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University of California and Political
8 Subdivisions, and Qui Tam Plaintiff
OnTheGo Wireless, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SACRAMENTO**

11 STATE OF CALIFORNIA, REGENTS OF THE
UNIVERSITY OF CALIFORNIA [AND OTHERS
12 LISTED ON EXHIBIT A], *ex rel.* OnTheGo
Wireless, LLC

13
14 Plaintiffs,

15 vs.

16 CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS, a Delaware general partnership;
17 NEXTEL OF CALIFORNIA, INC., d/b/a SPRINT
NEXTEL AND NEXTEL COMMUNICATIONS, a
18 Delaware corporation; SPRINT SOLUTIONS, INC.,
a Delaware corporation; T-MOBILE USA, a
19 Delaware corporation; NEW CINGULAR
WIRELESS NATIONAL ACCOUNTS, LLC, d/b/a
20 CINGULAR WIRELESS n/k/a AT&T MOBILITY
NATIONAL ACCOUNTS LLC, a Delaware limited
21 liability company; and Does 1-50;

22 Defendants.

Case No. 34-2012-00127517

**FIRST AMENDED COMPLAINT AND
COMPLAINT IN INTERVENTION**

23
24 **INTRODUCTION**

25 1. For ten years and counting, the nation's four largest wireless carriers have failed to
26 provide the cost-saving services they contractually promised to the State of California and local
27 governments across the state, overcharging the government entities hundreds of millions of dollars.
28 To win three multi-billion dollar contracts that cracked open the large and lucrative government

1 market, AT&T, Sprint, T-Mobile, and Verizon promised to rightsize on a quarterly basis the rate
2 plan selected for each wireless line purchased by a government customer. Rightsizing, also known
3 as rate plan optimization, is a common industry practice that saves from 20% to 30% on the cost of
4 wireless services by ensuring that each wireless line is subscribed to the most cost-efficient rate plan
5 available. Rate plan optimization cuts deeply into the wireless carriers' revenues and profits, giving
6 the carriers an incentive to disregard their express contractual commitments to optimize government
7 lines. Nearly four dozen government entities and a whistleblower bring this lawsuit to return the
8 carriers' resulting overcharges to the cash-strapped coffers of California's educational institutions,
9 local governments, and state agencies.

10 2. The carriers breached two interlocking provisions in three form contracts at issue in
11 this case. The first provision – the “rate plan optimization” requirement – compelled the carriers to
12 identify, every three months and for every government user, the one rate plan among the many
13 offered that would result in the lowest cost to the government. The second provision – the “lowest
14 cost available” requirement – obligated the carriers to ensure that the Government Plaintiffs received
15 wireless services at the lowest cost available by recommending optimized rate plan assignments.
16 Taken together, these two provisions put on the carriers the burden of providing to the Government
17 Plaintiffs rate plan optimization reports that would permit them to purchase wireless services at the
18 lowest cost available each quarter.

19 3. The carriers agreed to both contractual provisions to gain access to the lucrative
20 government market. Once they had secured entry into it, however, the carriers breached these cost-
21 saving commitments. Knowing that users forced to choose among a bewildering array of rate plans
22 without optimization tools often choose the “wrong” or non-optimal plan, and consequently
23 overspend, the carriers placed their own profits above their contractual commitments to the
24 government.

25 4. The carriers knew what they were doing. They knew the contracts required rate plan
26 optimization. They knew what rate plan optimization was, as it is a term often used in the industry,
27 and the carriers often provided optimization to large commercial customers. And they knew that
28 abiding by the contracts' terms would substantially cut into their profits. The carriers knowingly

1 chose not to make good on their contractual commitments.

2 5. As a result, government customers – and the taxpayers who provide the funds – have
3 been overcharged hundreds of millions of dollars.

4 **PARTIES**

5 6. The plaintiffs consist of California government entities that purchased wireless
6 services from the Carrier Defendants pursuant to certain contracts described below, and a
7 “whistleblower” that is pursuing claims on behalf of California government entities as authorized by
8 the California False Claims Act, OnTheGo Wireless, LLC.

9 7. The government plaintiffs are the State of California and its agencies and political
10 subdivisions who are customers of Defendants with contracts for wireless telecommunications
11 services that required Defendants to provide rate plan optimization, as further alleged below
12 (“Government Plaintiffs”). The whistleblower plaintiff is informed and believes, and based thereon
13 alleges, that each party listed on Exhibit A to the Complaint is a Government Plaintiff.

14 8. The Government Plaintiffs include political subdivisions that, by this Complaint,
15 intervene in this action pursuant to the California False Claims Act, Cal. Gov’t Code §§ 12650, et
16 seq. (the “False Claims Act” or “FCA”). *See id.* §§ 12652(c)(8)(E) & 12652.5. These “False Claims
17 Intervenor” are:

- 18 1) Regents of the University of California
- 19 2) Los Angeles County
- 20 3) Madera County
- 21 4) Marin County
- 22 5) Orange County
- 23 6) Riverside County
- 24 7) Sacramento County
- 25 8) San Bernardino County
- 26 9) Santa Cruz County
- 27 10) Sonoma County
- 28 11) Stanislaus County

- 1 12) Yuba County
- 2 13) City of Capitola
- 3 14) City of Chino
- 4 15) City of Corona
- 5 16) City of Farmersville
- 6 17) City of Fortuna
- 7 18) City of Fresno
- 8 19) City of Long Beach
- 9 20) City of Oxnard
- 10 21) City of Rancho Cucamonga
- 11 22) City of Ripon
- 12 23) City of Riverside
- 13 24) City of Sacramento
- 14 25) City of San Bernardino
- 15 26) City of San Mateo
- 16 27) City of Santa Cruz
- 17 28) City of Santa Rosa
- 18 29) City of Vernon
- 19 30) City of Victorville
- 20 31) Grossmont Union High School District
- 21 32) Irvine Unified School District
- 22 33) Kings Canyon Unified School District
- 23 34) Olivenhain Municipal Water District
- 24 35) Sonoma County Water Agency
- 25 36) Rosemead School District
- 26 37) Saddleback Valley Unified
- 27 38) San Diego Unified School District
- 28 39) Santa Ana Unified School District

- 1 40) Santa Cruz Public Libraries
- 2 41) Torrance Unified School District
- 3 42) Victor Valley Transit Authority
- 4 43) Whittier Union High School District
- 5 44) Woodbridge Fire District

6 9. Qui Tam Plaintiff OnTheGo Wireless , LLC (“OnTheGo” or “Relator”) is a *qui tam*
7 relator, or “whistleblower,” pursuing claims on behalf of California government entities under the
8 provisions of the FCA. OnTheGo is a California limited liability company with its principal place of
9 business in San Ramon, California. OnTheGo was founded by Jeffrey Smith, the principal of
10 eOnTheGo, a California corporation that provides wireless management services, including rate plan
11 optimization. OnTheGo is pursuing claims in this action on behalf of the Government Plaintiffs who
12 are not also False Claims Intervenors pursuant to the *qui tam* provisions of the FCA. The FCA
13 provides that an individual or entity that submits false or fraudulent claims for payment to the State
14 of California or any of its political subdivisions is liable for three times the amount of damages
15 sustained as a result, as well as civil penalties of up to \$11,000 for each false and fraudulent claim
16 submitted.

- 17 10. The defendants (collectively, “Defendants” or the “Carrier Defendants”) are:
- 18 a. Cellco Partnership d/b/a Verizon Wireless (“VERIZON”). VERIZON is a
19 Delaware general partnership with its principal place of business in New Jersey.
 - 20 b. Nextel of California, Inc., d/b/a Nextel Communications and Sprint Nextel;
21 and Sprint Solutions, Inc. (collectively, “SPRINT”). Nextel of California, Inc. is a Delaware
22 corporation with its principal place of business in California. Sprint Solutions, Inc. is a
23 Delaware corporation with its principal place of business in Kansas.
 - 24 c. T-Mobile USA (“T-MOBILE”). T-MOBILE is a Delaware corporation with
25 its principal place of business in the state of Washington.
 - 26 d. New Cingular Wireless National Accounts, LLC d/b/a Cingular Wireless, now
27 known as AT&T Mobility National Accounts LLC (“AT&T”). AT&T is a Delaware limited
28 liability company with its principal place of business in Georgia.

1 such as WSCA/NASPO.¹ In the cooperative purchasing model, a “lead” government agency solicits
2 and enters into one or more master contracts, which other members of the cooperative are then able
3 to adopt and use. The WSCA contracts are available to all NASPO members, which include the 50
4 states, the District of Columbia, and U.S. territories.

5 16. Cooperative purchasing contracts produce lower prices for government purchasers
6 and larger markets for government contractors. Working together to take advantage of their
7 collective market power, government entities can secure better pricing and terms. By standardizing
8 products and services and aggregating requirements, governments benefit from the combined
9 economies of scale of multiple organizations, which can be especially beneficial for smaller
10 government entities. For contractors selling to the government, cooperative purchase agreements
11 provide instant access to the large and lucrative government market. Vendors can solicit and secure
12 government customers without the burden of a competitive bidding process and the need to negotiate
13 a separate agreement.

