

1 ELECTRONIC FRONTIER FOUNDATION
CINDY COHN (145997)
2 cindy@eff.org
LEE TIEN (148216)
3 KURT OPSAHL (191303)
KEVIN S. BANKSTON (217026)
4 JAMES S. TYRE (083117)
454 Shotwell Street
5 San Francisco, CA 94110
Telephone: 415/436-9333; Fax: 415/436-9993

6 RICHARD R. WIEBE (121156)
7 wiebe@pacbell.net
LAW OFFICE OF RICHARD R. WIEBE
8 425 California Street, Suite 2025
San Francisco, CA 94104
9 Telephone: 415/433-3200; Fax: 415/433-6382

10 THOMAS E. MOORE III (115107)
tmoore@moorelawteam.com
11 THE MOORE LAW GROUP
228 Hamilton Avenue, 3rd Floor
12 Palo Alto, CA 94301
Telephone: 650/798-5352; Fax: 650/798-5001

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 CAROLYN JEWEL, TASH HEPTING, GREGORY HICKS,
ERIK KNUTZEN and JOICE WALTON, on behalf of
17 themselves and all others similarly situated,

18 Plaintiffs,

19 vs.

20 NATIONAL SECURITY AGENCY and KEITH B.
ALEXANDER, its Director, in his official and personal
21 capacities; MICHAEL V. HAYDEN, in his personal capacity;
the UNITED STATES OF AMERICA; GEORGE W. BUSH,
22 President of the United States, in his official and personal
capacities; RICHARD B. CHENEY, in his personal capacity;
23 DAVID S. ADDINGTON, in his personal capacity;
DEPARTMENT OF JUSTICE and MICHAEL B.
24 MUKASEY, its Attorney General, in his official and personal
capacities; ALBERTO R. GONZALES, in his personal
25 capacity; JOHN D. ASHCROFT, in his personal capacity;
JOHN M. MCCONNELL, Director of National Intelligence, in
26 his official and personal capacities; JOHN D. NEGROPONTE,
in his personal capacity; and DOES #1-100, inclusive,

27 Defendants.
28

ORIGINAL
FILED

SEP 18 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

CASE NO:

08 4373

CLASS ACTION

CRB

COMPLAINT FOR
CONSTITUTIONAL AND
STATUTORY
VIOLATIONS, SEEKING
DAMAGES,
DECLARATORY, AND
INJUNCTIVE RELIEF

DEMAND FOR JURY
TRIAL

1 1. Plaintiffs, on behalf of themselves and a class of similarly situated persons, bring this
2 action and allege upon personal knowledge and belief as to their own acts, and upon information and
3 belief (based on the investigation of counsel) as to all other matters, as to which allegations Plaintiffs
4 believe substantial evidentiary support exists or will exist after a reasonable opportunity for further
5 investigation and discovery, as follows:

6
7 **PRELIMINARY STATEMENT**

8 2. This case challenges an illegal and unconstitutional program of dragnet
9 communications surveillance conducted by the National Security Agency (the “NSA”) and other
10 Defendants in concert with major telecommunications companies (“Defendants” is defined
11 collectively as the named defendants and the Doe defendants as set forth in paragraphs 25 through
12 38 below).

13 3. This program of dragnet surveillance (the “Program”), first authorized by Executive
14 Order of the President in October of 2001 (the “Program Order”) and first revealed to the public in
15 December of 2005, continues to this day.

16
17 4. Some aspects of the Program were publicly acknowledged by the President in
18 December 2005 and later described as the “terrorist surveillance program” (“TSP”).

19 5. The President and other executive officials have described the TSP’s activities, which
20 were conducted outside the procedures of the Foreign Intelligence Surveillance Act (“FISA”) and
21 without authorization by the Foreign Intelligence Surveillance Court (“FISC”), as narrowly targeting
22 for interception the international communications of persons linked to Al Qaeda.

23
24 6. The Attorney General and the Director of National Intelligence have since publicly
25 admitted that the TSP was only one particular aspect of the surveillance activities authorized by the
26 Program Order.

27
28

1 7. In addition to eavesdropping on or reading specific communications, Defendants
2 have indiscriminately intercepted the communications content and obtained the communications
3 records of millions of ordinary Americans as part of the Program authorized by the President.

4 8. The core component of the Program is Defendants' nationwide network of
5 sophisticated communications surveillance devices, attached to the key facilities of
6 telecommunications companies such as AT&T that carry Americans' Internet and telephone
7 communications.

8 9. Using this shadow network of surveillance devices, Defendants have acquired and
9 continue to acquire the content of a significant portion of the phone calls, emails, instant messages,
10 text messages, web communications and other communications, both international and domestic,
11 of practically every American who uses the phone system or the Internet, including Plaintiffs and
12 class members, in an unprecedented suspicionless general search through the nation's
13 communications networks.

14 10. In addition to using surveillance devices to acquire the domestic and international
15 communications content of millions of ordinary Americans, Defendants have unlawfully solicited
16 and obtained from telecommunications companies such as AT&T the complete and ongoing
17 disclosure of the private telephone and Internet transactional records of those companies' millions
18 of customers (including communications records pertaining to Plaintiffs and class members),
19 communications records indicating who the customers communicated with, when and for how long,
20 among other sensitive information.

21 11. This non-content transactional information is analyzed by computers in conjunction
22 with the vast quantity of communications content acquired by Defendants' network of surveillance
23 devices, in order to select which communications are subjected to personal analysis by staff of the
24 NSA and other Defendants, in what has been described as a vast "data-mining" operation.
25
26
27
28

1 12. Plaintiffs and class members are ordinary Americans who are current or former
2 subscribers to AT&T's telephone and/or Internet services.

3 13. Communications of Plaintiffs and class members have been and continue to be
4 illegally acquired by Defendants using surveillance devices attached to AT&T's network, and
5 Defendants have illegally solicited and obtained from AT&T the continuing disclosure of private
6 communications records pertaining to Plaintiffs and class members. Plaintiffs' communications or
7 activities have been and continue to be subject to electronic surveillance.

8 14. Plaintiffs are suing Defendants to enjoin their unlawful acquisition of the
9 communications and records of Plaintiffs and class members, to require the inventory and
10 destruction of those that have already been seized, and to obtain appropriate statutory, actual, and
11 punitive damages to deter future illegal surveillance.

12 **JURISDICTION AND VENUE**

13 15. This court has subject matter jurisdiction over the federal claims pursuant to 28
14 U.S.C. § 1331, 18 U.S.C. § 2712, and 5 U.S.C. § 702.

15 16. Plaintiffs are informed, believe and thereon allege that Defendants have sufficient
16 contacts with this district generally and, in particular, with the events herein alleged, that Defendants
17 are subject to the exercise of jurisdiction of this court over the person of such Defendants and that
18 venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.
19

20 17. Plaintiffs are informed, believe and thereon allege that a substantial part of the events
21 giving rise to the claims herein alleged occurred in this district and that Defendants and/or agents
22 of Defendants may be found in this district.

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

26 19. Plaintiffs have fully complied with the presentment of claim provisions of 28 U.S.C.
27 § 2675, as required for their claims under 18 U.S.C. § 2712. Plaintiffs timely served notice of their
28

1 claims on the NSA and the Department of Justice on December 19, 2007, and over six months have
2 passed since the filing of that notice.

3 **PARTIES**

4 20. Plaintiff Tash Hepting, a senior systems architect, is an individual residing in
5 Livermore, California. Hepting has been a subscriber and user of AT&T's residential long distance
6 telephone service since at least June 2004.

7
8 21. Plaintiff Gregory Hicks is an individual residing in San Jose, California. Hicks, a
9 retired Naval Officer and systems engineer, has been a subscriber and user of AT&T's residential
10 long distance telephone service since February 1995.

11 22. Plaintiff Carolyn Jewel is an individual residing in Petaluma, California. Jewel, a
12 database administrator and author, has been a subscriber and user of AT&T's WorldNet dial-up
13 Internet service since approximately June 2000.

14 23. Plaintiff Erik Knutzen is an individual residing in Los Angeles, California. Knutzen,
15 a photographer and land use researcher, was a subscriber and user of AT&T's WorldNet dial-up
16 Internet service from at least October 2003 until May 2005. Knutzen is currently a subscriber and
17 user of AT&T's High Speed Internet DSL service.

18
19 24. Plaintiff Joice Walton is an individual residing in San Jose, California. Walton, a
20 high technology purchasing agent, is a current subscriber and user of AT&T's WorldNet dial-up
21 Internet service. She has subscribed to and used this service since around April 2003.

22 25. Defendant National Security Agency (NSA) is an agency under the direction and
23 control of the Department of Defense that collects, processes and disseminates foreign signals
24 intelligence. It is responsible for carrying out the Program challenged herein.

25 26. Defendant Lieutenant General Keith B. Alexander is the current Director of the NSA,
26 in office since April 2005. As NSA Director, defendant Alexander has ultimate authority for
27 supervising and implementing all operations and functions of the NSA, including the Program.

28

1 27. Defendant Lieutenant General (Ret.) Michael V. Hayden is the former Director of
2 the NSA, in office from March 1999 to April 2005. While Director, Defendant Hayden had ultimate
3 authority for supervising and implementing all operations and functions of the NSA, including the
4 Program.

5 28. Defendant United States is the United States of America, its departments, agencies,
6 and entities.

7 29. Defendant George W. Bush is the current President of the United States, in office
8 since January 2001. Mr. Bush authorized and continues to authorize the Program.

9 30. Defendant Richard B. Cheney is the current Vice President of the United States, in
10 office since January 2001. Defendant Cheney was personally involved in the creation, development
11 and implementation of the Program.

12 31. Defendant David S. Addington is currently the chief of staff to Defendant Cheney,
13 in office since October 2005. Previously, Defendant Addington served as legal counsel to the Office
14 of the Vice President. Defendant Addington was personally involved in the creation, development
15 and implementation of the Program. On information and belief, Defendant Addington drafted the
16 documents that purportedly authorized the Program.

17 32. Defendant Department of Justice is a Cabinet-level executive department in the
18 United States government charged with law enforcement, defending the interests of the United States
19 according to the law, and ensuring fair and impartial administration of justice for all Americans.

20 33. Defendant Michael B. Mukasey is the current Attorney General of the United States,
21 in office since November 2007. As Attorney General, Defendant Mukasey approves and authorizes
22 the Program on behalf of the Department of Justice.

23 34. Defendant Alberto R. Gonzales is the former Attorney General of the United States,
24 in office from February 2005 to September 2007, and also served as White House Counsel to
25 President George W. Bush from January 2001 to February 2005. Defendant Gonzales was
26 personally involved in the creation, development and implementation of the Program. As Attorney
27

1 General, Defendant Gonzales authorized and approved the Program on behalf of the Department of
2 Justice.

3 35. Defendant John D. Ashcroft is the former Attorney General of the United States, in
4 office from January 2001 to February 2005. As Attorney General, Defendant Ashcroft authorized
5 and approved the Program on behalf of the Department of Justice.
6

7 36. Defendant Vice Admiral (Ret.) John M. McConnell is the Director of National
8 Intelligence (“DNI”), in office since February 2007. Defendant McConnell has authority over the
9 activities of the U.S. intelligence community, including the Program.

