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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 KATHERINE SCOTT, CAROLYN JEWEL,  
and GEORGE PONTIS, individually and on  
14 behalf of all others similarly situated,  
15 Plaintiffs,

16 v.

17 AT&T INC.; AT&T SERVICES, INC.; AT&T  
18 MOBILITY, LLC; TECHNOCOM CORP.; and  
ZUMIGO, INC.,  
19 Defendants.

No. 3:19-cv-04063-SK

**PLAINTIFFS' FURTHER BRIEFING  
REGARDING DEFENDANTS' CALL  
ROUTING SERVICES**

Judge: Hon. Sallie Kim

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22 **\*\*REDACTED VERSION\*\***  
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## I. INTRODUCTION

AT&T asks this Court to dismiss Plaintiffs’ injunctive relief claims at the pleading stage on its representation that it ceased disclosing its customers’ location data before Plaintiffs’ filed their Complaint. ECF No. 73. But the limited discovery conducted to date establishes that AT&T continues to disclose its mobile customers’ location data to third parties—including to route businesses’ calls based on the location of the caller—without the privacy safeguards required by the Federal Communication Act (“FCA”). This ongoing conduct is the very behavior Plaintiffs seek to enjoin. ECF No. 1 (Compl.) ¶¶ 1, 145, 154, 285, 299.

As the Court explained, AT&T claimed at the hearing on its motion, “through argument, but not evidence” that it “only provided its customers’ geolocation data to governmental agencies and life alert companies[.]” ECF No. 135. After the Court required AT&T to substantiate this claim with evidence, AT&T revealed that it provided location data to commercial entities for call routing, utilizing a previously-undisclosed system. ECF No. 129 ¶ 7. “[I]n the interests of fairness,” the Court ordered AT&T to submit to a Rule 30(b)(6) deposition concerning these practices. ECF No. 135.

AT&T has failed to provide Plaintiffs with the 30(b)(6) testimony ordered by the Court and noticed by Plaintiffs. Instead, AT&T’s designee only provided details about *one* type of commercial location-based call routing, while testifying that he was “sure” AT&T used others. AT&T’s latest discovery misconduct is a continuation of its nearly yearlong pattern of obscuring the extent of its ongoing location data disclosures and denying Plaintiffs relevant discovery.

Nevertheless, the limited factual discovery conducted to date evidences that AT&T repeatedly provides its customers’ location data to third parties largely unknown to AT&T, without adequate oversight or protection, in violation of federal law. AT&T’s ongoing practices subject Plaintiffs to ongoing injury and a significant likelihood of future injury. *Campbell v. Facebook, Inc.*, 951 F.3d 1106 (9th Cir. 2020). AT&T’s motion should be denied.

## II. PROCEDURAL BACKGROUND

AT&T moved to dismiss Plaintiffs’ injunctive relief claims on the sole ground that its cessation of location data sales to aggregators deprived Plaintiffs of standing. ECF No. 73. The Court limited jurisdictional discovery to RFPs “targeted” to whether AT&T “stop[ped] selling location data

1 or geolocation information to third parties[.]” ECF No. 96. AT&T revealed in September that it  
 2 disseminated customers’ location data for call routing. ECF No. 112-1. In November, AT&T  
 3 disclosed new facts regarding its call routing system, including that it provides location data for  
 4 commercial call routing. ECF No. 129. In supplemental briefing, Plaintiffs argued that AT&T’s call  
 5 routing practices violate the FCA and that AT&T failed to disclose key facts concerning call routing.  
 6 ECF No. 131 at 7-8. “In the interests of fairness” the Court permitted a Federal Rule of Civil  
 7 Procedure 30(b)(6) deposition “on AT&T’s call routing practices[.]” ECF No. 135 at 3. Plaintiffs  
 8 noticed the deposition on December 18, 2020.<sup>1</sup> Siegel Decl., Ex. A. Plaintiffs deposed AT&T’s  
 9 witness, Kris Weterrings, on January 13, 2021. *Id.*, Ex. B (hereafter, “Tr.”).