14 17. Cooperative purchasing also provides benefits with respect to the procurement of
15 products and services that require technical expertise. Having a single entity develop the contract
16 saves time and money, including the effort required to learn about complicated services and develop
17 specialized terms. According to NASPO, “[c]ooperative purchasing contracts provide higher quality
18 products and services. By using specialized specification writers, procurement professionals, and
19 technical evaluation committee members, governments are able to produce better contracts for
20 higher quality products and services.” Other government entities using the cooperative purchasing
21 contract can then benefit from the work of the lead agency without having to become technical
22 experts on the procurement matter. When negotiating with vendors the size and sophistication of the
23 Carrier Defendants, group purchasing creates a more level playing field.

24 18. In addition, cooperative purchasing greatly streamlines government procurement for
25 both the government customers and contractors. Without cooperative purchasing, each government
26 purchaser would typically be required to separately solicit bids or quotations and evaluate proposals.

27 _____
28 ¹ Long a cooperative purchasing organization of NASPO, WSCA changed its name in 2013 to NASPO ValuePoint
Cooperative Purchasing Organization LLC.

1 Each contractor also would have to prepare responses to such government solicitations, negotiate
2 separate contracts, and maintain a legal and operational infrastructure to administer dozens or even
3 hundreds of dissimilar contracts.

4 19. In short, a cooperative purchasing agreement can result in substantial benefits for
5 both governments and their contractors. The benefits to government entities, however, depend on
6 contractors living up to the terms of the agreement.

7 Wireless Pricing and Cost Control

8 20. The contracts at issue included specialized provisions designed to reduce costs
9 despite the complex pricing models the Carrier Defendants devised. The Carrier Defendants provide
10 wireless services using a multiplicity of “rate plans.” In 2012, for example, VERIZON alone
11 promoted upwards of 100 options for voice, text, and data plans to government purchasers under one
12 of the contracts at issue. Because each Carrier Defendant typically offers dozens of rate plan options
13 at any given time, and frequently changes these plans’ features and costs, the selection of the most
14 cost-effective rate plan for a given user is a difficult task. Further, the cost effectiveness of a rate
15 plan is not static. As an individual’s usage patterns vary over time, the most cost-effective rate plan
16 one month is often not the most cost-effective plan a few months later.

17 21. Selecting the most cost-effective rate plan for a phone or wireless device, a process
18 known in the industry as rate plan optimization, is one of the most effective means of reducing and
19 controlling costs. A wireless service account assigned to a rate plan that is not rightsized can cost far
20 more than one assigned to the optimal rate plan. The converse is also true: routinely optimizing
21 using the rate plans available from a given carrier reduces costs by 20% or more, quarter after
22 quarter.

23 22. While it reduces costs greatly, identifying the most cost-effective rate plan for an
24 individual phone line is difficult. It requires historical usage data, a complete list of all available rate
25 plans including add-on features and the associated pricing formulas, and a means to match up the
26 usage with the optimal plan. The complexity of rate plan features the Carrier Defendants devised
27 makes it necessary to have detailed usage data. For example, selecting the optimal rate plan requires
28 knowing not just the total minutes used during the billing period, but also the time of day calls were

1 made (peak or off peak); whether the other party to a call also purchased service from the same
2 carrier (in network or out of network); the number of text messages sent; the amount of data sent or
3 received; and so on.

4 23. Further, to identify the best rate plan, one also must know all of the rate plans a
5 carrier makes available, as well as the pricing features of each plan. As said above, this might
6 involve dozens of rate plans, each with a unique pricing formula, some of which are “bundled” with
7 text and data allowances and others that require users to pay for these services separately.

8 24. As difficult as this process is for an individual user, it is even more challenging in the
9 context of a large group, or government, account, where numerous lines of service make up an
10 account. A large number of lines compounds the difficulty of optimization, as dozens, hundreds, or
11 even thousands of lines need to be matched to the most cost-effective rate plan available. Additional
12 variables unique to enterprise accounts, such as shared or pooled usage plans and custom rate plans,
13 must also be factored in.

14 25. Given the multiplicity of variables involved in selecting the most cost-effective plan,
15 rate plan optimization is a task uniquely suited for computerized analysis.

16 26. Because rate plan optimization provides such large savings, large commercial
17 customers often hire third party optimization firms to perform the analysis or demand from the
18 Carrier Defendants a contractual commitment to provide it. The Carrier Defendants frequently hire
19 third party firms to fulfill their commitments to perform optimization analyses. VERIZON, for
20 example, routinely hired eOnTheGo to prepare rate plan optimization reports. Indeed, the Relator
21 learned that VERIZON decided to commit the acts alleged here in the course of that work.

22 27. Rate plan optimization has a clear, widely accepted meaning in the wireless industry.
23 The Carrier Defendants demonstrated their understanding of it when they provided the service to
24 large commercial customers and when they worked with third party optimization providers to do the
25 same. At a minimum, rate plan optimization involves identifying for each line of service the most
26 cost-effective rate plan in light of a subscriber’s usage patterns and the rate plans available from the
27 carrier under the relevant agreement.

28 28. To reduce and control costs for government customers, the DGS and WSCA contracts

1 required the Carrier Defendants to provide rate plan optimization and service at the “lowest cost
2 available.” The contracts thus shifted to the carriers the burden of providing to the Government
3 Plaintiffs rate plan optimization reports that would permit them to purchase wireless services at the
4 lowest cost available each quarter. Despite expressly certifying they would do so, the Carrier
5 Defendants knowingly failed to optimize rate plans in order to preserve revenue and high margins.

6 **THE CARRIERS PROMISED RATE PLAN OPTIMIZATION REPORTS**
7 **AND SERVICE AT THE LOWEST COST AVAILABLE**

8 **The California Wireless Contract – The CWC**

9 29. On or about May 27, 2005, California’s Department of General Services issued an
10 electronic “Request for Proposals,” referred to as “eRFP 5014,” seeking submissions from wireless
11 carriers to provide service to California government entities. Following DGS’s evaluation of all
12 carrier responses to eRFP 5014, defendants VERIZON and SPRINT entered into contracts (the
13 “California Wireless Contract” or “CWC”) to provide wireless services.

14 30. While DGS issued the eRFP, the CWC was a contract for the entire State of
15 California. All California state agencies wishing to purchase wireless services were required to use
16 the CWC to do so, absent a waiver or special circumstance. In addition, many California political
17 subdivisions purchased wireless services from VERIZON or SPRINT under the CWC.

18 31. In order to reduce costs, the CWC included a provision requiring VERIZON and
19 SPRINT to prepare and deliver rate plan optimization analyses each quarter to every California state
20 agency customer.

21 32. The requirement to provide rate plan optimization reports was contained in Section
22 5.11 of the eRFP, entitled “Agency Reporting Requirements.” Section 5.11.2 concerned
23 optimization reports specifically. It provided:

24 Wireless Services Optimization Reports <M>

25 Contractor must provide a quarterly optimization report for each
26 wireless service subscriber. The goal of these optimization reports is
27 to ensure that each subscriber is utilizing the most appropriate plan.
28 This includes identifying subscribers that may be consistently
incurring overage charges, and therefore should move to a higher plan,
or subscribers consistently under-utilizing a plan, and therefore should

1 move to a lower plan. **When determining the optimal plan for a**
2 **subscriber, Contractor must analyze the effective cost of all plans**
3 **bid (including custom plans) and exclude any months of suspended**
4 **service from the analysis.**

5 The optimization report will be submitted in electronic and/or
6 hardcopy formats on a quarterly basis, by the 15th day of the first
7 month of the new quarter. Contractor may be required to submit this
8 report to the DGS Contract Administrator and the ATRs [“agency
9 telecommunications representatives”] at anytime upon request. Refer
10 to Section 8, Exhibits, Required Wireless Reporting Elements for
11 minimum required elements.

12 eRFP 5014 § 5.11.2 (emphasis in original).

13 33. Exhibit 8.12 to the eRFP, referenced in Section 5.11.2, set out fourteen items of
14 information VERIZON and SPRINT were required to include for every “subscriber” or line of
15 service in the mandatory rate plan optimization reports. These included, “Current [Rate] Plan,”
16 “Proposed [Rate] Plan,” and the carrier’s estimate of the “Potential Savings” that would result from
17 moving to the proposed optimal rate plan. Consistent with industry meaning and standards,
18 including the rate plan optimization reports VERIZON and SPRINT provided to commercial
19 customers, Section 5.11.2 and Exhibit 8.12 specified that the carriers were obligated to analyze “the
20 effective cost of all plans bid [and available]” and, for “each subscriber,” set forth the “potential
21 savings” from the rate plan that would yield the lowest cost.