10 37. Defendant John D. Negroponte was the first Director of National Intelligence, in
11 office from April 2005 to February 2007. As DNI, Defendant Negroponte had authority over the
12 activities of the U.S. intelligence community, including the Program.

13 38. At all times relevant hereto, Defendants Doe Nos. 1-100, inclusive (the “Doe
14 defendants”), whose actual names Plaintiffs have been unable to ascertain notwithstanding
15 reasonable efforts to do so, but who are sued herein by the fictitious designation “Doe # 1” through
16 “Doe # 100,” were agents or employees of the NSA, the DOJ, the White House, or were other
17 government agencies or entities or the agents or employees of such agencies or entities, who
18 authorized or participated in the Program. Plaintiffs will amend this complaint to allege their true
19 names and capacities when ascertained. Upon information and belief each fictitiously named
20 Defendant is responsible in some manner for the occurrences herein alleged and the injuries to
21 Plaintiffs and class members herein alleged were proximately caused in relation to the conduct of
22 Does 1-100 as well as the named Defendants.

23 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

24 **THE PRESIDENT’S AUTHORIZATION OF THE PROGRAM**

25 39. On October 4, 2001, President Bush, in concert with White House Counsel Gonzales,
26 NSA Director Hayden, Attorney General Ashcroft and other Defendants, issued a secret presidential
27 order (the “Program Order”) authorizing a range of surveillance activities inside of the United States
28

1 without statutory authorization or court approval, including electronic surveillance of Americans’
2 telephone and Internet communications (the “Program”).

3 40. This Program of surveillance inside the United States began at least by October 6,
4 2001, and continues to this day.

5 41. The President renewed and, on information and belief, renews his October 4, 2001
6 order approximately every 45 days.

7 42. The Program of domestic surveillance authorized by the President and conducted by
8 Defendants required and requires the assistance of major telecommunications companies such as
9 AT&T, whose cooperation in the Program was and on information and belief is obtained based on
10 periodic written requests from Defendants and/or other government agents indicating that the
11 President has authorized the Program’s activities, and/or based on oral requests from Defendants
12 and/or other government agents.

13 43. The periodic written requests issued to colluding telecommunications companies,
14 including AT&T, have stated and on information and belief do state that the Program’s activities
15 have been determined to be lawful by the Attorney General, except for one period of less than sixty
16 days.

17 44. On information and belief, at some point prior to March 9, 2004, the Department of
18 Justice concluded that certain aspects of the Program were in excess of the President’s authority and
19 in violation of criminal law.

20 45. On Tuesday, March 9, 2004, Acting Attorney General James Comey advised the
21 Administration that he saw no legal basis for certain aspects of the Program. The then-current
22 Program authorization was set to expire March 11, 2004.

23 46. On Thursday, March 11, 2004, the President renewed the Program Order without a
24 certification from the Attorney General that the conduct it authorized was lawful.

25 47. On information and belief, the March 11 Program Order instead contained a
26 statement that the Program’s activities had been determined to be lawful by Counsel to the President
27 Alberto Gonzales, and expressly claimed to override the Department of Justice’s conclusion that the
28

1 Program was unlawful as well as any act of Congress or judicial decision purporting to constrain the
2 President's power as commander in chief.

3 48. For a period of less than sixty days, beginning on or around March 11, 2004, written
4 requests to the telecommunications companies asking for cooperation in the Program stated that the
5 Counsel to the President, rather than the Attorney General, had determined the Program's activities
6 to be legal.

7 49. By their conduct in authorizing, supervising, and implementing the Program,
8 Defendants, including the President, the Vice-President, the Attorneys General and the Directors of
9 NSA since October 2001, the Directors of National Intelligence since 2005 and the Doe defendants,
10 have aided, abetted, counseled, commanded, induced or procured the commission of all Program
11 activities herein alleged, and proximately caused all injuries to Plaintiffs herein alleged.

12 **THE NSA'S DRAGNET INTERCEPTION OF COMMUNICATIONS TRANSMITTED**
13 **THROUGH AT&T FACILITIES**

14 50. AT&T is a provider of electronic communications services, providing to the public
15 the ability to send or receive wire or electronic communications.

16 51. AT&T is also a provider of remote computing services, providing to the public
17 computer storage or processing services by means of an electronic communications system.

18 52. Plaintiffs and class members are, or at pertinent times were, subscribers to and/or
19 customers of AT&T's electronic communications services and/or computer storage or processing
20 services.

21 53. AT&T maintains domestic telecommunications facilities over which millions of
22 Americans' telephone and Internet communications pass every day.

23 54. These facilities allow for the transmission of interstate and/or foreign electronic voice
24 and data communications by the aid of wire, fiber optic cable, or other like connection between the
25 point of origin and the point of reception.

26 55. One of these AT&T facilities is located at on Folsom Street in San Francisco, CA
27 (the "Folsom Street Facility").

28

1 56. The Folsom Street Facility contains a “4ESS Switch Room.” A 4ESS switch is a
2 type of electronic switching system used to route long-distance telephone communications transiting
3 through the facility.

4 57. The Folsom Street Facility also contains a “WorldNet Internet Room” containing
5 large routers, racks of modems for AT&T customers’ WorldNet dial-up services, and other
6 telecommunications equipment through which wire and electronic communications to and from
7 AT&T’s dial-up and DSL Internet service subscribers, including emails, instant messages, Voice-
8 Over-Internet-Protocol (“VOIP”) conversations and web browsing requests, are transmitted.

9 58. The communications transmitted through the WorldNet Internet room are carried as
10 light signals on fiber-optic cables that are connected to routers for AT&T’s WorldNet Internet
11 service and are a part of AT&T’s Common Backbone Internet network (“CBB”), which comprises
12 a number of major hub facilities such as the Folsom Street Facility that are connected by a mesh of
13 high-speed fiber optic cables and that are used for the transmission of interstate and foreign
14 communications.

15 59. The WorldNet Internet Room is designed to route and transmit vast amounts of
16 Internet communications that are “peered” by AT&T between AT&T’s CBB and the networks of
17 other carriers, such as ConXion, Verio, XO, Genuity, Qwest, PAIX, Allegiance, Abovenet, Global
18 Crossing, C&W, UUNET, Level 3, Sprint, Telia, PSINet, and MAE-West. “Peering” is the process
19 whereby Internet providers interchange traffic destined for their respective customers, and for
20 customers of their customers.

21 60. Around January 2003, the NSA designed and implemented a program in
22 collaboration with AT&T to build a surveillance operation at AT&T’s Folsom Street Facility, inside
23 a secret room known as the “SG3 Secure Room”.

24 61. The SG3 Secure Room was built adjacent to the Folsom Street Facility’s 4ESS
25 switch room.

26 62. An AT&T employee cleared and approved by the NSA was charged with setting up
27 and maintaining the equipment in the SG3 Secure Room, and access to the room was likewise
28 controlled by those NSA-approved AT&T employees.

1 63. The SG3 Secure Room contains sophisticated computer equipment, including a
2 device know as aNarus Semantic Traffic Analyzer (the Narus STA”), which is designed to analyze
3 large volumes of communications at high speed, and can be programmed to analyze the contents and
4 traffic patterns of communications according to user-defined rules.

5 64. By early 2003, AT&T—under the instruction and supervision of the NSA—had
6 connected the fiber-optic cables used to transmit electronic and wire communications through the
7 WorldNet Internet Room to a “splitter cabinet” that intercepts a copy of all communications
8 transmitted through the WorldNet Internet Room and diverts copies of those communications to the
9 equipment in the SG3 Secure Room. (Hereafter, the technical means used to receive the diverted
10 communications will be referred to as the “Surveillance Configuration.”)

11 65. The equipment in the SG3 Secure Room is in turn connected to a private high-speed
12 backbone network separate from the CBB (the “SG3 Network”).

13 66. NSA analysts communicate instructions to the SG3 Secure Room’s equipment,
14 including theNarus STA, using the SG3 Network, and the SG3 Secure Room’s equipment transmits
15 communications based on those rules back to NSA personnel using the SG3 Network.

16 67. The NSA in cooperation with AT&T has installed and is operating a nationwide
17 network of Surveillance Configurations in AT&T facilities across the country, connected to the SG3
18 Network.

19 68. This network of Surveillance Configurations includes surveillance devices installed
20 at AT&T facilities in Atlanta, GA; Bridgeton, MO; Los Angeles, CA; San Diego, CA; San Jose CA;
21 and/or Seattle, WA.

22 69. Those Surveillance Configurations divert all peered Internet traffic transiting those
23 facilities into SG3 Secure Rooms connected to the secure SG3 Network used by the NSA, and
24 information of interest is transmitted from the equipment in the SG3 Secure Rooms to the NSA
25 based on rules programmed by the NSA.

26 70. This network of Surveillance Configurations indiscriminately acquires domestic
27 communications as well as international and foreign communications.

1 71. This network of Surveillance Configurations involves considerably more locations
2 than would be required to capture the majority of international traffic.

3 72. This network of Surveillance Configurations acquires over half of AT&T's purely
4 domestic Internet traffic, representing almost all of the AT&T traffic to and from other providers,
5 and comprising approximately 10% of all purely domestic Internet communications in the United
6 States, including those of non-AT&T customers.

7 73. Through this network of Surveillance Configurations and/or by other means,
8 Defendants have acquired and continue to acquire the contents of domestic and international wire
9 and/or electronic communications sent and/or received by Plaintiffs and class members, as well as
10 non-content dialing, routing, addressing and/or signaling information pertaining to those
11 communications.

12 74. In addition to acquiring all of the Internet communications passing through a number
13 of key AT&T facilities, Defendants and AT&T acquire all or most long-distance domestic and
14 international phone calls to or from AT&T long-distance customers, including both the content of
15 those calls and dialing, routing, addressing and/or signaling information pertaining to those calls,
16 by using a similarly nationwide network of surveillance devices attached to AT&T's long-distance
17 telephone switching facilities, and/or by other means.

18 75. The contents of communications to which Plaintiffs and class members were a party,
19 and dialing, routing, addressing, and/or signaling information pertaining to those communications,
20 were and are acquired by Defendants in cooperation with AT&T by using the nationwide network
21 of Surveillance Configurations, and/or by other means.

22 76. Defendants' above-described acquisition in cooperation with AT&T of Plaintiffs' and
23 class members' communications contents and non-content information is done without judicial,
24 statutory, or other lawful authorization, in violation of statutory and constitutional limitations, and
25 in excess of statutory and constitutional authority.

26 77. Defendants' above-described acquisition in cooperation with AT&T of Plaintiffs'
27 and class members' communications contents and non-content information is done without
28

1 probable cause or reasonable suspicion to believe that Plaintiffs or class members have
2 committed or are about to commit any crime or engage in any terrorist activity.

3 78. Defendants' above-described acquisition in cooperation with AT&T of Plaintiffs' and
4 class members' communications contents and non-content information is done without probable
5 cause or reasonable suspicion to believe that Plaintiffs or class members are foreign powers or agents
6 thereof.

