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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SEP 29 2006

JAMES N HATTEN, Clerk  
By: *J. Hatten* Deputy Clerk

CINGULAR WIRELESS LLC,

Plaintiff,

vs

CAS AGENCY, INC.; CHARLES KELLY;  
JOHN DOES 1-100, AND XYZ CORPS.  
1-100,

Defendants.

Civil Action File No.

06 CV 2348

**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE  
RELIEF, REPLEVIN, AND DISGORGEMENT**

Plaintiff Cingular Wireless LLC ("Cingular"), by and through its undersigned counsel, brings this Complaint against Defendants CAS Agency, Inc ("CAS Agency"); Charles Kelly; John Does 1-100, and XYZ Corps. 1-100 (collectively, the "Defendants"), and alleges as follows.

**SUMMARY AND NATURE OF THE ACTION**

1.

Cingular brings this action to stop the Defendants from unlawfully obtaining, disseminating, or otherwise using Cingular's confidential customer information

2.

Cingular takes reasonable precautions to safeguard its customers' privacy and confidential customer information, including information concerning customers' use of their service, while providing its customers with timely, efficient, and effective customer service by making its service representatives available to address customer concerns over the telephone and by allowing its customers access to their account information through Cingular's online account management system.

3.

Defendants do not have authorization from Cingular, from its customers, or from validly issued subpoenas or court orders to access Cingular's confidential customer information. Thus, Defendants CAS Agency, Charles Kelly or their agents cannot lawfully obtain from Cingular the confidential customer information and records that, according to the House Energy and Commerce Congressional Committee on September 28, 2006, they obtained from Cingular customer and CNET news.com reporter Ms. Dawn Kawamoto, and provided to Hewlett-Packard as part of its leak investigation.

4.

In an attempt to circumvent Cingular's safeguards, Defendants CAS Agency

and Charles Kelly or their agents wrongfully obtain and disseminate confidential customer information, such as a customer's call records, through fraud and deception by engaging in "pretexting" or "social engineering" and/or unauthorized access to online account information stored in Cingular's computer network. For example, upon information and belief, Defendants CAS Agency and Charles Kelly, or their agents call Cingular's customer service representatives and dishonestly pose as customers seeking information about his or her own account, pose as fellow employees facing an urgent access problem in accessing a customer account, and/or access customers' online accounts fraudulently, using customers' passwords without their knowledge or consent

5.

Upon information and belief, John Does 1-100 and XYZ Corps 1-100 have conspired with CAS Agency and Charles Kelly to unlawfully obtain, convert, and disseminate the confidential call records of Cingular customers.

6.

Defendants' actions invade the privacy of Cingular's customers and erode the reputation of Cingular and its relationship with its customers.

7.

Cingular brings this action: (a) to obtain preliminary and permanent

injunctive relief to stop Defendants CAS Agency, Charles Kelly their principals, agents and representatives from engaging in further improper conduct that causes Cingular and its customers to suffer immediate, irreparable harm, (b) to seek the return of all of Cingular's customer information in the possession, custody, or control of all Defendants, regardless of form or manner of storage, including without limitation Cingular's customer information existing on Defendants' computers and hard drives; (c) to seek an order requiring Defendants CAS Agency and Charles Kelly to account for and to disgorge all profits obtained as a result of their fraud in obtaining Cingular's confidential customer information; (d) to compensate Cingular for the damages caused by the Defendants' wrongful conduct; and (e) to obtain such other and further relief as the Court deems equitable and appropriate, including costs and reasonable attorneys' fees.

**PARTIES, JURISDICTION, AND VENUE**

8.