22 34. The eRFP, incorporated into the resulting contracts, left no doubt that VERIZON and
23 SPRINT were required to provide optimization reports, and that this was a mandatory and material
24 term of the contract.

25 35. On its face, Section 5.11 stated that the carriers “must provide” the listed reports. As
26 well, the entire section was designated “<M>,” which stood for “mandatory.” In addition, the eRFP
27 contained further indicia that certain provisions, including this one, were mandatory. The eRFP
28 consisted of a series of requirements in numbered paragraphs. Bidders received a log-in to the eRFP
system, permitting them to provide a response to each requirement and additional information, as
needed. Mandatory items, the eRFP stated, were “not negotiable”; a refusal to comply with one
would “result in disqualification.” Carriers were required to respond to mandatory terms by
checking either a “yes” or “no” on the eRFP system. “By indicating ‘YES,’ bidders agree that they

1 shall comply with this term throughout the full term of the contract if the bidder is successful.” The
2 term “shall” was also defined: “The use of ‘shall,’ ‘must’ or ‘will’ (except to indicate simple
3 futurity) in the eRFP indicates a requirement or condition, which must be met.”

4 36. The State had authority to waive non-conforming responses only if the deviations
5 were “not material.” A deviation was material “if the deficient response is not in substantial accord
6 with the eRFP requirements . . . or has a potentially significant effect on the . . . amount paid to the
7 bidder, or for the cost to the State. Material deviations cannot be waived.”

8 37. The significance and materiality of the optimization requirement were also clear
9 because rate plan optimization has a large and continuing impact on cost. The eRFP was clear that
10 saving money was a primary purpose of the CWC: “Cost is the primary evaluation criterion for the
11 award of this eRFP.”

12 38. The eRFP also included, in Section 1.1, a provision requiring the carriers to “work
13 with the State to furnish quality wireless equipment and services at the lowest cost available”

14 39. The eRFP cautioned bidders that they were responsible for reading the entire
15 document carefully; “[i]f clarification is necessary, the bidders must submit clarification questions”
16 to a listed procurement official, who would provide responses to such questions by written notice to
17 all bidders. “If a bidder fails to notify the State, prior to the date fixed for submission of proposals,
18 of a known error in the eRFP or an error that reasonably should have been known to the bidder, the
19 bidder shall submit their proposal at their own risk; and if awarded the contract, the bidder shall not
20 be entitled to additional compensation”

21 40. The eRFP required that a “Letter of Acceptance” executed by an authorized carrier
22 representative accompany submissions: “The Letter of Acceptance is an acceptance of the terms and
23 conditions of the eRFP, and binds the company to those terms and conditions. This letter shall be on
24 company letterhead and signed by an authorized representative and/or corporate officer of the
25 company.”

26 41. When responding to the eRFP, both VERIZON and SPRINT expressly agreed to
27 comply with Section 5.11.2 and provide the mandated rate plan optimization reports. Shannon
28 Champion, VERIZON’s authorized representative, responded to the eRFP on VERIZON’s behalf on

1 or about July 20, 2005. Concerning Section 5.11.2, Ms. Champion checked “Yes,” indicating
2 VERIZON agreed to comply with this mandatory term. Gray Sigler, on behalf of SPRINT and as its
3 authorized representative, responded to the eRFP on or about July 20, 2005. Mr. Sigler also checked
4 “Yes,” affirming that his company would comply with Section 5.11.2.

5 42. Following DGS’s evaluation of the carriers’ responses to the eRFP, VERIZON and
6 SPRINT executed “Standard Agreements” with DGS. These Standard Agreements expressly
7 incorporated “the entire eRFP 5014 and Contractor’s entire Final Proposal in response to eRFP.”

8 43. H. Leon Frazier, identified as a “Vice President” of Nextel of California, Inc., d/b/a
9 Nextel Communications, a Delaware Corporation, executed the SPRINT CWC contract, Agreement
10 Number 1S-05-58-01, on or about October 1, 2005. While the original contract had a two-year term,
11 it was subsequently extended multiple times until it expired on October 2, 2010.

12 44. Daniel J. Hess, identified as “Area Vice President – Finance,” of Cellco Partnership
13 d/b/a/ Verizon Wireless, a Delaware general partnership, executed the VERIZON CWC contract,
14 Agreement Number 1S-05-58-02, on or about September 30, 2005. Shannon Champion, identified
15 as VERIZON’s “Senior Attorney,” approved the CWC “as to form.” While the original contract had
16 a two year term, it was subsequently extended multiple times until it expired on October 2, 2010.

17 45. In 2010, California decided not to extend the CWC further and instead began using
18 WSCA I to purchase wireless services.

19 **The WSCA Contracts**

20 46. Each Carrier Defendant agreed to provide wireless services to the Government
21 Plaintiffs pursuant to two contracts developed under the auspices of WSCA. The first contract
22 (“WSCA I”) became effective in or about October 2006, and the second (“WSCA II”) became
23 available as of approximately April 2012. Both contracts required the Carrier Defendants to prepare
24 quarterly “optimization reports” identifying the lowest cost rate plan for each user or phone, as well
25 as to provide service at the “lowest cost available.”

26 47. The State of Nevada was the “lead state” that managed the negotiation of these
27 agreements for WSCA. As the lead state, Nevada issued a “Request for Proposal” (“RFP”), which
28 set forth the proposed material terms of the anticipated contracts, with limited exceptions, including

1 notably the pricing that the carriers were to propose. The RFP also specified the process by which
2 the contract terms would be fixed. Specifically, responding carriers were required to submit a form
3 certifying that they understood and would comply with all terms of the RFP, except any terms the
4 carrier expressly identified and to which it took exception. Following receipt, Nevada evaluated the
5 carriers' submissions, including pricing and qualifications, and attempted to negotiate any terms as
6 to which a carrier had objected.

7 48. As described in detail below, written contracts were eventually entered into between
8 Nevada and each Carrier Defendant, in the form of a Nevada standard form "Contract for Services
9 on Independent Contractor." These contracts expressly incorporated the underlying RFP, the
10 carriers' responses to the RFP, and any additional terms agreed upon in writing as a result of a
11 carrier's objection to a term in the RFP. After the Nevada contracts became effective, states seeking
12 to utilize them had to enter into "Participating Addenda," which incorporated the terms of the
13 Nevada contracts and enabled state agencies, as well as a participating state's political subdivisions,
14 to procure services under the terms of the WSCA contracts.

15 WSCA I

16 49. On WSCA's behalf, the State of Nevada's Division of Purchasing issued the RFP for
17 WSCA I on or about February 8, 2006. The RFP set forth the terms of a proposed model contract
18 that government entities could utilize to purchase wireless services from carriers. The RFP included
19 the following statement concerning its general purpose:

20 The purpose of this Request for Proposals (RFP) is to establish
21 contracts on a competitive basis with qualified vendors to directly
22 supply wireless communication services including . . . the transmission
23 of voice, data and/or video content as well as optional messaging, two-
way radio, internet access or other related communications and/or data
transmission services.

24 50. A central goal of the RFP, material to the contracts that resulted from it, was to
25 leverage purchasing power and ease administrative burdens to reduce costs for government
26 customers. The RFP's statement of purpose noted:

27 A key objective of this procurement is to obtain greater volume price
28 discounts by combining the volume of purchases from governmental
entities within multiple states with administrative savings that will

1 result from the maintenance of a single, comprehensive contract for
2 each selected vendor.

3 51. Likewise, under the heading “Proposal Evaluation and Award Process,” the RFP
4 stated that carrier proposals would be evaluated and scored based upon six criteria, the first and most
5 important of which was “[r]easonableness of cost.”

6 52. The RFP was highly detailed and included material terms of the contract. The RFP
7 specifically provided that contracts resulting from it would incorporate its terms. Further, it
8 delineated a single path to depart from its dictates: A carrier had to take specific exception to a term
9 *and* Nevada and the carrier had to agree to modify it. In addition, both steps had to be memorialized
10 in writing.

