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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF OREGON

13 **DARRYL HINES, ALES KLABACKA,**
14 **and JANA KLABACKA** on behalf of
themselves and others similarly situated,

15 Plaintiffs,

16 vs.

17 **VERIZON COMMUNICATIONS, INC.,**
18 an active Delaware corporation, **VERIZON**
NORTHWEST, INC.,
19 an active Washington Corporation, and
DOES 1-20 inclusive,

20 Defendants.
21

Case No. CV-06-694-AS

FIRST AMENDED COMPLAINT

Class Action (Stored Wire and Electronic
Communications and Transactional
Records Access Act – 18 USC § 2702;
USC § 2707)

DEMAND FOR JURY TRIAL

22 JURISDICTION

23 1.

24 Plaintiff Darryl Hines (Hines) is a resident of the city of Beaverton, Washington County,
25 state of Oregon. Plaintiff Ales Klabacka (Ales Klabacka) is a resident of the city of Everett,
26 Snohomish County, state of Washington. Plaintiff Jana Klabacka (Jana Klabacka) is a resident

1 of the city of Everett, Snohomish County, state of Washington. Defendant Verizon
2 Communications, Incorporated (Verizon) is an active Delaware Corporation whose principal
3 place of business is in New York, New York. Defendant Verizon Northwest, Incorporated
4 (Verizon Northwest) is an active Washington Corporation whose principal place of business is in
5 the city of Everett, Snohomish County, state of Washington. Plaintiffs are unaware of the true
6 names and capacities of Does 1-20 and therefore sue these Defendants by using fictitious names.
7 This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

8
9 VENUE

10 2.

11 The events giving rise to Plaintiffs' claim occurred in Oregon, Washington, Idaho, and
12 California. At all times Verizon and Verizon Northwest have maintained regular, sustained, and
13 substantial contacts in the state of Oregon. Pursuant to 28 U.S.C. § 1391, venue is proper in the
14 United States Court District of Oregon.

15
16 CLASS REPRESENTATIVES

17 3.

18 Hines has resided in Beaverton, Oregon, since January 2002. Prior to January 2002,
19 Hines resided in Sherwood, Oregon. His residential telephone service was provided by Verizon
20 Northwest and Verizon, at both addresses, beginning on or about June 30, 2000. Beginning in
21 May 2005, Hines received cellular telephone services provided by Verizon Northwest, Verizon,
22 or another company affiliated with Verizon Northwest. During all material times, Hines made
23 and received telephone calls, generating records stored and maintained by Verizon Northwest and
24 Verizon, or one or more third parties, including Does 1-20 named herein, at their direction and
25 control.

26 ///

1 4.

2 Ales Klabacka has resided in Everett, Washington since 2001. His residential telephone
3 phone service was provided by Verizon Northwest and Verizon since that time. During all
4 material times, Ales Klabacka made and received telephone calls, generating records stored and
5 maintained by Verizon Northwest and Verizon, or one or more third parties, including Does 1-20
6 named herein, at their direction and control.

7 5.

8 Jana Klabacka has resided in Everett, Washington since 2001. Her residential telephone
9 phone service was provided by Verizon Northwest and Verizon between 2002 and 2005. During
10 all material times, Jana Klabacka made and received telephone calls, generating records stored
11 and maintained by Verizon Northwest and Verizon, or one or more third parties, including Does
12 1-20 named herein, at their direction and control.

13
14 CLASS ALLEGATIONS

15 6.

16 This action is brought as a class action. Plaintiffs tentatively define the class as all
17 persons within the United States who received electronic communication services from Verizon
18 after September 11, 2001. Plaintiffs further tentatively define a subclass, pursuant to FRCP
19 23(c)(4), which consists of all persons in the states of Oregon, Washington, Idaho, and
20 California, who received electronic communication services from Verizon Northwest after
21 September 11, 2001. Plaintiffs reserve the right to further define subclasses as necessary to
22 efficiently manage the class pursuant to FRCP 23(c)(4).

23 7.

24 The class is so numerous that the joinder of all members is impracticable. Verizon
25 provides electronic telecommunications services to approximately 50 million customers.
26

1 Verizon Northwest provides electronic communication services to over one million customers.
2 Further investigation and discovery will further define the class.

3 8.

4 There are questions of fact and law common to the class that predominate over any
5 questions affecting only individual class members. The principal question is whether Verizon
6 and Verizon Northwest violated 18 USC § 2702 in that they unlawfully disclosed customer
7 records to the National Security Agency (NSA) directly, or through third parties, including Does
8 1-20 named herein, at their direction and control.

9 9.

10 The claims of Hines, Ales Klabacka, and Jana Klabacka are typical of those of the class
11 and are all based on the same legal and factual theories arising under 18 USC § 2702.

12 10.

13 Hines, Ales Klabacka, and Jana Klabacka will fairly and adequately protect the interests
14 of the class. Hines, Ales Klabacka, and Jana Klabacka are committed to litigating these claims
15 for the benefit of the class. Hines, Ales Klabacka, and Jana Klabacka have retained counsel who
16 are experienced in consumer law issues and class actions. Hines, Ales Klabacka, and Jana
17 Klabacka do not have any interest that would prevent them from vigorously pursuing the claims
18 of the class.