Cingular is a Delaware limited liability company with its principal place of place of business in Atlanta, Georgia. Cingular has five members: (1) SBC Long Distance LLC; (2) SBC Alloy Holdings, Inc.; (3) Cingular Wireless Corporation, (4) Bell South Mobile Data, Inc.; and (5) BLS Cingular Holding LLC. Each of these members is a citizen of either Texas, Delaware, New York or Georgia SBC

Long Distance, LLC is wholly owned by SBC Telecom, Inc. SBC Telecom, Inc. is a Delaware corporation with no employees and no physical assets with the majority of its corporate officers located in San Antonio, Texas. SBC Alloy Holdings, Inc. is a Delaware corporation with its principal place of business in San Antonio, Texas. Cingular Wireless Corporation is a Delaware corporation with its principal place of business in Atlanta, Georgia. BellSouth Mobile Data, Inc. is a Georgia Corporation that has its principal place of business in Georgia. BLS Cingular Holding, LLC is owned by AB Cellular Holding, LLC and Wireless Telecommunications Investment Company, LLC. Wireless Telecommunications Investment Company, LLC is wholly owned by BellSouth Mobile Data, Inc. AB Cellular Holding LLC is owned by BellSouth Mobile Data, Inc. and RAM Broadcasting Corporation. RAM Broadcasting Corporation is a New York corporation with its principal place of business in Georgia.

9.

Defendant CAS Agency is a Georgia corporation with its principal place of business located at 145 Centennial Road, Carrolton, Georgia 30116-4466. The registered agent of CAS Agency is Charles Kelly and, according the Secretary of State, his office address is 145 Centennial Drive, Carrolton, Georgia 30117. As described below, CAS Agency has, through deceit, trickery, and dishonesty,

obtained Cingular's private customer information and received proceeds from the sale of such information.

10.

Defendant Charles Kelly is the principal and the incorporator of CAS Agency with a business address at 145 Centennial Road, Carrollton, Georgia 30116-4466. Upon information and belief, Charles Kelly is a citizen of Georgia. As described below, Charles Kelly has, through deceit, trickery, and dishonesty, obtained Cingular's private customer information and received proceeds from the sale of such information.

11.

Defendants John Does 1-100, whose identities and addresses are presently unknown to Cingular, are individuals who, upon information and belief, have attempted to obtain Cingular's private customer information illicitly and/or have received proceeds from the sale of such information.

12.

Defendants XYZ Corporations 1-100, whose identities and addresses are presently unknown to Cingular, are corporate entities that, upon information and belief, have illicitly attempted to obtain Cingular's private customer information and/or have received proceeds from the sale of such information.

13.

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964 because this action arises under the Federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq* and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq*. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims

14.

This Court has personal jurisdiction over the Defendants in connection with the claims asserted in this Complaint because Defendants transact business within the state of Georgia; have committed tortious acts within the state; have committed tortious injury within the state caused by an act or omission outside the state and regularly do or solicit business, or engage in other persistent course of conduct or derive substantial revenue from goods used or consumed or services rendered in this state

15.

Venue is proper in this Court under 18 U.S.C. § 1965 because this is a civil action arising under the Racketeer Influenced and Corrupt Practices Act, 18 U.S.C. § 1961, *et seq*, and the Defendants transact their affairs in this District. Venue is

also proper in this Court under 28 U.S.C. § 1391(a)(2) because Defendants have caused tortious injury within the Northern District of Georgia, and because a substantial part of the events giving rise to the claim occurred in Atlanta, Georgia, or were directed toward Cingular in this district.

**FACTS RELEVANT TO ALL COUNTS**

16.

Cingular is the largest wireless communications company in the United States, with more than 56 million customers. Cingular provides these customers with a high level of customer service and employs thousands of customer service representatives (“CSRs”) who are available by telephone to address and respond to inquiries from customers.

17.

Cingular’s CSRs work directly with Cingular’s customers and are dedicated to providing a high level of customer service by answering questions and resolving customer issues quickly and accurately.

18.

Having CSRs available by phone to address customer inquiries in a timely, efficient, and effective manner is an important component of Cingular’s commitment to providing customers a high level of satisfaction, which is vital in enabling Cingular to maintain its preeminence in the competitive wireless

communications market.

19.

Cingular also enables its customers to access their accounts through an online account management system, which is another important component of Cingular's customer service

20.