11 53. Responding carriers specifically certified that they would comply with the RFP’s
12 terms and conditions. A “Submission Checklist,” included in the RFP, identified “[d]ocuments that
13 must be submitted with each package in order to be considered responsive.” Among the required
14 documents was “Attachment B,” a “Certification of Compliance With Terms and Conditions of
15 RFP.” Attachment B, which appears below, required a carrier’s authorized representative to certify
16 that she had read, understood, and agreed to comply with the RFP’s terms and conditions. The
17 carrier could check “YES” to indicate “acceptance of all terms and conditions,” or “NO” to denote
18 “non-acceptance,” as “detailed below.” Attachment B also noted, “In order for any exceptions to be
19 considered they **MUST** be documented.” (Emphasis in original.) Section 9.24 of the RFP further
20 stated that Attachment B “shall constitute an agreement to all terms and conditions specified in the
21 RFP . . . except such terms and conditions that the vendor expressly excludes.” Responding carriers
22 were instructed to bring any “irregularities or lack of clarity in the RFP” to the attention of an
23 individual designee in the Nevada Purchasing Division.
24
25
26
27
28

Attachment B
CERTIFICATION OF COMPLIANCE WITH
TERMS AND CONDITIONS OF RFP
PRIMARY VENDOR

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking "YES" indicates acceptance of all terms and conditions, while checking "NO" denotes non-acceptance and vendor's exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____
Primary Vendor Date _____

PRINT NAME _____
Primary Vendor

EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

54. Section 7.11 of the RFP provided that a Carrier's proposal "must be signed by the individual(s) legally authorized to bind the vendor"

55. Section 9.25 of the RFP provided that the following contract documents would be incorporated into the final agreement, and "control in the following order of precedence: the final executed contract, the RFP, and modifications and clarifications to the awarded vendor's proposal, and the awarded vendor's proposal."

56. The RFP stressed that the terms of the RFP were material. Section 9.26 stated that "[v]endor understands and acknowledges that the representations above are material and important,

1 and will be relied on by the state in the evaluation of the proposal. Any vendor misrepresentation
2 shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.”

3 57. Section 3 of the RFP, entitled “Scope of Work,” contained the two requirements at
4 issue in this case. Section 3 included a general requirement that “[a]ll services proposed by the
5 responding contractors, shall meet each specific requirement listed in this section.” The RFP
6 provided that the terms “Shall/Must/Will” “[i]ndicate[] a mandatory requirement.”

7 58. The first requirement, set forth under the heading “General Services,” was to
8 “[p]rovide quality wireless equipment and services at the lowest cost available” WSCA I RFP
9 § 3.1.1.

10 59. Section 3.2.2.2 also included a “mandatory requirement” that the Carrier Defendants
11 provide quarterly optimization reports:

12 The following reports shall be submitted for the respective quarter:

13 . . .

14 Quarterly optimization report for each wireless service subscriber.
15 The goal of these optimization reports is to ensure that each subscriber
16 is utilizing the most appropriate plan. This includes indentifying
17 subscribers that may be consistently incurring overage charges, and
18 therefore should move to a more cost effective plan, or subscribers
consistently under-utilizing a plan, and therefore should move to a
lower cost plan.

19 60. Each Carrier Defendant certified and agreed to comply with both sections 3.1.1 and
20 3.2.2.2.

21 61. On or about March 15, 2006, Cathleen Pryor, an authorized AT&T representative,
22 executed a “Certification of Compliance with Terms and Conditions of RFP,” certifying that she had
23 read and understood the RFP. AT&T agreed to comply with both sections and took no exception to
24 either one.

25 62. On or about March 10, 2006, H. Leon Frazier, an authorized representative of
26 SPRINT, executed a “Certification of Compliance with Terms and Conditions of RFP,” certifying
27 that he had read and understood the RFP, and that SPRINT agreed to comply with Sections 3.1.1 and
28 3.2.2.2., and took no exception to them.

1 63. On or about March 15, 2006, Ian Mackay, an authorized representative of T-
2 MOBILE, executed a “Certification of Compliance with Terms and Conditions of RFP,” certifying
3 that he had read and understood the RFP, that T-MOBILE agreed to comply with Sections 3.1.1 and
4 3.2.2.2, and took no exception to them.

5 64. On or about March 15, 2006, Roger Gurnani, the “West Area President” and an
6 authorized representative of VERIZON, executed a “Certification of Compliance with Terms and
7 Conditions of RFP,” certifying that he had read and understood the RFP, and that VERIZON agreed
8 to comply with, and took no exception to, either section.

9 65. Nevada evaluated the Carrier Defendant’s RFP responses and negotiated
10 modifications to certain terms to which a carrier had objected; none of those modifications were
11 relevant to the Carrier Defendants’ obligations at issue in this case.

12 66. Each Carrier Defendant then entered into an agreement, titled a “Contract for
13 Services of Independent Contractor,” with the State of Nevada (the “Nevada WSCA I Contracts”).
14 As the authorized AT&T representative, Cathleen Pryor, the “Director, Contracts,” executed the
15 agreement on or about August 31, 2006. SPRINT’s authorized representative, H. Leon Frazier,
16 “V.P., Public Sector,” executed the agreement on or about September 8, 2006. T-MOBILE’s
17 authorized representative, Ian Mackay, “Vice President, Business Sales,” executed the agreement on
18 or about September 11, 2006. VERIZON’s authorized representative, Roger Gurnani, “West Area
19 President,” executed the agreement on or about August 29, 2006. Each agreement included a
20 representation that the individuals executing them had “full power and authority to enter into this
21 Contract.” In each instance, the Carrier Defendants warranted that “all services, deliverables, and/or
22 work product under this Contract shall be completed in a workmanlike manner consistent with
23 standards in the trade, profession, or industry.”

24 67. The Nevada WSCA I Contracts were alike in all relevant respects. Each recited that
25 it incorporated the RFP (“Attachment AA” to the agreement), any negotiated items (“Attachment
26 BB”), and the Carriers’ responses to the RFP (“Attachment CC”), with these three documents given
27 precedence in that order for purposes of construing the agreement. (Unlike the three other carriers’
28 agreements, T-MOBILE’s also included in its stated order of precedence Attachment DD, which

1 contained T-MOBILE's Special Terms and Conditions for WSCA Request.)

2 68. None of the specially negotiated terms concerned or in any way modified Sections
3 3.1.1 and 3.2.2.2 of the RFP; accordingly, these Sections as set forth in the RFP are the controlling
4 terms of the Nevada WSCA I Contracts. Narratives inserted by the Carrier Defendants in their RFP
5 responses were irrelevant; by signing the Nevada WSCA I Contracts, the Carrier Defendants agreed
6 to comply with the terms of the RFP itself with respect to the requirements for optimization reports
7 and service at the lowest cost available. The contracts also provided that they could not be modified
8 or amended, "unless the [amendment] . . . is in writing and signed by the respective parties hereto
9 and approved by the Office of the Attorney General and State Board of Examiners." No
10 modifications with respect to the relevant provisions were executed according to these rules.

11 WSCA II

12 69. The State of Nevada issued an RFP for the second WSCA wireless contract, WSCA
13 II, on or about February 3, 2011. The process governing the submission and evaluation of proposals,
14 as well as the creation of the contracts entered into under it, was substantially the same as for WSCA
15 I. As before, the WSCA II RFP set forth the material terms of the proposed contracts, and required a
16 responding carrier to execute a "Certification of Compliance with Terms and Conditions of RFP,"
17 certifying that the carrier would comply with the terms and conditions set out in the RFP. The RFP
18 provided that all of the terms and conditions stated in the RFP would become part of the resulting
19 agreement, except those terms to which the responding carrier specifically took exception and
20 Nevada agreed to modify.

21 70. The WSCA II RFP also included the same cost-saving provisions as WSCA I. The
22 "Scope of Work," under the heading "General Requirements," again mandated that the carriers were
23 to provide service at the "lowest cost available." Section 3.1.2 required the carriers to "[p]rovide
24 quality wireless voice services, wireless broadband services, equipment and accessories at the lowest
25 cost available in a timely and efficient manner."

26 71. The WSCA II RFP again required the Carrier Defendants to provide quarterly
27 optimization reports. Under the heading "Reporting," Section 3.3.2 identified optimization reports
28 as one of the reports that "shall be submitted for the respective quarter":

1 Quarterly optimization report for each wireless/broadband service
2 subscriber and orders placed for accessories. The goal of the
3 optimization reports is to ensure that each subscriber is utilizing the
4 most appropriate plan. This includes identifying subscribers that may
be consistently incurring overage charges, and therefore should move
to a more cost effective plan or subscribers consistently under-utilizing
a plan, and therefore should move to a lower cost plan.

5 WSCA II RFP § 3.3.2.2.

6 72. Each Carrier Defendant again agreed to provide services at the “lowest cost
7 available,” and to prepare and deliver optimization reports each quarter. As before, the WSCA II
8 RFP required a Certification of Compliance with Terms and Conditions of RFP, identified as Exhibit
9 B1. The form cautioned that “[i]n order for any exceptions and/or assumptions to be considered,
10 they **MUST** be documented in detail in the tables below.” (Emphasis in original.) None of the
11 Carrier Defendants took exception to the optimization provisions or requested clarification as to their
12 meaning.

13 73. All four Carrier Defendants certified they would provide service at the lowest cost
14 available and each quarter determine which rate plan among those available would yield the lowest
15 cost for each line of service.

