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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiffs,

19 vs.

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

27 Defendants.  
28

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NORTHERN DISTRICT OF CALIFORNIA

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CASE NO: 08-4373

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

DEMAND FOR JURY TRIAL



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

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

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

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

21           11.      This non-content transactional information is analyzed by computers in conjunction  
22 with the vast quantity of communications content acquired by Defendants' network of surveillance  
23 devices, in order to select which communications are subjected to personal analysis by staff of the  
24 NSA and other Defendants, in what has been described as a vast "data-mining" operation.  
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1 claims on the NSA and the Department of Justice on December 19, 2007, and over six months have  
2 passed since the filing of that notice.

3 **PARTIES**

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

23 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 80. Defendants' above-described acquisition in cooperation with AT&T of Plaintiffs' and  
12 class members' communications contents and non-content information was directly performed,  
13 and/or aided, abetted, counseled, commanded, induced or procured, by Defendants.  
14

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

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

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

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

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

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

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

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

12          88.     Daytona is also used to manage AT&T’s huge network-security database, known as  
13 “Aurora,” which has been used to store Internet traffic data since approximately 2003. The Aurora  
14 database contains huge amounts of data acquired by firewalls, routers, honeypots and other devices  
15 on AT&T’s global IP (Internet Protocol) network and other networks connected to AT&T’s network.  
16

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

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

24          91.     The NSA and/or other Defendants maintain the communications records disclosed  
25 by AT&T in their own database or databases of such records.  
26

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

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

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

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

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

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

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

23 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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



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

3 These common legal and factual questions include:

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

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

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

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

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

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

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

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

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

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

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

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

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

### 15 **COUNT I**

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

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

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

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

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

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

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

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

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

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

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

27  
28



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

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

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

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

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

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

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

28

1 **COUNT III**

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

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

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

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

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

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

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

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

3 133. Defendants’ conduct was done intentionally, with deliberate indifference, or with  
4 reckless disregard of, Plaintiffs’ and class members’ constitutional rights.  
5

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

12 135. Plaintiffs seek that this Court declare that Defendants have violated their rights and  
13 the rights of the class; enjoin the Count III Defendants, their agents, successors, and assigns, and all  
14 those in active concert and participation with them from violating the Plaintiffs’ and class members’  
15 rights under the First Amendment to the United States Constitution; and award such other and  
16 further equitable relief as is proper.  
17

#### 18 COUNT IV

#### 19 **Violation of First Amendment—Damages**

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

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

26 137. Plaintiffs use AT&T’s services to speak or receive speech anonymously and to  
27 associate privately.  
28

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

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

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

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

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

18  
19 **COUNT V**

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

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

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

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

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



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

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

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

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

(Emphasis added.)

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

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

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

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

5 (Emphasis added.)

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

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

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

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

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

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

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

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

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

1 COUNT VI

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

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

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

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

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

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

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

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

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

8 (Emphasis added.)

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

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

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

18 (Emphasis added.)

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

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

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

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

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

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

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

26  
27  
28

1 COUNT VII

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

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

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

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

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

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

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

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

(Emphasis added.)

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

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

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

9 (Emphasis added.)

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

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

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

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

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



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

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

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

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

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

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

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

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

### 9 COUNT VIII

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

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

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

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

19 (1) Except as otherwise specifically provided in this chapter any person who  
20 – (a) intentionally intercepts, endeavors to intercept, or procures any other  
21 person to intercept or endeavor to intercept, any wire, oral, or electronic  
22 communication . . . (c) intentionally discloses, or endeavors to disclose, to  
23 any other person the contents of any wire, oral, or electronic communication,  
24 knowing or having reason to know that the information was obtained through  
25 the interception of a wire, oral, or electronic communication in violation of  
26 this subsection . . . [or](d) intentionally uses, or endeavors to use, the contents  
27 of any wire, oral, or electronic communication, knowing or having reason to  
28 know that the information was obtained through the interception of a wire,  
oral, or electronic communication in violation of this subsection . . . shall be  
punished as provided in subsection (4) or shall be subject to suit as provided  
in subsection (5).

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

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

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

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

8 (Emphasis added.)

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

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

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

15 (Emphasis added.)

