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12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA

15 TASH HEPTING, GREGORY HICKS, ) No. C-06-0672-JCS  
CAROLYN JEWEL and ERIK KNUTZEN on )  
16 Behalf of Themselves and All Others Similarly ) CLASS ACTION  
Situating, )  
17 Plaintiffs, ) AMENDED COMPLAINT FOR DAMAGES,  
18 vs. ) DECLARATORY AND INJUNCTIVE  
19 ) RELIEF  
AT&T CORP., AT&T INC. and DOES 1-20, )  
20 inclusive, )  
21 Defendants. ) DEMAND FOR JURY TRIAL  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )





1 part of the events giving rise to the claims herein alleged occurred in this district and that Defendants  
2 and/or agents of Defendants may be found in this district.

3 12. **Intradistrict Assignment**: Assignment to the San Francisco/Oakland division is  
4 proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events and  
5 omissions giving rise to this lawsuit occurred in this district and division.  
6

7 **PARTIES**

8 13. Plaintiff Tash Hepting, a customer service manager, is an individual residing in San  
9 Jose, California. Hepting has been a subscriber and user of AT&T Corp.'s residential long distance  
10 telephone service since at least June 2004, and has used it to call internationally as well as  
11 domestically.

12 14. Plaintiff Gregory Hicks is an individual residing in San Jose, California. Hicks, a  
13 retired Naval Officer and systems engineer, has been a subscriber and user of AT&T Corp.'s  
14 residential long distance telephone service since February 1995. He has regularly used this service  
15 for calls to foreign countries including Korea, Japan and Spain.  
16

17 15. Plaintiff Carolyn Jewel is an individual residing in Petaluma, California. Jewel, a  
18 database administrator and author, has been a subscriber and user of AT&T Corp.'s Worldnet dial-  
19 up Internet service since approximately June 2000. She uses this service for web browsing and to  
20 send and receive email, including with correspondents in foreign countries such as England,  
21 Germany, and Indonesia.  
22

23 16. Plaintiff Erik Knutzen is an individual residing in Los Angeles, California. Knutzen, a  
24 photographer and land use researcher, was a subscriber and user of AT&T Corp.'s Worldnet dial-up  
25 Internet service from at least October 2003 until May 2005. He used this service to send and receive  
26 personal and professional emails, with both domestic and international correspondents, and for web  
27 browsing, including visits to web sites hosted outside of the United States.  
28

1           17. Defendant AT&T Corp. is a New York corporation with its principal place of  
2 business in the State of New Jersey.

3           18. Defendant AT&T Inc. is a Delaware corporation with its principal place of business  
4 in San Antonio, Texas.

5           19. Both AT&T Corp. and AT&T Inc. are telecommunications carriers, and both offer  
6 electronic communications service(s) to the public and remote computing service(s).  
7

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

12           21. Prior to the acquisition and merger, AT&T Corp. and SBC both had a significant  
13 business presence in California for many years. The new AT&T Inc. and its subsidiary, AT&T  
14 Corp., continue to have a significant business presence in California.  
15

16           22. AT&T Corp. operates through two principal divisions, its business services division  
17 and its consumer services division. AT&T Business Services provides a variety of communications  
18 services to domestic and multi-national businesses and government agencies. AT&T Consumer  
19 Services provides a variety of communications services to mass-market customers. These services  
20 include traditional long distance voice services such as domestic and international dial and toll-free  
21 services, as well as operator-assisted services. In addition, AT&T Consumer Services provides  
22 residential dial-up and DSL Internet services through its "Worldnet" service, as well as offering all-  
23 distance services, which bundle AT&T's facilities-based long distance services with local services.  
24

25           23. AT&T Corp.'s communications facilities constitute one of the world's most advanced  
26 communications networks, spanning more than 50 countries.  
27  
28

1           24.     By the end of 2004, on an average business day, AT&T Corp.'s network handled over  
2 300 million voice calls as well as over 4,000 terabytes (million megabytes) of data, including traffic  
3 from AT&T Business Services and AT&T Consumer Services, approximately 200 times the amount  
4 of data contained in all the books in the Library of Congress.