7 79. Defendants' above-described acquisition in cooperation with AT&T of Plaintiffs' and
8 class members' communications contents and non-content information is done without any reason
9 to believe that the information is relevant to an authorized criminal investigation or to an authorized
10 investigation to protect against international terrorism or clandestine intelligence activities.

11 80. Defendants' above-described acquisition in cooperation with AT&T of Plaintiffs' and
12 class members' communications contents and non-content information was directly performed,
13 and/or aided, abetted, counseled, commanded, induced or procured, by Defendants.

14 81. On information and belief, Defendants will continue to directly acquire, and/or aid,
15 abet, counsel, command, induce or procure the above-described acquisition in cooperation with
16 AT&T, the communications contents and non-content information of Plaintiffs and class members.

17 **THE NSA'S DRAGNET COLLECTION OF COMMUNICATIONS RECORDS FROM**
18 **AT&T DATABASES**

19 82. Defendants have since October 2001 continuously solicited and obtained the
20 disclosure of all information in AT&T's major databases of stored telephone and Internet records,
21 including up-to-the-minute updates to the databases that are disclosed in or near real-time.

22 83. Defendants have solicited and obtained from AT&T records concerning
23 communications to which Plaintiffs and class members were a party, and continue to do so.

24 84. In particular, Defendants have solicited and obtained the disclosure of information
25 managed by AT&T's "Daytona" database management technology, which includes records
26 concerning both telephone and Internet communications, and continues to do so.
27
28

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

6
7 86. The Hawkeye CDR database contains records or other information pertaining to
8 Plaintiffs’ and class members’ use of AT&T’s long distance telephone service and dial-up Internet
9 service.

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

12 88. Daytona is also used to manage AT&T’s huge network-security database, known as
13 “Aurora,” which has been used to store Internet traffic data since approximately 2003. The Aurora
14 database contains huge amounts of data acquired by firewalls, routers, honeypots and other devices
15 on AT&T’s global IP (Internet Protocol) network and other networks connected to AT&T’s network.

16
17 89. The Aurora database managed by Daytona contains records or other information
18 pertaining to Plaintiffs’ and class members’ use of AT&T’s Internet services.

19 90. Since October 6, 2001 or shortly thereafter, Defendants have continually solicited
20 and obtained from AT&T disclosure of the contents of the Hawkeye and Aurora communications
21 records databases and/or other AT&T communications records, including records or other
22 information pertaining to Plaintiffs’ and class members’ use of AT&T’s telephone and Internet
23 services.

24 91. The NSA and/or other Defendants maintain the communications records disclosed
25 by AT&T in their own database or databases of such records.

26
27 92. Defendants’ above-described solicitation of the disclosure by AT&T of Plaintiffs’
28 and class members’ communications records, and its receipt of such disclosure, is done without

1 judicial, statutory, or other lawful authorization, in violation of statutory and constitutional
2 limitations, and in excess of statutory and constitutional authority.

3 93. Defendants' above-described solicitation of the disclosure by AT&T of Plaintiffs'
4 and class members' communications records, and its receipt of such disclosure, is done without
5 probable cause or reasonable suspicion to believe that Plaintiffs' or class members have
6 committed or are about to commit any crime or engage in any terrorist activity.

7
8 94. Defendants' above-described solicitation of the disclosure by AT&T of Plaintiffs'
9 and class members' communications records, and its receipt of such disclosure, is done without
10 probable cause or reasonable suspicion to believe that Plaintiffs' or class members are foreign
11 powers or agents thereof.

12 95. Defendants' above-described solicitation of the disclosure by AT&T of Plaintiffs'
13 and class members' communications records, and its receipt of such disclosure, is done without any
14 reason to believe that the information is relevant to an authorized criminal investigation or to an
15 authorized investigation to protect against international terrorism or clandestine intelligence
16 activities.

17 96. Defendants' above-described solicitation of the disclosure by AT&T of Plaintiffs'
18 and class members' communications records, and its receipt of such disclosure, is directly
19 performed, and/or aided, abetted, counseled, commanded, induced or procured, by Defendants.

20 97. On information and belief, Defendants will continue to directly solicit and obtain
21 AT&T's disclosure of its communications records, including records pertaining to Plaintiffs and
22 class members, and/or will continue to aid, abet, counsel, command, induce or procure that conduct.

23 **CLASS ACTION ALLEGATIONS**

24 98. Pursuant to Federal Rules of Civil Procedure, Rule 23(b)(2), Plaintiffs Hepting,
25 Hicks, Jewel, Knutzen, and Walton bring this action on behalf of themselves and a class of similarly
26 situated persons defined as:
27
28

1 All individuals in the United States that are current residential subscribers or
2 customers of AT&T's telephone services or Internet services, or that were residential
telephone or Internet subscribers or customers at any time after September 2001.

3 99. The class seeks certification of claims for declaratory, injunctive and other equitable
4 relief pursuant to 18 U.S.C. §2520, 18 U.S.C. §2707 and 5 U.S.C. § 702, in addition to declaratory
5 and injunctive relief for violations of the First and Fourth Amendments. Members of the class
6 expressly and personally retain any and all damages claims they individually may possess arising
7 out of or relating to the acts, events, and transactions that form the basis of this action. The
8 individual damages claims of the class members are outside the scope of this class action.
9

10 100. Excluded from the class are the individual Defendants, all who have acted in active
11 concert and participation with the individual Defendants, and the legal representatives, heirs,
12 successors, and assigns of the individual Defendants.

13 101. Also excluded from the class are any foreign powers, as defined by 50 U.S.C.
14 § 1801(a), or any agents of foreign powers, as defined by 50 U.S.C. § 1801(b)(1)(A), including
15 without limitation anyone who knowingly engages in sabotage or international terrorism, or
16 activities that are in preparation therefore.
17

18 102. This action is brought as a class action and may properly be so maintained pursuant
19 to the provisions of the Federal Rules of Civil Procedure, Rule 23. Plaintiffs reserve the right to
20 modify the class definition and the class period based on the results of discovery.
21

22 103. **Numerosity of the Class**: Members of the class are so numerous that their
23 individual joinder is impracticable. The precise numbers and addresses of members of the class are
24 unknown to the Plaintiffs. Plaintiffs estimate that the class consists of millions of members. The
25 precise number of persons in the class and their identities and addresses may be ascertained from
26 Defendants' and AT&T's records.
27
28

1 104. **Existence of Common Questions of Fact and Law**: There is a well-defined
2 community of interest in the questions of law and fact involved affecting the members of the class.

3 These common legal and factual questions include:

4 (a) Whether Defendants have violated the First and Fourth Amendment rights of
5 class members, or are currently doing so;

6 (b) Whether Defendants have subjected class members to electronic surveillance,
7 or have disclosed or used information obtained by electronic surveillance of the class members, in
8 violation of 50 U.S.C. § 1809, or are currently doing so;

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

11 (d) Whether Defendants have solicited and obtained the disclosure of the
12 contents of class members' communications in violation of 18 U.S.C. § 2703(a) or (b), or are
13 currently doing so;

14 (e) Whether Defendants have solicited or obtained the disclosure of non-content
15 records or other information pertaining to class members in violation of 18 U.S.C. § 2703(c), or are
16 currently doing so;

17 (f) Whether Defendants have violated the Administrative Procedures Act, 5
18 U.S.C. §§ 701 *et seq.*, or are currently doing so;

19 (g) Whether the Defendants have violated the constitutional principle of
20 separation of powers, or are currently doing so;

21 (h) Whether Plaintiffs and class members are entitled to injunctive, declaratory,
22 and other equitable relief against Defendants;

23 (i) Whether Plaintiffs and class members are entitled to an award of reasonable
24 attorneys' fees and costs of this suit.

25 105. **Typicality**: Plaintiffs' claims are typical of the claims of the members of the class
26 because Plaintiffs are or were subscribers to the Internet and telephone services of Defendants.
27
28

1 Plaintiffs and all members of the class have similarly suffered harm arising from Defendants’
2 violations of law, as alleged herein.

3 106. **Adequacy**: Plaintiffs are adequate representatives of the class because their interests
4 do not conflict with the interests of the members of the class they seek to represent. Plaintiffs have
5 retained counsel competent and experienced in complex class action litigation and Plaintiffs intends
6 to prosecute this action vigorously. Plaintiffs and their counsel will fairly and adequately protect
7 the interests of the members of the class.
8

9 107. This suit may be maintained as a class action pursuant to Federal Rules of Civil
10 Procedure, Rule 23(b)(2) because Plaintiffs and the class seek declaratory and injunctive relief, and
11 all of the above factors of numerosity, common questions of fact and law, typicality and adequacy
12 are present. Moreover, Defendants have acted on grounds generally applicable to Plaintiffs and the
13 class as a whole, thereby making declaratory and/or injunctive relief proper.
14

15 **COUNT I**

16 **Violation of Fourth Amendment—Declaratory, Injunctive, and Equitable Relief**

17 **(Named Plaintiffs and Class vs. Defendants United States, National Security Agency,**
18 **Department of Justice, Bush (in his official and personal capacities), Alexander (in his**
19 **official and personal capacities), Mukasey (in his official and personal capacities),**
20 **McConnell (in his official and personal capacities), and one or more of the Doe Defendants)**

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

23 109. Plaintiffs and class members have a reasonable expectation of privacy in their
24 communications, contents of communications, and/or records pertaining to their communications
25 transmitted, collected, and/or stored by AT&T.

26 110. Defendants have directly performed, or aided, abetted, counseled, commanded,
27 induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in,
28 enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the commission

1 of the above-described acts of acquisition, interception, disclosure, divulgence and/or use of
2 Plaintiffs' and class members' communications, contents of communications, and records pertaining
3 to their communications transmitted, collected, and/or stored by AT&T, without judicial or other
4 lawful authorization, probable cause, and/or individualized suspicion, in violation of statutory and
5 constitutional limitations, and in excess of statutory and constitutional authority.

6
7 111. AT&T acted as the agent of Defendants in performing, participating in, enabling,
8 contributing to, facilitating, or assisting in the commission of the above-described acts of acquisition,
9 interception, disclosure, divulgence and/or use of Plaintiffs' and class members' communications,
10 contents of communications, and records pertaining to their communications transmitted, collected,
11 and/or stored by AT&T, without judicial or other lawful authorization, probable cause, and/or
12 individualized suspicion.

13
14 112. At all relevant times, Defendants committed, knew of and/or acquiesced in all of the
15 above-described acts, and failed to respect the Fourth Amendment rights of Plaintiffs and class
16 members by obtaining judicial or other lawful authorization and by conforming their conduct to the
17 requirements of the Fourth Amendment.

18 113. By the acts alleged herein, Defendants have violated Plaintiffs' and class members'
19 reasonable expectations of privacy and denied Plaintiffs and class members their right to be free
20 from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the Constitution
21 of the United States.

22
23 114. By the acts alleged herein, Defendants' conduct has proximately caused harm to
24 Plaintiffs and class members.

25 115. Defendants' conduct was done intentionally, with deliberate indifference, or with
26 reckless disregard of, Plaintiffs' and class members' constitutional rights.

