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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

TODD KAELIN, LOUIS KAELIN, DANA KAELIN, HECTOR YAMANAKA, AND VERONICA CUEVAS, on behalf of themselves and all others similarly situated

Plaintiffs,

vs.

COUNTY OF RIVERSIDE AND DOES 1-50, ET AL.,

Defendants

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

SEP 28 2016

E. Rodriguez

CASE NO: **RIC 1612681**

CLASS ACTION COMPLAINT

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

JURY TRIAL DEMANDED

**BY FAX**

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1 I. INTRODUCTION

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

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

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

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

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

9 5. Phone systems are commonly referred to as an Inmate Calling System (“ICS”),  
10 which is the term used by the FCC when addressing them. Counties like the County of Riverside  
11 enter into exclusive contracts granting to telecommunications companies, the most common of  
12 which are Global Tel\*Link Corporation (“GTL”) and Securus Technologies, Inc. (“Securus”)  
13 (hereafter collectively the “telecommunications companies”), the exclusive right to establish a  
14 phone system through which inmates – both pretrial and convicted – may communicate with Call  
15 Recipients, who have to establish a pre-paid account with the telecommunications companies  
16 and are charged unreasonable, unjust and exorbitant rates, the lion’s share of which are in turn  
17 paid to the Riverside County as what are euphemistically referred to as “commissions.” Said  
18 telecommunications companies are common carriers within the meaning of the Federal  
19 Communications Act. Under this scheme, the County of Riverside and its jails receive a  
20 **guaranteed \$2.5 million annually**, which comprises the majority of the collected charges.

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

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28 <sup>1</sup> See David Lazarus, *Gouging L.A. County Inmates With High Phone Fees*, The Riverside Times, September 8, 2014.

1 \$0.135 and \$0.09, respectively, and the cost of an intrastate 15 minute call is \$2.03. Thus, the  
2 same 15-minute intrastate call without the commissions is 61.70% less than when the State  
3 received commissions (\$3.27 differential in the post commission fee divided by \$5.30 total fee  
4 when commissions were used).

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

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

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

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

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

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

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

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

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

## 21 **II. JURISDICTION AND VENUE**

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

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

3 **III. PARTIES**

4 **A. PLAINTIFFS**

5 16. Plaintiff Todd Kaelin is a male inmate at the Larry D. Smith Correctional Facility  
6 in Banning, California starting in 2013 until the present date.

7 17. Plaintiffs Louis and Dana Kaelin, husband and wife, are Todd Kaelin's parents,  
8 and directly bore the costs of the charges for the telephone calls made by their son. Therefore,  
9 Plaintiffs Louis and Dana Kaelin qualify as the payors of said fees. Mr. and Mrs. Kaelin are  
residents of Riverside County.

10 18. Plaintiffs, Todd, Louis and Dana Kaelin, filed their original Cal. Govt. Code class  
11 § 910 claim on October 21, 2015. On November 12, 2015 the County sent a notice of  
12 insufficiencies. Plaintiffs sent amended claims on November 12 and 25, 2015. On December 9,  
13 2016, the County sent a notice that the portions of the claim seeking economic damages would  
14 be forwarded to the Board of Supervisors, and would be rejected by law if no action is taken. On  
15 December 15, 2015, the County sent a notice asserting that the claims were still insufficient, that  
16 no further clarification would be allowed, and that the claims were rejected by operation of law  
on December 10, 2015.

17 19. Plaintiff Hector Yamanaka was a male inmate at the Larry D. Smith Correctional  
18 Facility in Banning, California, from November 2014 to on or about November 21, 2015.

19 20. Veronica Cuevas is Mr. Yamanaka's wife and directly bore the cost of charges  
20 made by her husband. She, therefore, qualifies as the payor of said fees.

21 21. Mr. Yamanaka and Mrs. Cuevas both submitted a claim for damages pursuant to  
22 Cal. Govt. Code class § 910 by certified mail on January 29, 2016. On February 9, 2016, the  
23 county asserted that their claims were insufficient, in that the claims did not include specific  
24 details that are in the exclusive possession of the County, GTL and Securus; i.e. the names of the  
25 potential class members, dates that potential class members purchased phone cards or Inmate  
Phone Services, dates that phone calls were made, or the amount of damages for each class  
26 member.

