

**DECLARATION OF LEA BAKER**

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2 I, Lea Baker, being first duly sworn, under penalty of perjury under the laws of the  
3 United States declares and states:

4 1. I have personal knowledge of the matters asserted herein and am competent  
5 to testify thereto, save for those matters asserted on information and belief, and for those  
6 matters, I am informed and believe them to be true.

7 2. I am informed and believe Plaintiffs John Witherow and Donald York Evans  
8 have named me as a Defendant in a lawsuit in the United States District Court, District of  
9 Nevada entitled *Evans v. Inmate Calling Solutions, et. al.*, case number 3:08-cv-00353-  
10 GMN-VPC.

11 3. In 2007 and 2008, I was an employee of the Nevada Department of  
12 Corrections ("NDOC") and I was a Correctional Officer at Nevada State Prison ("NSP")  
13 located in Carson City, Nevada.

14 4. From May 8, 2007 to January 7, 2008, I was regularly assigned to Unit 13 at  
15 NSP which is a segregation unit. I do not recall being assigned as an officer to work in Unit  
16 13 at NSP during the period from around January 7, 2008 till July 30, 2008.

17 5. In Unit 13 I was usually assigned to the Unit 13 gun post, but sometimes I  
18 would fill in as the officer that operated the control room or "bubble". Being assigned to Unit 13  
19 at NSP, I was familiar with the NDOC's policy that out-going phone calls from segregation  
20 would be monitored.

21 6. During this period of time there were two portable phones for the inmates to  
22 use in Unit 13. One portable phone was designated for A-wing of Unit 13 and the other  
23 phone was reserved for B-Wing of Unit 13. Each wing had approximately 30 inmates, so  
24 there were a total of 2 portable phones for upwards of 60 inmates in Unit 13.

25 7. Officers in segregation used portable phones as segregation inmates were  
26 not allowed to leave their cells and roam around the unit. This prevented inmates in  
27 segregation from using the wall-mounted phones.

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1           8.       Instead if an inmate wanted to use the phone, they would request to use the  
2 phone in writing using a standard form called a kite which identified the number they wished  
3 to call and whether it was a personal or legal call. They had to submit this kite 24 hours prior  
4 to when they wanted to make their calls.

5           9.       From May 2007 till January 7, 2008, inmates could make unlimited legal calls,  
6 but I recall that their personal calls were limited to 2 calls a week.

7           10.       Once an inmate completed a written request to use the phone, when the  
8 portable phone was available the inmate would be handed the phone while he remained in  
9 his cell to make his allotted personal or unlimited legal calls.

10          11.       During the time I worked in Unit 13 there was no caller identification and there  
11 was no way to know who the inmate was actually calling or whether the call was being  
12 recorded. The only way to identify who the inmate was calling was through the written request  
13 or through initially monitoring the phone call.

14          12.       There was also no way to confirm that the number that had been disclosed in  
15 the written request was actually a legal number unless the out-going call was initially  
16 monitored to determine who answered the phone. This meant that an inmate could request  
17 to use the portable phone and identify the number as being a legal call, but the number  
18 could have been a personal number.

19          13.       In addition, once an inmate had the portable phone, he could make additional  
20 improper personal calls to friends or family. There was no way to know whether the inmate  
21 prematurely ended a proper legal call to make additional personal calls. Officers were not  
22 allowed to stand guard over the portable phone during the duration of its use because then  
23 we might hear privileged legal information. Also we did not have enough staff to have one  
24 officer stand watch as the inmates used the portable phone.

25          14.       To deter improper use and allow others within the unit an opportunity to use  
26 the portable phone, I would follow the applicable policies and practices regarding the initial  
27 screening of out-going legal calls using speaker boxes wired directly into the portable phone  
28 lines.

1           15.    The policy was that as soon as the call might be considered legal, all  
2 monitoring was to cease and, if I was working the control room, I would flip the switch on the  
3 speaker boxes located in the control room to discontinue any monitoring.