### 10 III. LEGAL STANDARD

11 A defendant seeking dismissal under Rule 12(b)(1) may make a facial or factual jurisdictional  
 12 attack. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). But when a  
 13 jurisdictional challenge “involve[es] factual issues which also go to the merits, the trial court should  
 14 employ the standard applicable to a motion for summary judgment” and the movant “should prevail  
 15 only if the material jurisdictional facts are not in dispute and [it] is entitled to prevail as a matter of  
 16 law.” *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983) (citation omitted).

### 17 IV. ARGUMENT

18 Plaintiffs have standing to enjoin AT&T’s compliance with the FCA—which requires it to  
 19 safeguard its customers’ sensitive location data and obtain proper notice and consent, or valid legal  
 20 authority, before disclosing it to any third party—and to enjoin AT&T from continuing to publicly  
 21 misrepresent its location data disclosure and security practices. Compl. ¶¶ 279, 285, 299, 342. AT&T  
 22 concedes that if location disclosures are ongoing, Plaintiffs have standing to enjoin AT&T’s ongoing  
 23

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24 <sup>1</sup> The Parties met and conferred on this Notice on December 29, 2020. *See* Siegel Dec., Ex. C.  
 25 AT&T did not object to any of the noticed topics but expressed concern that its deponent—a  
 26 marketing employee—would be unable to provide testimony in response to Topic 3(b), concerning  
 27 the technical operation of AT&T’s call routing program(s). *Id.* In a good-faith effort to accommodate  
 28 AT&T and proceed efficiently, Plaintiffs agreed to accept Topic 3(b) testimony in the form of  
 documentary evidence. *Id.* AT&T produced a document on January 8, 2021 that was created by  
 AT&T’s third-party service provider. *Id.*; Tr. 60:22-24. It did *not* depict how AT&T’s systems  
 operated or *any* of the testimony sought in Topic 3(b). *Id.*; *see also id.*, Ex. D (produced document).  
 AT&T’s designee was also unable to provide this testimony.

1 misrepresentations about its location data practices. MTD Transcript at 26:22-27:2; Compl. ¶¶ 233-  
2 65 (detailing AT&T’s false representations about its location data practices).

3 AT&T argues that Plaintiffs lack standing to seek this relief because its stopped selling  
4 location data sales to location data aggregators before Plaintiffs filed their complaint. ECF No. 73.<sup>2</sup>  
5 Even if the voluntarily cessation of misconduct under threat of investigation and litigation was the  
6 standard for dismissal in the Ninth Circuit—it is not<sup>3</sup>—Plaintiffs have met their factual burden to  
7 demonstrate AT&T’s ongoing disclosures of location data violates the FCA. Dismissal at this stage  
8 is therefore improper. *Augustine*, 704 F.2d at 1079 (where there is a “clear conflict as to the central  
9 factual issues on the case[.]” dismissal on the “basis of the pleadings and supporting affidavits” is  
10 improper); *Thornhill Pub. Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 735 (9th Cir. 1979) (after a  
11 Rule 12(b)(1) motion is converted to a motion for summary judgment, “a party is entitled to have the  
12 jurisdictional issue submitted to the jury, rather than having the court resolve factual issues”).

13 Although AT&T has not complied with this Court’s order to disclose its location data  
14 dissemination practices for call routing, the limited testimony AT&T has provided establishes that it  
15 continues to violate the FCA. AT&T’s failure to reasonably protect its customers’ sensitive location  
16 data and its ongoing disclosure of that data, together with its ongoing failure to correct its  
17 misrepresentations about its practices, confer Plaintiffs with standing. *Campbell*, 951 F.3d at 1106.

18 **A. AT&T failed to disclose the extent of its call routing practices.**

19 AT&T has failed to disclose the full scope of its dissemination of location data for  
20 commercial call routing purposes, in contravention of this Court’s December 12, 2020 Order (ECF  
21 No. 135) and in violation of its obligations under Rule 30(b)(6). *Molex v. City & Cty. of San*  
22 *Francisco*, No. C-4:11-1282-YGR (KAW), 2012 WL 1965607, at \*2 (N.D. Cal. May 31, 2012).