27
28

1 116. On information and belief, the Count I Defendants are now engaging in and will
2 continue to engage in the above-described violations of Plaintiffs’ and class members’ constitutional
3 rights, and are thereby irreparably harming Plaintiffs and class members. Plaintiffs and class
4 members have no adequate remedy at law for the Count I Defendants’ continuing unlawful conduct,
5 and the Count I Defendants will continue to violate Plaintiffs’ and class members’ legal rights unless
6 enjoined and restrained by this Court.
7

8 117. Plaintiffs seek that this Court declare that Defendants have violated their rights and
9 the rights of the class; enjoin the Count I Defendants, their agents, successors, and assigns, and all
10 those in active concert and participation with them from violating the Plaintiffs’ and class members’
11 rights under the Fourth Amendment to the United States Constitution; and award such other and
12 further equitable relief as is proper.
13

14 COUNT II
15 **Violation of Fourth Amendment—Damages**

16 **(Named Plaintiffs vs. Defendants Alexander (in his personal capacity), Hayden (in his**
17 **personal capacity), Cheney (in his personal capacity), Addington (in his personal capacity),**
18 **Mukasey (in his personal capacity), Gonzales (in his personal capacity), Ashcroft (in his**
19 **personal capacity), McConnell (in his personal capacity), Negroponte (in his personal**
20 **capacity), and one or more of the Doe Defendants)**

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

23 119. Plaintiffs have a reasonable expectation of privacy in their communications, contents
24 of communications, and/or records pertaining to their communications transmitted, collected, and/or
25 stored by AT&T.

26 120. Defendants have directly performed, or aided, abetted, counseled, commanded,
27 induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in,
28 enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the commission

1 of the above-described acts of acquisition, interception, disclosure, divulgence and/or use of
2 Plaintiffs' communications, contents of communications, and records pertaining to their
3 communications transmitted, collected, and/or stored by AT&T without judicial or other lawful
4 authorization, probable cause, and/or individualized suspicion, in violation of statutory and
5 constitutional limitations, and in excess of statutory and constitutional authority.

6
7 121. AT&T acted as the agent of Defendants in performing, participating in, enabling,
8 contributing to, facilitating, or assisting in the commission of the above-described acts of acquisition,
9 interception, disclosure, divulgence and/or use of Plaintiffs' communications, contents of
10 communications, and records pertaining to their communications transmitted, collected, and/or
11 stored by AT&T without judicial or other lawful authorization, probable cause, and/or individualized
12 suspicion.

13
14 122. At all relevant times, Defendants committed, knew of and/or acquiesced in all of the
15 above-described acts, and failed to respect the Fourth Amendment rights of Plaintiffs by obtaining
16 judicial or other lawful authorization and conforming their conduct to the requirements of the Fourth
17 Amendment.

18 123. By the acts alleged herein, Defendants have violated Plaintiffs' reasonable
19 expectations of privacy and denied Plaintiffs their right to be free from unreasonable searches and
20 seizures as guaranteed by the Fourth Amendment to the Constitution of the United States.

21
22 124. By the acts alleged herein, Defendants' conduct has proximately caused harm to
23 Plaintiffs.

24 125. Defendants' conduct was done intentionally, with deliberate indifference, or with
25 reckless disregard of, Plaintiffs' constitutional rights.

26 126. Plaintiffs seek an award of their actual damages and punitive damages against the
27 Count II Defendants, and such other or further relief as is proper.

1 COUNT III

2 **Violation of First Amendment—Declaratory, Injunctive, and Other Equitable Relief**

3 **(Named Plaintiffs and Class vs. Defendants United States, National Security Agency,**
4 **Department of Justice, Bush (in his official and personal capacities), Alexander (in his**
5 **official and personal capacities), Mukasey (in his official and personal capacities), and**
6 **McConnell (in his official and personal capacities), and one or more of the Doe Defendants)**

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

9 128. Plaintiffs and class members use AT&T's services to speak or receive speech
10 anonymously and to associate privately.

11 129. Defendants directly performed, or aided, abetted, counseled, commanded, induced,
12 procured, encouraged, promoted, instigated, advised, willfully caused, participated in, enabled,
13 contributed to, facilitated, directed, controlled, assisted in, or conspired in the commission of the
14 above-described acts of acquisition, interception, disclosure, divulgence and/or use of Plaintiffs' and
15 class members' communications, contents of communications, and records pertaining to their
16 communications without judicial or other lawful authorization, probable cause, and/or individualized
17 suspicion, in violation of statutory and constitutional limitations, and in excess of statutory and
18 constitutional authority.

19 130. AT&T acted as the agent of Defendants in performing, participating in, enabling,
20 contributing to, facilitating, or assisting in the commission of the above-described acts of acquisition,
21 interception, disclosure, divulgence and/or use of Plaintiffs' communications, contents of
22 communications, and records pertaining to their communications transmitted, collected, and/or
23 stored by AT&T without judicial or other lawful authorization, probable cause, and/or individualized
24 suspicion.

25 131. By the acts alleged herein, Defendants violated Plaintiffs' and class members' rights
26 to speak and to receive speech anonymously and associate privately under the First Amendment.
27
28

1 132. By the acts alleged herein, Defendants' conduct proximately caused harm to
2 Plaintiffs and class members.

3 133. Defendants' conduct was done intentionally, with deliberate indifference, or with
4 reckless disregard of, Plaintiffs' and class members' constitutional rights.

5 134. On information and belief, the Count III Defendants are now engaging in and will
6 continue to engage in the above-described violations of Plaintiffs' and class members' constitutional
7 rights, and are thereby irreparably harming Plaintiffs and class members. Plaintiffs and class
8 members have no adequate remedy at law for the Count III Defendants' continuing unlawful
9 conduct, and the Count III Defendants will continue to violate Plaintiffs' and class members' legal
10 rights unless enjoined and restrained by this Court.

11 135. Plaintiffs seek that this Court declare that Defendants have violated their rights and
12 the rights of the class; enjoin the Count III Defendants, their agents, successors, and assigns, and all
13 those in active concert and participation with them from violating the Plaintiffs' and class members'
14 rights under the First Amendment to the United States Constitution; and award such other and
15 further equitable relief as is proper.

16
17
18 **COUNT IV**

19 **Violation of First Amendment—Damages**

20 **(Named Plaintiffs vs. Defendants Alexander (in his personal capacity), Hayden (in his**
21 **personal capacity), Cheney (in his personal capacity), Addington (in his personal capacity),**
22 **Mukasey (in his personal capacity), Gonzales (in his personal capacity), Ashcroft (in his**
23 **personal capacity), McConnell (in his personal capacity), and Negroponte (in his personal**
capacity), and one or more of the Doe Defendants)

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

26 137. Plaintiffs use AT&T's services to speak or receive speech anonymously and to
27 associate privately.

28

1 138. Defendants directly performed, or aided, abetted, counseled, commanded, induced,
2 procured, encouraged, promoted, instigated, advised, willfully caused, participated in, enabled,
3 contributed to, facilitated, directed, controlled, assisted in, or conspired in the commission of the
4 above-described acts of acquisition, interception, disclosure, divulgence and/or use of Plaintiffs'
5 communications, contents of communications, and records pertaining to their communications
6 without judicial or other lawful authorization, probable cause, and/or individualized suspicion, in
7 violation of statutory and constitutional limitations, and in excess of statutory and constitutional
8 authority.

10 139. By the acts alleged herein, Defendants violated Plaintiffs' rights to speak and receive
11 speech anonymously and associate privately under the First Amendment.

13 140. By the acts alleged herein, Defendants' conduct proximately caused harm to
14 Plaintiffs.

15 141. Defendants' conduct was done intentionally, with deliberate indifference, or with
16 reckless disregard of, Plaintiffs' constitutional rights.

17 142. Plaintiffs seek an award of their actual damages and punitive damages against the
18 Count IV Defendants, and for such other or further relief as is proper.

19 **COUNT V**

20 **Violation of Foreign Intelligence Surveillance Act—Declaratory, Injunctive and Other**
21 **Equitable Relief**

22 **(Named Plaintiffs and Class vs. Defendants Alexander (in his official and personal**
23 **capacities), Mukasey (in his official and personal capacities), and McConnell (in his official**
24 **and personal capacities), and one or more of the Doe Defendants)**

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

27 144. In relevant part, 50 U.S.C. § 1809 provides that:

28 (a) Prohibited activities—A person is guilty of an offense if he
intentionally—(1) engages in electronic surveillance under color of law

1 except as authorized by this chapter, chapter 119, 121, or 206 of Title 18 or
2 any express statutory authorization that is an additional exclusive means for
3 conducting electronic surveillance under section 1812 of this title; or (2)
4 discloses or uses information obtained under color of law by electronic
5 surveillance, knowing or having reason to know that the information was
6 obtained through electronic surveillance not authorized by this chapter,
7 chapter 119, 121, or 206 of Title 18 or any express statutory authorization
8 that is an additional exclusive means for conducting electronic surveillance
9 under section 1812 of this title.

10 145. In relevant part 50 U.S.C. § 1801 provides that:

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

33 146. 18 U.S.C. § 2511(2)(f) further provides in relevant part that “procedures in this
34 chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the *exclusive*
35 *means* by which electronic surveillance, as defined in section 101 [50 U.S.C. § 1801] of such Act,
36 and the interception of domestic wire, oral, and electronic communications may be conducted.”

37 (Emphasis added.)

38 147. 50 U.S.C. § 1812 further provides in relevant part that:

39 (a) Except as provided in subsection (b), the procedures of chapters 119, 121,
40 and 206 of Title 18 and this chapter shall be the *exclusive means* by which

1 electronic surveillance and the interception of domestic wire, oral, or
2 electronic communications may be conducted.

3 (b) Only an express statutory authorization for electronic surveillance or the
4 interception of domestic wire, oral, or electronic communications, other than
as an amendment to this chapter or chapters 119, 121, or 206 of Title 18 shall
constitute an additional exclusive means for the purpose of subsection (a).

5 (Emphasis added.)

6 148. Defendants intentionally acquired, or aided, abetted, counseled, commanded,
7 induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in,
8 enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the commission
9 of such acquisition, by means of a surveillance device, the contents of one or more wire
10 communications to or from Plaintiffs and class members or other information in which Plaintiffs or
11 class members have a reasonable expectation of privacy, without the consent of any party thereto,
12 and such acquisition occurred in the United States.

14 149. AT&T acted as the agent of Defendants in performing, participating in, enabling,
15 contributing to, facilitating, or assisting in the commission of the above-described acts of acquisition
16 of Plaintiffs' communications.

17 150. By the acts alleged herein, Defendants acting in excess of their statutory authority
18 and in violation of statutory limitations have intentionally engaged in, or aided, abetted, counseled,
19 commanded, induced, procured, encouraged, promoted, instigated, advised, willfully caused,
20 participated in, enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in
21 the commission of, electronic surveillance (as defined by 50 U.S.C. § 1801(f)) under color of law,
22 not authorized by any statute, to which Plaintiffs and class members were subjected in violation of
23 50 U.S.C. § 1809.