5           25.     By the end of 2004, AT&T Corp. provided long distance service (including both  
6 stand-alone and bundled) to approximately 24.6 million residential customers. Before the  
7 acquisition, AT&T Corp.'s bundled local and long distance service was available in 46 states,  
8 covering more than 73 million households.

9           26.     By the end of 2004, AT&T Corp. provided its residential Worldnet Internet services  
10 to approximately 1.2 million customers. Even prior to its being acquired by SBC, AT&T Corp. was  
11 the second largest Internet provider in the country, primarily serving businesses in addition to its  
12 Worldnet customers.

13           27.     The new AT&T Inc. constitutes the largest telecommunications provider in the  
14 United States and one of the largest in the world. AT&T Inc. is the largest U.S. provider of both  
15 local and long distance services, serving millions of customers nationwide. AT&T Inc.'s  
16 international voice service carries more than 18 billion minutes per year, reaching approximately 240  
17 countries, linking approximately 400 carriers and offering remote access in approximately 149  
18 countries around the globe.

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

22           29.     According to the *Description of the Transaction, Public Interest Showing, and*  
23 *Related Demonstrations* filed by AT&T Corp. and SBC with the Federal Communications  
24 Commission in anticipation of the merger:

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

16 30. On information and belief, this characterization was substantially correct when filed,  
17 and is substantially correct as to the current AT&T Corp. and AT&T Inc.

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

### 26 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

#### 27 **THE NSA SURVEILLANCE PROGRAM**

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

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

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

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

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

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

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

18          39.     On information and belief, as part of this data-mining program, the NSA intercepts  
19 millions of communications made or received by people inside the United States, and uses powerful  
20 computers to scan their contents for particular names, numbers, words or phrases.

21          40.     Additionally, on information and belief, the NSA collects and analyzes a vast amount  
22 of communications traffic data to identify persons whose communications patterns the government  
23 believes may link them, even if indirectly, to investigatory targets.



1           41.     On information and belief, the NSA has accomplished its massive surveillance  
2 operation by arranging with some of the nation’s largest telecommunications companies, including  
3 Defendants, to gain direct access to the telephone and Internet communications transmitted via those  
4 companies’ domestic telecommunications facilities, and to those companies’ records pertaining to  
5 the communications they transmit.  
6

7                           **AT&T PROVIDES THE GOVERNMENT WITH DIRECT**  
8                           **ACCESS TO ITS DOMESTIC TELECOMMUNICATIONS NETWORK**

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

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

16           44.     On information and belief, the interception devices acquire the content of all or a  
17 substantial number of the wire or electronic communications transferred through the AT&T Corp.  
18 facilities where they have been installed.  
19

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

24           46.     On information and belief, using these devices, government agents have acquired and  
25 are acquiring wire or electronic communications content and DRAS information directly via remote  
26 or local control of the device, and/or AT&T Corp. has disclosed and is disclosing those  
27  
28

1 communications and information to the government after interception, capture, recording or  
2 decoding.

3 47. On information and belief, AT&T Corp. used or assisted in the use of these devices to  
4 acquire wire or electronic communications to which Plaintiffs and class members were a party, and  
5 to acquire DRAS information pertaining to those communications. On information and belief,  
6 Defendants continue to do so.  
7

8 **AT&T HAS PROVIDED AND CONTINUES TO PROVIDE THE**  
9 **GOVERNMENT WITH DIRECT ACCESS TO DATABASES**  
10 **CONTAINING ITS STORED TELEPHONE AND INTERNET RECORDS**

11 48. Defendants AT&T Corp. and AT&T Inc. have provided at all relevant times and  
12 continue to provide electronic communication services to the public, *i.e.*, services that provide to  
13 users thereof the ability to send or receive wire or electronic communications.

14 49. Defendants AT&T Corp. and AT&T Inc. have provided at all relevant times and  
15 continue to provide computer or storage processing services to the public, by means of wire, radio,  
16 electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic  
17 communications, and/or by means of computer facilities or related electronic equipment for the  
18 electronic storage of such communications.

19 50. Plaintiffs and class members are, or at pertinent times were, subscribers to or  
20 customers of one or more of those services.