24 \_\_\_\_\_  
25 <sup>2</sup> The evidence does not bare out AT&T’s repeated claim that when it stopped providing  
26 customer location to aggregators, it functionally ended dissemination of location data to all entities  
27 except law enforcement and certain life alert pendent companies. *See, e.g.*, Mot. to Dismiss Hr’g Tr.  
28 at 25:2-22; ECF No. 108 at 2; ECF No. 131-4.

<sup>3</sup> The relevant jurisdictional inquiry is whether plaintiffs have shown “either ‘continuing, present  
adverse effects’ due to [their] exposure to [the defendant’s] past illegal conduct or a sufficient  
likelihood that [they] will again be wronged in a similar way.” *Villa v. Maricopa Cty.*, 865 F.3d  
1224, 1229 (9th Cir. 2017) (internal quotation marks and citations omitted).

1 AT&T's 30(b)(6) designee only had knowledge of *one type* of commercial call routing: call  
 2 routing utilizing abbreviated dial codes ("ADCs"). But he testified that he was "sure there are" other  
 3 AT&T commercial call routing products, in addition to ADC-based routing. Tr. 22:2-6; *see also id.*  
 4 30:4-6 ("Again, I am not familiar with all the call routing capabilities that AT&T Mobility has");  
 5 31:1-16; 68:15-69:8. Even the graphic produced by AT&T, which AT&T counsel claimed showed  
 6 the "technical functioning" of AT&T's call routing systems, did not depict the full scope of those  
 7 services. *Compare* Siegel Decl., Ex. A at Topic 3 with Ex. D; *see also id.*, Ex. C. When asked if the  
 8 graphic "depict[ed] all flows of location data for commercial call routing purposes by AT&T,"  
 9 AT&T confirmed that it did not. Tr. 105:10-17 (objection by counsel omitted).

10 Having failed to meet its discovery obligations, AT&T is not entitled to any inference that its  
 11 call routing practices comply with the FCA or its own privacy policy. AT&T has not put forth facts  
 12 negating Plaintiffs' allegations or factual submissions regarding its ongoing conduct. Nor has it  
 13 established the absence of a dispute of material fact, as it must to succeed under a Rule 56 motion.  
 14 *Augustine*, 704 F.2d at 1077. The one call routing program AT&T did disclose violates the FCA and  
 15 AT&T's privacy policy. AT&T's motion should be denied. In the alternative, AT&T should be  
 16 ordered disclose the full extent of its location-based commercial call routing practices.

17 **B. AT&T's ADC-based call routing violates the FCA and AT&T's privacy policy.**

18 AT&T's ongoing ADC-based routing program puts Plaintiffs data at risk—and requires them  
 19 to overpay for AT&T services—and creates a sufficient risk of future injury.<sup>4</sup> While AT&T failed to  
 20 disclose the full extent to which it accesses or discloses customers' location for commercial call  
 21 routing, the evidence concerning its ADC-based routing establishes that the program does not  
 22 comply with the FCA, and that its ongoing conduct confers Plaintiffs with standing.

23 \_\_\_\_\_  
 24 <sup>4</sup> It is of no moment that the Complaint does not describe AT&T's ADC-routing program.  
 25 Plaintiffs were unaware of AT&T's surreptitious disclosure of customer location via call routing at  
 26 the time they filed their Complaint. They nonetheless alleged that AT&T illegally disclosed  
 27 customers' location data to "unknown and additional third parties," Compl. ¶ 145, and that the  
 28 surreptitious nature of AT&T's location data disclosures meant that "Plaintiffs do not, and indeed  
 cannot, know how many other third parties—in addition to the Aggregator Defendants—accessed  
 their sensitive location data." *Id.* ¶ 154. At this stage, the allegations are well-plead and sufficient to  
 establish standing. In any event, Plaintiffs can amend the Complaint to include allegations about the  
 ADC-routing program. *Petersen v. Boeing Co.*, 715 F.3d 276, 280 (9th Cir. 2013).