24 151. Additionally or in the alternative, by the acts alleged herein, Defendants acting in
25 excess of their statutory authority and in violation of statutory limitations have intentionally
26 disclosed or used information obtained under color of law by electronic surveillance, knowing or
27
28

1 having reason to know that the information was obtained through electronic surveillance not
2 authorized by statute, including information pertaining to Plaintiffs and class members, or aided,
3 abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised,
4 willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in,
5 or conspired in the commission of such acts.

6
7 152. Defendants did not notify Plaintiffs or class members of the above-described
8 electronic surveillance, disclosure, and/or use, nor did Plaintiffs or class members consent to such.

9 153. Plaintiffs and class members have been and are aggrieved by Defendants' electronic
10 surveillance, disclosure, and/or use of their wire communications.

11 154. On information and belief, the Count V Defendants are now engaging in and will
12 continue to engage in the above-described acts resulting in the electronic surveillance, disclosure,
13 and/or use of Plaintiffs' and class members' wire communications, acting in excess of the Count V
14 Defendants' statutory authority and in violation of statutory limitations, including 50 U.S.C. § 1809
15 and 18 U.S.C. § 2511(2)(f), and are thereby irreparably harming Plaintiffs and class members.
16 Plaintiffs and class members have no adequate remedy at law for the Count V Defendants'
17 continuing unlawful conduct, and the Count V Defendants will continue to violate Plaintiffs' and
18 class members' legal rights unless enjoined and restrained by this Court.

19
20 155. Pursuant to *Larson v. United States*, 337 U.S. 682 (1949) and to 5 U.S.C. § 702,
21 Plaintiffs seek that this Court declare that Defendants have violated their rights and the rights of the
22 class; enjoin the Count V Defendants, their agents, successors, and assigns, and all those in active
23 concert and participation with them from violating the Plaintiffs' and class members' statutory
24 rights, including their rights under 50 U.S.C. §§ 1801 *et seq.*; and award such other and further
25 equitable relief as is proper.
26
27
28

1 COUNT VI

2 **Violation of 50 U.S.C. § 1809, actionable under 50 U.S.C. § 1810—Damages**

3 **(Named Plaintiffs vs. Defendants United States, National Security Agency, Department of**
4 **Justice, Alexander (in his official and personal capacities), Hayden (in his personal**
5 **capacity), Cheney (in his personal capacity), Addington (in his personal capacity), Mukasey**
6 **(in his official and personal capacities), Gonzales (in his personal capacity), Ashcroft (in his**
7 **personal capacity), McConnell (in his official and personal capacities), and Negroponte (in**
8 **his personal capacity), and one or more of the Doe Defendants)**

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

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

12 (a) Prohibited activities—A person is guilty of an offense if he
13 intentionally—(1) engages in electronic surveillance under color of law
14 except as authorized by this chapter, chapter 119, 121, or 206 of Title 18 or
15 any express statutory authorization that is an additional exclusive means for
16 conducting electronic surveillance under section 1812 of this title; or (2)
17 discloses or uses information obtained under color of law by electronic
18 surveillance, knowing or having reason to know that the information was
19 obtained through electronic surveillance not authorized by this chapter,
20 chapter 119, 121, or 206 of Title 18 or any express statutory authorization
21 that is an additional exclusive means for conducting electronic surveillance
22 under section 1812 of this title.

23 158. In relevant part 50 U.S.C. § 1801 provides that:

24 (f) “Electronic surveillance” means – (1) the acquisition by an electronic,
25 mechanical, or other surveillance device of the contents of any wire or radio
26 communication sent by or intended to be received by a particular, known
27 United States person who is in the United States, if the contents are acquired
28 by intentionally targeting that United States person, under circumstances in
which a person has a reasonable expectation of privacy and a warrant would
be required for law enforcement purposes; (2) the acquisition by an
electronic, mechanical, or other surveillance device of the contents of any
wire communication to or from a person in the United States, without the
consent of any party thereto, if such acquisition occurs in the United States,
but does not include the acquisition of those communications of computer
trespassers that would be permissible under section 2511(2)(i) of Title 18; (3)
the intentional acquisition by an electronic, mechanical, or other surveillance
device of the contents of any radio communication, under circumstances in
which a person has a reasonable expectation of privacy and a warrant would
be required for law enforcement purposes, and if both the sender and all
intended recipients are located within the United States; or (4) the installation
or use of an electronic, mechanical, or other surveillance device in the United
States for monitoring to acquire information, other than from a wire or radio

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

3 159. 18 U.S.C. § 2511(2)(f) further provides in relevant part that “procedures in this
4 chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the *exclusive*
5 *means* by which electronic surveillance, as defined in section 101 [50 U.S.C. § 1801] of such Act,
6 and the interception of domestic wire, oral, and electronic communications may be conducted.”
7

8 (Emphasis added.)

9 160. 50 U.S.C. § 1812 further provides in relevant part that:

10 (a) Except as provided in subsection (b), the procedures of chapters 119, 121,
11 and 206 of Title 18 and this chapter shall be the *exclusive means* by which
12 electronic surveillance and the interception of domestic wire, oral, or
13 electronic communications may be conducted.

13 (b) Only an express statutory authorization for electronic surveillance or the
14 interception of domestic wire, oral, or electronic communications, other than
15 as an amendment to this chapter or chapters 119, 121, or 206 of Title 18 shall
16 constitute an additional exclusive means for the purpose of subsection (a).

15 (Emphasis added.)

16 161. Defendants intentionally acquired, or aided, abetted, counseled, commanded,
17 induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in,
18 enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the commission
19 of such acquisition, by means of a surveillance device, the contents of one or more wire
20 communications to or from Plaintiffs or other information in which Plaintiffs have a reasonable
21 expectation of privacy, without the consent of any party thereto, and such acquisition occurred in
22 the United States.
23

24 162. AT&T acted as the agent of Defendants in performing, participating in, enabling,
25 contributing to, facilitating, or assisting in the commission of the above-described acts of acquisition
26 of Plaintiffs’ communications.
27
28

1 163. By the acts alleged herein, Defendants have intentionally engaged in, or aided,
2 abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised,
3 willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in,
4 or conspired in the commission of, electronic surveillance (as defined by 50 U.S.C. § 1801(f)) under
5 color of law, not authorized by any statute, to which Plaintiffs were subjected in violation of 50
6 U.S.C. § 1809.

8 164. Additionally or in the alternative, by the acts alleged herein, Defendants have
9 intentionally disclosed or used information obtained under color of law by electronic surveillance,
10 knowing or having reason to know that the information was obtained through electronic surveillance
11 not authorized by statute, including information pertaining to Plaintiffs, or aided, abetted, counseled,
12 commanded, induced, procured, encouraged, promoted, instigated, advised, willfully caused,
13 participated in, enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in
14 the commission of such acts.

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

18 166. Plaintiffs have been and are aggrieved by Defendants' electronic surveillance,
19 disclosure, and/or use of their wire communications.

21 167. Pursuant to 50 U.S.C. § 1810, which provides a civil action for any person who has
22 been subjected to an electronic surveillance or about whom information obtained by electronic
23 surveillance of such person has been disclosed or used in violation of 50 U.S.C. § 1809, Plaintiffs
24 seek from the Court VI Defendants for each Plaintiff their statutory damages or actual damages;
25 punitive damages as appropriate; and such other and further relief as is proper.

26
27
28

1 COUNT VII

2 **Violation of 18 U.S.C. § 2511—Declaratory, Injunctive, and Other Equitable Relief**

3 **(Named Plaintiffs and Class vs. Defendants Alexander (in his official and personal**
4 **capacities), Mukasey (in his official and personal capacities), and McConnell (in his official**
5 **and personal capacities), and one or more of the Doe Defendants)**

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

8 169. In relevant part, 18 U.S.C. § 2511 provides that:

9 (1) Except as otherwise specifically provided in this chapter any person who
10 – (a) intentionally intercepts, endeavors to intercept, or procures any other
11 person to intercept or endeavor to intercept, any wire, oral, or electronic
12 communication . . . (c) intentionally discloses, or endeavors to disclose, to
13 any other person the contents of any wire, oral, or electronic communication,
14 knowing or having reason to know that the information was obtained through
15 the interception of a wire, oral, or electronic communication in violation of
16 this subsection . . . [or](d) intentionally uses, or endeavors to use, the contents
17 of any wire, oral, or electronic communication, knowing or having reason to
18 know that the information was obtained through the interception of a wire,
19 oral, or electronic communication in violation of this subsection . . . shall be
20 punished as provided in subsection (4) or shall be subject to suit as provided
21 in subsection (5).

22 170. 18 U.S.C. § 2511 further provides that:

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

171. 18 U.S.C. § 2511(2)(f) further provides in relevant part that “procedures in this
chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the *exclusive*
means by which electronic surveillance, as defined in section 101 [50 U.S.C. § 1801] of such Act,
and the interception of domestic wire, oral, and electronic communications may be conducted.”

(Emphasis added.)

172. 50 U.S.C. § 1812 further provides in relevant part that:

1 (a) Except as provided in subsection (b), the procedures of chapters 119, 121,
2 and 206 of Title 18 and this chapter shall be the *exclusive means* by which
3 electronic surveillance and the interception of domestic wire, oral, or
4 electronic communications may be conducted.

5 (b) Only an express statutory authorization for electronic surveillance or the
6 interception of domestic wire, oral, or electronic communications, other than
7 as an amendment to this chapter or chapters 119, 121, or 206 of Title 18 shall
8 constitute an additional exclusive means for the purpose of subsection (a).

9 (Emphasis added.)

10 173. By the acts alleged herein, Defendants have intentionally and willfully intercepted,
11 endeavored to intercept, or procured another person to intercept or endeavor to intercept, Plaintiffs'
12 and class members' wire or electronic communications in violation of 18 U.S.C. § 2511(1)(a); and/or

13 174. By the acts alleged herein, Defendants have intentionally and willfully disclosed, or
14 endeavored to disclose, to another person the contents of Plaintiffs' and class members' wire or
15 electronic communications, knowing or having reason to know that the information was obtained
16 through the interception of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(c);
17 and/or

18 175. By the acts alleged herein, Defendants have intentionally and willfully used, or
19 endeavored to use, the contents of Plaintiffs' and class members' wire or electronic communications,
20 while knowing or having reason to know that the information was obtained through the interception
21 of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(d).

22 176. By the acts alleged herein, Defendants have intentionally and willfully caused, or
23 aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated,
24 advised, participated in, contributed to, facilitated, directed, controlled, assisted in, or conspired to
25 cause AT&T's divulgence of Plaintiffs' and class members' wire or electronic communications to
26 Defendants while in transmission by AT&T, in violation of 18 U.S.C. § 2511(3)(a).

27 177. Defendants have committed these acts of interception, disclosure, divulgence and/or
28 use of Plaintiffs' and class members' communications directly or by aiding, abetting, counseling,

1 commanding, inducing, procuring, encouraging, promoting, instigating, advising, willfully causing,
2 participating in, enabling, contributing to, facilitating, directing, controlling, assisting in, or
3 conspiring in their commission. In doing so, Defendants have acted in excess of their statutory
4 authority and in violation of statutory limitations.