Cingular has implemented numerous safeguards to protect its customers' privacy and to prevent public access to confidential customer information, including information concerning customers' use of their wireless service. For example, all newly hired Cingular CSRs receive training regarding customer privacy issues and CSRs are trained to follow a verification process before providing customer information over the telephone. In addition, customers are given the option of adding passwords on their accounts to provide an increased level of security. Cingular also safeguards its customers' confidential information by requiring customers to login using a password in order to access their account information through the online account management system.

21.

CAS Agency and Charles Kelly have not obtained authorization to access Cingular's customer accounts from Cingular, from its customers, or from duly

issued subpoenas or court orders. Therefore, CAS Agency, Charles Kelly, or their agents cannot lawfully obtain from Cingular the confidential customer information and records that they have obtained according to the September 28, 2006 House Energy and Commerce Congressional Committee, and which they provided to Hewlett-Packard as part of its leak investigation

22.

In an effort to circumvent Cingular's safeguards to preserve the confidentiality of its customers' information, CAS Agency, Charles Kelly and their agents, upon information and belief, engage in deceit, trickery, and dishonesty to obtain private information from Cingular's CSRs through "pretexting" or "social engineering" and/or through unauthorized access to online account information stored on Cingular's databases.

23.

Upon information and belief, in some of these calls with CSRs and/or from some of their unauthorized accessing of Cingular customers' online accounts, CAS Agency, Charles Kelly, or their agents have improperly obtained confidential information about Cingular customers, and have subsequently provided that illegally obtained information to third parties who have paid CAS Agency or Charles Kelly a fee for the improperly obtained Cingular confidential customer

information.

24.

For example, according to the House Energy and Commerce Congressional Committee on September 28, 2006, CAS Agency, Charles Kelly, or its agents improperly obtained the cell phone records of Cingular customer and a CNET news com reporter Ms. Dawn Kawamoto through pretexting and provided those records to Hewlett-Packard as part of its leak investigation.

25.

Ms. Dawn Kawamoto did not provide her account information to any of Defendants' agents and did not authorize their access of her account.

26

Upon information and belief, some or all of the Defendants have collaborated or are collaborating to wrongfully obtain and disseminate confidential call records and information to which they are not entitled, to the extreme detriment of Cingular and its customers.

27.

Upon information and belief, Defendants CAS Agency and Charles Kelly also work with or through other corporate entities and individuals (the XYZ Corps. and John Does) that collaborate with CAS Agency and Charles Kelly to fraudulently obtain confidential information regarding Cingular customers.

28.

Cingular has been irreparably harmed in a number of ways by Defendants' unscrupulous practices, including the following:

- (a) Cingular's reputation has been severely harmed and the goodwill associated with it has been tarnished to a degree and extent that is incalculable; and
- (b) Cingular's customers whose information has been obtained wrongfully by Defendants have mistakenly accused Cingular of releasing their private information to third parties, thereby harming the Company's relationship with its customers.

**COUNT ONE**  
**(Fraud)**

29.

Cingular incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

30.

By calling Cingular's CSRs and pretending to be Cingular employees and customers, and by accessing Cingular customer's online accounts without authorization and pretending to be Cingular customers, Defendants CAS Agency and Charles Kelly, by and through their employees and agents, have made

numerous false statements of fact.

31.

These statements were known by CAS Agency and Charles Kelly to be false when made.

32.

The false statements made by CAS Agency and Charles Kelly were made for the purpose of inducing Cingular to act in reliance thereon.

33.

Cingular has justifiably relied upon CAS Agency's and Charles Kelly's false statements, and has been irreparably harmed and damaged as a result.

34.

CAS Agency's and Charles Kelly's actions constitute an actionable fraud.

35.

If CAS Agency and Charles Kelly are not enjoined, they will continue to engage in fraudulent conduct, causing irreparable harm to Cingular

36.