1 For at least ten years, AT&T has routed its customers' calls to abbreviated dial codes, ADCs,  
 2 based on the caller's location. ADCs are shortened phone numbers, proceeded by a pound (#) or stars  
 3 (\*) (e.g., \*\*LAW). Tr. 66:7-18. For example, if an AT&T mobile customer dials \*\*LAW while  
 4 standing outside the Oakland courthouse, she would be connected to a designated law firm in  
 5 Alameda county (that law firm, in turn, "leases" the ADC for that county). *Id.* 30:12-16; *see also id.*  
 6 61:13-20. AT&T contracts with a third party, StarStar Mobile, to manage ADC-based commercial  
 7 call routing. *Id.* 30:12-20. StarStar Mobile enters into the lease contracts with routing businesses  
 8 (such as [REDACTED] and insurance companies). *Id.* 32:5-14. When an AT&T customer  
 9 dials an ADC, AT&T routes the calls, but it sends a request to StarStar Mobile asking to which  
 10 number it should connect the call. *Id.* 98:14-24; 100:5-25. AT&T's request sends StarStar Mobile:  
 11 (i) the ADC, (ii) the caller's phone number, and (iii) the cell phone tower associated with handling  
 12 the call, which, as explained below, discloses the caller's location. *Id.* 69:14-23.

13 When StarStar Mobile receives AT&T's request, it completes at least two conversions. First,  
 14 it translates the cellphone tower, which AT&T calls the cell ID, into county-level location. Tr. 88:20-  
 15 25:2. Then it translates the ADC (e.g., \*\*LAW) into the number the call should be routed to (e.g., the  
 16 Alameda County law firm's number) based on the caller's county. 92:4-17. StarStar Mobile sends  
 17 that data back to AT&T, which completes the call using its own network. Tr. 98:7-13.

18 **1. AT&T's ADC-routing discloses location data covered by the FCA.**

19 AT&T discloses its customers' location data to StarStar Mobile every time a customer dials  
 20 an ADC in the form of a cell ID, a type of cell tower location data. Tr. 64:2-65:2; 81:7-10. A cell ID  
 21 is a unique number assigned to each tower that corresponds with the tower's latitude and longitude.<sup>5</sup>  
 22 *Id.* 71:15-72:15. The data linking a cell ID to the corresponding tower's longitude and latitude is  
 23 widely available on the internet, allowing anyone with a caller's cell ID to determine their location.<sup>6</sup>

24 Cell tower location reveals the caller's location. When a cell phone is on, it sends its location  
 25 to nearby cell towers approximately every seven seconds, continuously. *See State v. Earls*, 214 N.J.

26  
 27 <sup>5</sup> Data regarding a cell phone's communications with cell towers is often called "cell-site location  
 28 information" or "CSLI" *See In re Application for Tel. Info. Needed for a Criminal Investigation*, 119  
 F. Supp. 3d 1011, 1014 (N.D. Cal. 2015).

<sup>6</sup> *See, e.g.,* <https://www.opencellid.org/>; <http://www.cell2gps.com/>.

1 564, 568 (2013). The phone is continuously scanning “for the best signal, which generally comes  
2 from the closest cell site.” *Carpenter v. United States*, 138 S. Ct. 2206, 2211 (2018). How closely  
3 tower location correlates with caller location “depends on the size of the geographic area covered by  
4 the cell site. The greater the concentration of cell sites, the smaller the coverage area. As data usage  
5 from cell phones has increased, wireless carriers have installed more cell sites to handle the traffic.  
6 That has led to increasingly compact coverage areas, especially in urban areas.” *Id.* at 2211-12. By  
7 2018, “the accuracy of CSLI [was] rapidly approaching GPS-level precision” in terms of locating an  
8 individual cell phone. *Carpenter*, 138 S. Ct. at 2219. Cell tower data’s precise link to an individual’s  
9 location is why the Supreme Court requires a warrant for its disclosure. *Id.*

10 Once AT&T discloses the cell ID to StarStar Mobile, StarStar Mobile converts it to county-  
11 level location. Yet AT&T does not need to disclose sensitive cell ID in order to route calls because it  
12 can convert cell ID to county location itself, before sending any data to StarStar Mobile. Tr. 90:8-12.  
13 This would protect the more granular—and sensitive—cell ID from disclosure. AT&T could not  
14 provide an explanation why it did not do so. *Id.* 90:8-16.<sup>7</sup> Until March 2020—after the Complaint  
15 was filed—StarStar Mobile also disclosed AT&T customers’ location data to its lease customers in  
16 an online dashboard. Tr. 43:21-44:10; 97:22-98:6. AT&T does not know whether the StarStar  
17 Mobile lease customers currently receive location data after a call is routed. *Id.* 101:1-102:5.

