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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 CITY AND COUNTY OF SAN FRANCISCO

23 TOM CAMPBELL; GEORGE MAIN;
24 DENNIS P. RIORDAN; MARGARET
25 RUSSELL; ROBERT SCHEER; PETER
26 SUSSMAN; RICHARD BELZER; MARC
27 COOPER; STEPHEN J. MATHER;
28 SANDRA RICHARDS; CURREN WARF;
AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, a nonprofit
corporation; ACLU OF SOUTHERN
CALIFORNIA, a nonprofit corporation;
AMERICAN CIVIL LIBERTIES UNION OF
SAN DIEGO/IMPERIAL COUNTIES, a
nonprofit corporation,

Plaintiffs,

v.

AT&T COMMUNICATIONS OF
CALIFORNIA, a corporation; AT&T CORP.,
a corporation; AT&T, Inc, a corporation; and
DOES 1 through 20,

Defendants.

No.

VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

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1 Article I, section 1 of the California Constitution and the California Public Utilities
2 Code provide the most robust protection for the privacy of telephone customers, including
3 prohibiting the release of their telephone calling records without their consent or court order.
4 The California Legislature could not have been plainer when it stated in the preamble to the
5 Customer Privacy Act: "The Legislature hereby finds and declares that residential telephone
6 and telegraph customers and subscribers have a right to private communications, that the
7 protection of this right to privacy is of paramount state concern, and to this end, has enacted
8 this act."

9 Plaintiffs, who include a former Congressman, a doctor, ministers, lawyers, journalists
10 and the members of the three ACLU affiliates in California, are seeking a court order to bar
11 Defendant AT&T from violating their right to privacy by providing confidential customer
12 records and access to confidential customer records to the National Security Agency—or
13 anyone else—with neither their consent nor a court order. Plaintiffs also ask the Court to
14 declare that AT&T's actions violate their right to privacy guaranteed by article I, section 1 of
15 the California Constitution and by Public Utilities Code section 2891.

17 INTRODUCTION

18 1. On or about May 11, 2006, plaintiffs learned from newspaper reports that since
19 shortly after September 11, 2001, AT&T has been providing data to the NSA on telephone
20 calls made to and from AT&T's California residential telephone customers. Specifically,
21 plaintiffs are informed and believe that AT&T has been providing the NSA with the personal
22 calling patterns of customers, including telephone numbers called, time, date, and duration
23 of calls ("calling records"), including those records for plaintiffs.

24 2. The information covers hundreds of millions of telephone calls made by millions
25 of AT&T California residential customers, including plaintiffs. AT&T provided this
26 information with neither the consent of their customers, including plaintiffs, nor under the
27 compulsion of a warrant, court order, or other legal process from the government. The
28 telephone numbers provided to the government by AT&T can be easily matched with other

1 readily available databases to obtain the name and residence of each caller and of each
2 person called. This information thus enables the government to track the telephone calls and
3 calling patterns made by California AT&T residential customers, including the identity of
4 the people they have called and the length of each conversation.

5 3. The plaintiffs in this action are a group of AT&T residential customers, and the
6 three California affiliates of the American Civil Liberties Union, who bring this action on
7 behalf of their over 100,000 members, many thousands of whom are residential customers of
8 AT&T. The individual plaintiffs include journalists, a doctor, a criminal defense attorney, a
9 constitutional law professor, a former linguist for the Army Security Agency, a business
10 consultant, an actor and two ministers.

11 4. Many of the individual plaintiffs have a particular interest in knowing that the
12 identity of the persons with whom they communicate by telephone, even at home, ordinarily
13 will remain private. The nature of many any of their calls at home are confidential, and part
14 of that confidentiality relates to the identity of the persons to whom plaintiffs are speaking.
15 Reporters such as plaintiffs Robert Scheer, Peter Sussman and Marc Cooper use their home
16 telephones to speak to their confidential sources. Similarly, attorneys such as Dennis
17 Riordan and Margaret Russell frequently advise their clients using their home telephones.
18 Ministers such as plaintiffs Stephen Mather and Sandra Richards often provide confidential
19 counseling to their congregants while at home. Indeed, because of the special protection
20 accorded to telephone customer calling records by California law, most individuals feel that
21 they can rest assured that the identity of the individuals they call and of those who call them
22 will not be subject to the prying eyes of the government unless they have provided consent
23 or unless the government has obtained legal process compelling the production of such
24 information. AT&T has severely compromised plaintiffs' privacy by enabling the
25 government to pry into the identity of the persons with whom plaintiffs communicate by
26 telephone.