21 51. On information and belief, AT&T Corp. has provided and continues to provide the  
22 government with direct access to its databases of stored telephone and Internet records, which are  
23 updated with new information in real time or near-real time.  
24

25 52. On information and belief, AT&T Corp. has disclosed and is currently disclosing to  
26 the government records concerning communications to which Plaintiffs and class members were a  
27 party, and there is a strong likelihood that Defendants will disclose more of the same in the future.  
28

1           53.     As reported by the Los Angeles Times, “AT&T has a database code-named Daytona  
2 that keeps track of telephone numbers on both ends of calls as well as the duration of all land-line  
3 calls. . . . After Sept. 11, intelligence agencies began to view it as a potential investigative tool, and  
4 the NSA has had a direct hookup into the database. . . .” Joseph Menn and Josh Meyer, *U.S. Spying*  
5 *is Much Wider, Some Suspect*, L.A. TIMES, Dec. 25, 2005, at A1. On information and belief, this  
6 report is substantially correct.  
7

8           54.     Daytona is a database management technology originally developed and maintained  
9 by the AT&T Laboratories division of AT&T Corp., and is used by AT&T Corp. to manage multiple  
10 databases.  
11

12           55.     Daytona was designed to handle very large databases and is used to manage  
13 “Hawkeye,” AT&T Corp.’s call detail record (“CDR”) database, which contains records of nearly  
14 every telephone communication carried over its domestic network since approximately 2001, records  
15 that include the originating and terminating telephone numbers and the time and length for each call.  
16

17           56.     On information and belief, this CDR database contains records pertaining to  
18 Plaintiffs’ and class members’ use of AT&T Corp. long distance service and dial-up Internet service,  
19 including but not limited to DRAS information and personally identifiable customer proprietary  
20 network information (CPNI) that AT&T Corp. obtained by virtue of its provision of  
21 telecommunications service.  
22

23           57.     As of September 2005, all of the CDR data managed by Daytona, when  
24 uncompressed, totaled more than 312 terabytes.  
25

26           58.     The Daytona system’s speed and powerful query language allow users to quickly and  
27 easily search the entire contents of a database to find records that match simple or complex search  
28 parameters. For example, a Daytona user can query the Hawkeye database for all calls made to a

1 particular country from a specific area code during a specific month and receive information about  
2 all such calls in about one minute.

3           59.     Daytona is also used to manage AT&T Corp.'s huge network-security database,  
4 known as Aurora, which has been used to store Internet traffic data since approximately 2003. The  
5 Aurora database contains huge amounts of data acquired by firewalls, routers, honeypots and other  
6 devices on AT&T Corp.'s global IP (Internet Protocol) network and other networks connected to  
7 AT&T Corp.'s network, including but not limited to DRAS information and personally identifiable  
8 CPNI that AT&T Corp. obtained by virtue of its provision of telecommunications service.  
9

10           60.     On information and belief, the Aurora database managed and/or accessed via Daytona  
11 contains records or other information, including but not limited to DRAS information and CPNI,  
12 pertaining to Plaintiffs' and class members' use of AT&T Corp.'s Internet services.  
13

14           61.     On information and belief, AT&T Corp. has provided the government with direct  
15 access to the contents of the Hawkeye, Aurora and/or other databases that it manages using Daytona,  
16 including all information, records, DRAS information and CPNI pertaining to Plaintiffs and class  
17 members, by providing the government with copies of the information in the databases and/or by  
18 giving the government access to Daytona's querying capabilities and/or some other technology  
19 enabling the government agents to search the databases' contents.  
20

21           62.     AT&T Inc. has begun a transition process designed to integrate the former SBC's  
22 telecommunications network with AT&T Corp.'s network, ultimately leading into unified IP-based  
23 networks. AT&T Inc. intends to use AT&T Corp.'s IP network in place of the fee-based transiting  
24 and backbone access arrangements it currently has with third parties. In addition, others aspects of  
25 both companies will be integrated. For example, SBC Laboratories and AT&T Laboratories will be  
26 combined into AT&T Labs to provide technology research and development exclusively to the  
27 subsidiaries of AT&T Inc.  
28



1           68.     The California Subclass seeks certification of claims for declaratory and injunctive  
2 relief, and for restitution pursuant to the Unfair Competition Law (Cal. Bus. and Prof. Code  
3 §§17200, *et seq.*).