18 The customer location data AT&T discloses to StarStar Mobile is subject to the protections of  
19 the FCA’s customer proprietary network information (“CPNI”) provisions. CPNI is, *inter alia*,  
20 “information that relates to the... location... of a telecommunications service subscribed to by any  
21 customer... and that is made available to the carrier by the customer solely by virtue of the carrier-  
22 customer relationship.” 47 U.S.C. § 222(h)(1). Cell ID and county-level location data qualifies as  
23 CPNI: it relates to customers’ location, is collected from their devices at AT&T’s direction, and can  
24 be accessed and controlled by AT&T because of its status as the customer’s mobile service provider.  
25 *See Declaratory Ruling, In the Matter of Implementation of the Telecommunications Act of 1996*, 28

26 \_\_\_\_\_  
27 <sup>7</sup> AT&T also could have assigned a non-identifying ID to a caller’s phone number before sending  
28 the request to StarStar Mobile, thereby preventing the risk that a caller’s identifying phone number  
linked with their location would be breached and enhancing privacy protections. Likewise, AT&T  
could not provide a reason why it did not do so. Tr. 104:22-105:4.

1 F.C.C. Rcd. 9609 ¶ 16 (2013). Because cell tower location data reflects the location where customers  
 2 use their cellphone service, it “clearly qualifies as CPNI.” *Id.* ¶ 22; *see also Carpenter*, 138 S. Ct. at  
 3 2272 (Gorsuch, J., dissenting) (finding that the FCA designates CSLI as CPNI).

4 **2. AT&T’s ADC-based call routing system discloses customer location data without**  
 5 **obtaining the notice and consent required by the FCA.**

6 Because customer location data qualifies as CPNI, the FCA requires AT&T to provide its  
 7 customers with “individual notice” before using, disclosing, or permitting access to it. 47 C.F.R.  
 8 § 64.2008(b). This notice must “provide sufficient information to enable the customer to make an  
 9 informed decision[.]” 47 C.F.R. § 64.2008(c). It must include, *inter alia*, “the *specific entities* that  
 10 will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer  
 11 of his or her right to disapprove those uses . . . .” 47 C.F.R. § 64.2008(c)(2) (emphasis added).

12 AT&T does not provide notice before disclosing customer location for ADC call routing. At  
 13 no point during the call routing process does AT&T tell its mobile customer—for example by audio  
 14 alert or text message—that their customer location will be accessed and disclosed. Tr. 111:17-22;  
 15 107:19-25. AT&T’s representative claimed there was an unspecified “reference[] in [AT&T’s]  
 16 privacy policy for all AT&T subscribers that indicates that [AT&T] may use the information for call  
 17 routing purposes.” *Id.* 106:5-10.<sup>8</sup> He was mistaken. The AT&T privacy policy in place when the  
 18 Complaint was filed—and thus relevant for purposes of this motion<sup>9</sup>—does not disclose that AT&T  
 19 will access location data for commercial call routing or that it will provide that data to third parties,  
 20 let alone identify the “specific entities that will receive” the data. *See* ECF No. 1-1 (privacy policy);  
 21 Tr. 107:12-18 (StarStar Mobile is not identified in any version of AT&T’s privacy policy).

22 Nor does AT&T obtain the knowing, opt-in customer consent required by the FCA before  
 23 AT&T may “use, disclose, or permit access to” location data, except in limited circumstances not  
 24 relevant here. 47 U.S.C. § 222(c)(1); *see also* 2007 CPNI Order ¶ 4. This requirement extends to the  
 25

26  
 27 <sup>8</sup> AT&T did not know what notice the policy provides, which version of the policy the purported  
 notice is provided in, or whether it was provided when the Complaint was filed. Tr. 106:11-107:11.

28 <sup>9</sup> *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167,80-74 (2000)  
 (explaining the difference between mootness and Article III standing and when each applies).

