has contracted with Ventura County to provide third party
22 phone accounts for phone access to County Jail inmates, from which pre-paid accounts
23 the phone charges and administrative or other fees for calls with inmates housed or
24 confined in any Ventura County Jail Facility are paid, and out of which collected funds
25 the County of Ventura is paid commissions pursuant to its contract with the
26 telecommunications company.

27 47. The Monetary Relief Class (referring to the class of people seeking monetary
28 relief in addition to injunctive relief) of Ventura County is generally the same, but limited to
those who suffered monetary harm and so excludes certain future class members, and is defined
as follows:

 Those individuals or entities, through the earlier of the complete cessation of the
challenged conduct or the final resolution of this case, that qualify as either a) a past or

1 present Ventura County Jail inmate for whom a third party ICS account was established,
2 or b) a Call Recipient, i.e., inmates' family, friends, bailbondsmen, legal counsel, or
3 others, who in the past or present has established, or will in the future establish, a pre-
4 paid ICS account with a telecommunications company (currently GTL) that has
5 contracted with the County of Ventura to provide third party phone accounts for phone
6 access to County Jail inmates, from which pre-paid accounts the phone charges and
7 administrative or other fees for calls with inmates housed or confined in any County of
8 Ventura Jail Facility are paid, and out of which collected funds the County of Ventura is
9 paid commissions pursuant to its contract with the telecommunications company.

9 **B. LIMITED DISPARATE IMPACT SUB-CLASS DEFINED**

10 48. The Limited Disparate Impact Injunctive Relief Sub-Class (referring to the class
11 of people seeking purely injunctive relief) of Ventura County applies only in the event the Court
12 determines that a disparate impact class is limited to African-Americans and Latinos. This sub-
13 class is generally defined as follows:

14 Individuals that qualify as either a) a past, present or future County of Ventura
15 Jail African-American or Latino inmate for whom a third party ICS account was in the
16 past or present, or in the future will be, established, or b) a Call Recipient, i.e., an
17 African-American or Latino inmates' family, friends, bailbondsmen, legal counsel, or
18 others, who is either African-American or Latino, and who in the past or present has
19 established, or will in the future establish, a pre-paid ICS account with a
20 telecommunications company (currently GTL) that has contracted with the County of
21 Ventura to provide third party phone accounts for phone access to County of Ventura Jail
22 inmates, from which pre-paid accounts the phone charges and administrative or other fees
23 for calls with inmates housed or confined in any County of Ventura Jail Facility are paid,
24 and out of which collected funds the County of Ventura is paid commissions pursuant to
25 its contract with the telecommunications company.

26 49. The Limited Disparate Impact Monetary Relief Sub- Class (referring to the class
27 of people seeking monetary relief in addition to injunctive relief) of Ventura County is generally
28 the same, but limited to those who suffered monetary harm and so excludes certain future class
members, and is defined as follows:

Individuals, through the earlier of the complete cessation of the challenged
conduct or the final resolution of this case, that qualify as either a) a past or present

1 County of Ventura Jail African-American or Latino inmate for whom a third party ICS
2 account was in the past or present, or in the future will be established, or b) a Call
3 Recipient, i.e., an African-American or Latino inmates' family, friends, bailbondsmen,
4 legal counsel, or others, who is either African-American or Latino, and who in the past or
5 present has established, or will in the future establish, a pre-paid ICS account with a
6 telecommunications company (currently GTL) that has contracted with the County of
7 Ventura to provide third party phone accounts for phone access to County of Ventura Jail
8 inmates, from which pre-paid accounts the phone charges and administrative or other fees
9 for calls with inmates housed or confined in any County of Ventura Jail Facility are paid,
10 and out of which collected funds the County of Ventura is paid commissions pursuant to
11 its contract with the telecommunications company.

12 **VII. COMPLIANCE WITH CODE OF CIVIL PROCEDURE § 382**

13 **A. NUMEROSITY**

14 50. Because California is such a large state, many of its jail systems are large
15 compared to the average jail system in the United States.

16 51. The Ventura County's jail population is over 1,500 inmates.

17 52. Average jail turnover rate in US jails is 15 times per year.