26 **B. DEFENDANTS**

27 22. Defendant Riverside County (hereafter "County") is a public entity organized and  
28 existing under the laws of the State of California. The Riverside County Sheriff's Department

1 (hereafter "RCSD") is a public entity within the meaning of California law, and is an agency of  
2 Riverside County (Defendants Riverside County and the Riverside County Sheriff's Department  
3 are hereinafter collectively referred to as "County Defendants"). The County is sued in its own  
4 right for a County and/or RCSD policy, practice or custom which caused Plaintiffs' injuries in  
5 violation of California state law for violation of California constitutional guarantees, as well as  
6 violations of Civil Code §52.1 and Govt. Code §11135.

7 23. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein  
8 as DOES 1 through 50, inclusive, and therefore sue these Defendants by such fictitious names.  
9 Plaintiffs will give notice of this complaint, and of one of more DOES' true names and  
10 capacities, when ascertained. Plaintiffs are informed and believe, and based thereon allege that  
11 Defendants DOES 1 through 50 are responsible in some manner for the damages and injuries  
12 hereinafter complained of.

13 24. Individual Defendants from Riverside County (although not currently named, but  
14 who may be named in the future) may at times be referred to herein collectively as the  
15 "Individual Defendants."

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

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

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



1           28.    When the phrase "Riverside County Defendants" is used in this Complaint, it  
2 refers not only to the County Defendants, but to the Doe Defendants and to any Individual  
3 Defendants who may be named with regard to that County.

4           **IV.    CLAIMS OF CLASS REPRESENTATIVES**

5           29.    Todd Kaelin is white. He is currently, and for the foreseeable future will be in the  
6 Riverside County Jail. He attempts to stay in close contact with his parents. He feels better on  
7 those days that he speaks with his parents. However, due to the cost of each call he makes from  
8 jail, his family pays a high price to stay in touch with their son. To save his family money, Mr.  
9 Kaelin significantly limits his calls to his parents. Todd Kaelin submitted a class claim for  
10 damages class claim for damages pursuant to California Government Code § 910 *et seq.* by  
11 certified mail on October 21, 2015. He submitted an amended class claim clarifying and  
12 expanding his claim on November 9, 2015. Plaintiff Todd Kaelin brings this suit on his own  
13 behalf and on behalf of a class of similarly situated persons, defined elsewhere in this Complaint.

14           30.    Louis and Dana Kaelin, Todd's parents, are also white. They do all that they can  
15 to speak with their son. But, because of the cost of each call, whether through GTL, Securus, or  
16 another telecommunications company, they feel like they are constantly depositing more of their  
17 money into their son's prepaid phone account. Mr. and Mrs. Kaelin are retired and live on a  
18 fixed income, and the cost of these calls has placed a significant burden upon them. Since  
19 Todd's most recent conviction in 2013, Mr. and Mrs. Kaelin have paid in excess of \$1,000 to  
20 GTL and Securus. They both submitted a class claim for damages pursuant to California  
21 Government Code § 910 *et seq.* by certified mail on October 21, 2015. They submitted an  
22 amended class claim clarifying and expanding her claim on November 9, 2015. Plaintiffs Louis  
23 and Dana Kaelin bring this suit on their own behalf and on behalf of a class of similarly situated  
24 persons, defined elsewhere in this Complaint.

25           31.    Hector Yamanaka is a Latino. From November, 2014 through on or about  
26 November 21, 2015, he was incarcerated in the Riverside County Jail. During his incarceration  
27 he attempted to stay in close contact with his wife. However, due to the cost of each call he  
28 made from jail, his wife paid a high price to stay in touch with her husband. To save his family's  
money, Mr. Yamanaka significantly limited his phone calls. Mr. Yamanaka submitted a class  
claim for damages pursuant to California Government Code § 910 *et seq.* by certified mail on  
January 29, 2016. Plaintiff Hector Yamanaka brings this suit on his own behalf and on behalf of  
a class of similarly situated persons, defined elsewhere in this Complaint.

1           32.     Veronica Cuevas, Hector's wife, is a Latina. Because of the cost of each call,  
2 whether through GTL, Securus, or another telecommunications company, Mrs. Cuevas was  
3 limited in the amount of time that she could speak with her husband. The costs of these phone  
4 calls placed a significant burden upon her. During the approximately one-year that Mr.  
5 Yamanaka was incarcerated in Riverside County Jails, Mrs. Cuevas paid many hundreds of  
6 dollars to GTL and Securus. Mrs. Cuevas submitted a class claim pursuant to California  
7 Government Code § 910 *et seq.* by certified mail on January 29, 2016. Plaintiff Veronica  
8 Cuevas brings this suit on her own behalf and on behalf of a class of similarly situated persons,  
9 defined elsewhere in this Complaint.