THE PARTIES

A. Plaintiffs

5. Plaintiff Tom Campbell is a former member of Congress and a former California State Senator, residing in Santa Clara County. His local and long distance residential telephone carrier is AT&T. Like many other Californians, Mr. Campbell objects to the disclosure of his customer calling records without either his consent or the compulsion of legal process. He believes that he has the right to keep private the identity of those he speaks to on his home telephone and that requiring the government to obtain appropriate legal authority before obtaining access to this information is a vital means of preserving the underlying values of our constitution.

6. Plaintiff George Main is a computer consultant residing in Sacramento, California. From 1969 until 1977, Mr. Main served as a linguist for the Army Security Agency, which reported directly to the NSA. He is a residential customer of AT&T for local and long distance service. He objects to the disclosure of his customer calling records without either his consent or the compulsion of legal process. Mr. Main is particularly sensitive to governmental intrusions on his privacy, because he has learned that information about a demonstration he helped organize at the Sacramento Military Entrance Processing Station was included in a secret Pentagon database.

7. Plaintiff Dennis Riordan is a criminal defense attorney residing and practicing in San Francisco, California. Like most criminal defense attorneys, Mr. Riordan often receives calls from clients or potential clients at home. Those calls are often made when immediate legal advice is needed and the client cannot wait until regular working hours. If those individuals believe that the government has routine access to Mr. Riordan's residential telephone calling records, and hence to the identity of his callers, they will be reluctant to seek the legal advice they need from him over his home telephone. Defendant AT&T provides Mr. Riordan's local telephone service.

8. Margaret Russell is a Professor of Constitutional Law at Santa Clara Law School. She resides in Oakland, California, and is a residential local and long distance subscriber of

1 AT&T. Professor Russell has also been a board member of several legal nonprofit
2 organizations, including the East Palo Alto Community Law Project, the American Civil
3 Liberties Union and the American Civil Liberties Union of Northern California. In both her
4 capacity as a law professor and board member of organizations that provide legal advice, she
5 often uses her home telephone to discuss issues that need immediate attention. Individuals
6 would be reluctant to have these conversations with her, seeking necessary legal and
7 personal advice, if they thought that the government had routine access to her residential
8 telephone calling records.

9 9. Peter Sussman is an investigative reporter, writer and a former editor of the *San*
10 *Francisco Chronicle*. He is also the former chapter president of the Northern California
11 Society for Professional Journalists. AT&T provides his local residential telephone service.
12 Mr. Sussman resides in Berkeley, California, where he works out of his home. It is
13 essential that Mr. Sussman's residential calling records remain confidential since he is often
14 in communication with individuals who will become confidential sources. Many individuals
15 who are in communication with Mr. Sussman, such as prison sources, would be subject to
16 serious repercussions if their identities became known. These individuals would be
17 unwilling to speak to him if they believed that the government could learn that they had been
18 in contact with Mr. Sussman.

19 10. Plaintiff Richard Belzer is an actor who currently appears on television as a series
20 regular on *Law & Order: Special Victims Unit*. He is a resident of New York state who also
21 owns an apartment in West Hollywood, California, where he has residential telephone
22 service. SBC, which Mr. Belzer is informed and believes is an AT&T entity, is Mr. Belzer's
23 local carrier; AT&T is his long distance carrier. Mr. Belzer is a member of the ACLU with a
24 strong interest in privacy.

25 11. Plaintiff Marc Cooper is a professional journalist who writes for *The Nation*
26 magazine and other publications. He resides in Los Angeles, California. He has AT&T
27 local and long distance telephone service at his home. Mr. Cooper regularly speaks with
28 confidential sources on his home telephone. Mr. Cooper and his sources rely on the

1 confidentiality of their communications. Moreover, it is essential to Mr. Cooper's work that
2 his confidential sources know that they can communicate without the record of their having
3 communicated being revealed to the government or any other entity without a valid court
4 order.

