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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 CITY AND COUNTY OF SAN FRANCISCO

15
16 DENNIS P. RIORDAN; EDWARD
GERARD DE BONIS; ROBERT S.
17 GERSTEIN; ROD GORNEY; ROBERT
JACOBSON; VINCENT J. MANISCALCO;
18 CAROL SOBEL; AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN
19 CALIFORNIA, a nonprofit corporation;
ACLU OF SOUTHERN CALIFORNIA, a
20 nonprofit corporation; AMERICAN CIVIL
LIBERTIES UNION OF SAN DIEGO/
21 IMPERIAL COUNTIES, a nonprofit
corporation,

22 Plaintiffs,

23 v.

24 VERIZON COMMUNICATIONS, INC., a
25 corporation; and DOES 1 through 20,

26 Defendants.

No.

VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

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Attorneys for Plaintiffs

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 records without their consent or a court order. The
4 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 the drafter of the Customer Privacy Act, a psychiatrist, business
10 people, two criminal defense attorneys, a civil rights attorney and the members of the three
11 ACLU affiliates in California, are seeking an injunction to bar Defendant Verizon from
12 violating their right to privacy by providing confidential customer records and access to
13 confidential customer information to the National Security Agency—or anyone else—with
14 neither their consent nor a court order. Plaintiffs also ask the Court to declare that Verizon’s
15 actions violate their right to privacy guaranteed by article I, section 1 of the California
16 Constitution and by Public Utilities Code section 2891.

18 INTRODUCTION

19 1. On or about May 11, 2006, plaintiffs learned from newspaper reports that since
20 shortly after September 11, 2001, Defendant Verizon has been providing data to the NSA on
21 telephone calls made to and from Verizon’s California residential telephone customers.
22 Specifically, plaintiffs are informed and believe that Verizon has been providing the NSA
23 with the personal calling patterns of customers, including telephone numbers called, time,
24 date, and duration of calls (“calling records”), including those records for plaintiffs.

25 2. The information covers hundreds of millions of telephone calls made by millions
26 of Verizon’s California residential customers, including plaintiffs. Verizon provided this
27 information with neither the consent of its customers, including plaintiffs, nor under the
28 compulsion of a warrant, court order or other legal process from the government. The

1 telephone numbers provided to the government by Verizon can be easily matched with other
2 readily available databases to obtain the name and residence of each caller and of each
3 person called. This information thus enables the government to track the telephone calls and
4 calling patterns made by Verizon's residential customers, including the identity of the people
5 they have called and the length of each conversation.

6 3. The plaintiffs in this action are a group of Verizon residential customers, and the
7 three California affiliates of the American Civil Liberties Union, who bring this action on
8 behalf of their over 100,000 members, many thousands of whom are residential customers of
9 Verizon. The individual plaintiffs include a psychiatrist, criminal defense attorneys, a civil
10 rights attorney, and business people.

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 of their calls at home are confidential, and part of
14 that confidentiality relates to the identity of the persons to whom plaintiffs are speaking.
15 Psychiatrists such as Plaintiff Rod Gorney frequently use their home telephones in speaking
16 with patients after hours. Similarly, attorneys such as Dennis Riordan, Robert Gerstein and
17 Carol Sobel frequently advise their clients using their home telephones. Business people,
18 such as Edward Gerard De Bonis, Robert Jacobson and Vincent Maniscalco, frequently enter
19 into non-disclosure agreements with their clients, promising to keep the fact of their business
20 relationship confidential. Indeed, because of the special protection accorded to telephone
21 customer calling records by California law, most individuals feel that they can rest assured
22 that the identity of the individuals they call and of those who call them will not be subject to
23 the prying eyes of the government unless they have provided consent or unless the
24 government has obtained legal process compelling the production of such information.
25 Verizon has severely compromised plaintiffs' privacy by enabling the government to pry
26 into the identity of the persons with whom plaintiffs communicate by telephone.

THE PARTIES

A. Plaintiffs

5. Plaintiffs Edward Gerard De Bonis and Vincent J. Maniscalco are the co-owners of a legal search firm. They are residents of the state of New York and also rent an apartment in Santa Monica, California. Their residential local and long distance carrier in Santa Monica is Verizon. They frequently receive calls from clients when at their Santa Monica apartment, many of whom do not wish it known that they are in the job market, or, in the case of law firms, that they are seeking to hire attorneys. In their contract with the firm, clients typically require a non-disclosure clause concerning, among other things, their identity as clients.

6. Plaintiff Robert S. Gerstein is an attorney who practices both civil and criminal appellate law and is past president of the California Academy of Appellate Lawyers. Mr. Gerstein resides in Venice, California. Defendant Verizon is his residential local carrier. Because of his work, he has a particular interest not only in the content of his conversations with clients and potential clients, but also in his phone records, because some potential clients wish to keep confidential their contacts with him. Mr. Gerstein has also written extensively about privacy, including an article about article I, section 1 of the California Constitution for the *Hastings Constitutional Law Quarterly* entitled "California's Constitutional Right to Privacy." 9 *Hastings Const. L.Q.* 385 (1982).