16 74. Nevada awarded contracts to each Carrier Defendant (the “Nevada WSCA II
17 Contracts”). The Nevada WSCA II Contracts that AT&T and SPRINT executed expressly
18 incorporated the WSCA II RFP, referred to as the “Solicitation”; the carriers’ responses to the RFP;
19 and any special terms negotiated in view of exceptions the carriers took, referred to as the
20 “Contractor’s Special Terms and Conditions.” As relevant here, these two agreements laid out the
21 following order of constructive precedence in the event of any conflict: the applicable Participating
22 Addendum; the Master Service Agreement, referring to the Nevada WSCA II contracts; the
23 Contractor’s Special Terms and Conditions; the RFP, called the “Solicitation”; the Contractor’s
24 Response to the RFP; and, in the case of AT&T only, any individual order a Participating Entity
25 placed on the contract. AT&T’s agreement further stated: “Neither the Special Terms and
26 Condition[s], nor any purchase order(s) issued under the Contract shall contradict or supersede any
27 terms and conditions in the Contract without written evidence of mutual assent to such change(s)”
28 between AT&T and Nevada. SPRINT’s agreement said the same, and added that “[a] Contractor’s

1 attachment shall not contradict or supersede any WSCA specifications, terms or conditions without
2 written evidence of mutual assent to such change appearing in this Contract.”

3 75. The Nevada WSCA II Contracts that T-MOBILE and VERIZON executed also
4 expressly incorporated in descending order of constructive precedence the WSCA II RFP, referred to
5 as the “Solicitation”; the carriers’ responses to the RFP; and any special terms negotiated in view of
6 exceptions the carriers took, referred to as the “Contractor’s Special Terms and Conditions” in the T-
7 MOBILE agreement and “Contractor’s Additional Terms” in the VERIZON contract. Both
8 agreements also stated that “[a] Contractor’s attachment shall not contradict or supersede any WSCA
9 specifications, terms or conditions without written evidence of mutual assent to such change
10 appearing in this Contract.”

11 76. In no case did the Contractor’s Additional Terms or Contractor’s Special Terms and
12 Conditions as incorporated in the Nevada WSCA II Contracts contradict or modify the provisions of
13 3.1.2, the “lowest cost available” requirement, or of 3.3.2.2, the “rate plan optimization”
14 requirement. Accordingly, these are the controlling terms of the Nevada WSCA II Contracts.

15 77. AT&T’s authorized representative, identified as Roland Saenz, “Director of
16 Contracts,” executed the Nevada WSCA II Contract on or about March 14, 2012. Attachment AA,
17 Contractor’s Special Terms and Conditions, did not purport to alter Sections 3.1.2 or 3.3.2.2.

18 78. SPRINT’s authorized representative, Paget L. Alves, “Chief Sales Officer,” executed
19 the Nevada WSCA II Contract on or about April 9, 2012. Attachment AA, Contractor’s Special
20 Terms and Conditions, made no reference to Section 3.3.2.2 and did not otherwise change the
21 requirement to provide optimization reports.

22 79. T-MOBILE’s authorized representative, Matt Millen, “VP Business Sales,” executed
23 the Nevada WSCA II Contract on or about April 9, 2012. Attachment CC, Contractor’s Special
24 Terms and Conditions, did not reference or modify sections 3.1.2 or 3.3.2.2.

25 80. VERIZON’s authorized representative, Todd Loccisano, “Executive Director
26 Enterprise & Government Contracts,” executed the Nevada WSCA II Contract on or about April 13,
27 2012. Attachment CC, Contractor’s Special Terms and Conditions, contained no reference to
28 Sections 3.1.2 or 3.3.2.2.

WSCA Participating Addenda and the California Request for Offers

1
2 81. The Nevada WSCA contracts require any state wishing to participate in them to
3 execute a “Participating Addendum,” or “PA,” with each carrier from whom the state (or other
4 authorized entity) wishes to procure wireless services. As NASPO describes it, a PA is

5 a bilateral agreement executed by a Contractor and a Participating
6 Entity incorporating the terms and conditions included in the original
7 solicitation and any other additional Participating Entity specific
8 language or other requirements, e.g. ordering procedures, or other
9 terms and conditions unique to the participating entity. The purpose of
a Participating Addendum is to afford each party using a NASPO
ValuePoint contract the protection of the solicitation’s terms and
conditions.

10 According to NASPO, nearly 1,600 PAs are currently operative nationwide under the WSCA
11 wireless contracts.

12 82. California entered into PAs under WSCA I with AT&T in 2006 (AT&T was not a
13 contractor under CWC), and with SPRINT, T-MOBILE, and VERIZON in 2010. When WSCA II
14 replaced WSCA I, California amended or entered into new PAs with each Carrier Defendant.

15 83. Each PA California entered into defined authorized purchasers as all state agencies
16 and political subdivisions. The PAs, in turn, defined political subdivisions as “any city, county, city
17 and county, district, or other local governmental body or corporation, including the California State
18 Universities (CSU) and University of California Systems, K-12 school[s] and community colleges[,]
19 empowered to expend public funds.” The PAs incorporated the terms of the related Nevada WSCA
20 contracts; they did not amend or relieve the Carrier Defendants from their obligations to provide
21 quarterly rate plan optimization reports and service at the “lowest cost available.”

22 84. In or around November 2010, DGS issued a “Request for Offer,” RFO DGS-1070
23 (“RFO”), directed to wireless carriers who had WSCA contracts, so that California-specific terms
24 could be negotiated with the WSCA carriers for inclusion in PAs and amended PAs pursuant to what
25 was then WSCA I. The RFO stated that WSCA carriers “must adhere to the administrative and
26 technical requirements in this RFO,” with “Yes” or “No” responses to each of its provisions, and
27 “the use of ‘shall,’ ‘must’ or ‘will’ indicat[ing] a requirement or condition that must be met.” RFO
28 responses “shall include a cover letter on company letterhead stating that the prospective WSCA

1 [wireless provider] agrees to all of the State’s requirements.”

2 85. The RFO, section 7.15, outlines the carriers’ reporting responsibilities, and made
3 clear that such reports “shall reflect State and local governmental agencies usage and purchases.”
4 Elsewhere, the RFO required the carriers to take steps to protect the confidentiality of individual user
5 data in their reports, and reiterated that “[t]he State will require information for reporting purposes
6 for both State and local governmental agencies.” Although reporting was required for both state and
7 local government entities, the RFO required that “State and Local Governmental Agency reports
8 shall be separated.”

9 86. The RFO required optimization reporting. In contrast to the eRFP for the CWC, the
10 RFO for the WSCA contracts did not state that the requirement to provide optimization reports
11 automatically whether or not requested did not encompass political subdivisions. Specifically,
12 Section 7.16.2 of the RFO stated:

13 WSCA [wireless provider] must provide a quarterly optimization
14 report for each wireless service subscriber. The goal of this
15 optimization reports to [sic] ensure that each subscriber is utilizing the
16 most appropriate plan. This includes identifying subscribers that may
17 be consistently incurring coverage [sic] charges and therefore should
18 move to a higher plan or subscribers consistently under-utilizing a plan
19 and therefore should move to a lower plan. When determining the
20 optimal plan for a subscriber, WSCA [wireless providers] must
21 analyze the effective cost of all plans offered and exclude any months
22 of suspended service from the analysis.

23 87. Each Carrier Defendant responded “Yes” to Section 7.16.2, indicating it would
24 comply with that provision.

25 88. The RFO and the carriers’ responses to the RFO were incorporated into PAs entered
26 into after the RFO process was complete in or around 2011. The RFO and the carriers’ responses
27 reaffirmed the carriers’ obligation and agreement to provide optimization reports for every
28 California state agency and political subdivision, above and beyond what was required by the
WSCA contracts.

89. AT&T first entered into a state-level PA with California under WSCA I in or around
February 27, 2007 (contract number 7-06-70-01). Although the PA restricted state agencies from

1 procuring services from AT&T while the CWC contracts were available, the PA authorized state
2 purchases in limited circumstances, and authorized California political subdivisions to purchase
3 wireless services from AT&T under WSCA I. Cathleen M. Pryor, listed as the “Director,
4 Contracts,” was AT&T’s primary customer contact. AT&T’s designated contract manager pursuant
5 to the RFO was Twila Lively. Later, Theresa Page, “Senior Contract Manager,” executed a new PA
6 for AT&T (contract number 7-11-70-17).

7 90. SPRINT representative Paget Alves, “Chief Sales Officer,” executed a PA with
8 California (contract number 7-10-70-15), as well as SPRINT’s response to the RFO, in which
9 SPRINT stated that it had “read, understands, and will comply with the terms, conditions,
10 specifications and requirements of the RFO,” subject to certain objections it made to terms other
11 than the optimization requirement. The parties subsequently amended the agreement to incorporate
12 the provisions of the RFO and WSCA II, among other things.

13 91. T-MOBILE entered into a PA with California under WSCA I in or around May 17,
14 2011 (contract number 7-11-70-18). David Lampkin, “VP Enterprise Sales,” executed the PA on
15 behalf of T-MOBILE, as well as T-MOBILE’s response to the RFO.