5 12. Plaintiff Stephen J. Mather is the minister at the Coronado Community Church in
6 Coronado, California, the same city in which he maintains his residence. Reverend Mather
7 uses AT&T for his local calls from his home. As a minister, Reverend Mather frequently
8 converses with his congregants on his home telephone. Because of the sensitive matters that
9 are often the subject of these conversations, and because contacting Reverend Mather by
10 telephone is more private than visiting him at the Church or at his home where others might
11 see them, it is important to Reverend Mather that the identity of the congregants who call
12 him at home remain private; otherwise, congregants might be reluctant to seek out his advice
13 in times of need.

14 13. Plaintiff Sandra Richards is a Minister for the United Methodist Church of Los
15 Angeles. She resides in Los Angeles. AT&T provides both her local and long distance
16 residential phone service. Reverend Richards regularly speaks with her parishioners on her
17 residential phone and frequently counsels them on a wide variety of private issues. It is
18 important to her ability to provide such counseling that the fact that these individuals have
19 spoken with her remains confidential.

20 14. Plaintiff Robert Scheer is a journalist who writes a nationally syndicated column
21 based at the *San Francisco Chronicle* and is the Editor-In-Chief of the Internet blog
22 Truthdig.com. Mr. Scheer is a resident of California and spends approximately half the year
23 in Berkeley and half the year in Los Angeles. AT&T is his residential telephone provider
24 for both local and long distance calls at his home in Berkeley. Mr. Scheer writes frequently
25 about the Iraq war and national security issues, among other things, and regularly uses
26 confidential sources. He has a particular interest in keeping records of his phone calls
27 confidential, because many of his calls are to confidential sources.

28 15. Plaintiff Curren Warf, M.D., is a pediatrician with a specialization in adolescent

1 medicine. He resides in Los Angeles, California, and Defendant AT&T is his local and long
2 distance residential phone carrier. Dr. Warf has particular concerns about keeping his phone
3 records confidential because he sometimes receives calls from patients at home. Many of
4 these patients are adolescents struggling with difficult issues concerning their sexuality,
5 substance abuse or other highly private matters; these patients frequently do not want anyone
6 to know that they are consulting with a doctor.

7 16. Plaintiffs ACLU of Northern California, ACLU of Southern California and
8 ACLU of San Diego/Imperial Counties are each a nonprofit, nonpartisan, public interest
9 organization dedicated to the mission of protecting, fostering and extending civil liberties for
10 all Californians. Together, they have over 100,000 members spanning the length and
11 breadth of California, thousands of whom are residential customers of AT&T.

12 13 **B. Defendants**

14 17. Defendants AT&T Communications of California, AT&T Corp. and AT&T, Inc.
15 (collectively "AT&T") are each corporations currently doing business in the State of
16 California as providers of telecommunications services. Plaintiffs are informed and believe
17 that SBC is an AT&T entity providing residential telephone service in California.

18 18. Does One through Twenty are sued herein under fictitious names pursuant to
19 Code of Civil Procedure Section 474. Plaintiffs are ignorant of the true names of these Doe
20 defendants and will amend this complaint when those names become known to them.
21 Plaintiffs are informed and believe that each Doe defendant is a provider of local and/or long
22 distance residential telephone service to one or more of the plaintiffs herein and is in some
23 manner responsible for the wrongs alleged below.

24 25 **STATEMENT OF FACTS**

26 On information and belief, and as grounds for their complaint, plaintiffs allege as
27 follows:

28 19. Beginning sometime after September 11, 2001, AT&T began providing the NSA

1 on an ongoing basis with residential customer telephone calling records and access to other
2 information about AT&T's customers and subscribers. The information includes the number
3 initiating the call, the number receiving the call, the date of the call and its duration. The
4 NSA reportedly has used and continues to use this sensitive information to create a massive
5 database to search for patterns of social interaction that might warrant further investigation.

6 20. The database includes records of telephone calls made from shortly after
7 September 11, 2001, to the present by residential telephone customers of AT&T.