1 sharing of location data with third parties, as such disclosures increase the risk of breach.<sup>10</sup> AT&T's  
2 failure to obtain customer consent for its call routing location disclosures violates the FCA.

3 **3. AT&T's call routing system fails to safeguard customers' location data, as**  
4 **required by the FCA.**

5 Plaintiffs also face an ongoing risk of injury because the ADC-based call routing program  
6 fails to provide the necessary safeguards that would prevent their location data from being disclosed.  
7 The FCA imposes a duty on AT&T to protect the confidentiality of customer location data. *See* 47  
8 U.S.C. § 222(a); 47 C.F.R. § 64.2009. AT&T is required to take reasonable steps, such as encrypting  
9 its data and implementing a system to clearly establish customer consent, to protect location data  
10 from unauthorized disclosure. 2007 CPNI Order ¶ 36; 47 C.F.R. § 64.2009(a). The FCC's 2007  
11 Order and its recent enforcement action against AT&T confirmed that contractual provisions are  
12 insufficient to safeguard customer location information. 2007 CPNI Order ¶ 49; ECF No. 106-01 ¶¶  
13 6-8. AT&T is liable not just for its own violations of this requirement, but also for violations that it  
14 "cause[s] or permit[s]" – including by StarStar Mobile. *See* 47 U.S.C. § 206. Indeed, the FCC has  
15 found that the need to safeguard CPNI is *heightened* when the data is shared. 2007 CPNI Order ¶ 39.

16 AT&T's 30(b)(6) testimony confirms that AT&T has very little oversight or control over its  
17 ADC routing program, evidencing its lack of adequate safeguards over sensitive customer location  
18 data and the risk of further disclosure that it creates by disclosing this data for call routing.

19 *First*, AT&T has little control over, or even knowledge of, StarStar Mobile's customers. It  
20 does not review the leases, nor does it have "any level of control over who StarStar Mobile enters  
21 into leases with." Tr. 33:14-18, 32:19-33:4. AT&T does not even *know* who StarStar Mobile's  
22 customers are before they begin receiving customer data. *Id.* 33:11-13. In January 2021, AT&T had  
23 not inquired about StarStar Mobile's customers for about ten months and did not know how many  
24 entities or which entities were currently receiving data. *Id.* 36:9-12; 37:25-38:4 ("Q: Does that mean

25 \_\_\_\_\_  
26 <sup>10</sup> The FCC has found that "by sharing CPNI . . . carriers *increase the odds of wrongful*  
27 *disclosure of this sensitive information*, and before the chances of unauthorized disclosure are  
28 increased, a customer's explicit consent should be required." Report and Order and Further Notice of  
Proposed Rulemaking, In the Matter of Implementation of the Telecommunications Act of 1996:  
Telecommunications Carriers Use of Customer Proprietary Network Info. & Other Customer Info.,  
22 F.C.C. Rcd. 6927 ¶ 46 (2007) ("2007 CPNI Order") (emphasis added).

1 AT&T does not know who StarStar Mobile has lease contracts with between March 2020 and the  
 2 present? A: Correct” (objection by counsel omitted)). Nor does AT&T know the scale of its ADC  
 3 routing program; it had “no idea” know how many calls are routed every day. *Id.* 38:8-14.

4 *Second*, AT&T has no knowledge of how StarStar Mobile secures and safeguards AT&T  
 5 customers’ data or how broadly it disseminates this sensitive data to additional third parties. AT&T  
 6 does not know whether StarStar Mobile discloses location data to third parties to convert it to  
 7 county-level data (Tr. 89:3-90:7) or to determine the connecting number (*id.* 93:13-23; 94:14-21). It  
 8 does not know what data—including location data—StarStar Mobile discloses after a call is routed.  
 9 *Id.* 101:1-102:5. It does not know what AT&T customer data StarStar Mobile retains, how long it is  
 10 kept, whether it is encrypted, and who has access to it. *Id.* 95:3-96:7. Because AT&T cannot answer  
 11 these questions, it cannot credibly claim to protect customer location data as required by the FCA.