4           69.     Excluded from the Nationwide Class and California Subclass are the officers,  
5 directors, and employees of Defendants, and the legal representatives, heirs, successors, and assigns  
6 of Defendants.

7           70.     Also excluded from the Nationwide Class and California Subclass are any foreign  
8 powers, as defined by 50 U.S.C. §1801(a), or any agents of foreign powers, as defined by 50 U.S.C.  
9 §1801(b)(1)(A), including without limitation anyone who knowingly engages in sabotage or  
10 international terrorism, or activities that are in preparation therefore.

11           71.     This action is brought as a class action and may properly be so maintained pursuant to  
12 the provisions of the Federal Rules of Civil Procedure, Rule 23. Plaintiffs reserve the right to  
13 modify the Nationwide Class and the California Subclass definitions and the class period based on  
14 the results of discovery.

15           72.     **Numerosity of the Nationwide Class and California Subclass:** Members of the  
16 Nationwide Class and California Subclass are so numerous that their individual joinder is  
17 impracticable. The precise numbers and addresses of members of the Nationwide Class and  
18 California Subclass are unknown to the Plaintiffs. Plaintiffs estimate that the Nationwide Class  
19 consists of millions of members and the California Subclass consists of hundreds of thousands of  
20 members. The precise number of persons in both the Nationwide Class and California Subclass and  
21 their identities and addresses may be ascertained from Defendants' records.

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

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

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

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

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

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

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

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

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

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

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

1           74.     **Typicality**: Plaintiffs' claims are typical of the claims of the members of the  
2 Nationwide Class and California Subclass because Plaintiffs are or were subscribers to the Internet  
3 and telephone services of Defendants. Plaintiffs and all members of the Nationwide Class and  
4 California Subclass have similarly suffered harm arising from Defendants' violations of law, as  
5 alleged herein.

6           75.     **Adequacy**: Plaintiffs are adequate representatives of the Nationwide Class and  
7 California Subclass because their interests do not conflict with the interests of the members of the  
8 classes they seek to represent. Plaintiffs have retained counsel competent and experienced in  
9 complex class action litigation and Plaintiffs intends to prosecute this action vigorously. Plaintiffs  
10 and their counsel will fairly and adequately protect the interests of the members of the Nationwide  
11 Class and California Subclass.

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

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



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

9 **COUNT I**

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

13 78. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding  
14 paragraphs of this complaint, as if set forth fully herein.

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

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

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

24 82. On information and belief, at all relevant times, the government instigated, directed  
25 and/or tacitly approved all of the above-described acts of AT&T Corp.  
26  
27  
28

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

4           84.     In performing the acts alleged herein, AT&T Corp. had at all relevant times a primary  
5 or significant intent to assist or purpose of assisting the government in carrying out the Program  
6 and/or other government investigations, rather than to protect its own property or rights.  
7

8           85.     By the acts alleged herein, AT&T Corp. acted as an instrument or agent of the  
9 government, and thereby violated Plaintiffs' and class members' reasonable expectations of privacy  
10 and denied Plaintiffs and class members their right to be free from unreasonable searches and  
11 seizures as guaranteed by the Fourth Amendment to the Constitution of the United States, and  
12 additionally violated Plaintiffs' and class members' rights to speak and receive speech anonymously  
13 and associate privately under the First Amendment.  
14

15           86.     By the acts alleged herein, AT&T Corp.'s conduct proximately caused harm to  
16 Plaintiffs and class members.

17           87.     On information and belief, AT&T Corp.'s conduct was done intentionally, with  
18 deliberate indifference, or with reckless disregard of, Plaintiffs' and class members' constitutional  
19 rights.  
20

21           88.     On information and belief, there is a strong likelihood that Defendants are now  
22 engaging in and will continue to engage in the above-described violations of Plaintiffs' and class  
23 members' constitutional rights, as agents of the government, and that likelihood represents a credible  
24 threat of immediate future harm.