Because of CAS Agency's and Charles Kelly's fraud, CAS Agency and Charles Kelly should provide an accounting for, and should be ordered to disgorge, any and all profits wrongfully obtained as a result of their fraud

37.

Because CAS Agency and Charles Kelly have acted willfully, wantonly, and with malice, Cingular is entitled to punitive damages in an amount sufficient to deter CAS Agency and Charles Kelly from engaging in similar conduct in the future

WHEREFORE, with respect to Count One, Cingular respectfully requests that this Court: (a) enter judgment in favor of Cingular and against CAS Agency and Charles Kelly in an amount sufficient to compensate Cingular for its actual damages, (b) award Cingular punitive damages as a result of CAS Agency's and Charles Kelly's willful, wanton, and malicious misconduct; (c) afford Cingular a trial by jury; (d) enjoin CAS Agency and Charles Kelly from fraudulently obtaining confidential Cingular customer information; (e) require CAS Agency and Charles Kelly to account for and to disgorge all profits obtained as a result of their fraud, and (f) grant Cingular any other relief that this Court deems just and proper.

**COUNT TWO**  
**(Civil Conspiracy)**

38.

Cingular incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

39.

Defendants have entered into agreements or confederations with each other and, upon information and belief, with third parties to act in concert to obtain and disseminate confidential Cingular customer information by tortious means, including by fraud, which has caused Cingular to suffer special damages.

40.

Defendants have acted willfully, wantonly, and with malice.

41.

In engaging in the foregoing conduct, one or more of Defendants have engaged in overt acts in furtherance of the conspiracy, which have been the actual and proximate cause of damage to Cingular.

WHEREFORE, with respect to Count Two, Cingular respectfully requests that this Court (a) enter judgment in favor of Cingular and against Defendants in an amount sufficient to compensate Cingular for its actual damages; (b) award Cingular punitive damages as a result of Defendants' willful, wanton, and malicious misconduct, (c) afford Cingular a trial by jury; (d) enjoin Defendants from conspiring to fraudulently obtain confidential Cingular customer information; and (e) grant Cingular any other relief that this Court deems just and proper.

**COUNT THREE**

**(Federal Computer Fraud and Abuse Act – 18 U.S.C. § 1030(g))**

42.

Cingular incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

43.

The computers, computer networks, and computer services that operate Cingular customers' online accounts are "protected computers" as defined in 18 U S C. § 1030(e)(2)(B).

44.

CAS Agency and Charles Kelly intentionally and without authorization accessed Cingular customers' online accounts on Cingular's protected computers and obtained confidential Cingular customer information, which CAS Agency and Charles Kelly sold to third parties such as Hewlett-Packard.

45.

By their unauthorized accessing of Cingular customers' online accounts and/or through their improper hacking, CAS Agency and Charles Kelly intentionally accessed Cingular's protected computers without authorization, and thereby obtained information from Cingular's protected computers

46.

CAS Agency's and Charles Kelly's conduct involves interstate communications. § 1030(a)(2)(C).

47.

CAS Agency's and Charles Kelly's conduct has caused Cingular to suffer loss or damages aggregating at least \$5,000.00 in a one-year period, and CAS Agency's and Charles Kelly's conduct causes a threat to public safety. 18 U.S.C. § 1030 (a)(5)(B)(i) and (iv).

48.

CAS Agency's and Charles Kelly's activity has occurred within the last two (2) years and constitutes a violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g), and Cingular is entitled to damages and injunctive and equitable relief against CAS Agency and Charles Kelly under the Act.

WHEREFORE, with respect to Count Three, Cingular respectfully requests that this Court. (a) enter judgment in favor of Cingular and against CAS Agency and Charles Kelly in an amount sufficient to compensate Cingular for its actual damages; (b) afford Cingular a trial by jury; (c) enjoin CAS Agency and Charles Kelly from accessing without authorization Cingular customers' online accounts; and (d) grant Cingular any other relief that this Court deems just and proper.

**COUNT FOUR**  
**(Trespass to Chattels)**

49.

Cingular incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

50.