10           **V.     CLASS ACTION FACTUAL ALLEGATIONS**

11           33.     The County of Riverside entered into exclusive contracts with Public  
12 Communications Services, Inc., a wholly owned subsidiary of GTL, (hereinafter referred to as  
13 "GTL"), for a period of several years through on or about September 22, 2015 and Securus  
14 Technologies, (hereinafter "Securus") from on or about September 23, 2015 to the present to  
15 provide pay telephone services from Riverside County's jails and other corrections facilities,  
16 resulting in a monopoly for GTL and Securus. Because these contracts are exclusive to GTL  
17 and Securus, and because inmates are literally a captive market with no ability to choose another  
18 telephone company, there are no competitive market forces to constrain the prices set by GTL  
19 and Securus.<sup>2</sup>

20           34.     In return for this monopoly power, however, GTL and Securus provide kickbacks,  
21 masqueraded as "site commissions," to the County of Riverside. Indeed, the County of  
22 Riverside selected GTL and, then, Securus to be the third party phone providers based on the fact  
23 that, at the respective times that they bid on the exclusive contract, they were the company that  
24 agreed to pay the highest amount in annual commissions. In order to generate these sizable  
25 kickbacks, "[f]amilies of incarcerated individuals often pay significantly more to receive a single  
26 15-minute call from prison than for the basic monthly phone service."<sup>3</sup> In addition, GTL and  
27 Securus impose unnecessary and unconscionable fees and charges on accounts used for inmate  
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<sup>2</sup> See *In re Rates for Interstate Inmate Calling Servs. I*, 28 FCC Rcd. 14107, 14129 (F.C.C. Sept. 26, 2013).

<sup>3</sup> *Id.*, 28 FCC Rcd. at 14130.

1 telephone calls, all of which “inflicts substantial and clear harm on the general public,”<sup>4</sup>  
2 including Plaintiffs.

3 35. Since County Defendants’ commission contracts provide a substantial minimum  
4 guaranteed fee against an identified percentage of the ICS charges for the County of Riverside  
5 after which GTL and Securus still make a substantial profit, it is obvious that, without the  
6 commissions, the charges would be substantially lower, and they bear no reasonable relationship

7 36. County Defendants use their annual commissions as provided by Penal Code  
8 §4025(c-d), which states that any money or commission collected by a jail for the use of pay  
9 phones primarily used by incarcerated inmates shall be deposited in the Inmate Welfare Fund  
10 and used first for the benefit, education and welfare of inmates and, to the extent not needed for  
11 that purpose, may be used for the maintenance of county jail facilities. Nonetheless, rather than  
12 using the money primarily for vocational and educational programs, or other programs designed  
13 for the rehabilitation of inmates, much, if not most, of the money deposited in the Inmate  
14 Welfare fund is spent on general jails issues, including maintenance, equipment, office furniture,  
15 salaries and, in some instances, food. The demographics of the jail population of County  
16 Defendants’ jails are highly disproportionate to the demographics of Riverside County as a  
17 whole. While Plaintiffs do not currently have statistical breakdown of Riverside County, there  
18 are readily available statistics available on the demographics of the California prison population  
19 which, on information and belief, mirrors that of the County jails. While approximately 29% of  
20 the California male prison population is African-American, less than 7% of the California  
21 population is African American. In 2013, 4.367 % of all African-American males (4,367 out of  
22 every 100,000) in California were imprisoned, compared to .922 % (922 out of every hundred  
23 thousand) for Latinos, and .488% (488 out of every hundred thousand) for whites. Said another  
24 way, African-Americans are imprisoned at almost 10 times the rate of whites, and Latinos are  
25 imprisoned at almost twice the rate of whites.

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

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<sup>4</sup> *In re Rates for Interstate Calling Servs.* II, 40, 15929, 15938 (F.C.C. Nov. 21, 2013).

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

7 **A. FACTUAL ALLEGATIONS**

8 38. For a period of several years and continuing through on or about September 22,  
9 2015, the County had a written agreement with GTL to provide telephone services for the RCSD.  
10 Pursuant to that agreement, GTL agreed to pay, and did pay, the County a Minimum Annual  
11 Guaranty of \$2,000,000, adjusted each year based on the number of inmates housed in the  
12 County's jails. Plaintiffs are currently unaware of the actual commission amounts that GTL paid  
13 to the County for each year that this agreement was in effect.

14 39. Effective on or about September 23, 2015, the County began its current agreement  
15 for ICS with Securus. This current agreement is for a term of five years, under which the County  
16 receives a Minimum Annual Guaranty of \$2,500,000, adjusted each year based on the number of  
17 inmates housed in the County's jails.