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

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

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

1           192. By the acts alleged herein, Defendants have intentionally and willfully caused, or  
2 aided, abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated,  
3 advised, participated in, contributed to, facilitated, directed, controlled, assisted in, or conspired to  
4 cause AT&T's divulgence of Plaintiffs' and class members' wire or electronic communications to  
5 Defendants while in transmission by AT&T, in violation of 18 U.S.C. § 2511(3)(a).  
6

7           193. Defendants have committed these acts of interception, disclosure, divulgence and/or  
8 use of Plaintiffs' communications directly or by aiding, abetting, counseling, commanding, inducing,  
9 procuring, encouraging, promoting, instigating, advising, willfully causing, participating in,  
10 enabling, contributing to, facilitating, directing, controlling, assisting in, or conspiring in their  
11 commission.  
12

13           194. AT&T acted as the agent of Defendants in performing, participating in, enabling,  
14 contributing to, facilitating, or assisting in the commission of these acts of interception, disclosure,  
15 divulgence and/or use of Plaintiffs' communications.  
16

17           195. Defendants did not notify Plaintiffs of the above-described intentional interception,  
18 disclosure, divulgence and/or use of their wire or electronic communications, nor did Plaintiffs or  
19 class members consent to such.  
20

21           196. Plaintiffs have been and are aggrieved by Defendants' intentional and willful  
22 interception, disclosure, divulgence and/or use of their wire or electronic communications.  
23

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

1 **COUNT IX**

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

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

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

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

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

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

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

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

33 (Emphasis added.)

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

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

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

9 (Emphasis added.)

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

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

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

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

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



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

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

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

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

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

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

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

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

(2) Paragraph (1) is applicable with respect to any wire or electronic  
communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from  
(or created by means of computer processing of communications received  
by means of electronic transmission from), a subscriber or customer of  
such remote computing service; and

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

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



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

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

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

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

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

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



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

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

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

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

9 (2) Paragraph (1) is applicable with respect to any wire or electronic  
10 communication that is held or maintained on that service—

11 (A) on behalf of, and received by means of electronic transmission from  
12 (or created by means of computer processing of communications received  
13 by means of electronic transmission from), a subscriber or customer of  
14 such remote computing service; and

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

19 223. Defendants intentionally and willfully solicited and obtained from AT&T, or aided,  
20 abetted, counseled, commanded, induced, procured, encouraged, promoted, instigated, advised,  
21 willfully caused, participated in, enabled, contributed to, facilitated, directed, controlled, assisted in,  
22 or conspired in the soliciting and obtaining from AT&T the disclosure to Defendants of the contents  
23 of Plaintiffs' communications while in electronic storage by an AT&T electronic communication  
24 service, and/or while carried or maintained by an AT&T remote computing service, in violation of  
25 18 U.S.C. §§ 2703(a) and/or (b).

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

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

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



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

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

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

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

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

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

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

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

### 5 COUNT XIII

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

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

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

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

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

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

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

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

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

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

24 (E) seeks information under paragraph (2).

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

26 (A) name;

27 (B) address;

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 17 COUNT XIV

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

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

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

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

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

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



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

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

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

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

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

9 (E) seeks information under paragraph (2).

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

11 (A) name;

12 (B) address;

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

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

15 (E) telephone or instrument number or other subscriber number or  
identity, including any temporarily assigned network address; and

16 (F) means and source of payment for such service (including any credit  
card or bank account number),

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

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

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

26

27

28

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

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

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

8 250. Pursuant to 18 U.S.C. § 2707, which provides a civil action for any person aggrieved  
9 by knowing or intentional violation of 18 U.S.C. § 2703, Plaintiffs seek from the Court XIV  
10 Defendants for each Plaintiff their statutory damages or actual damages; punitive damages as  
11 appropriate; and such other and further relief as may be proper.  
12

13 **COUNT XV**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           255. Defendants did not notify Plaintiffs of the disclosure of these records or other  
25 information pertaining to them and their use of AT&T services, nor did Plaintiffs consent to such.  
26  
27  
28

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

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

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

9 **COUNT XVI**

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

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

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

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

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



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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that the Court:

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

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

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

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

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

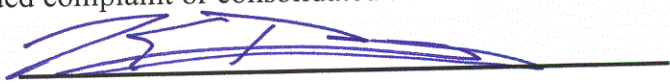
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**JURY DEMAND**

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

4 DATED: September 17, 2008



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