18 [http://apps.fcc.gov/ecfs/document/view;NEWECFSSSESSION=KnsqVy1h8yKTrI2gyF3g621nyZ/
19 NJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155.](http://apps.fcc.gov/ecfs/document/view;NEWECFSSSESSION=KnsqVy1h8yKTrI2gyF3g621nyZ/NJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155)

20 53. While the turnover rate is smaller in large jails, the jail population turns over
21 several times per year. Assuming a turnover rate of eight, Defendant Ventura County jails have
22 well over 5,000 individual inmates in a given year.

23 54. Even assuming that only a small fraction of inmates and their families avail
24 themselves of prepaid ICS accounts, on information and belief, each class for Ventura County
25 numbers in the thousands.

26 **B. COMMON ISSUES OF FACT OR LAW**

27 55. The County of Ventura has a contract with a telecommunications company, the
28 terms of which provide a minimum annual guaranteed payment against a percentage that goes to
the County Jail for the exclusive right to provide pre-paid Call Recipient phone accounts to
receive inmate calls.

56. The County of Ventura has acted with respect to the Class in a manner generally
applicable to each member of the Class. There is a well-defined community of interest in the

1 questions of law and fact involved in the action. The questions of law and fact predominate over
2 any questions affecting only individual members, including, but not limited to the following:

- 3 a. Are the charges pursuant to which Defendant County of Ventura receives
4 Contract Funds so excessive, arbitrary and/or unreasonable as to deprive or limit
5 Class Members' ability to reasonably communicate between Inmate Class
6 Members and their families and loved ones who are Call Recipient Class
7 Members in violation of the First Amendment and/or Due Process clauses of the
8 California Constitution?
- 9 b. Are the charges pursuant to which Defendant County of Ventura receives
10 Contract Funds so excessive, arbitrary and/or unreasonable as to deprive or limit
11 Class Members' of due process by virtue of their disproportionate relationship to
12 the reasonable cost to Defendant County of Ventura of ICS usage?
- 13 c. Are the charges pursuant to which the Defendant County Ventura receives
14 Contract Funds so excessive, arbitrary and/or unreasonable as to place
15 unconstitutional conditions on Class Members' exercise of their state
16 constitutional rights to association and just compensation and/or constitute an
17 unlawful taking in violation of California due process and unlawful takings
18 clauses?
- 19 d. Do the Contract Funds qualify as an unlawful tax under Articles 13 C and/or D of
20 the California Constitution?
- 21 e. Do the ICS charges that provide the source of the Contract Funds received by
22 Defendant County of Ventura, and consequently the Contract Funds, have a
23 disparate impact on African-Americans and Latinos, and, if so, a) are the Contract
24 Funds necessary to the operation of the County Jails or otherwise substantially
25 justified, and b) if they are, can they be replaced by an equally effective but less
26 discriminatory alternative?
- 27 f. If the ICS charges that provide the source of the Contract Funds received by
28 Defendant County of Ventura, and consequently the Contract Funds, have a
disparate impact on African-Americans and Latinos, do persons who are injured
by such charges who are not African-American or Latino have standing to receive
redress for such unlawful charges?

- 1 g. Do the ICS Contracts create, or contribute to the creation of, a coercive choice for
2 Class Members between paying unlawful ICS charges (on any of the foregoing
3 grounds) or foregoing spoken communication between inmates and family,
4 friends or other associates and thereby violate Civil Code §52.1?
5 h. Are presumed damages available to Plaintiffs and the Class Members for their
6 non-economic damages for violation of the federal rights asserted in the
7 complaint?

8 57. While there are additional common issues, these issues alone more than establish
9 that there are common issues.

10 **C. TYPICALITY**

11 58. The claims of the Named Plaintiffs are typical of each class for which they are
12 named as a class representative. All Named Inmate Plaintiffs were in the custody of Ventura
13 County Jail when they were subjected to the unlawful conduct alleged in the Complaint, which
14 unlawful conduct applied and applies to all inmates in Ventura County Jail, who established, or
15 whose family or other associates established, an ICS pre-paid account through Call Recipients.
16 All Named Call Recipient Plaintiffs established a pre-paid ICS account with Ventura County Jail
17 in order to be able to communicate with an inmate housed in Ventura County Jail, and were
18 accordingly subjected to the unlawful conduct alleged in the Complaint, which unlawful conduct
19 applied and applies to all Call Recipients who established an ICS pre-paid account through Call
20 Recipients.