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

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

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

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

6 **VI. CLASS DEFINITIONS**

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

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

21 45. The Named Plaintiffs for the General Class of Riverside County are as follows:

- 22 a. Todd Kaelin (former inmate);
- 23 b. Louis Kaelin and Dana Kaelin (Todd Kaelin's parents, who established and paid  
24 for a pre-paid ICS account to allow him to communicate with her parents);
- 25 c. Hector Yamanaka (former inmate); and
- 26 d. Veronica Cuevas (Latina wife of Hector Yamanaka, who has established and paid  
27 for a pre-paid ICS account).

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

- a. Hector Yamanaka (former Latino inmate);
- b. Veronica Cuevas (Latina wife of Hector Yamanaka, who established and paid for  
a pre-paid ICS account).

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

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

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

13           **A.    GENERAL CLASS DEFINED**

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

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

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

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

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

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

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

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

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

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

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

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

13 **A. NUMEROSITY**

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

16 55. Riverside County has a large jail population in the United States, numbering just  
17 under 4,000 inmates.

18 56. Average jail turnover rate in US jails is 15 times per year.  
19 [http://apps.fcc.gov/ecfs/document/view;NEWECFSSSESSION=KnsqVy1h8yKTrl2gyF3g621nyZ  
21 NJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155](http://apps.fcc.gov/ecfs/document/view;NEWECFSSSESSION=KnsqVy1h8yKTrl2gyF3g621nyZ<br/>20 NJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155).

22 57. While the turnover rate is smaller in large jails, the jail population turns over  
23 several times per year.

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

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

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

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



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

- 3 a. Are the charges pursuant to which Defendant County of Riverside receives  
4 Contract Funds so excessive, arbitrary and/or unreasonable as to deprive or limit  
5 Class Members' ability to reasonably communicate between Inmate Class  
6 Members and their families and loved ones who are Call Recipient Class  
7 Members in violation of the First Amendment and/or Due Process clauses of the  
8 California Constitution?
- 8 b. Are the charges pursuant to which Defendant County of Riverside receives  
9 Contract Funds so excessive, arbitrary and/or unreasonable as to deprive or limit  
10 Class Members' of due process by virtue of their disproportionate relationship to  
11 the reasonable cost to Defendant County of Riverside of ICS usage?
- 11 c. Are the charges pursuant to which the Defendant County Riverside receives  
12 Contract Funds so excessive, arbitrary and/or unreasonable as to place  
13 unconstitutional conditions on Class Members' exercise of their state  
14 constitutional rights to association and just compensation and/or constitute an  
15 unlawful taking in violation of California due process and unlawful takings  
16 clauses?
- 16 d. Do the Contract Funds qualify as an unlawful tax under Articles 13 C and/or D of  
17 the California Constitution?
- 17 e. Do the ICS charges that provide the source of the Contract Funds received by  
18 Defendant County of Riverside, and consequently the Contract Funds, have a  
19 disparate impact on African-Americans and Latinos, and, if so, a) are the Contract  
20 Funds necessary to the operation of the County Jails or otherwise substantially  
21 justified, and b) if they are, can they be replaced by an equally effective but less  
22 discriminatory alternative?
- 22 f. If the ICS charges that provide the source of the Contract Funds received by  
23 Defendant County of Riverside, and consequently the Contract Funds, have a  
24 disparate impact on African-Americans and Latinos, do persons who are injured  
25 by such charges who are not African-American or Latino have standing to receive  
26 redress for such unlawful charges?  
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- g. Do the ICS Contracts create, or contribute to the creation of, a coercive choice for Class Members between paying unlawful ICS charges (on any of the foregoing grounds) or foregoing spoken communicational between inmates and family, friends or other associates and thereby violate Civil Code §52.1?
- h. Are presumed damages available to Plaintiffs and the Class Members for their non-economic damages for violation of the federal rights asserted in the complaint?