7. Plaintiff Rod Gorney is a licensed psychiatrist, who resides in Los Angeles, California. He has numerous clients who do not wish to reveal that they are receiving psychiatric treatment. He regularly conducts confidential discussions by telephone from his residence with his clients, many of whom are located in other states. Defendant Verizon provides the local and long distance phone service at Dr. Gorney's residence.

8. Plaintiff Robert Jacobson is a business and strategic consultant to numerous Internet start-up companies. From 1981 through 1989 he was the Principal Consultant to the California State Assembly Utilities and Commerce Committee, and in that capacity drafted the language of the bill that became Article 3 of Chapter 10 of the Public Utilities Code,

1 sections 2891 *et seq.* (Customer Right of Privacy) and helped manage it through passage and
2 enactment. Mr. Jacobson is a resident of Santa Monica, California. Defendant Verizon is
3 his local and long distance residential phone carrier. Mr. Jacobson has a particular interest
4 in keeping records of his phone calls confidential because many of his calls are to or from
5 persons with whom he is consulting concerning start-up businesses. He enters into non-
6 disclosure agreements for almost all his consulting work.

7 9. Plaintiff Dennis Riordan is a criminal defense attorney residing and practicing in
8 San Francisco, California. Like most criminal defense attorneys, Mr. Riordan often receives
9 calls from clients or potential clients at home. Those calls are often made when immediate
10 legal advice is needed and the client cannot wait until regular working hours. If those
11 individuals believe that the government has routine access to Mr. Riordan's residential
12 telephone calling records, and hence can learn their identity, they will be reluctant to seek
13 the legal advice they need from him over his home telephone. Mr. Riordan's long distance
14 carrier is MCI.

15 10. Plaintiff Carol Sobel is a civil rights lawyer with a specialization in the First
16 Amendment who resides in Los Angeles, California. Defendant Verizon provides the local
17 and long distance phone service at her residence. Ms. Sobel has a particular interest in
18 keeping records of her phone calls confidential in order to protect the identities of clients and
19 potential clients, many of whom she speaks with on her home telephone. In particular, Ms
20 Sobel has brought cases on behalf of Doe plaintiffs; represented unnamed class members
21 who do not want their identities revealed; and regularly consults with, especially since
22 September 11, 2001, individuals who are concerned that their lawful political activity may
23 subject them to surveillance activities by the government.

24 11. Plaintiffs ACLU of Northern California, ACLU of Southern California, and
25 ACLU of San Diego/Imperial Counties are each a nonprofit, nonpartisan, public interest
26 organization dedicated to the mission of protecting, fostering and extending civil liberties for
27 all Californians. Together, they have over 100,000 members spanning the length and
28 breadth of California, thousands of whom are residential customers of Verizon.

1 Intelligence Agency, the Federal Bureau of Investigation and the Drug Enforcement Agency.

2 18. Verizon has made these telephone records available to the NSA on a voluntary
3 basis. They were not provided under the compulsion of any legal process such as a warrant,
4 court order or subpoena. Nor has Verizon obtained its customers' permission to provide
5 these records to the NSA.

6 19. Verizon has a privacy policy that prohibits the disclosure of private call
7 information, termed customer proprietary network information (CPNI), to outside parties
8 without legal process. The policy assures its customers that their private information will be
9 kept private. Verizon's privacy policy provides that information may be disclosed "if
10 disclosure is required by law Verizon must disclose information, as necessary, to
11 comply with court orders or subpoenas."

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

23 21. These California residential telephone customers were not notified by Verizon
24 that their personal call information was being made available to the NSA or to any other
25 government agency.

26 22. Since the disclosures in the press regarding the NSA database, Verizon has issued
27 denials that it has provided the NSA with data from its customers' calls and claimed that it
28 did not provide "customer phone records" or "call data" to the NSA. However, those denials

1 have been equivocal in nature in a number of respects, including the following: the denials
2 have been limited to only certain Verizon businesses rather than being applicable to all
3 Verizon businesses that provide residential telephone service; the denials have been limited
4 in time; and, in at least one instance, the denial was limited to local telephone calls.

5 23. As customers of Defendant Verizon, plaintiffs have a reasonable expectation of
6 privacy in their telephone calling records and other information provided by Verizon to the
7 NSA that is protected both by statute and by the representations made by Verizon in its
8 privacy statements. The actions of Verizon in providing the calling records of plaintiffs is a
9 serious invasion of their privacy, revealing information that plaintiffs are entitled to have
10 maintained as private.

11
12 **FIRST CAUSE OF ACTION**
13 **(Violation of Article I, Section 1 of the California Constitution)**

14 24. Plaintiffs incorporate paragraphs 1 through 23 as though fully set forth herein.

15 25. The right to control access to information about oneself is protected by article I,
16 section 1 of the California Constitution.

17 26. Article I, section 1 provides: "All people are by nature free and independent and
18 have inalienable rights. Among these are enjoying and defending life, liberty, acquiring,
19 possessing and protecting property, and pursuing and obtaining safety, happiness, and
20 privacy."