The computers, computer networks, and computer services that operate Cingular customers' online accounts are Cingular's personal property.

51.

Without valid authorization, CAS Agency and Charles Kelly have intentionally and repeatedly made use of Cingular's proprietary computer system for CAS Agency's and Charles Kelly's own economic benefit.

52.

CAS Agency's and Charles Kelly's conduct constitutes trespass to Cingular's chattels.

53.

Cingular's possessory interest in its computers, computer networks, and computer services that operate Cingular customers' online accounts, and Cingular's business goodwill, has been injured by CAS Agency's and Charles Kelly's unauthorized access of Cingular's computer networks.

54.

As a result of CAS Agency's and Charles Kelly's actions, Cingular has been damaged in an amount to be proven at trial.

55.

Because CAS Agency and Charles Kelly have acted willfully, wantonly, and with malice, Cingular is entitled to punitive damages in an amount sufficient to deter CAS Agency and Charles Kelly from engaging in similar conduct in the future.

WHEREFORE, with respect to Count Four, Cingular respectfully requests that this Court: (a) enter judgment in favor of Cingular and against CAS Agency and Charles Kelly in an amount sufficient to compensate Cingular for its actual damages; (b) award Cingular punitive damages as a result of CAS Agency's and Charles Kelly's willful, wanton, and malicious misconduct; (c) afford Cingular a trial by jury, (d) enjoin CAS Agency and Charles Kelly from trespassing on Cingular's computer network; and (e) grant Cingular any other relief that this Court deems just and proper.

**COUNT FIVE**  
**(Federal RICO - 18 U.S.C. § 1962(c))**

56.

Cingular incorporates by reference Paragraphs 1 through 28 as if fully set

forth herein.

57.

Defendant CAS Agency is an “enterprise” within the meaning of 18 U.S.C. § 1961(4), which enterprise affects interstate commerce

58.

Alternatively, Charles Kelly is an “enterprise” within the meaning of 18 U.S.C. § 1961(4), which enterprise affects interstate commerce.

59.

Alternatively, Charles Kelly and/or one or more as yet to be identified persons, who operated as an “association in fact,” comprise an “enterprise” within the meaning of 18 U.S.C. § 1961(4), which enterprise affects interstate commerce. Such “association in fact” is an ongoing organization organized for the common purpose of perpetrating a fraudulent and illegal scheme of obtaining and selling Cingular’s confidential customer information. Such enterprise is controlled by Charles Kelly, and regularly carries out its function of perpetrating Charles Kelly’s fraudulent and illegal scheme.

60.

Charles Kelly is a person employed by or associated with an enterprise described in this Complaint.

61

Charles Kelly has conducted or participated, directly or indirectly, in the conduct of the affairs of an enterprise described in this Complaint through at least two acts of “racketeering activity,” including wire fraud, which is defined as “racketeering activity” under 18 U.S.C. § 1961(1).

62.

Every time that CAS Agency, Charles Kelly, or their agents called Cingular to fraudulently obtain confidential Cingular customer information, they committed wire fraud in violation of 18 U.S.C. § 1343. CAS Agency and Charles Kelly intentionally participated in a scheme to defraud Cingular of its confidential information. The scheme involved obtaining confidential Cingular customer information by fraudulent and deceptive means, and then selling the unlawfully obtained information to third parties such as Hewlett-Packard. CAS Agency and Charles Kelly had the specific intent to defraud Cingular into providing the information. CAS Agency, Charles Kelly and/or his agents used wires, specifically the telephone, in furtherance of the scheme. Such actions directly and proximately caused damage to Cingular, which reasonably relied to its detriment on Defendants’ material misstatements. Each instance in which CAS Agency, Charles Kelly, or their representatives or agents contacted Cingular by telephone in

connection with their scheme constitutes a separate predicate act.

63.