25           89.     Wherefore, Plaintiffs and class members pray for this court to declare that AT&T  
26 Corp. has violated their rights under the First and Fourth Amendments to the United States  
27 Constitution, and enjoin Defendants and their agents, successors and assigns from violating the  
28

1 Plaintiffs’ and class members’ rights under the First and Fourth Amendments to the United States  
2 Constitution.

3 **COUNT II**

4 **Electronic Surveillance Under Color of Law in Violation of 50 U.S.C. §1809 (Plaintiffs**  
5 **Hepting, Hicks, Jewel and Knutzen and the Nationwide Class [Including the California**  
6 **Subclass] vs. Defendants)**

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

9 91. In relevant part, 50 U.S.C. §1809 provides that:

10 (a) Prohibited activities – A person is guilty of an offense if he intentionally – (1)  
11 engages in electronic surveillance under color of law except as authorized by statute;  
12 or (2) discloses or uses information obtained under color of law by electronic  
surveillance, knowing or having reason to know that the information was obtained  
through electronic surveillance not authorized by statute.

13 92. In relevant part 50 U.S.C. §1801 provides that:

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

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

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

5           95. Additionally or in the alternative, by the acts alleged herein, AT&T Corp. has  
6 intentionally disclosed or used information obtained under color of law by electronic surveillance,  
7 knowing or having reason to know that the information was obtained through electronic surveillance  
8 not authorized by statute.

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

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

15           98. Plaintiffs and class members have been and are aggrieved by Defendants' electronic  
16 surveillance, disclosure, and/or use of their wire communications.

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

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

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

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

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

20 18 U.S.C. §2511 further provides that:

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

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

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

30 104. By the acts alleged herein, AT&T Corp. has intentionally used, or endeavored to use,  
the contents of Plaintiffs' and class members' wire or electronic communications, while knowing or

1 having reason to know that the information was obtained through the interception of wire or  
2 electronic communications in violation of 18 U.S.C. §2511(1)(d); and/or

3           105. On information and belief, AT&T Corp. has intentionally divulged the contents of  
4 Plaintiffs' and class members' wire or electronic communications to persons or entities other than  
5 the addressee or intended recipient, or the agents of same, or other providers of wire or electronic  
6 communication service, while those communications were in transmission on AT&T Corp.'s  
7 electronic communications services, in violation of 18 U.S.C. §2511(3)(a).  
8

9           106. AT&T Corp. did not notify Plaintiffs or class members of the above-described  
10 intentional interception, disclosure, divulgence and/or use of their wire or electronic  
11 communications, nor did Plaintiffs or class members consent to such.  
12

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

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

19           109. Pursuant to 18 U.S.C. §2520, which provides a civil action for any person whose wire  
20 or electronic communications have been intercepted, disclosed or intentionally used in violation of  
21 18 U.S.C. §2511, Plaintiffs and class members seek equitable and declaratory relief; statutory  
22 damages for each Plaintiff and class member of whichever is the greater of \$100 a day for each day  
23 of violation or \$10,000; punitive damages as appropriate; and reasonable attorneys' fees and other  
24 litigation costs reasonably incurred.  
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1 **COUNT IV**

2 **Unauthorized Publication and/or Use of Communications in Violation of 47 U.S.C. §605**  
3 **(Plaintiffs Hepting, Hicks, Jewel and Knutzen and The NationwideClass**  
4 **[Including the California Subclass] vs. Defendants)**

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

7 111. In relevant part, 47 U.S.C. §605 provides that:

8 (a) Practices prohibited – Except as authorized by chapter 119, Title 18, no  
9 person receiving, assisting in receiving, transmitting, or assisting in transmitting, any  
10 interstate or foreign communication by wire or radio shall divulge or publish the  
11 existence, contents, substance, purport, effect, or meaning thereof, except through  
12 authorized channels of transmission or reception, (1) to any person other than the  
13 addressee, his agent, or attorney, (2) to a person employed or authorized to forward  
14 such communication to its destination, (3) to proper accounting or distributing  
15 officers of the various communicating centers over which the communication may be  
16 passed, (4) to the master of a ship under whom he is serving, (5) in response to a  
17 subpoena issued by a court of competent jurisdiction, or (6) on demand of other  
18 lawful authority.