21 59. Thus, the Named Plaintiffs for the General Class of Ventura County and Limited
22 Disparate Impact Classes have the same interests, and have suffered the same type of damages as
23 the Class Members of those classes. Named Plaintiffs' claims for the respective classes alleged
24 in this Complaint are based upon the same or similar legal theories as the claims of the Class
25 Members. Each class member of the respective classes alleged herein suffered actual damages as
26 a result of the actions of each Defendant applicable to that class. The actual damages suffered by
27 Plaintiffs are similar in type and amount to the actual damages suffered by each class member.

28 60. The economic losses suffered by each class member (whether General or Limited
Disparate Impact Sub-Class) are commonly determined by the amount paid by that class member
for the ICS charges paid by or on behalf of that class member, plus interest to be determined.

1 **D. ASCERTAINABILITY**

2 61. While Plaintiffs do not know the identities of the Class Members, the identities of
3 the Class Members are ascertainable from a combination of Ventura County Jail and the
4 County's contracted telecommunications company records. Plaintiffs are informed and believe,
5 and thereon allege, that the foregoing computer records reflect the identities, including addresses
6 and telephone numbers, of the persons who qualify as Class Members, and the charges incurred,
7 and that it is possible to ascertain from those records who qualifies as a class member of each
8 class. In the event that a determination is made that the disparate impact claim is limited only to
9 African-Americans and Latinos (a proposition that Plaintiffs contest), those Class Members who
10 are African-Americans and Latinos can be identified through a combination of available records
11 and self-identification.

12 **E. ADEQUACY OF REPRESENTATION**

13 62. The Named Plaintiffs will fairly and adequately protect the interests of the class.
14 The interests of the Named Plaintiffs are consistent with and not antagonistic to the interests of
15 each class.

16 63. Similarly, class counsel are experienced class action litigators who will fairly and
17 adequately protect the interests of each class.

18 **F. PREDOMINANCE AND SUPERIORITY**

19 64. Prosecutions of separate actions by individual members of the class would create
20 a risk that inconsistent or varying adjudications with respect to individual members of the class
21 would establish incompatible standards of conduct for the parties opposing the class.

22 65. Prosecutions of separate actions by individual members of the class would create
23 a risk of adjudications with respect to individual members of the class that would, as a practical
24 matter, substantially impair or impede the interests of the other members of the class to protect
25 their interests.

26 66. Plaintiffs are informed and believe, and thereon allege that Defendants have acted
27 on grounds generally applicable to the class.

28 67. The interests of Class Members in individually controlling the prosecution of a
separate action is low in that most Class Members would be unable to individually prosecute any
action at all. The amounts at stake for individuals are such that separate suits would be
impracticable in that most members of the class will not be able to find counsel to represent them
on an individual basis. It is desirable to concentrate all litigation in one forum because all of the

1 claims arise out of the same basic pattern of conduct, the legality of which is subject to class
2 wide determination. It will promote judicial efficiency to resolve the common questions of law
3 and fact in one forum rather than in multiple courts. Because the unlawful conduct alleged herein
4 is systemic, it is particularly well suited to resolution on a class basis, as the critical questions in
5 the case may be answered on a class wide basis. Indeed, in this case, there are no individualized
6 issues at all regarding liability. Either the charges are lawful under the legal theories implicated
7 by this Complaint or they are not.

8 68. The claims raised herein are susceptible to common proof. Defendant County of
9 Ventura has a contract under which it receives a minimum fee against a percentage of certain
10 proceeds in exchange for its grant of exclusive ICS rights. The phone charges and related fees
11 that Class Members pay are uniform across Class Members, and are discoverable from the
12 contracted telecommunications company computerized records. The race and ethnicity of Class
13 Members for the disparate impact claims are discoverable from jail and phone records, either
14 because they directly contain such information or because they can be determined from statistical
15 analyses based on those records (including from census information based on addresses).

16 69. Plaintiffs know of no difficulty that will be encountered in the management of this
17 litigation that would preclude its maintenance as a class action. The class action is superior to
18 any other available means to resolve the issues raised on behalf of the classes. The class action
19 will be manageable because computerized records systems exist from which to ascertain the
20 members of the class and to ascertain some of the proof relevant to Plaintiffs' claims. Liability
21 can be determined on a class-wide basis based on class wide evidence because the Plaintiffs
22 complain of systemic and widespread policies and practices that are uniform for Defendant
23 County of Ventura, based on their particular contract with the relevant telecommunications
24 company. Named Plaintiffs and the Class Members are entitled to economic damages under
25 federal and state law, and to such other damages as may be determined by the Court or the trier
26 of facts; to statutory damages under Civil Code § 52.1; and, in any event, individualization or
27 variability in damages is not a bar to a liability certification based on common liability issues.