Charles Kelly's and CAS Agency Inc 's discrete acts of racketeering activity constitute a pattern of racketeering activity in that they have the same or similar purposes, results, participants, victims, or methods of commission. The discrete racketeering acts demonstrate continuity in that they occurred repeatedly and frequently beginning at least in 2006. Charles Kelly and CAS Agency committed these acts of racketeering activity as a regular manner of conducting business through the present. If not permanently enjoined, Charles Kelly and CAS Agency will continue to commit such racketeering acts indefinitely. Charles Kelly and CAS Agency acted knowingly, willfully and maliciously.

64.

Each alternative "enterprise" described in this Complaint affects interstate commerce.

65.

As a direct and proximate result of CAS Agency Inc 's and Charles Kelly's racketeering activity, Cingular suffered injury to its business and property.

WHEREFORE, with respect to Count Five, Cingular respectfully requests that this Court. (a) enter judgment in favor of Cingular and against CAS Agency

and Charles Kelly in an amount sufficient to compensate Cingular for its actual damages; (b) award Cingular three times the amount of its actual damages, (c) award Cingular all its reasonable attorney's fees and costs for bringing this action; (d) afford Cingular a trial by jury; and (e) grant Cingular any other relief that this Court deems just and proper

**COUNT SIX**  
**(Georgia RICO - O.C.G.A. § 16-14-4(a) & (b))**

66.

Cingular incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

67.

Defendant CAS Agency is an "enterprise" within the meaning of O.C.G.A. § 16-14-3(6), which affects commerce in the State of Georgia and elsewhere.

68.

Alternatively, Charles Kelly is an "enterprise" within the meaning of O.C.G.A. § 16-14-3(6), which affects commerce in the State of Georgia and elsewhere.

69.

Alternatively, Charles Kelly and one or more as yet to be identified persons, who operated as an "association in fact," comprise an "enterprise" within the

meaning of O.C.G.A. § 16-14-3(6), which affects commerce in the State of Georgia and elsewhere. Such “association in fact” is an ongoing organization organized for the common purpose of perpetrating Charles Kelly’s fraudulent and illegal scheme of obtaining and selling Cingular’s confidential customer information. Such enterprise is controlled by Charles Kelly and regularly carries out its function of perpetrating Charles Kelly’s fraudulent and illegal schemes.

70

Charles Kelly, through a pattern of racketeering activity, acquired and maintained, directly or indirectly, an interest in or control of personal property, including money. Such pattern of racketeering activity included at least two acts of “racketeering activity,” including wire fraud, which is defined as “racketeering activity” under O.C.G.A. § 16-14-3(9)(A)(xxix) and 18 U.S.C. § 1961(1)(B).

71.

Charles Kelly is employed by or associated with an enterprise described in this Complaint.

72.

Charles Kelly conducted or participated, directly or indirectly, in the conduct of the affairs the enterprise through at least two acts of “racketeering activity,” including wire fraud, which is defined as “racketeering activity” under O.C.G.A. §

16-14-3(9)(A)(xxix) and 18 U.S.C. § 1961(1)(B).

73.

Every time that CAS Agency or Charles Kelly called or instructed others to call Cingular to fraudulently obtain confidential Cingular customer information, Charles Kelly committed wire fraud in violation of 18 U.S.C. § 1343. CAS Agency and Charles Kelly intentionally participated in a scheme to defraud Cingular of its confidential customer information. The scheme involved obtaining confidential Cingular customer information by fraudulent and deceptive means, and then selling the unlawfully obtained information to third parties such as Hewlett-Packard. Charles Kelly had the specific intent to defraud Cingular. CAS Agency, Charles Kelly, and/or their agents used wires, specifically the telephone, in furtherance of the scheme. Such actions directly and proximately caused damage to Cingular, which reasonably relied to its detriment on CAS Agency's and Charles Kelly's material misstatements. Each instance in which CAS Agency, Charles Kelly, or their representatives or agents contacted Cingular by telephone in connection with their scheme constitutes a separate predicate act.

74.

In the course of carrying out his scheme, CAS Agency and Charles Kelly committed fraud against Cingular.