19 112. AT&T Corp. received, assisted in receiving, transmitted, or assisted in transmitting,  
20 Plaintiffs' and class members' interstate or foreign communications by wire or radio.

21 113. By the acts alleged herein, AT&T Corp. divulged or published the existence,  
22 contents, substance, purport, effect, or meaning of such communications, by means other than  
23 through authorized channels of transmission or reception, in violation of 47 U.S.C. §605.

24 114. On information and belief, such divulgence or publication was willful and for  
25 purposes of direct or indirect commercial advantage or private financial gain.

26 115. AT&T Corp. did not notify Plaintiffs or class members of the divulgence or  
27 publication of their communications, nor did Plaintiffs or class members consent to such.

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

1 117. Plaintiffs and class members have been and are aggrieved by Defendants' divulgence  
2 or publication of their wire or radio communications.

3 118. Pursuant to 47 U.S.C. §605(e)(3)(A), which provides a civil action for any person  
4 whose wire or electronic communications have been divulged or published in violation of 47 U.S.C.  
5 §605(a), Plaintiffs and class members seek temporary and final injunctions on such terms as the  
6 Court deems reasonable to prevent or restrain such violations; statutory damages of not less than  
7 \$1,000 or more than \$10,000 for each violation aggrieving each Plaintiff and class member, as the  
8 Court considers just; in the Court's discretion, an increase in the reward of damages to each Plaintiff  
9 and class member by an amount of not more than \$100,000 for each violation; and the recovery of  
10 full costs, including reasonable attorneys' fees.

11  
12 **COUNT V**

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

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

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

19 (a) Prohibitions. – Except as provided in subsection (b) – (1) a person or entity  
20 providing an electronic communication service to the public shall not knowingly  
21 divulge to any person or entity the contents of a communication while in electronic  
22 storage by that service; and (2) a person or entity providing remote computing  
23 service to the public shall not knowingly divulge to any person or entity the contents  
24 of any communication which is carried or maintained on that service – (A) on behalf  
25 of, and received by means of electronic transmission from (or created by means of  
26 computer processing of communications received by means of electronic  
27 transmission from), a subscriber or customer of such service; (B) solely for the  
28 purpose of providing storage or computer processing services to such subscriber or  
customer, if the provider is not authorized to access the contents of any such  
communications for purposes of providing any services other than storage or  
computer processing. . . .

26 121. On information and belief, AT&T Corp. knowingly divulged to one or more persons  
27 or entities the contents of Plaintiffs' and class members' communications while in electronic storage  
28



1 by an AT&T Corp. electronic communication service, and/or while carried or maintained by an  
2 AT&T Corp. remote computing service, in violation of 18 U.S.C. §§2702(a)(1) and/or (a)(2).

3 122. AT&T Corp. did not notify Plaintiffs or class members of the divulgence of their  
4 communications, nor did Plaintiffs or class members consent to such.

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

11 124. Plaintiffs and class members have been and are aggrieved by Defendants' above-  
12 described divulgence of the contents of their communications.

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

19 **COUNT VI**

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

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

25 127. In relevant part, 18 U.S.C. §2702 provides that:

26 (a) Prohibitions. – Except as provided in subsection (b) – (3) a provider of  
27 remote computing service or electronic communication service to the public shall not  
28 knowingly divulge a record or other information pertaining to a subscriber to or  
customer of such service (not including the contents of communications covered by  
paragraph (1) or (2)) to any governmental entity.



1           135. By engaging in the acts and practices described herein, Defendants have committed  
2 one or more unfair business practices within the meaning of Bus. & Prof. Code §§17200, *et seq.*  
3 Specifically, Defendants’ business practices offend the public policies set forth in California  
4 Constitution Art. 1, section 1.

5           136. Defendants’ above-described deceptive and misleading acts and practices have  
6 deceived and/or are likely to deceive Plaintiffs and other California Subclass members. Plaintiffs  
7 were, in fact, deceived as to the terms and conditions of services provided by defendants. Plaintiffs  
8 and California Subclass members have suffered harm as a result of Defendants’ misrepresentations  
9 and/or omissions.