5
6 178. AT&T acted as the agent of Defendants in performing, participating in, enabling,
7 contributing to, facilitating, or assisting in the commission of these acts of interception, disclosure,
8 divulgence and/or use of Plaintiffs' and class members' communications.

9 179. Defendants did not notify Plaintiffs or class members of the above-described
10 intentional interception, disclosure, divulgence and/or use of their wire or electronic
11 communications, nor did Plaintiffs or class members consent to such.

12 180. Plaintiffs and class members have been and are aggrieved by Defendants' intentional
13 and willful interception, disclosure, divulgence and/or use of their wire or electronic
14 communications.

15
16 181. On information and belief, the Count VII Defendants are now engaging in and will
17 continue to engage in the above-described acts resulting in the intentional and willful interception,
18 disclosure, divulgence and/or use of Plaintiffs' and class members' wire or electronic
19 communications, acting in excess of the Count VII Defendants' statutory authority and in violation
20 of statutory limitations, including 18 U.S.C. § 2511, and are thereby irreparably harming Plaintiffs
21 and class members. Plaintiffs and class members have no adequate remedy at law for the Count VII
22 Defendants' continuing unlawful conduct, and the Count VII Defendants will continue to violate
23 Plaintiffs' and class members' legal rights unless enjoined and restrained by this Court.

24
25 182. Pursuant to 18 U.S.C. § 2520, which provides a civil action for any person whose
26 wire or electronic communications have been intercepted, disclosed, divulged or intentionally used
27 in violation of 18 U.S.C. § 2511, to *Larson v. United States*, 337 U.S. 682 (1949), and to 5 U.S.C.
28

1 § 702, Plaintiffs and class members seek equitable and declaratory relief against the Count VII
2 Defendants.

3 183. Plaintiffs seek that this Court declare that Defendants have violated their rights and
4 the rights of the class; enjoin the Count VII Defendants, their agents, successors, and assigns, and
5 all those in active concert and participation with them from violating the Plaintiffs' and class
6 members' statutory rights, including their rights under 18 U.S.C. § 2511; and award such other and
7 further equitable relief as is proper.
8

9 **COUNT VIII**

10 **Violation of 18 U.S.C. § 2511, actionable under 18 U.S.C. § 2520—Damages**

11 **(Named Plaintiffs vs. Defendants Alexander (in his personal capacity), Hayden (in his**
12 **personal capacity), Cheney (in his personal capacity), Addington (in his personal capacity),**
13 **Mukasey (in his personal capacity), Gonzales (in his personal capacity), Ashcroft (in his**
14 **personal capacity), McConnell (in his personal capacity), and Negroponte (in his personal**
15 **capacity), and one or more of the Doe Defendants)**

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

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

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

186. 18 U.S.C. § 2511 further provides that:

(3)(a) Except as provided in paragraph (b) of this subsection, a person or
entity providing an electronic communication service to the public shall not
intentionally divulge the contents of any communication (other than one to

1 such person or entity, or an agent thereof) while in transmission on that
2 service to any person or entity other than an addressee or intended recipient
of such communication or an agent of such addressee or intended recipient.

3 187. 18 U.S.C. § 2511(2)(f) further provides in relevant part that “procedures in this
4 chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the *exclusive*
5 *means* by which electronic surveillance, as defined in section 101 [50 U.S.C. § 1801] of such Act,
6 and the interception of domestic wire, oral, and electronic communications may be conducted.”
7

8 (Emphasis added.)

9 188. 50 U.S.C. § 1812 further provides in relevant part that:

10 (a) Except as provided in subsection (b), the procedures of chapters 119, 121,
11 and 206 of Title 18 and this chapter shall be the *exclusive means* by which
12 electronic surveillance and the interception of domestic wire, oral, or
electronic communications may be conducted.

13 (b) Only an express statutory authorization for electronic surveillance or the
14 interception of domestic wire, oral, or electronic communications, other than
as an amendment to this chapter or chapters 119, 121, or 206 of Title 18 shall
constitute an additional exclusive means for the purpose of subsection (a).

15 (Emphasis added.)

16 189. By the acts alleged herein, Defendants have intentionally and willfully intercepted,
17 endeavored to intercept, or procured another person to intercept or endeavor to intercept, Plaintiffs’
18 wire or electronic communications in violation of 18 U.S.C. § 2511(1)(a); and/or
19

20 190. By the acts alleged herein, Defendants have intentionally and willfully disclosed, or
21 endeavored to disclose, to another person the contents of Plaintiffs’ wire or electronic
22 communications, knowing or having reason to know that the information was obtained through the
23 interception of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(c); and/or

24 191. By the acts alleged herein, Defendants have intentionally and willfully used, or
25 endeavored to use, the contents of Plaintiffs’ wire or electronic communications, while knowing or
26 having reason to know that the information was obtained through the interception of wire or
27 electronic communications in violation of 18 U.S.C. § 2511(1)(d).
28

1 192. By the acts alleged herein, Defendants have intentionally and willfully caused, or
2 aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated,
3 advised, participated in, contributed to, facilitated, directed, controlled, assisted in, or conspired to
4 cause AT&T's divulgence of Plaintiffs' and class members' wire or electronic communications to
5 Defendants while in transmission by AT&T, in violation of 18 U.S.C. § 2511(3)(a).

6 193. Defendants have committed these acts of interception, disclosure, divulgence and/or
7 use of Plaintiffs' communications directly or by aiding, abetting, counseling, commanding, inducing,
8 procuring, encouraging, promoting, instigating, advising, willfully causing, participating in,
9 enabling, contributing to, facilitating, directing, controlling, assisting in, or conspiring in their
10 commission.

11 194. AT&T acted as the agent of Defendants in performing, participating in, enabling,
12 contributing to, facilitating, or assisting in the commission of these acts of interception, disclosure,
13 divulgence and/or use of Plaintiffs' communications.

14 195. Defendants did not notify Plaintiffs of the above-described intentional interception,
15 disclosure, divulgence and/or use of their wire or electronic communications, nor did Plaintiffs or
16 class members consent to such.

17 196. Plaintiffs have been and are aggrieved by Defendants' intentional and willful
18 interception, disclosure, divulgence and/or use of their wire or electronic communications.

19 197. Pursuant to 18 U.S.C. § 2520, which provides a civil action for any person whose
20 wire or electronic communications have been intercepted, disclosed, divulged or intentionally used
21 in violation of 18 U.S.C. § 2511, Plaintiffs seek from the Court VIII Defendants for each Plaintiff
22 their statutory damages or actual damages; punitive damages as appropriate; and such other and
23 further relief as is proper.
24
25
26
27
28

1 COUNT IX

2 **Violation of 18 U.S.C. § 2511, actionable under 18 U.S.C. § 2712—Damages Against The**
3 **United States**

4 **(Named Plaintiffs vs. Defendants United States, Department of Justice, and National**
5 **Security Agency)**

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

8 199. In relevant part, 18 U.S.C. § 2511 provides that:

9 (1) Except as otherwise specifically provided in this chapter any person who
10 – (a) intentionally intercepts, endeavors to intercept, or procures any other
11 person to intercept or endeavor to intercept, any wire, oral, or electronic
12 communication . . . (c) intentionally discloses, or endeavors to disclose, to
13 any other person the contents of any wire, oral, or electronic communication,
14 knowing or having reason to know that the information was obtained through
15 the interception of a wire, oral, or electronic communication in violation of
16 this subsection . . . [or](d) intentionally uses, or endeavors to use, the contents
17 of any wire, oral, or electronic communication, knowing or having reason to
18 know that the information was obtained through the interception of a wire,
19 oral, or electronic communication in violation of this subsection . . . shall be
20 punished as provided in subsection (4) or shall be subject to suit as provided
21 in subsection (5).

22 200. 18 U.S.C. § 2511 further provides that:

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

29 201. 18 U.S.C. § 2511(2)(f) further provides in relevant part that “procedures in this
30 chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the *exclusive*
31 *means* by which electronic surveillance, as defined in section 101 [50 U.S.C. § 1801] of such Act,
32 and the interception of domestic wire, oral, and electronic communications may be conducted.”

33 (Emphasis added.)

34 202. 50 U.S.C. § 1812 further provides in relevant part that:

1 (a) Except as provided in subsection (b), the procedures of chapters 119, 121,
2 and 206 of Title 18 and this chapter shall be the *exclusive means* by which
3 electronic surveillance and the interception of domestic wire, oral, or
4 electronic communications may be conducted.

5 (b) Only an express statutory authorization for electronic surveillance or the
6 interception of domestic wire, oral, or electronic communications, other than
7 as an amendment to this chapter or chapters 119, 121, or 206 of Title 18 shall
8 constitute an additional exclusive means for the purpose of subsection (a).

9 (Emphasis added.)

10 203. By the acts alleged herein, Defendants have intentionally and willfully intercepted,
11 endeavored to intercept, or procured another person to intercept or endeavor to intercept, Plaintiffs'
12 wire or electronic communications in violation of 18 U.S.C. § 2511(1)(a); and/or

13 204. By the acts alleged herein, Defendants have intentionally and willfully disclosed, or
14 endeavored to disclose, to another person the contents of Plaintiffs' wire or electronic
15 communications, knowing or having reason to know that the information was obtained through the
16 interception of wire or electronic communications in violation of 18 U.S.C. § 2511(1)(c); and/or

17 205. By the acts alleged herein, Defendants have intentionally and willfully used, or
18 endeavored to use, the contents of Plaintiffs' wire or electronic communications, while knowing or
19 having reason to know that the information was obtained through the interception of wire or
20 electronic communications in violation of 18 U.S.C. § 2511(1)(d).

21 206. By the acts alleged herein, Defendants have intentionally and willfully caused, or
22 aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated,
23 advised, participated in, contributed to, facilitated, directed, controlled, assisted in, or conspired to
24 cause AT&T's divulgence of Plaintiffs' and class members' wire or electronic communications to
25 Defendants while in transmission by AT&T, in violation of 18 U.S.C. § 2511(3)(a).

26 207. Defendants have committed these acts of interception, disclosure, divulgence and/or
27 use of Plaintiffs' communications directly or by aiding, abetting, counseling, commanding, inducing,
28 procuring, encouraging, promoting, instigating, advising, willfully causing, participating in,

1 enabling, contributing to, facilitating, directing, controlling, assisting in, or conspiring in their
2 commission.

3 208. AT&T acted as the agent of Defendants in performing, participating in, enabling,
4 contributing to, facilitating, or assisting in the commission of these acts of interception, disclosure,
5 divulgence and/or use of Plaintiffs' communications.
6

7 209. Defendants did not notify Plaintiffs of the above-described intentional interception,
8 disclosure, divulgence and/or use of their wire or electronic communications, nor did Plaintiffs or
9 class members consent to such.

10 210. Plaintiffs have been and are aggrieved by Defendants' intentional and willful
11 interception, disclosure, divulgence and/or use of their wire or electronic communications.