28 **VIII. APPROPRIATENESS OF EQUITABLE RELIEF**

70. Inmate Plaintiffs and Class Members currently incarcerated, and Call Recipient
Plaintiffs and Class Members with current and operating ICS accounts, are and will continue to
be, subject to the unlawful ICS phone charges addressed in this Complaint.

1 71. Defendant County of Ventura's continuing violations of law under applicable
2 California constitutional and statutory provisions causes Plaintiffs and Class Members
3 continuing, sweeping and irreparable harm.

4 72. Because no adequate remedy at law exists for the injuries alleged herein,
5 Plaintiffs seek injunctive relief under both federal and state law, including restitution in amounts
6 to be determined at trial based on the unlawful payments plus interest.

6 **IX. DAMAGES**

7 73. As a result of Ventura County Defendants' unlawful conduct, Plaintiffs and Class
8 Members have suffered, and will continue to suffer, compensable damages in amounts to be
9 determined at trial, including economic, physical and emotional distress damages, in amounts
10 according to proof at trial. The economic damages and/or refund/restitution/d disgorgement are
11 susceptible to class wide proof based on the computerized records of the applicable
12 telecommunications company, the Ventura County Jail, and the applicable documents and
13 records memorializing and documenting the ICS charges complained of herein.

14 74. Plaintiffs and the class members are entitled to statutory damages under state law.
15 Plaintiffs and the class members are entitled to statutory damages under state law.

16 75. Ventura County Defendants acted maliciously, fraudulently or oppressively, and
17 in reckless disregard of the Plaintiffs' and Class Members' rights, thereby entitling Plaintiffs and
18 the Class to an award of punitive damages from all Defendant individuals except the County
19 Defendants or any governmental entity.

18 **X. CLAIMS**

19 **A. VIOLATION OF CALIFORNIA CONSTITUTION ARTICLES 13C AND 13D [BY ALL**
20 **PLAINTIFFS AGAINST VENTURA COUNTY DEFENDANTS].**

21 76. Plaintiffs incorporate all previous and subsequent paragraphs of this Complaint
22 into this claim.

23 77. The commissions received by the Ventura County Defendants in exchange for
24 their grant of exclusive rights to establish an inmate call system in their jails, although
25 denominated as a commission, in fact constitute a tax under California law, and, as such, were
26 not approved by the voters of the respective counties in which the tax was established, as
27 required by Articles 13C and 13D of the California Constitution.
28

1 78. As evidenced by the fact that the commissions are required by California Penal
2 Code §4025 to be used in the first instance for a jail's inmate welfare fund, the primary purpose
3 of the commissions is to raise revenue for governmental services.

4 79. The FCC has determined that, for jails with an average daily population above
5 2,500, the facility cost of supporting ICS is between \$0.01-\$0.02 per minute, based on
6 information provided by the National Sheriff's Association. (See 8/19/16 FCC Order on
7 Reconsideration, 16-102, pg. 15 ¶ 26.

8 80. The commissions far exceed the reasonable cost to the County of Ventura or
9 Ventura County Jail of providing services necessary to the activity for which the fee is charged,
10 here the provision of a calling service for inmate calls.

11 81. Pursuant to Article 13C §1 of the California Constitution, a tax "means any levy,
12 charge, or exaction of any kind imposed by a local government" with certain specified
13 exceptions.

14 82. The first two relevant exceptions are charges "imposed for a specific benefit
15 conferred or privilege granted" or for "a specific government service or product provided" in
16 each of which situations the charge may "not exceed the reasonable costs to the local
17 government" of "conferring the benefit or granting the privilege" or "providing the service or
18 product." Because the charges here exceed the reasonable cost of the benefit, privilege, service
19 or product, these exceptions are inapplicable.

20 83. The third relevant exception is charges "imposed for the reasonable regulatory
21 costs to a local government for issuing licenses and permits, performing investigations,
22 inspections, and audits" and other inapplicable activities. Because the charges here do not
23 constitute regulatory activities and, in any event, exceed the reasonable cost for the grant of the
24 activity, this exception is inapplicable.