16 92. VERIZON entered into a PA with California under WSCA I in or around September
17 30, 2010 (contract number 7-10-70-16). Todd Loccisano, “Executive Director, Sales Operations,”
18 executed the PA for VERIZON. Chris Rock, identified as the “National Account Manager,”
19 executed VERIZON’s RFO response. The parties subsequently amended the agreement to
20 incorporate the provisions of the RFO and WSCA II, among other things.

21 93. In addition, although neither the WSCA contract nor California required it, a number
22 of political subdivisions entered into their own PAs with the Carrier Defendants, which allowed
23 them to incorporate their own terms. Each PA incorporated the terms of the related master contracts;
24 none of them relieved the Carrier Defendants from their obligations to provide quarterly rate plan
25 optimization reports and service at the “lowest cost available.”

26 **The Carrier Defendants Secured Hundreds of Government Customers**
27 **Pursuant to the CWC and WSCA Contracts**

28 94. The CWC and WSCA contracts permitted the Carrier Defendants to market their

1 services to government customers throughout California. The Carrier Defendants marketed the
2 contracts to state agencies, which were required to use them. The Carrier Defendants marketed the
3 contracts to local political subdivisions, too. As a result, most political subdivisions, including all of
4 the False Claims Intervenors, purchased under the contracts.

5 95. In and around 2011, there were approximately 200,000 government paid lines of
6 service under the contracts, split between state and local entities. At the state level, the largest
7 departmental users included the California Department of Corrections and Rehabilitation,
8 Department of Transportation, Department of Social Services, Department of Public Health,
9 California Highway Patrol, California Forestry and Fire Protection, Department of Consumer
10 Affairs, Department of Fish and Game, Department of General Services, Department of Motor
11 Vehicles, Employment Development Department, and Franchise Tax Board. Among those
12 Government Plaintiffs treated as local entities under the contracts, the largest users included the
13 California State University; the University of California; the Counties of Sacramento, San Diego,
14 Riverside, Orange, San Bernardino, Alameda, Santa Clara, and San Francisco; the cities of Los
15 Angeles, San Diego, Sacramento, Fresno, Long Beach, and Bakersfield; and districts including Bay
16 Area Rapid Transit and the Riverside Unified School District.

17 96. In addition to the sheer volume of government accounts obtained through the
18 contracts, the Carrier Defendants gained a secondary benefit: Under the terms of several
19 agreements, carriers could market special rates on personal wireless accounts to government
20 employees and their families. While the provision of so-called “employee liable” or “individual
21 liable” lines was not subject to the rate plan optimization and “lowest cost available” terms in the
22 contracts, it illustrates that the value the Carrier Defendants received as a result of entering into the
23 contracts extended far beyond capturing a base of government customers alone.

24 **The Carrier Defendants Failed to Provide**
25 **Rate Plan Optimization Reports as the Contracts Required**

26 97. Notwithstanding multiple certifications and their commitments under the CWC,
27 WSCA I, WSCA II, and the RFO, the Carrier Defendants failed to identify the lowest cost rate plans
28 when billing the Government Plaintiffs. They did not identify the optimal rate plan for each line of

1 service on a quarterly basis. And, having failed to identify optimal rate plans, they did not
2 recommend or use those rate plans to achieve the lowest cost available when invoicing government
3 customers.

4 98. The CWC, both WSCA RFPs, and the RFO each provides a straightforward
5 description of what is required in an optimization report. In addition, the term has a well-recognized
6 meaning in the wireless industry, one which the Carrier Defendants regularly used in their dealings
7 with non-governmental customers. This definition is entirely consistent with the language in the
8 contract documents, such that the Carrier Defendants knew exactly what sort of report the RFP and
9 RFO documents requested.

10 99. Despite the multiple promises they made under each relevant contract to prepare
11 quarterly optimization reports for government customers, Plaintiffs are unaware of any Carrier
12 Defendant that actually did so. Put simply, the Carrier Defendants did not regularly produce such
13 reports and the Plaintiffs did not receive them.

14 100. To comply with the reporting requirement, the Carrier Defendants would have had to
15 produce thousands of rate plan optimization reports. For example, if 300 local government entities
16 purchased wireless services under the WSCA agreements from just two of the Carrier Defendants,
17 then each year some 2,400 reports would have to be prepared to comply with the requirement for
18 local government entities alone.

19 101. Indeed, the actual number of reports that was required is likely much higher because
20 the Carrier Defendants maintained multiple billing accounts with many of the Government Plaintiffs
21 to whom the reporting requirement applied. With respect to the University of California system, for
22 example, the Carrier Defendants billed each of the UC system's ten campuses, in addition to its
23 administrative units, such as the Office of the President. In many cases, the Carrier Defendants
24 devolved campus accounts further to the department level. The same was often true of other
25 Government Plaintiffs. Had the Carrier Defendants complied with the contracts' terms, they would
26 have produced tens of thousands of rate plan optimization reports during the relevant time period.
27 The Carrier Defendants did not do so.

28 102. It is true that the Carrier Defendants sporadically prepared reports related to rate plan

1 selections, often in response to requests from the Government Plaintiffs. Neither in their substance
2 nor their frequency, though, were these the optimization reports the contracts required.

3 103. To take one example, the Sacramento City Auditor's Office initiated an audit of the
4 City's wireless spending in November 2013. In February 2014, the Auditor's Office asked the
5 City's Department of Information Technology if the City had received rate plan optimization reports
6 from the Carrier Defendants, which included AT&T, SPRINT, and VERIZON. After confirming the
7 City had not received them, City staff requested optimization analyses from the City's carriers.

8 104. In March 2014, VERIZON produced four "Price Plan Analysis" reports that
9 corresponded to four City accounts and covered the time period from December 2013 to January
10 2014. The misleading reports VERIZON provided, however, did not meet the requirements of the
11 contracts. While the reports projected thousands of dollars in savings if their recommendations were
12 adopted, the City's eventual audit noted that Sacramento could have saved considerably more if
13 VERIZON had moved many of its lines from rate plans that had a high monthly recurring cost to a
14 so-called "consumption plan" that would cost the City \$0.06 per billable voice minute. Even though
15 the consumption plan was available under the WSCA contracts, the "Price Plan Analysis" reports
16 VERIZON provided failed to consider or disclose it as an option. VERIZON, therefore, failed to
17 "analyze the effective cost of all plans offered," as the RFO optimization language required.

18 105. SPRINT produced to the City of Sacramento in February 2014 a "Standard
19 Communications Optimization Report (SCOR)" (also described as an "RPA") that covered the
20 period from October 2013 to December 2013. SPRINT's report similarly identified significant
21 savings from rate plan reassignments. Like VERIZON, however, SPRINT also failed to recommend
22 that the City transition its accounts to an available consumption plan, which would have saved
23 considerably more money than the recommendations SPRINT provided.

24 106. AT&T's response to the City's request was more tangled. AT&T representative Arne
25 Benowitz took three months to produce a "Rate Plan Summary" that could presumably be used to
26 determine if plan changes were warranted. But the report AT&T produced in June 2014 did little
27 more than summarize each line's usage over three month period; it entirely left out the critical step
28 of evaluating such usage data against the plans available to the City and selecting the most cost-

1 efficient option. After City staff noted that AT&T's report did not show the savings the City could
2 anticipate if it optimized its lines, Mr. Benowitz explained that AT&T was experiencing "technical
3 difficulties" and could not produce the requested report, a fact AT&T had not earlier disclosed. In
4 place of providing line-by-line recommendations as the WSCA contract and RFO required AT&T to
5 do, Mr. Benowitz sent a short list of general recommendations, suggesting, for example, that he
6 "generally do[es] not recommend voice pooling rate plans."

7 107. Customer requests for optimization analyses similarly spurred T-MOBILE to make
8 sporadic attempts to comply with its contractual obligations. For example, when the University of
9 California, San Diego asked T-MOBILE for an optimization analysis in late 2013 or early 2014,
10 T-MOBILE representative Glen Klimek prepared a report that projected the campus would save
11 37% on its T-MOBILE bill if its recommendations were followed.

12 108. In short, even when the Carrier Defendants provided rate plan analyses or
13 "optimization reports," they did not do so consistently or correctly.

14 109. In contrast to their failure to provide optimization reports, the Carrier Defendants
15 furnished to the Government Plaintiffs an array of other reports. Some of these compiled usage data
16 or considered alternative rate plans. But while they often bore false and misleading titles that
17 included phrases like "plan optimization" and "price analysis," and were formatted to resemble
18 optimization reports, these other reports were not the genuine article. In the multiplicity of those
19 reports the Carrier Defendants made available, true rate plan optimization analyses were not to be
20 found.

21 110. Three types of these reports are worth noting. First, the Carrier Defendants
22 frequently supplied "usage reports" to the Government Plaintiffs. Usage reports presented raw, line-
23 by-line usage data. Such data was a necessary component of a rate plan optimization analysis, but
24 hardly sufficient on its own.