12 211. Title 18 U.S.C. § 2712 provides a civil action against the United States and its
13 agencies and departments for any person whose wire or electronic communications have been
14 intercepted, disclosed, divulged or intentionally used in willful violation of 18 U.S.C. § 2511.
15 Plaintiffs have complied fully with the claim presentment procedure of 18 U.S.C. § 2712. Pursuant
16 to 18 U.S.C. § 2712, Plaintiffs seek from the Court IX Defendants for each Plaintiff their statutory
17 damages or actual damages, and such other and further relief as is proper.
18

19 **COUNT X**

20 **Violation of 18 U.S.C. § 2703(a) & (b)—Declaratory, Injunctive, and Other Equitable**
21 **Relief**

22 **(Named Plaintiffs and Class vs. Defendants Alexander (in his official and personal**
23 **capacities), Mukasey (in his official and personal capacities), and McConnell (in his official**
24 **and personal capacities), and one or more of the Doe Defendants)**

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

27 213. In relevant part, 18 U.S.C. § 2703 provides that:
28

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

(a) Contents of Wire or Electronic Communications in Electronic Storage.— A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) Contents of Wire or Electronic Communications in a Remote Computing Service.—

(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held 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 remote computing service; and

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

214. Defendants intentionally and willfully solicited and obtained from AT&T, or aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in soliciting and obtaining from AT&T, the disclosure to Defendants of the contents

1 of Plaintiffs' and class members' communications while in electronic storage by an AT&T electronic
2 communication service, and/or while carried or maintained by an AT&T remote computing service,
3 in violation of 18 U.S.C. §§ 2703(a) and/or (b). In doing so, Defendants have acted in excess of
4 their statutory authority and in violation of statutory limitations.

5
6 215. AT&T acted as the agent of Defendants in performing, participating in, enabling,
7 contributing to, facilitating, or assisting in the commission of these acts of disclosure of Plaintiffs'
8 and class members' communications.

9 216. Defendants did not notify Plaintiffs or class members of the disclosure of their
10 communications, nor did Plaintiffs or class members consent to such.

11 217. Plaintiffs and class members have been and are aggrieved by Defendants' above-
12 described soliciting and obtaining of disclosure of the contents of communications.

13 218. On information and belief, the Count X Defendants are now engaging in and will
14 continue to engage in the above-described soliciting and obtaining of disclosure of the contents of
15 class members' communications while in electronic storage by AT&T's electronic communication
16 service(s), and/or while carried or maintained by AT&T's remote computing service(s), acting in
17 excess of the Count X Defendants' statutory authority and in violation of statutory limitations,
18 including 18 U.S.C. § 2703(a) and (b), and are thereby irreparably harming Plaintiffs and class
19 members. Plaintiffs and class members have no adequate remedy at law for the Count X
20 Defendants' continuing unlawful conduct, and the Count X Defendants will continue to violate
21 Plaintiffs' and class members' legal rights unless enjoined and restrained by this Court.

22 219. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved
23 by knowing or intentional violation of 18 U.S.C. § 2703, to *Larson v. United States*, 337 U.S. 682
24 (1949), and to 5 U.S.C. § 702, Plaintiffs and class members seek equitable and declaratory relief
25 against the Count X Defendants.
26
27
28

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

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held 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 remote computing service; and

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

223. Defendants intentionally and willfully solicited and obtained from AT&T, or aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the soliciting and obtaining from AT&T the disclosure to Defendants of the contents of Plaintiffs' communications while in electronic storage by an AT&T electronic communication service, and/or while carried or maintained by an AT&T remote computing service, in violation of 18 U.S.C. §§ 2703(a) and/or (b).

224. AT&T acted as the agent of Defendants in performing, participating in, enabling, contributing to, facilitating, or assisting in the commission of these acts of disclosure of Plaintiffs' communications.

225. Defendants did not notify Plaintiffs of the disclosure of their communications, nor did Plaintiffs consent to such.

226. Plaintiffs have been and are aggrieved by Defendants' above-described soliciting and obtaining of disclosure of the contents of communications.

1 227. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved
2 by knowing or intentional violation of 18 U.S.C. § 2703, Plaintiffs seek from the Court XI
3 Defendants for each Plaintiff their statutory damages or actual damages; punitive damages as
4 appropriate; and such other and further relief as may be proper.
5

6 **COUNT XII**

7 **Violation of 18 U.S.C. § 2703(a) & (b), actionable under 18 U.S.C. § 2712—Damages**
8 **Against The United States**

9 **(Named Plaintiffs vs. Defendants United States, Department of Justice, and National**
10 **Security Agency)**

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

13 229. In relevant part, 18 U.S.C. § 2703 provides that:

14 (a) Contents of Wire or Electronic Communications in Electronic Storage.— A
15 governmental entity may require the disclosure by a provider of electronic
16 communication service of the contents of a wire or electronic communication, that
17 is in electronic storage in an electronic communications system for one hundred
18 and eighty days or less, only pursuant to a warrant issued using the procedures
19 described in the Federal Rules of Criminal Procedure by a court with jurisdiction
20 over the offense under investigation or equivalent State warrant. A governmental
21 entity may require the disclosure by a provider of electronic communications
22 services of the contents of a wire or electronic communication that has been in
23 electronic storage in an electronic communications system for more than one
24 hundred and eighty days by the means available under subsection (b) of this
25 section.

26 (b) Contents of Wire or Electronic Communications in a Remote Computing
27 Service.—

28 (1) A governmental entity may require a provider of remote computing
service to disclose the contents of any wire or electronic communication to
which this paragraph is made applicable by paragraph (2) of this subsection—

 (A) without required notice to the subscriber or customer, if the
governmental entity obtains a warrant issued using the procedures
described in the Federal Rules of Criminal Procedure by a court with
jurisdiction over the offense under investigation or equivalent State
warrant; or

 (B) with prior notice from the governmental entity to the subscriber or
customer if the governmental entity—

 (i) uses an administrative subpoena authorized by a Federal or State
statute or a Federal or State grand jury or trial subpoena; or

1 (ii) obtains a court order for such disclosure under subsection (d) of
2 this section;
3 except that delayed notice may be given pursuant to section 2705 of this
4 title.

5 (2) Paragraph (1) is applicable with respect to any wire or electronic
6 communication that is held or maintained on that service—
7 (A) on behalf of, and received by means of electronic transmission from
8 (or created by means of computer processing of communications received
9 by means of electronic transmission from), a subscriber or customer of
10 such remote computing service; and
11 (B) solely for the purpose of providing storage or computer processing
12 services to such subscriber or customer, if the provider is not authorized to
13 access the contents of any such communications for purposes of providing
14 any services other than storage or computer processing.

15 230. Defendants intentionally and willfully solicited and obtained from AT&T, or aided,
16 abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised,
17 willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in,
18 or conspired in the soliciting and obtaining from AT&T the disclosure to the NSA of the contents
19 of Plaintiffs' communications while in electronic storage by an AT&T electronic communication
20 service, and/or while carried or maintained by an AT&T remote computing service, in violation of
21 18 U.S.C. §§ 2703(a) and/or (b).

22 231. AT&T acted as the agent of Defendants in performing, participating in, enabling,
23 contributing to, facilitating, or assisting in the commission of these acts of disclosure of Plaintiffs'
24 communications.

25 232. Defendants did not notify Plaintiffs of the disclosure of their communications, nor
26 did Plaintiffs consent to such.

27 233. Plaintiffs have been and are aggrieved by Defendants' above-described soliciting and
28 obtaining of disclosure of the contents of communications.

29 234. Title 18 U.S.C. § 2712 provides a civil action against the United States and its
30 agencies and departments for any person whose communications have been disclosed in willful

1 violation of 18 U.S.C. § 2703. Plaintiffs have complied fully with the claim presentment procedure
2 of 18 U.S.C. § 2712. Pursuant to 18 U.S.C. § 2712, Plaintiffs seek from the Court XII Defendants
3 for each Plaintiff their statutory damages or actual damages, and such other and further relief as is
4 proper.

5
6 **COUNT XIII**

7 **Violation of 18 U.S.C. § 2703(c)—Declaratory, Injunctive, and Other Equitable Relief**

8 **(Named Plaintiffs and Class vs. Defendants Alexander (in his official and personal**
9 **capacities), Mukasey (in his official and personal capacities), and McConnell (in his official**
10 **and personal capacities), and one or more of the Doe Defendants)**

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

13 236. In relevant part, 18 U.S.C. § 2703(c) provides that:

14 (c) Records Concerning Electronic Communication Service or Remote
15 Computing Service.—

16 (1) A governmental entity may require a provider of electronic
17 communication service or remote computing service to disclose a record or
18 other information pertaining to a subscriber to or customer of such service
19 (not including the contents of communications) only when the governmental
20 entity—

21 (A) obtains a warrant issued using the procedures described in the Federal
22 Rules of Criminal Procedure by a court with jurisdiction over the offense
23 under investigation or equivalent State warrant;

24 (B) obtains a court order for such disclosure under subsection (d) of this
25 section;

26 (C) has the consent of the subscriber or customer to such disclosure;

27 (D) submits a formal written request relevant to a law enforcement
28 investigation concerning telemarketing fraud for the name, address, and
place of business of a subscriber or customer of such provider, which
subscriber or customer is engaged in telemarketing (as such term is
defined in section 2325 of this title); or

(E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing
service shall disclose to a governmental entity the—

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of
session times and durations;

(D) length of service (including start date) and types of service utilized;

1 (E) telephone or instrument number or other subscriber number or
2 identity, including any temporarily assigned network address; and
3 (F) means and source of payment for such service (including any credit
4 card or bank account number),

5 of a subscriber to or customer of such service when the governmental entity
6 uses an administrative subpoena authorized by a Federal or State statute or a
7 Federal or State grand jury or trial subpoena or any means available under
8 paragraph (1).

9 (3) A governmental entity receiving records or information under this
10 subsection is not required to provide notice to a subscriber or customer.

11 237. Defendants intentionally and willfully solicited and obtained from AT&T, or aided,
12 abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised,
13 willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in,
14 or conspired in the soliciting and obtaining from AT&T the disclosure to Defendants of records or
15 other information pertaining to Plaintiffs' and class members' use of electronic communication
16 services and/or remote computing services offered to the public by AT&T, in violation of 18 U.S.C.
17 § 2703(c). In doing so, Defendants have acted in excess of their statutory authority and in violation
18 of statutory limitations.

19 238. AT&T acted as the agent of Defendants in performing, participating in, enabling,
20 contributing to, facilitating, or assisting in the commission of these acts of disclosure of Plaintiffs'
21 and class members' records or other information.

22 239. Defendants did not notify Plaintiffs or class members of the disclosure of these
23 records or other information pertaining to them and their use of AT&T services, nor did Plaintiffs
24 or class members consent to such.

25 240. Plaintiffs and class members have been and are aggrieved by Defendants' above-
26 described acts of soliciting and obtaining disclosure by AT&T of records or other information
27 pertaining to Plaintiffs and class members.