25 84. The last relevant exception is a "charge imposed for entrance to or use of local
26 government property, or the purchase, rental, or lease of local government property." Because
27 the commission has never been characterized as, and is not, a charge for the limited use of
28 government property, this exception is inapplicable. The Commission is in fact a fee unrelated to
the use of government property, and that bears no rational relationship to the cost or value of
whatever limited governmental access is involved in the transaction. The purpose of this
exception is to allow government owned property that is leased or bought to do so at a
reasonable market value, which is inapplicable here.

1 85. Regardless of whether any of the exceptions under Article 13C §1 apply, the
2 commissions nonetheless constitute an unlawful tax. Under Article 13C, the local government in
3 all situations bears the burden of proving by a preponderance of the evidence that “a levy,
4 charge, or other exaction is not a tax, that the amount is not more than necessary to cover the
5 reasonable costs of the government activity, and that the manner in which costs are allocated to a
6 payor bear a fair or reasonable relationship to the payor’s burden on, or benefits received from,
7 the governmental activity”. This applies to all governmental levies, charges or exactions. It was
8 added by Proposition 26, enacted in 2010, and applies to all of the enumerated exceptions under
9 Article 13C §1. Thus, even if the commission constitutes a charge for the use of government
10 property, it still must be reasonably related to the benefit conferred or benefit received, and, for
11 the reasons previously stated, it does not.

12 86. Accordingly, none of the exceptions under Article 13C §1 of the California
13 Constitution apply, and in any event the commissions at issue here are a tax for which each
14 Plaintiff class and its members are entitled to a refund, measured from the date of the first filing
15 of a Govt. Code §910 claim applicable to that class until such time as the tax ceases to operate.

16 87. As a direct and proximate result of Ventura County Defendants’ violations,
17 Plaintiffs and the Class Members have been damaged in amounts to be determined at trial.

18 88. As a direct and proximate result of Ventura County Defendants’ violations,
19 Plaintiffs and the Class Members are entitled to injunctive relief, including restitution in amounts
20 to be determined at trial based on the unlawful payments plus interest.

21 **B. VIOLATION OF GOVE. CODE §11135 ET. SEQ. [BY ALL PLAINTIFFS AGAINST**
22 **VENTURA COUNTY DEFENDANTS]**

23 89. Plaintiffs incorporate all previous and subsequent paragraphs of this Complaint
24 into this claim.

25 90. Both Inmate Class Members and Call Recipient Class Members are
26 disproportionately African-American and Latino compared to the overall population of San
27 Mateo County. They also disproportionately suffer from mental illness and drug addiction.

28 91. Regardless of whether Inmate Class Members and Call Recipient Class Members
are disproportionately African-American and Latino, or disproportionately suffer from mental
illness or drug addiction, they are perceived as such.

To the extent that Inmate Class Members and Call Recipient Class Members are
not African-American and Latino, or do not suffer from mental illness or drug addiction, they

1 are, for purposes of the ICS charges, inextricably associated with such Class Members, and
2 suffer the same injuries as Class Members.

3 93. Defendant County of Ventura and its Sheriff's Department and County Jail within
4 Ventura County, receive a significant amount of money from the State of California. In fact, over
5 70 % of all state spending is for local government assistance, of which, on information and
6 belief, a substantial share, amounting to many millions of dollars, go to fund various activities of
7 the County of Ventura, including its county jail. For example, the State Controller's Office
8 Community Corrections 2014-2015 Sub-account allocation for Ventura County exceeded \$1
9 million. http://www.sco.ca.gov/Files-ARD-Payments/localcomcorremit_1415_dofletter.pdf
10 "Across the state, county officials are laying claim to billions in state funding to refurbish old
11 jails and build new ones." [https://www.themarshallproject.org/2015/07/02/california-s-jail-](https://www.themarshallproject.org/2015/07/02/california-s-jail-building-boom)
12 [building-boom](https://www.themarshallproject.org/2015/07/02/california-s-jail-building-boom). It is anticipated that the State of California will distribute approximately \$4.4
13 Billion to the counties by 2016-2017 for realignment costs. [http://law.stanford.edu/wp-](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/443444/doc/stspublic/SCJC%20Money%20full%20report.pdf)
14 [content/uploads/sites/default/files/child-](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/443444/doc/stspublic/SCJC%20Money%20full%20report.pdf)
15 [page/443444/doc/stspublic/SCJC%20Money%20full%20report.pdf](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/443444/doc/stspublic/SCJC%20Money%20full%20report.pdf). Thus, the County of Ventura
16 qualifies as having received, and continuing to receive, state funds, both generally and for the
17 jail.