61. While there are additional common issues, these issues alone more than establish that there are common issues.

**C. TYPICALITY**

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

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

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

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**D. ASCERTAINABILITY**

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

**E. ADEQUACY OF REPRESENTATION**

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

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

**F. PREDOMINANCE AND SUPERIORITY**

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

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

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

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

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

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

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

#### 24 **VIII. APPROPRIATENESS OF EQUITABLE RELIEF**

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

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

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

6 **IX. DAMAGES**

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

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

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

18 **X. CLAIMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 97. Defendant County of Riverside and its Sheriff's Department and County Jail  
4 within Riverside County, receive a significant amount of money from the State of California. In  
5 fact, over 70 % of all state spending is for local government assistance, of which, on information  
6 and belief, a substantial share, amounting to many millions of dollars, go to fund various  
7 activities of the County of Riverside, including its county jail. For example, the State  
8 Controller's Office Community Corrections Sub-account for the month of October 2015 alone  
9 for Riverside County exceeded \$25 million. [http://www.sco.ca.gov/Files-ARD-](http://www.sco.ca.gov/Files-ARD-Payments/localcomcorremit_1415_dofletter.pdf)  
10 [Payments/localcomcorremit\\_1415\\_dofletter.pdf](http://www.sco.ca.gov/Files-ARD-Payments/localcomcorremit_1415_dofletter.pdf) "Across the state, county officials are laying  
11 claim to billions in state funding to refurbish old jails and build new ones."  
12 <https://www.themarshallproject.org/2015/07/02/california-s-jail-building-boom>. It is anticipated  
13 that the State of California will distribute approximately \$4.4 Billion to the counties by 2016-  
14 2017 for realignment costs. [http://law.stanford.edu/wp-content/uploads/sites/default/files/child-](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/443444/doc/slspublic/SCJC%20Money%20full%20report.pdf)  
15 [page/443444/doc/slspublic/SCJC%20Money%20full%20report.pdf](http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/443444/doc/slspublic/SCJC%20Money%20full%20report.pdf). Thus, the County of  
16 Riverside qualifies as having received, and continuing to receive, state funds, both generally and  
17 for the jail.

18 98. Further, under realignment, the State of California is paying funds to local  
19 counties, including Defendant County of Riverside, for housing state prisoners. See  
20 [http://www.ppic.org/content/pubs/report/R\\_812MLR.pdf](http://www.ppic.org/content/pubs/report/R_812MLR.pdf).

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

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

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

101. Plaintiffs incorporate all previous and subsequent paragraphs of this Complaint into this claim.



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

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

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

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

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

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

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

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

7 108. Plaintiffs have a First Amendment right of access to telephones because no other  
8 means of communication is an adequate substitute for the telephone. Specifically, neither in  
9 person visits, which are unrealistic for many people, not mail, which is difficult to accomplish  
10 and requires a level of literacy not possessed by a significant portion of class members, are a  
11 substitute for telephone communication. This is a fundamental constitutional right.

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

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

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

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

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

1 **XI. PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

5 DATED: September 28, 2016

Respectfully Submitted,

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

10 By: 

11 Barrett S. Litt  
12 Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

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

15 DATED: September 28, 2016

Respectfully Submitted,

16  
17 KAYE, MCLANE, BEDNARSKI & LITT, LLP  
18 &  
19 RAPKIN & ASSOCIATES, LLP

20 By: 

21 Barrett S. Litt  
22 Attorneys for Plaintiffs  
23  
24  
25  
26  
27  
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Barrett S. Litt (SBN 45527) Ronald O. Kaye (SBN 145051) Kaye, McLane, Bednarski & Litt, LLP 234 E. Colorado Blvd., #230, Pasadena, CA 91101 TELEPHONE NO.: 626-844-7660 FAX NO.: 626-844-7670 ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4050 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Riverside, California 92501 BRANCH NAME: Riverside Historic Courthouse	
CASE NAME: Todd Kaelin, et al v. County of Riverside, et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <b>RIC 1612681</b> JUDGE: DEPT: <b>BY FAX</b>

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |   |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties   | d. <input checked="" type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): Four (4)
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/28/16  
Barrett S. Litt

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collection's case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

4050 Main Street - 2nd Floor

Riverside, CA 92501

[www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov)

NOTICE OF ASSIGNMENT TO DEPARTMENT  
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

KAELIN VS COUNTY OF RIVEF

CASE NO. RIC1612681

This case is assigned to the Honorable Judge Sharon J. Waters in Department 10 for all purposes.

The Case Management Conference is scheduled for 11/28/16 at 8:30 in Department 10.

Department 5 and 10 are located at 4050 Main St, Riverside, CA 92501.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Date: 09/28/16

Court Executive Officer/Clerk

by: 

ELIZETH RODRIGUEZ, Deputy Clerk

## Mailing List

Notice 'CCADCC' has been printed for the following Attorneys/Firms  
or Parties for Case Number RIC1612681 on 9/28/16:

TODD KAE LIN

LOUIS KAE LIN

DANA KAE LIN

HECTOR YAMANAKA

VERONICA CUEVAS