28 241. On information and belief, the Count XIII Defendants are now engaging in and will
continue to engage in the above-described soliciting and obtaining disclosure by AT&T of records
or other information pertaining to Plaintiffs and class members, acting in excess of the Count XIII

1 Defendants' statutory authority and in violation of statutory limitations, including 18 U.S.C. §
2 2703(c), and are thereby irreparably harming Plaintiffs and class members. Plaintiffs and class
3 members have no adequate remedy at law for the Count XIII Defendants' continuing unlawful
4 conduct, and the Count XIII Defendants will continue to violate Plaintiffs' and class members' legal
5 rights unless enjoined and restrained by this Court.
6

7 242. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved
8 by knowing or intentional violation of 18 U.S.C. § 2703, to *Larson v. United States*, 337 U.S. 682
9 (1949), and to 5 U.S.C. § 702, Plaintiffs and class members seek equitable and declaratory relief
10 against the Count XIII Defendants.

11 243. Plaintiffs seek that the Court declare that Defendants have violated their rights and
12 the rights of the class; enjoin the Count XIII Defendants, their agents, successors, and assigns, and
13 all those in active concert and participation with them from violating the Plaintiffs' and class
14 members' statutory rights, including their rights under 18 U.S.C. § 2703; and award such other and
15 further equitable relief as is proper.
16

17 COUNT XIV

18 **Violation of 18 U.S.C. § 2703(c), actionable under 18 U.S.C. § 2707—Damages**

19 **(Named Plaintiffs vs. Defendants Alexander (in his personal capacity), Hayden (in his**
20 **personal capacity), Cheney (in his personal capacity), Addington (in his personal capacity),**
21 **Mukasey (in his personal capacity), Gonzales (in his personal capacity), Ashcroft (in his**
22 **personal capacity), McConnell (in his personal capacity), and Negroponte (in his personal**
23 **capacity), and one or more of the Doe Defendants)**

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

26 245. In relevant part, 18 U.S.C. § 2703(c) provides that:

27 (c) Records Concerning Electronic Communication Service or Remote
28 Computing Service.—

(1) A governmental entity may require a provider of electronic
communication service or remote computing service to disclose a record or

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

other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

- (A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant;
- (B) obtains a court order for such disclosure under subsection (d) of this section;
- (C) has the consent of the subscriber or customer to such disclosure;
- (D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or
- (E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

246. Defendants intentionally and willfully solicited and obtained from AT&T, or aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the soliciting and obtaining from AT&T the disclosure to Defendants of records or other information pertaining to Plaintiffs' use of electronic communication services and/or remote computing services offered to the public by AT&T, in violation of 18 U.S.C. § 2703(c).

1 247. AT&T acted as the agent of Defendants in performing, participating in, enabling,
2 contributing to, facilitating, or assisting in the commission of these acts of disclosure of Plaintiffs'
3 records or other information.

4 248. Defendants did not notify Plaintiffs of the disclosure of these records or other
5 information pertaining to them and their use of AT&T services, nor did Plaintiffs consent to such.

6 249. Plaintiffs have been and are aggrieved by Defendants' above-described acts of
7 soliciting and obtaining disclosure by AT&T of records or other information pertaining to Plaintiffs.

8 250. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved
9 by knowing or intentional violation of 18 U.S.C. § 2703, Plaintiffs seek from the Court XIV
10 Defendants for each Plaintiff their statutory damages or actual damages; punitive damages as
11 appropriate; and such other and further relief as may be proper.

12
13
COUNT XV

14
15 **Violation of 18 U.S.C. § 2703(c), actionable under 18 U.S.C. § 2712—Damages Against The
United States**

16 **(Named Plaintiffs vs. Defendants United States, Department of Justice, and National
17 Security Agency)**

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

20 252. In relevant part, 18 U.S.C. § 2703(c) provides that:

21 (c) Records Concerning Electronic Communication Service or Remote
22 Computing Service.—

23 (1) A governmental entity may require a provider of electronic
24 communication service or remote computing service to disclose a record or
25 other information pertaining to a subscriber to or customer of such service
(not including the contents of communications) only when the governmental
entity—

26 (A) obtains a warrant issued using the procedures described in the Federal
Rules of Criminal Procedure by a court with jurisdiction over the offense
under investigation or equivalent State warrant;

27 (B) obtains a court order for such disclosure under subsection (d) of this
28 section;

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

- (C) has the consent of the subscriber or customer to such disclosure;
- (D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or
- (E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- (F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

253. Defendants intentionally and willfully solicited and obtained from AT&T, or aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised, willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in, or conspired in the soliciting and obtaining from AT&T the disclosure to Defendants of records or other information pertaining to Plaintiffs' use of electronic communication services and/or remote computing services offered to the public by AT&T, in violation of 18 U.S.C. § 2703(c).

254. AT&T acted as the agent of Defendants in performing, participating in, enabling, contributing to, facilitating, or assisting in the commission of these acts of disclosure of Plaintiffs' records or other information.

255. Defendants did not notify Plaintiffs of the disclosure of these records or other information pertaining to them and their use of AT&T services, nor did Plaintiffs consent to such.

1 256. Plaintiffs have been and are aggrieved by Defendants' above-described acts of
2 soliciting and obtaining disclosure by AT&T of records or other information pertaining to Plaintiffs.

3 257. Title 18 U.S.C. § 2712 provides a civil action against the United States and its
4 agencies and departments for any person aggrieved by willful violation of 18 U.S.C. § 2703.

5 Plaintiffs have complied fully with the claim presentment procedure of 18 U.S.C. § 2712. Pursuant
6 to 18 U.S.C. § 2712, Plaintiffs seek from the Court XV Defendants for each Plaintiff their statutory
7 damages or actual damages and such other and further relief as is proper.
8

9 **COUNT XVI**

10 **Violation of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* - Declaratory,
11 Injunctive, and Other Equitable Relief**

12 **(Named Plaintiffs and Class vs. Defendants United States, Department of Justice, National
13 Security Agency, Alexander (in his official and personal capacities), Mukasey (in his official
14 and personal capacities), and McConnell (in his official and personal capacities), and one
15 or more of the Doe Defendants)**

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

18 259. The Program violates the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*,
19 because Defendants' actions under the Program exceed statutory authority and limitations imposed
20 by Congress through FISA, and through Chapters 119, 121 and 206 of Title 18 of the U.S. Code (the
21 Wiretap Act, the Stored Communications Act, and the Pen Register Statute, respectively) and in
22 violation of statutory rights under those laws are not otherwise in accordance with law; are contrary
23 to constitutional rights, including the Fourth Amendment, First Amendment, and separation of
24 powers principles; and are taken without observance of procedures required by law.

25 260. Plaintiffs and class members are aggrieved by these violations because, as described
26 previously in this Complaint, Defendants' actions under the Program has resulted in the interception,
27 acquisition, disclosure, divulgence and/or use of the contents of their wire and electronic
28

1 communications, communications records, and other information in violation of their constitutional
2 and statutory rights.

3 261. Plaintiffs seek nonmonetary relief against the Count XVI Defendants, including a
4 declaration that Defendants have violated their rights and the rights of the class; an injunction
5 enjoining the Count XVI Defendants, their agents, successors, and assigns, and all those in active
6 concert and participation with them from violating the Plaintiffs’ and class members’ rights; and
7 such other and further nonmonetary relief as is proper.
8

9 **COUNT XVII**

10 **Violation of Separation of Powers - Declaratory, Injunctive, and Other Equitable Relief**

11 **(Named Plaintiffs and Class vs. Defendants United States, Department of Justice, National**
12 **Security Agency, Bush (in his official and personal capacities), Alexander (in his official**
13 **and personal capacities), Mukasey (in his official and personal capacities), and McConnell**
14 **(in his official and personal capacities), and one or more of the Doe Defendants)**

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

17 263. The Program violates the principles of separation of powers because it was
18 authorized by the Executive in excess of the Executive’s authority under Article II of the United
19 States Constitution, in excess of statutory authority granted the Executive under FISA and under
20 Chapters 119, 121 and 206 of Title 18 of the U.S. Code (the Wiretap Act, the Stored
21 Communications Act, and the Pen Register Statute, respectively) and exceeds the statutory limits
22 imposed on the Executive by Congress.

23 264. Plaintiffs and class members are aggrieved by these violations because, as described
24 previously in this Complaint, Defendants’ actions under the Program has resulted in the interception,
25 acquisition, disclosure, divulgence and/or use of the contents of their wire and electronic
26 communications, communications records, and other information in violation of their constitutional
27 and statutory rights.
28

1 265. Plaintiffs seek nonmonetary relief against the Count XVII Defendants, including a
2 declaration that Defendants have violated their rights and the rights of the class; an injunction
3 enjoining the Count XVII Defendants, their agents, successors, and assigns, and all those in active
4 concert and participation with them from violating the Plaintiffs' and class members' rights; and for
5 such other and further nonmonetary relief as is proper.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that the Court:

9 A. Declare that the Program as alleged herein violates without limitation Plaintiffs' and
10 class members' rights under the First and Fourth Amendments to the Constitution; their statutory
11 rights, including their rights under 18 U.S.C. § 2511, 18 U.S.C. § 2703, 50 US.C. § 1809, and the
12 Administrative Procedures Act; and their rights under the constitutional principle of Separation of
13 Powers.

14 B. Award Plaintiffs and the class equitable relief, including without limitation, a
15 preliminary and permanent injunction pursuant to the First and Fourth Amendments to the United
16 States Constitution prohibiting Defendants' continued use of the Program, and a preliminary and
17 permanent injunction pursuant to the Fourth Amendment requiring Defendants to provide to
18 Plaintiffs and the class an inventory of their communications, records, or other information that was
19 seized in violation of the Fourth Amendment, and further requiring the destruction of all copies of
20 those communications, records, or other information within the possession, custody, or control of
21 Defendants.

22 C. Award Plaintiffs their statutory, actual, and punitive damages to the extent permitted
23 by law and according to proof.

24 D. Award to Plaintiffs reasonable attorneys' fees and other costs of suit to the extent
25 permitted by law.

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

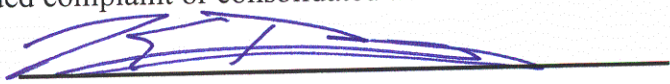
27 //

28 //

JURY DEMAND

1
2 Plaintiffs hereby request a jury trial for all issues triable by jury including, but not limited to,
3 those issues and claims set forth in any amended complaint or consolidated action.

4 DATED: September 17, 2008



5 ELECTRONIC FRONTIER FOUNDATION
6 CINDY COHN (1455997)
7 LEE TIEN (148216)
8 KURT OPSAHL (191303)
9 KEVIN S. BANKSTON (217026)
10 JAMES S. TYRE (083117)
454 Shotwell Street
San Francisco, CA 94110
Telephone: 415/436-9333
415/436-9993 (fax)

11 RICHARD R. WIEBE (121156)
12 LAW OFFICE OF RICHARD R. WIEBE
13 425 California Street, Suite 2025
14 San Francisco, CA 94104
Telephone: (415) 433-3200
Facsimile: (415) 433-6382

15 THOMAS E. MOORE III (115107)
16 THE MOORE LAW GROUP
17 228 Hamilton Avenue, 3rd Floor
18 Palo Alto, CA 94301
Telephone: (650) 798-5352
Facsimile: (650) 798-5001

19 Attorneys for Plaintiffs
20
21
22
23
24
25
26
27
28