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

13           138. AT&T Corp.’s acts and practices are also unlawful because they violate 18 U.S.C.  
14 §3121.

15           139. In relevant part, 18 U.S.C. §3121 provides that:

16           (a) In general. – Except as provided in this section, no person may install or use a  
17 pen register or a trap and trace device without first obtaining a court order under  
18 section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978  
19 (50 U.S.C. 1801 *et seq.*)

20           As defined by 18 U.S.C. §3127:

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

27           (4) the term “trap and trace device” means a device or process which captures the  
28 incoming electronic or other impulses which identify the originating number or other  
dialing, routing, addressing, and signaling information reasonably likely to identify

1 the source of a wire or electronic communication, provided, however, that such  
2 information shall not include the contents of any communication;

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

6 141. On information and belief, the pen registers and/or trap and trace devices installed  
7 and used by AT&T Corp. have captured, recorded, or decoded, and continue to capture, record or  
8 decode, dialing, routing, addressing or signaling information pertaining to Plaintiff and/or California  
9 Subclass members' wire or electronic communications.

10 142. AT&T Corp. did not notify Plaintiffs or California Subclass members of the  
11 installation or use of pen registers and/or trap and trace devices, nor did Plaintiffs or California  
12 Subclass members consent to such.

13 143. AT&T Corp.'s acts and practices are also unlawful because they violate 47 U.S.C.  
14 §222, which in relevant part provides that:

15  
16 (c) Confidentiality of customer proprietary network information – (1) Privacy  
17 requirements for telecommunications carriers – Except as required by law or with the  
18 approval of the customer, a telecommunications carrier that receives or obtains  
19 customer proprietary network information by virtue of its provision of a  
20 telecommunications service shall only use, disclose, or permit access to individually  
21 identifiable customer proprietary network information in its provision of (A) the  
22 telecommunications service from which such information is derived, or (B) services  
23 necessary to, or used in, the provision of such telecommunications service, including  
24 the publishing of directories.

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

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



1 (ii) Cal. Bus. & Prof. Code §§17200, *et seq.*, as to Plaintiffs and the  
2 California Subclass.

3 B. Award equitable relief, including without limitation, a preliminary and permanent  
4 injunction prohibiting Defendants' continued or future participation in the Program:

5 (i) Pursuant to the First and Fourth Amendments to the United States  
6 Constitution, 50 U.S.C. §1810, 18 U.S.C. §2520(b)(1), 47 U.S.C. §605(e)(3)(b)(i), and 18 U.S.C.  
7 §2707(b)(1), as to the Plaintiffs and the Nationwide Class; and

8 (ii) Pursuant to Cal. Bus. & Prof. Code §§17200, *et seq.*, as to Plaintiffs  
9 and California Subclass;

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

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

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

16 (iii) Not less than \$1,000 or more than \$10,000 for each violation  
17 aggrieving that Plaintiff or class member, as the court considers just, pursuant to 47 U.S.C.  
18 §605(e)(3)(C)(i)(II); and

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

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

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

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

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

26 E. Award to Plaintiffs attorneys' fees and other costs of suit to the extent permitted by  
27 law, including without limitation pursuant to 50 U.S.C. §1810(c), 18 U.S.C. §2520(b)(3), 47 U.S.C.  
28 §605(e)(3)(B)(iii), 18 U.S.C. §2707(b)(3), and Cal. Code Civ. Proc. §1021.5;

1 F. Award restitution, disgorgement, preliminary and permanent injunctive relief and all  
2 other relief allowed under §§17200, *et seq.* to Plaintiffs and the California Subclass;

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

4 **JURY DEMAND**

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

7 DATED: February 22, 2006

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 22, 2006, I electronically filed the foregoing with the Clerk  
3 of the Court using the CM/ECF system which will send notification of such filing to the e-mail  
4 addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have  
5 mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF  
6 participants indicated on the attached Manual Notice List.

7 s/ REED R. KATHREIN  
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