25 111. The report AT&T provided to the City of Sacramento, described above, is an example
26 of a usage report that conveys raw data – and little else. Premier, AT&T's online customer portal,
27 made usage reports available to its customers; before Premier was operational, AT&T offered these
28 same reports to customers on a CD-ROM the company called a "WIN CD." Neither the Premier

1 portal nor the WIN CDs, however, contain all the data or software needed to prepare optimization
2 reports, let alone include completed optimization reports the Government Plaintiffs could use to
3 reduce cost.

4 112. The other Carrier Defendants disseminated similar usage reports to the Government
5 Plaintiffs in hard copy or electronic forms, but these did not comply with the contractual requirement
6 to prepare optimization reports.

7 113. Second, each carrier also offered a variant of an “overage report.” An overage report
8 analyzes usage and billing information for a certain time interval and recommends line-by-line
9 changes. Unlike rate plan optimization analyses, overage reports are one-way ratchets that
10 recommend *more* expensive plans for lines that exceed plan allowances, but do not suggest *less*
11 expensive plans for lines that do not surpass usage limits.

12 114. An example of an “overage report” is the “monthly bill review” or “Quarterly
13 Business Review” VERIZON periodically provided to some government customers, like Sonoma
14 County. These reports identified voice and data overages and made line-specific recommendations
15 for more expensive, *higher* volume rate plans that lines with overages should switch to. They did
16 not, however, make recommendations for cheaper, *lower* volume rate plans that lines that did not use
17 their allotted voice, text, or data allowances should choose instead.

18 115. AT&T’s “Stewardship Report” is another example of an “overage report” sales
19 representatives periodically provided to some Government Plaintiffs. This presentation and
20 corresponding spreadsheets similarly focused on lines that incurred overage charges because they
21 used more voice, text, and data than they were allotted. As with other reports the Carrier Defendants
22 produced, AT&T’s “Stewardship Report” failed to analyze lines of service whose usage was *lower*
23 than the selected rate plan allowed, focusing instead on lines with overage charges to persuade
24 customers to purchase costlier plans. AT&T provided such reports to Marin County, among other
25 Government Plaintiffs.

26 116. The other Carrier Defendants provided similar overage reports to the Government
27 Plaintiffs in hard copy or electronic forms.

28 117. Finally, the Carrier Defendants provided government customers with a third type of

1 report used to promote new rate plans or analyze possible changes. Like rate plan optimization
2 analyses, these reports purported to analyze a customer's usage, make line-by-line recommendations,
3 and project savings if the customer made the changes. Unlike optimization reports that consider all
4 available plan options for each line of service to select the most cost-efficient among them, these
5 reports are marketing tools the Carrier Defendants used to promote rate plans, such as when they
6 rolled out new rate plans to show customers how they would fare if they were to transition to the
7 new offerings. Because these analyses ignore the full range of rate plans available under the
8 contracts, they are a far cry from rate plan optimization reports.

9
10 **Carrier Defendants Knowingly Failed to Provide
Rate Plan Optimization Reports and Service at the Lowest Cost Available**

11 118. The Carrier Defendants clearly stated they would provide optimization reports in
12 response to the RFPs they submitted for the CWC, WSCA I, and WSCA II, as well as in response to
13 the state RFO. The Carrier Defendants know what optimization reports are, as the term is commonly
14 used in the wireless industry, and the Defendants regularly provide such reports to commercial
15 customers. If the Carrier Defendants had any question about the scope or nature of the contractual
16 requirements to provide optimization reports and service at the lowest available cost, the RFPs
17 required them to ask clarifying questions. Their failure to do so further demonstrates they
18 understood these terms of the RFPs and RFO.

19 119. Despite their RFP and RFO responses, each Carrier Defendant failed to take the
20 actions necessary to ensure it fulfilled the contracts' requirements. The Plaintiffs are informed and
21 believe that each Carrier Defendant failed to:

- 22 a. secure or authorize the resources required to prepare rate plan optimization
23 reports each quarter for each government account, including personnel with the necessary
24 expertise, the required software and data systems, and the funds required to pay for the effort;
- 25 b. communicate to the personnel who regularly administered the Government
26 Plaintiffs' contracts that those contracts required quarterly rate plan optimization reports to
27 be prepared and delivered automatically, whether or not the customer requested them;
- 28 c. direct that rate plan assignments are analyzed and new rate plan assignments

1 are recommended each quarter in order for the Government Plaintiffs to be able to procure
2 wireless services at the lowest cost available; and

3 d. otherwise take the actions required to ensure compliance and prevent the
4 breaches and violations alleged in this Complaint.

5 120. The Carrier Defendants' affirmative representations that they would comply with the
6 contracts – in their responses to the RFPs, related documents, and the resulting contracts generally,
7 and in the provisions requiring rate plan optimization and service at the lowest cost available
8 specifically – were false and materially misleading, and contained deceptive half-truths. The
9 Plaintiffs are informed and believe that the Carrier Defendants were not prepared to analyze rate
10 plan assignments for all Government Plaintiffs each quarter, as the contracts required, when the
11 Carrier Defendants responded to the RFPs or executed the contracts. Truthful responses would have
12 disclosed that the Carrier Defendants did not then have the ability to comply and had not secured the
13 resources or developed a viable plan to provide the required optimization reports.

14 121. In response to the WSCA I RFP, for example, AT&T (then known as Cingular) took
15 no exception to the optimization requirement found in Section 3.2.2.2. AT&T represented that it
16 accepted the provision and would comply with it. AT&T stated in its narrative response: “Cingular
17 will comply with this requirement via our WIN CD software described in 3.2.2.1 above and through
18 the dedicated Project manager.”

19 122. Similarly, in response to the optimization requirement in the State's RFO, AT&T
20 represented that it would take actions to fulfill its contractual commitment:

21 AT&T will provide the ability for [Agency Telecommunications
22 Representatives] ATR's and Contract Administrators to access
23 quarterly optimization reports. AT&T Service Managers will create a
24 Premier online site for each ATR. The Service Manager will give
25 each ATR the tools needed to create exception and optimization
26 reports that, once built, will populate the needed data each billing
27 period for the ATR. Service Managers also perform manual account
28 optimization analysis quarterly as part of a . . . Stewardship report.

26 123. These statements by AT&T were false and misleading. In fact, the WIN CDs
27 mentioned in the WSCA I narrative did not contain complete optimization reports or the data or
28 software needed to prepare optimization reports. Likewise, the Government Plaintiffs could not

1 obtain optimization reports through the Premier web portal; indeed, Plaintiffs are informed and
2 believe that AT&T has failed to create this functionality up to the present.

3 124. In its response to the WSCA II RFP, now found in renumbered Section 3.3.2.2,
4 AT&T again took no exception to the optimization provision. In its narrative, AT&T simply stated,
5 “AT&T will provide quarterly optimization reports for each subscriber.” Following this
6 unconditional statement, AT&T went on to say:

7 Based on the extremely large anticipated volume of use at the WSCA
8 Master Contract level, AT&T will develop a customized reporting
9 function to provide summary data that may be used by WSCA and the
10 Participating Entities in determining the most appropriate plan. AT&T
will work with WSCA to determine how the data will be customized to
meet the needs of the Participating Entities.

11 Currently, AT&T complies with the quarterly optimization report
12 requirement through our Premier Platform at the agency level.
13 Premier provides Participating Entities, on a monthly basis, the
14 information they need to evaluate if an End User is utilizing the most
appropriate plan.

15 125. If AT&T intended not to prepare optimization reports each quarter, but instead to
16 provide only some of the data needed to prepare an optimization report and no rate plan optimization
17 analysis on WIN CDs or the Premier web portal, AT&T’s representation that it would “comply” and
18 “provide” optimization reports was false. To make the statements not misleading, AT&T was
19 required to represent that it would not comply, but would instead provide some data and leave the
20 hardest part, the optimization analysis, to the Government Plaintiffs.

21 126. Similarly, VERIZON represented in response to the CWC RFP that it would comply
22 with the requirement to provide quarterly optimization reports, stating it was “confident that our
23 Internet Billing Analysis System (IBAS) . . . will meet all of the State’s reporting needs.” To the
24 extent this statement was a representation that IBAS included optimization reports, it was false;
25 IBAS did not.

26 127. When responding to the WSCA I RFP, VERIZON stated, “Verizon Wireless will
27 provide the quarterly optimization report as an additional report along with Attachment F [another
28 report the contract required]. The data requested in the quarterly optimization report is quite

1 voluminous and therefore this document will be sent separately in CD format to the State of Nevada.
2 With approximately 200,000 line subscribers, additional resources will have to be dedicated to the
3 production of this report.” VERIZON, however, did not prepare and provide optimization reports, in
4 part because management decided not to allocate the “additional resources” VERIZON
5 acknowledged were required. The representation that VERIZON was prepared and willing to do so
6 was false. As it routinely did when optimization reports were needed for non-government
7 customers, VERIZON contacted eOnTheGo, a rate plan optimization firm then owned by the
8 Relator’s principal, about preparing the reports the CWC and WSCA I required. Shortly thereafter,
9 however, a VERIZON employee told eOnTheGo that senior VERIZON executives refused to fund
10 the optimization work and decided not to prepare optimization reports as the contract required.