75

By calling Cingular's CSRs and pretending to be Cingular employees and customers, CAS Agency, Charles Kelly and his agents have made numerous false statements of material fact.

76.

These statements were known by CAS Agency and Charles Kelly to be false when made

77

The false statements made by CAS Agency, Charles Kelly and his agents were made for the purpose of inducing Cingular to act in reliance thereon in providing access to its confidential customer information.

78.

Cingular reasonably relied upon CAS Agency, Charles Kelly and his agents' false statements, and has been irreparably harmed and damaged as a result

79.

As a result of CAS Agency's and Charles Kelly's misrepresentations, Cingular has suffered damages in an amount to be proven at trial.

80.

CAS Agency's and Charles Kelly's discrete acts of racketeering activity constitute a pattern of racketeering activity in that CAS Agency and Charles Kelly

committed at least two incidents of racketeering activity that had the same or similar purposes, results, participants, victims, or methods of commission.

81.

Because CAS Agency and Charles Kelly unlawfully acquired money through a pattern of racketeering activity in violation of O.C.G.A. § 16-14-4(a), and because CAS Agency and Charles Kelly conducted and/or participated in the affairs of an enterprise through a pattern of racketeering activity in violation of 16-14-4(b), and because Cingular was directly injured by CAS Agency's and Charles Kelly's unlawful conduct, Cingular seeks three times the amount of actual damages, attorney's fees and investigative expenses, plus punitive damages in an amount sufficient to punish CAS Agency and Charles Kelly.

82.

As a direct and proximate result of CAS Agency's and Charles Kelly's racketeering activity, Cingular has suffered injury to its business and property.

WHEREFORE, with respect to Count Six, Cingular respectfully requests that this Court: (a) enter judgment in favor of Cingular and against CAS Agency and Charles Kelly in an amount sufficient to compensate Cingular for its actual damages; (b) award Cingular three times the amount of its actual damages, (c) award Cingular punitive damages as a result of Charles Kelly's intentional

misconduct; (d) award Cingular all its reasonable attorney's fees and costs for bringing this action; (e) afford Cingular a trial by jury; and (f) grant Cingular any other relief that this Court deems just and proper.

WHEREFORE, Cingular prays that judgment be entered in its favor and against Defendants on all counts, and that the Court order as follows:

- (a) That Defendants and any of their directors, officers, agents, servants, and employees, and those persons and entities in active concert or participation with them, be preliminarily and permanently enjoined from:
  - (i) attempting, directly or indirectly, to obtain any information from Cingular regarding any of Cingular's customers;
  - (ii) using the name or identity of any Cingular employee or customer for any purpose,
  - (iii) contacting Cingular for any reason;
  - (iv) providing any Cingular customer information currently in their possession to any third parties;
  - (v) advertising that Defendants can or will obtain information regarding wireless telephone subscribers;
  - (vi) possessing any confidential customer information obtained

from Cingular, regardless of form or manner of storage; and

(vii) disposing of any confidential Cingular customer information, other than by returning it to Cingular.

- (b) That Defendants be ordered to make every effort to retrieve from third parties to whom they have disseminated confidential Cingular customer information (such as Hewlett-Packard), and return to Cingular all confidential Cingular customer information in their possession, regardless of the form or manner of storage, including all copies of such information;
- (c) That Defendants CAS Agency and Charles Kelly be required to account for and to disgorge all profits obtained as a result of their fraud in obtaining Cingular's confidential customer information;
- (d) That Defendants be ordered to pay Cingular compensatory and punitive damages, together with interest thereon;
- (e) That Cingular be afforded a trial by jury on all issues so triable; and
- (f) That Cingular be granted such other and further legal and equitable relief against Defendants as the Court deems appropriate, including (i) an accounting of each and every person or entity that has been provided with Cingular's confidential customer information, and (ii)

an award to Cingular of costs and reasonable attorneys' fees incurred  
in bringing this action

Respectfully submitted, this 29th day of September, 2006.



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