12 Most telling of AT&T’s lack of adequate data safeguards: Until March 2020, StarStar Mobile  
 13 provided AT&T customers’ location to its lease customers over an online dashboard. Tr. 45:2-12;  
 14 51:9-11. AT&T did not even know these disclosures were occurring until it ended the program. *Id.*  
 15 55:16–56:18. AT&T has no information about who had access to its customers’ location data as a  
 16 result of this system or how long they had access (*id.* 44:11-45:16, 56:15-57:1)—a clear violation of  
 17 the FCA’s rule that AT&T “maintain a record of all instances where CPNI was disclosed or provided  
 18 to third parties.” 47 C.F.R. § 64.2009(c). AT&T has taken no steps to investigate the dashboard  
 19 program or whether any location data breaches occurred as a result of its operation, nor has it  
 20 requested that the data obtained be deleted. *Id.* 57:2-11; 59:6-13 (“What steps did AT&T take when  
 21 it terminated StarStar Mobile customers’ dashboard capability to make sure . . . any customer  
 22 location data had not been further disseminated? . . . A: We didn’t take any.” (objection omitted)).

23 The only safeguard AT&T uses to protect customers’ location data is contractual provisions  
 24 prohibiting ADC customers from further dissemination of the data they receive. Tr. 45:17-24. But  
 25 AT&T takes *no affirmative steps* to confirm that these contractual provisions are followed or to  
 26 ensure that customer location data is not sold downstream. *Id.* 46:9-13; 79:22-80:11. AT&T used the  
 27 same contract-based security system to safeguard location data provided to aggregators. ECF No.  
 28 106-01 ¶¶ 53-39. The FCC found that such provisions are “insufficient to prevent the misuse of the

1 customer location information to which AT&T sold access,” *id.* ¶ 54, especially when AT&T took no  
 2 steps to determine whether they were “actually being followed.” *Id.* ¶ 58. The FCC concluded that by  
 3 implementing ineffective safeguards AT&T had “failed in its obligation under [the FCA] and [FCC]  
 4 rules to have reasonable measures in place to discover and protect against attempts to gain  
 5 unauthorized access to its customers’ CPNI.” *Id.* ¶¶ 70, 81. That flawed system fares no better here.

6 **C. AT&T’s ongoing FCA and UCL violations confer Plaintiffs with standing.**

7 Plaintiffs allege that by continuing to disclose customer location data without adequate notice  
 8 and consent procedures or data safeguards in place, AT&T continues to violate the FCA, and by  
 9 misleading Plaintiffs and the public about its location data practices, AT&T is violating the UCL and  
 10 CLRA. Compl. ¶¶ 176-218, 281-83, 233-65. Plaintiffs have established that their private location  
 11 data remains at risk—and they continue to overpay for AT&T’s service—as a result of AT&T’s  
 12 ongoing practices. AT&T’s call routing program inadequately protects Plaintiffs’ location data,  
 13 including their cell IDs. And because cell tower location is broadly publicly available on the internet,  
 14 possessing a person’s cell ID provides nearly GPS-level location data about their location. As  
 15 Plaintiffs’ complaint details, disclosure of a person’s location data is intrusive and dangerous. *Id.*  
 16 ¶¶ 153-58. This alone is sufficient to confer standing under controlling Ninth Circuit law. *See*  
 17 *Campbell*, 951 F.3d 1106 (continuing and future harms sufficient to confer standing where defendant  
 18 continues to collect, retain, and use the data at issue).

19 The significant likelihood of future harm establishes an independent basis for jurisdiction.  
 20 Plaintiffs adequately allege a real and immediate threat of repeated injury here, where their injuries  
 21 stem from AT&T’s policies and patterns of practice. *Armstrong v. Davis*, 275 F.3d 849, 867 (9th Cir.  
 22 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). Plaintiffs provide  
 23 multiple, independent bases for this Court’s jurisdiction, each supported by well-pleaded allegations  
 24 and buttressed by facts uncovered by the FCC or disclosed in discovery, and AT&T has failed to  
 25 rebut those facts or establish the cessation of its practices. Its motion should be denied.

26 **V. CONCLUSION**

27 For the foregoing reasons, Plaintiffs ask this Court to find that it has subject matter  
 28 jurisdiction over their claims for injunctive relief and to deny AT&T’s motion in its entirety.

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