21 27. Verizon's actions in providing customer calling records about plaintiffs have
22 violated their constitutional right to privacy guaranteed by article I, section 1 of the
23 California Constitution.

24 28. Plaintiffs have no adequate remedy at law to remedy Verizon's violation of their
25 right to privacy and unless enjoined from doing so, Verizon will continue to violate
26 plaintiffs' right to privacy by providing private calling records to the NSA.

27 29. An actual controversy now exists between plaintiffs and Verizon concerning the
28 legality of Verizon's actions in providing private calling records to the government.

1 Plaintiffs desire a judicial determination and declaration of the parties' respective rights,
2 duties and obligations under the California Constitution.

3
4 **SECOND CAUSE OF ACTION**
5 **(Violation of Public Utilities Code Section 2891)**

6 30. Plaintiffs incorporate paragraphs 1 through 23 as though fully set forth herein.

7 31. Public Utilities Code section 2891(a) states that no telephone or telegraph
8 corporation shall "make available" a residential subscriber's personal calling information to
9 another person or company without first obtaining the subscriber's permission in writing.
10 Personal calling information includes "the subscriber's personal calling patterns, including
11 any listing of the telephone or other access numbers called by the subscriber." Personal
12 calling information may be made available to a law enforcement agency only in response to
13 lawful process, pursuant to subsection (d)(6) of section 2891. Plaintiffs are informed and
14 believe that at least one telephone company, Quest Communications, refused to provide
15 customer calling records to the NSA without a warrant, court order or other legal process.

16 32. The purpose of Public Utilities Code section 2891 is to safeguard the right of
17 residential telephone customers to private communications.

18 33. Verizon has violated Public Utilities Code section 2891 (a) by making available
19 to the NSA the precise type of personal calling pattern information that the California
20 legislature determined was of paramount importance to protect, the disclosure of which was
21 made illegal by the passage of Public Utilities Code section 2891, including illegal
22 disclosure of numbers called, time, date and duration of telephone calls for millions of
23 California residential telephone calls since September 11, 2001. Plaintiffs are informed and
24 believe that Verizon provided this information voluntarily, rather in response to the
25 compulsion of legal process, and without the consent of its customers, including plaintiffs.

26 34. Public Utilities Code section 2891(b) states that all telecommunications
27 companies must inform a residential customer who has given written consent for the release
28 of any of the personal information specified in subdivision (a), regarding the identity of each

1 person or corporation to whom the information has been released, upon written request. The
2 company must notify every residential subscriber of the provisions of subdivision (b)
3 whenever consent is requested pursuant to that subdivision.

4 35. Many California residential customers who are members of the three California
5 affiliates of the ACLU have sent written requests to Verizon asking that they be informed
6 whether their private customer information has been provided to the government. Verizon
7 has violated Public Utilities Code section 2891(b) by failing to inform those California
8 residential customers that their private customer information has been released to the NSA
9 and other government agencies.

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

15 37. Verizon has violated Public Utilities Code section 2891(c) by continuing to make
16 personal call data available to the NSA after the thirty-day period following written notice
17 from California consumers rescinding any consent.

18 38. Plaintiffs have no adequate remedy at law to remedy Verizon's violation of their
19 rights under Public Utilities Code section 2891 and unless enjoined from doing so, Verizon
20 will continue to violate plaintiffs' rights under section 2891 by providing private calling
21 records to the NSA.

22 39. An actual controversy now exists between plaintiffs and Verizon concerning the
23 legality of Verizon's actions in providing private calling records to the government.
24 Plaintiffs desire a judicial determination and declaration of the parties' respective rights,
25 duties and obligations under the California Constitution.

26 WHEREFORE, plaintiffs pray for a judgment:

27 (a) Declaring that defendants have violated plaintiffs' right to privacy
28 guaranteed them under article I, section 1 of the California Constitution and their rights

1 under Public Utilities Code section 2891;

2 (b) Enjoining defendants from providing any customer calling records to the
3 NSA or to any other person unless the customer to whom those records pertain has provided
4 written consent for their disclosure or unless the records are disclosed pursuant to legal
5 process;

6 (c) Ordering Verizon to disclose to each customer what files or records of that
7 customer have been shared with any third party, including the dates and recipients of any
8 such disclosure;

9 (d) Awarding plaintiffs their costs of suit and reasonable attorneys fees under
10 Code of Civil Procedure section 1021.5; and

11 (e) Granting such other relief as may be just.

12
13 DATED: May 26 2006.

14 Respectfully,

15 ANN BRICK
16 MARK SCHLOSBERG
17 NICOLE A. OZER
18 AMERICAN CIVIL LIBERTIES UNION
19 FOUNDATION OF NORTHERN CALIFORNIA

20 PETER ELIASBERG
21 CLARE PASTORE
22 ACLU FOUNDATION OF SOUTHERN
23 CALIFORNIA

24 DAVID BLAIR-LOY
25 ACLU FOUNDATION OF SAN DIEGO/IMPERIAL
26 COUNTIES

27 By: _____
28 ANN BRICK

Attorneys for Plaintiffs