8 21. The database includes dozens of fields of information including the number from
9 which the call originates, the number called, the date of the call and the time at which the
10 call began and ended. Using this information, the NSA can easily determine the names and
11 addresses associated with these calls by cross-referencing other, readily available databases.

12 22. The database is accessible not just by the NSA, but also by the Central
13 Intelligence Agency, the Federal Bureau of Investigation and the Drug Enforcement Agency.

14 23. AT&T has made these telephone records available to the NSA on a voluntary
15 basis. They were not provided under the compulsion of any legal process such as a warrant,
16 court order or subpoena. Nor has AT&T obtained its customers' permission to provide these
17 records to the NSA.

18 24. AT&T has issued a privacy policy that prohibits the disclosure of private call
19 information, termed customer proprietary network information (CPNI), to outside parties
20 without legal process. The policy assures AT&T's customers that their private information
21 will be kept private.

22 25. The AT&T policy states that it does not sell the personal information of its
23 customers and "abides by the federal and/or state CPNI rules that apply to all
24 telecommunication carriers."

25 26. AT&T defines CPNI to include information such as "long distance and local
26 service billing records" and "usage data and calling patterns."

27 27. AT&T states that it provides information in response to "court orders or
28 subpoenas."

1 28. On December 16, 2005, the *New York Times* reported on an NSA program of
2 eavesdropping on the telephone conversations of Americans without court order as required
3 by the Foreign Intelligence Surveillance Act. Following these initial revelations, many
4 members of the California ACLU affiliates who are residential telephone customers of
5 AT&T contacted AT&T in writing, telling it not to release information to the NSA without a
6 warrant and asking it to inform them whether it was cooperating with the NSA. These
7 customers attached notes to their telephone bills including the following language: "please
8 write me . . . to let me know what you are doing to safeguard my privacy and assure me that
9 you are not allowing the NSA to tap into your information pipeline or helping the
10 government violate my privacy in any other way. Please make your company's policy on
11 this critical issue crystal clear with a prompt response."

12 29. These California residential telephone customers were not notified by AT&T that
13 their personal call information was being made available to the NSA or to any other
14 government agency.

15 30. AT&T has neither confirmed nor denied that it has been providing customer call
16 records to the NSA.

17 31. As customers of AT&T, plaintiffs have a reasonable expectation of privacy in the
18 their telephone calling records and other information provided by AT&T to the NSA that is
19 protected both by statute and by the representations made by AT&T in their privacy
20 statements. The actions of AT&T in providing the calling records of plaintiffs is a serious
21 invasion of their privacy, revealing information that plaintiffs are entitled to have maintained
22 as private.

23
24 **FIRST CAUSE OF ACTION**
25 **(Violation of Article I, Section 1 of the California Constitution)**

26 32. Plaintiffs incorporate paragraphs 1 through 31 as though fully set forth herein.

27 33. The right to control access to information about oneself is protected by article I,
28 section 1 of the California Constitution.

1 34. Article I, section 1 provides: "All people are by nature free and independent and
2 have inalienable rights. Among these are enjoying and defending life, liberty, acquiring,
3 possessing and protecting property, and pursuing and obtaining safety, happiness, and
4 privacy."

5 35. AT&T's actions in providing customer calling records about plaintiffs have
6 violated their constitutional right to privacy guaranteed by article I, section 1 of the
7 California Constitution.

8 36. Plaintiffs have no adequate remedy at law to remedy AT&T's violation of their
9 right to privacy and unless enjoined from doing so, AT&T will continue to violate plaintiffs'
10 right to privacy by providing private calling records to the NSA.

11 37. An actual controversy now exists between plaintiffs and AT&T concerning the
12 legality of AT&T's actions in providing private calling records to the government. Plaintiffs
13 desire a judicial determination and declaration of the parties' respective rights, duties and
14 obligations under the California Constitution.

15
16 **SECOND CAUSE OF ACTION**
17 **(Violation of Public Utilities Code Section 2891)**

18 38. Plaintiffs incorporate paragraphs 1 through 31 as though fully set forth herein.