19 11.

20 A class action is superior to other available methods for the fair and efficient adjudication
21 of the controversy. Most class members are unaware of their rights and remedies with regard to
22 the disclosure of their records. The majority of the class members lack the financial resources or
23 knowledge that is necessary to access the justice system. The interest of individual class
24 members in prosecuting separate claims is greatly outweighed by the burden of prosecuting
25 individual claims. Plaintiffs seek declaratory injunctive relief to be uniformly applied for the
26 benefit of the class as a whole.

1 CLAIM FOR RELIEF

2 (18 USC § 2702; 18 USC § 2707)

3 12.

4 Verizon and Verizon Northwest provide electronic communication services to the public
5 including, but not limited to, residential telephone services, business telephone services, cellular
6 telephone services, and internet-related data services. Verizon provides telephone services across
7 the United States to approximately 50 million telephone lines. Verizon Northwest provides
8 telephone services in the states of Oregon, Washington, Idaho, and California through
9 approximately 1.6 million telephone lines. Verizon Northwest is a subsidiary of Verizon.
10 At all material times, Verizon and Verizon Northwest was subject to the Stored Wire and
11 Electronic Communications and Transactional Records Access Act, 18 USC § 2701, *et seq.* At
12 all material times, and with respect to all allegations herein, Verizon and Verizon Northwest
13 were acting independently or, in the alternative, in concert with, or provided substantial
14 assistance to, third parties, including Does 1-20, named herein.

15 13.

16 Following the terrorist attacks against the United States on September 11, 2001, the NSA,
17 a federal governmental entity, approached the major telecommunications carriers in the United
18 States, including Verizon and Verizon Northwest, and requested that the carriers voluntarily
19 provide the NSA with customer telephone records sufficient for the NSA to identify telephone
20 calls made within the United States.

21 14.

22 Verizon and Verizon Northwest knowingly and voluntarily provided, either directly or
23 through third parties, including Does 1-20 named herein, telephone records of its customers to
24 the NSA in sufficient form for the NSA to be able to identify Plaintiffs and their incoming and
25 outgoing telephone calls including the date, time, duration, and telephone numbers of the
26 participants. Verizon and Verizon Northwest provided this information without previously

1 consulting its customers, previously obtaining permission, or even advising its customers after
2 the fact. Verizon and Verizon Northwest, either directly or through third parties, including Does
3 1-20 named herein, concealed the disclosure of the customer records from its customers.

4 15.

5 In providing the information in the manner described in paragraph 12 above, Verizon and
6 Verizon Northwest knowingly divulged records or other information pertaining to Plaintiffs to a
7 governmental agency in violation of 18 USC § 2702(3).

8 16.

9 Verizon and Verizon Northwest provided these records to the NSA without a court order
10 or subpoena from the NSA and without the consent of Plaintiffs. Verizon and Verizon
11 Northwest provided these records even though they lacked reasonable belief that an emergency
12 involving immediate danger of death or serious physical injury to any person justified the
13 disclosure of the information.

14 17.

15 The clandestine and unauthorized disclosure of Plaintiffs' records by Verizon and
16 Verizon Northwest was made with a knowing or intentional state of mind, violating Plaintiffs'
17 privacy rights. Pursuant to 18 USC § 2707(c), Plaintiffs are entitled to recover actual damages,
18 or in the alternative, a statutory penalty in the amount of \$1,000 per violation.

19 18.

20 Pursuant to 18 USC 2707(b)(1), Plaintiffs seek declaratory relief that Verizon and
21 Verizon Northwest's disclosures were unlawful and violated 18 USC § 2702. Plaintiffs also seek
22 injunctive relief pursuant to 18 USC § 2707(b)(1).

23 19.

24 Verizon and Verizon Northwest willfully and intentionally provided Plaintiffs' records to
25 the NSA with reckless disregard to the rights of Plaintiffs and with conscious indifference to the
26

1 damage to Plaintiffs, thereby justifying an award of punitive damages in the amount of
2 \$5,000,000,000, pursuant to 18 USC § 2707(c).

3 20.

4 Pursuant to 18 USC § 2707(b)(3) and 18 USC § 2707(c), Plaintiffs seek reasonable
5 attorney fees and costs.

6
7 WHEREFORE, Plaintiffs requests judgment against Defendants:

- 8 (1) Declaratory and injunctive relief;
- 9 (2) Actual damages, or in the alternative, statutory penalties in the amount of \$1,000
10 per violation;
- 11 (3) \$5,000,000,000 in punitive damages;
- 12 (4) Plaintiffs' reasonable attorney fees;
- 13 (5) For Plaintiffs' costs disbursements incurred herein;
- 14 (6) For prejudgment interest; and
- 15 (7) For such other relief as the Court deems just.

16
17 DATED this _____ day of June, 2006.

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20 _____
21 Christopher A. Slater, OSB No. 97398
22 Michael J. Ross, OSB No. 91410
23 Of Attorneys for Plaintiffs
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