18 94. Further, under realignment, the State of California is paying funds to local
19 counties, including Defendant County of Ventura, for housing state prisoners. See
20 http://www.ppic.org/content/pubs/report/R_812MLR.pdf.

21 95. There is no reasonable necessity or substantial legitimate justification for the
22 imposition of the ICS charges, and, in any event, they can be replaced by an equally effective but
23 less discriminatory alternative (e.g., a reasonable fee, or a general tax or fee not aimed
24 specifically at the disproportionately African-American and Latino population that currently pays
25 the ICS charges out of which Defendant County of Ventura receives the lion's share.

26 96. As a direct and proximate result of Ventura County Defendants' violations,
27 Plaintiffs and the Classes are entitled to injunctive relief, including restitution in amounts to be
28 determined at trial based on the unlawful payments plus interest.

29 **C. VIOLATION OF CALIFORNIA CIVIL CODE §52.1 [BY ALL PLAINTIFFS AGAINST
30 VENTURA COUNTY DEFENDANTS].**

31 97. Plaintiffs incorporate all previous and subsequent paragraphs of this Complaint
32 into this claim.

1 98. By their conduct, Ventura County Defendants have interfered by threats,
2 intimidation, or coercion, or attempted to interfere by threats, intimidation, or coercion of
3 Plaintiffs' rights as secured by the First and Fourteenth Amendments to the United States
4 Constitution and of the rights secured by the Constitution and laws of the state of California,
5 including but not limited to California Constitution, Articles 13C, 13D and Art. I, sec. 7, and the
6 federal and state statutory protections guaranteed to individuals based on race, including those
7 statutes that prohibit policies resulting in a disparate impact against a particular race.

8 99. Ventura County Defendants' conduct in entering into contracts that condition
9 Plaintiffs' and Class Members' First Amendment right to communicate with loved ones, family,
10 friends and associates who are incarcerated (at least once the benefit is granted) on payments of
11 funds that bear no reasonable nexus or rough proportionality to the cost to, or burden or effect
12 on. Defendant County of Ventura, or are otherwise unlawful, is a coercive act separate and apart
13 from the imposition of the unlawful charges themselves. The contracts at issue in this Complaint
14 authorize, require and force Plaintiffs and Class Members to make the coercive choice of paying
15 the ICS charges challenged in this Complaint or foregoing their ability to communicate with
16 family, friends and associates.

17 100. ICS charges are especially vulnerable to the type of coercion that the
18 unconstitutional conditions doctrine prohibits because Defendant County of Ventura has the
19 ability to control inmates' access to the outside world, and therefore can pressure and coerce
20 Class Members into paying hugely disproportionate and unreasonable phone charges in order to
21 be able to communicate with loved ones, family, friends and associates.

22 101. There was, and is, no lawful justification for Ventura County Defendants to
23 threaten, intimidate or coerce any of the Plaintiffs, or to attempt to use threats, intimidation, or
24 coercion to interfere with Plaintiffs' rights to speak on the telephone by conspiring with third
25 party providers, such as GTL, to charge illegal, unreasonable, excessive, substantially
26 disproportionate, and prohibitive rates and fees. Ventura County Defendants' actions were taken
27 with malice and oppression to deter and/or prevent Plaintiffs from exercising their protected
28 constitutional and statutory rights.

 102. As a direct and proximate consequence of Ventura County Defendants' actions,
Plaintiffs suffered, and continue to suffer, a loss of their constitutional rights, pain and suffering,
including stress and anxiety, financial losses, and are entitled to all damages authorized by Civil
Code §52.1 and all other applicable laws. In addition, Plaintiffs are entitled to injunctive relief.

1 including restitution in amounts to be determined at trial based on the unlawful payments plus
2 interest and attorneys' fees pursuant to Civ. Cod. §52.1(h).

3 **D. ADDITIONAL VIOLATIONS OF CALIFORNIA CONSTITUTION [BY ALL PLAINTIFFS**
4 **AGAINST VENTURA COUNTY DEFENDANTS].**

5 103. Plaintiffs incorporate all previous and subsequent paragraphs of this Complaint
6 into this claim.

7 104. Plaintiffs have a First Amendment right of access to telephones because no other
8 means of communication is an adequate substitute for the telephone. Specifically, neither in
9 person visits, which are unrealistic for many people, nor mail, which is difficult to accomplish
10 and requires a level of literacy not possessed by a significant portion of class members, are a
11 substitute for telephone communication. This is a fundamental constitutional right.