19 39. Public Utilities Code section 2891(a) states that no telephone or telegraph
20 corporation shall "make available" a residential subscriber's personal calling information to
21 another person or company without first obtaining the subscriber's permission in writing.
22 Personal calling information includes "the subscriber's personal calling patterns, including
23 any listing of the telephone or other access numbers called by the subscriber." Personal
24 calling information may be made available to a law enforcement agency only in response to
25 lawful process, pursuant to subsection (d)(6) of section 2891. Plaintiffs are informed and
26 believe that at least one telephone company, Qwest Communications, refused to provide
27 customer calling records to the NSA without a warrant, court order, or other legal process.

28 40. The purpose of Public Utilities Code section 2891 is to safeguard the right of

1 residential telephone customers to private communications.

2 41. AT&T has violated Public Utilities Code section 2891(a) by making available to
3 the NSA the precise type of personal calling pattern information that the California
4 legislature determined was of paramount state importance to protect, the disclosure of which
5 was made illegal to disclose by the passage of Public Utilities Code section 2891, including
6 illegal disclosure of numbers called, time, date and duration of telephone calls for millions of
7 California residential telephone calls since September 11, 2001. Plaintiffs are informed and
8 believe that AT&T provided this information voluntarily, rather than in response to the
9 compulsion of legal process, and without the consent of their customers, including plaintiffs.

10 42. Public Utilities Code section 2891(b) states that all telecommunications
11 companies must inform a residential customer, who has given written consent for the release
12 of any of the personal information specified in subdivision (a), regarding the identity of each
13 person or corporation to whom the information has been released, upon written request. The
14 company must notify every residential subscriber of the provisions of subdivision (b)
15 whenever consent is requested pursuant to that subdivision.

16 43. Many California residential customers who are members of the three California
17 affiliates of the ACLU have sent written requests to AT&T asking that they be informed
18 whether their private customer information has been provided to the government. AT&T
19 has violated Public Utilities Code section 2891(b) by failing to inform those California
20 residential customers that their private customer information has been released to the NSA
21 and other government agencies.

22 44. Public Utilities Code section 2891(c) states that any residential subscriber who
23 has given written consent to the release of private customer information may rescind this
24 consent upon submission of a written notice. Within thirty days following receipt of notice
25 given pursuant to subdivision (c), the corporation must stop making available any such
26 private customer information about the subscriber.

27 45. AT&T has violated Public Utilities Code section 2891(c) by continuing to make
28 personal call data available to the NSA after the thirty-day period following written notice

1 from California consumers rescinding any consent.

2 46. Plaintiffs have no adequate remedy at law to remedy AT&T's violation of their
3 rights under Public Utilities Code section 2891 and unless enjoined from doing so, AT&T
4 will continue to violate plaintiffs' right under section 2891 by providing private calling
5 records to the NSA.

6 47. An actual controversy now exists between plaintiffs and AT&T concerning the
7 legality of AT&T's actions in providing private calling records to the government. Plaintiffs
8 desire a judicial determination and declaration of the parties' respective rights, duties and
9 obligations under the California Constitution.

10 WHEREFORE, plaintiffs pray for a judgment:

11 1. Declaring that AT&T has violated plaintiffs' right to privacy guaranteed them
12 under article I, section 1 of the California Constitution and their rights under Public Utilities
13 Code section 2891;

14 2. Enjoining AT&T from providing any customer calling records to the NSA or to
15 any other person unless the customer to whom those records pertain has provided written
16 consent for their disclosure or unless the records are disclosed pursuant to legal process;

17 3. Ordering AT&T to disclose to each customer what files or records of that
18 customer have been shared with any third party, including the dates and recipients of any
19 such disclosure;

20 4. Awarding plaintiffs their costs of suit and reasonable attorneys fees under Code
21 of Civil Procedure section 1021.5; and

1 5. Granting such other relief as may be just.

2
3 DATED: May 26, 2006.

4 Respectfully,

5 ANN BRICK
6 MARK SCHLOSBERG
7 NICOLE A. OZER
8 AMERICAN CIVIL LIBERTIES UNION
9 FOUNDATION OF NORTHERN CALIFORNIA

10 PETER ELIASBERG
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12 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

13 DAVID BLAIR-LOY
14 ACLU FOUNDATION OF SAN DIEGO/IMPERIAL
15 COUNTIES

16 By: _____
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