4           16.    Prior to the actual phone call being answered, all that we would know about  
5 the out going phone would be listed on the request form the inmate submitted requesting to  
6 use the phone. Once the inmate dialed the number, I would wait till I heard either an  
7 attorney or law office answer the phone. Generally, even if a secretary answered or if it  
8 sounded like the inmate was calling a professional office that could hold or transfer a call, I  
9 would discontinue monitoring based on the information in the written request and the  
10 knowledge that he was calling a professional office.

11           17.    Extended or prolonged monitoring legal calls was absolutely prohibited and if  
12 the parties did not identify themselves, but I heard anything being discussed that remotely  
13 sounded legal in nature I would discontinue monitoring.

14           18.    At no time was I allowed or supposed to listen to legal calls for longer than it  
15 took to identify the party receiving the phone call.

16           19.    At no time was I trained, advised, or told to listen to possible legal calls for  
17 longer than it took to identify that the party answering the call.

18           20.    From May 2007 to January 2008, I do not recall ever listening to a legal call  
19 for longer than it took to initially screen.

20           21.    I believe that the entire purpose behind initially screening the out-going calls  
21 was to make sure the legal calls were being made properly, the portable phones were not  
22 being abused, and other inmates did not make improper personal calls which would have  
23 deprived others in the unit from using the portable phone.

24           22.    From May 2007 to January 2008, I do not ever recall hearing an attorney-  
25 client communication between Plaintiff Evans and Witherow. I also do not recall ever  
26 relaying any information regarding the substance or frequency of any such legal calls to the  
27 Nevada Office of the Attorney General or any other third party.

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1           23. I am informed and believe that Plaintiff Witherow alleges that at one time we  
2 had a friendly relationship until during one of his phone calls I allegedly overheard him make  
3 outrageous and inflammatory remarks that were allegedly offensive to me. I understand that  
4 Plaintiff Witherow claims that based on his comments, my attitude towards him changed and  
5 this proves that I was listening to his legal calls.

6           24. I do not recall ever monitoring Plaintiff's legal calls or being offended at Plaintiff  
7 Witherow's comments. I am a female correctional officer and believe that if he had made a  
8 comment that would have offended me, I would be able to recall what was said.

9           25. Additionally, I recall when Plaintiff Witherow was transferred into Unit 13 at NSP.  
10 My first impression of him was based on the large number of legal boxes that accompanied  
11 him to segregation. I do not recall the exact number, but he brought something like 30 legal  
12 boxes with him and I remember thinking that he was an inmate that was extremely litigious or  
13 what I sometimes called a "sue hound". I believed that Plaintiff Witherow was prone to filing  
14 lawsuits and, although I continued to do my job, I made sure that I kept my distance and did  
15 not interact with him beyond what was required. I do not believe that my treatment of him was  
16 any different from when he arrived in Unit 13 until I left in January 2008.

17           26. Sometimes due to emergencies or unusual occurrences, an inmate could  
18 have the portable phone for longer than allowed. In these instances, an inmate might have  
19 the portable phone in his possession for long than authorized.

20           27. From May 2007 to January 2008, I had no specific knowledge that Plaintiffs  
21 Evans and Witherow had a business, personal, and attorney-client relationship. If Plaintiff  
22 Witherow requested to speak with an attorney named Evans, as soon as he identified himself  
23 as an attorney or I thought he was calling a law office, I would discontinue any monitoring.  
24 Therefore, even if Plaintiff Witherow was calling Plaintiff Evans to discuss a purely personal  
25 matter, once Plaintiff Evans or his secretary identified themselves, any monitoring would  
26 cease if the written request designated that it was a legal call.

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1 Pursuant to 28 U.S.C. § 1746, Declarant herein certifies, under penalty of perjury  
2 under the laws of the United States, on March 18, 2011 that the foregoing is true and  
3 correct.

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6 LEA BAKER  
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