12 105. The use of the telephone is an expressive activity protected by the First
13 Amendment. Such expressive activity is a fundamental constitutional right.

14 106. Even if the County Jail has discretion to deny telephone access to inmates, it has
15 chosen to provide such access. Accordingly, since it has chosen to provide such a benefit to
16 inmates and their families, it may not condition class members' exercise of, and access to, that
17 discretionary benefit on coercive or unreasonable conditions that require payment of money not
18 reasonably related to that benefit or its costs, which is what it has done here.

19 107. The conduct alleged in this Complaint violate Plaintiffs' and Class Members'
20 rights of free speech and association under Articles 2 and 3 of the California Constitution, their
21 right to due process of law under Article 7 of the California Constitution (including the right not
22 to have unconstitutional conditions imposed in exchange for access to a government benefit),
23 their right to equal protection of the law under Article 7 of the California Constitution and their
24 right to just compensation for a public use under Article 19 of the California Constitution.

25 108. As a direct and proximate result of Ventura County Defendants' violations,
26 Plaintiffs and the Class Members have been damaged in amounts to be determined at trial, and
27 claim such damages directly under the above Constitutional provisions to the extent permitted by
28 law.

109. As a direct and proximate result of Ventura County Defendants' violations,
Plaintiffs and the Class Members are entitled to injunctive relief, including restitution in amounts
to be determined at trial based on the unlawful payments plus interest.

1 **XI. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members they seek to
3 represent, request monetary and injunctive relief against each defendant as follows:

4 1. General and special damages according to proof;

5 2. A refund/d disgorgement/restitution of the monies paid by Class Members that, in
6 turn, were used to pay the contracted commissions to County Defendants the amounts contracted
7 for in connection with the inmate calling agreements of each with telecommunications
8 companies.

9 3. Economic, physical and emotional distress damages (in addition to the damages
10 sought in the preceding paragraph, or to the extent not covered or awarded pursuant to that
11 paragraph), and physical and emotional distress and other damages according to proof.

12 4. Temporary, preliminary and permanent injunctive relief prohibiting Defendant
13 County of Ventura from continuing to engage in the unlawful practices complained of herein as
14 follows:

15 a. Prohibiting the Defendants from renewing, or entering into new, ICS
16 contracts under which it receives commissions or fees except exceeds the
17 reasonable cost of providing the service of allowing telephone access cost
18 after determination of such amounts by the court;

19 b. Prohibiting the Defendants, while the current challenged contract remains
20 in effect, from using the commissions it receives under the contract for
21 any purpose other than placement in a court supervised fund for any
22 purpose other than ultimately restoring such funds back to the class
23 members who paid charges from which said commissions were taken to
24 the extent of said commissions.

25 5. Temporary, preliminary and permanent injunctive relief requiring Defendant
26 County of Ventura to provide refunds/d disgorgement/restitution of the monies paid or to be paid
27 by Class Members as a form of equitable relief.

28 6. Class wide presumed damages for non-economic damages for class members on
the federal claims, as well as statutory damages as allowed by law under California Civil Code
§§52 and 52.1.

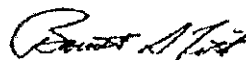
1 7. Attorneys' fees and costs under, California Civil Code §§52(b)(3), 52.1(h);
2 California Code of Civil Procedure §1021.5, and whatever other statute or law may be
3 applicable.

4 8. Grant any other relief that this Court may deem fit and proper.

5 DATED: September 28, 2016

Respectfully Submitted,

6 KAYE, MCLANE, BEDNARSKI & LITT, LLP
7 &
8 RAPKIN & ASSOCIATES, LLP

9
10 

11 By: _____
12 Barrett S. Litt
13 Attorneys for Plaintiffs

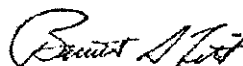
14
15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs, on behalf of themselves individually and on behalf of the Class, demand a jury
17 trial to the extent available under applicable law.

18
19 DATED: September 28, 2016

Respectfully Submitted,

20 KAYE, MCLANE, BEDNARSKI & LITT, LLP
21 &
22 RAPKIN & ASSOCIATES, LLP

23 

24 By: _____
25 Barrett S. Litt
26 Attorneys for Plaintiffs