11 128. In connection with WSCA II, VERIZON represented in its response to the RFP that it
12 would provide quarterly optimization reports “as part of a Quarterly Business Review,” and touted
13 that it would include “personalized recommendations on price plans and equipment based on
14 analysis of the data.” The representation that these quarterly reviews include optimization reports
15 was false; they do not. Moreover, while VERIZON account representatives sometimes provided the
16 Government Plaintiffs with reports that looked like or were sometimes falsely represented to be
17 optimization reports, they were not. As described above, the reports VERIZON provided – either to
18 show the benefits of new rate plans or to highlight lines that incurred overage costs – were not
19 optimization reports for a simple reason: They did not analyze the cost of service under all available
20 rate plans and identify the lowest cost alternative plan. Other ad hoc efforts at compliance, such as
21 when VERIZON provided optimization analyses in response to demands from Government
22 Plaintiffs, hardly fulfill VERIZON’s obligation to prepare bona fide optimization reports each
23 quarter covering every wireless subscriber.

24 129. In its response to WSCA I, SPRINT touted a number of “Account Management and
25 Reporting Tools,” including “SmartCD,” “WirelessMGR,” and “Sprint PCS eBilling and Analysis.”
26 Concerning the quarterly optimization provision, SPRINT certified it would comply, and represented
27 that “Sprint’s Contract Compliance Team will work with WSCA participating States or entities to
28 develop report templates based on their specific requirements.” While superficially positive, these

1 statements, too, were false and misleading. Plaintiffs are informed and believe that SPRINT's
2 "Management and Reporting Tools" were unable to prepare the required optimization reports.
3 While they provided access to raw data, these tools did not incorporate the software needed to
4 identify the most cost-effective rate plan among all those available. Further, the contracts obligated
5 SPRINT to provide optimization reports each quarter regardless of any additional requests from the
6 government customers. If, in conflict with the requirements of WSCA I RFP, SPRINT intended not
7 to provide optimization reports unless a customer representative specifically requested one, the RFP
8 required SPRINT to say so explicitly by taking exception to the RFP's term. SPRINT's response
9 that it would comply with the RFP was a misrepresentation.

10 130. When it responded to the WSCA II RFP, SPRINT took no exception to the
11 optimization requirement in its Certification of Compliance, which constituted SPRINT's agreement
12 to the provision. In its narrative response, SPRINT said only that "Sprint's reporting team will work
13 with the WSCA Account Team to provide contract information in order for the Account Team to
14 build a quarterly optimization report." Plaintiffs are informed and believe that SPRINT did not have
15 in place the ability or capacity to provide the required reports. As SPRINT noted elsewhere in its
16 response, it had "thousands of WSCA member accounts" at that time. To make its response truthful
17 and not misleading, SPRINT should have disclosed that it lacked the ability to prepare the reports
18 required. Further, as with WSCA I, if SPRINT intended not to provide optimization reports unless a
19 customer representative specifically requested one, to make its response not misleading, SPRINT
20 was required to say so. SPRINT misrepresented that it would comply with the RFP.

21 131. In its response to WSCA I, T-MOBILE took no exception to the optimization
22 requirement, indicating it would comply. Further, in its narrative response, T-MOBILE represented:

23 T-Mobile agrees to provide this type of reporting from the Account
24 Support team.

25 Additionally, T-Mobile provides each of our customers with I-Billing
26 which will enable our customers to extract detailed usage information
27 and provide the tools to analyze usage and trends on their individual
28 accounts. 2 months of detailed information is held in the system along
with up to 12 months of bill summary information.

Each individual account is also welcome to request rate plan

1 optimizations for specific lines from our Business Care team either by
2 phone or via email request.”

3 T-MOBILE certified it would comply with the same provision in WSCA II, stating:

4 T-Mobile Response: Comply. We will provide quarterly usage
5 reports for each subscriber when requested by WSCA or an individual
6 state or account.

7 132. Thus, in response to both RFPs, T-MOBILE represented that it “agree[d]” and
8 “would comply” with the requirement to provide optimization reports each quarter. The requirement
9 in the RFP, of course, did not require customers to request optimization reports to get them; instead,
10 it said that the Carrier Defendants “shall” provide them on a quarterly basis. If T-MOBILE intended
11 to only provide the reports when they were specifically requested, then its representations that it
12 “agree[d]” and “would comply” were false. To make its responses not misleading, T-MOBILE was
13 required to state that it would not comply but would only provide reports if specifically requested.

14 133. The Carrier Defendants acted knowingly when they made false and misleading
15 representations in their RFP and RFO responses; they also acted knowingly when they submitted
16 invoices that included sums materially above the “lowest cost available” for lines that had not been
17 optimized. The Carrier Defendants knew and understood the contracts required them to provide
18 optimization reports for each government customer every quarter, as they attested when they
19 executed the RFP and RFO responses and the contracts.

20 134. The Carrier Defendants were awarded the contracts because of the representations
21 they made. If the Government Plaintiffs had known that the Carrier Defendants would not or could
22 not comply with the mandatory or material terms of the contracts, the Carrier Defendants would not
23 have been awarded the contracts on the terms set forth therein.

24 135. The Carrier Defendant’s failures were not merely the result of poor or inefficient
25 management of their contractual obligations. In their responses to the RFPs, the Carrier Defendants
26 committed to providing customer service and compliance teams to ensure the implementation and
27 management of the contracts.

28 136. VERIZON’s response to the CWC RFP identified “Five Account Liaisons” who
29 would “own the account management relationship of assigned Government Accounts”; be “subject

1 matter expert[s] on invoicing and reporting billing and research and resolve all facets of invoicing
2 and reporting products”; “have extensive knowledge of contractual obligations”; and “assess needs
3 and proactively suggest alternative services and solutions.” Together with members of the “Strategic
4 Account team (SAT),” the account liaisons were “part of an organization called the Business Service
5 Center (BSC) located in Rancho Cordova, CA.” Chris Rock was identified as the “Contract
6 Manager for the State of California relationship” for the CWC and in response to the state RFO.

7 137. VERIZON’s response to the WSCA I RFP identified RJ Fenolio, “National Account
8 Manager,” who was represented to be “intimately familiar with the terms of the agreement and the
9 unique requirements of WSCA and its Participating Entities”; an unnamed “Government Account
10 Executive” who would be “responsible for sales and customer support to government accounts . . .
11 [and] provide quarterly reviews . . . [during which] Verizon Wireless can identify opportunities to
12 save money and provide valuable recommendations and pertinent account information”; and an
13 unnamed “Associate Director, Government,” who would be “[r]esponsible for managing the overall
14 operations and budget.”

15 138. SPRINT’s response to the CWC RFP identified Shane Harper as the “Senior
16 Government Account Manager (GAM)” who would “lead . . . the account team for the State of
17 California,” and serve as the “point of contact for . . . post-sales account management,” and Tracey
18 Strong, described as the “Senior Government Account Specialist,” who would “assist the GAM . . .
19 [and] synchronize the daily efforts for the GAM, local sales team and Government Customer Care.”
20 In addition, unnamed “Strategic Care Specialists (SCS) [were to be assigned] to each of the State
21 agencies” and given “responsibility for ongoing billing maintenance and customer service . . .
22 [including] participat[ing] in quarterly sales reviews and rate plan analyses[.]”

23 139. SPRINT’s response to the WSCA I RFP stated that SPRINT would assign a “Public
24 Sector Account Manager (PS AM)” as the point of contact for participating States and entities “for
25 contract negotiation[,] pre-sales needs assessment, implementation and post-sales account
26 management.” In addition, SPRINT claimed that a “Strategic Care Specialist” would “responsible
27 for post-sales support . . . and also participate in quarterly sales reviews and rate plan analyses.”

28 140. In response to the WSCA II RFP, SPRINT identified Gray Sigler as the “Client

1 Executive” responsible for “overall performance requirements, ongoing unresolved issues, [and]
2 overall customer service,” as well as “oversee[ing] sales execution, operations and internal/external
3 communications.” In addition, Jamie Karakas, “Program Manager,” was to be “responsible for
4 overseeing operational processes of the WSCA Agreement.”

5 141. AT&T’s response to WSCA I identified Scott Cannon as the “Contract Manager”
6 whose “main responsibilities” were “contract management – updates, modifications, new PAs, offer
7 development, etc.” The “WSCA Program Manger” was to be Ron Montague, who AT&T described
8 as “well versed in report generation, billing requirements, customer care and issue resolution.” Mr.
9 Montague was to be “accountable for the overall performance requirements” under WSCA I. AT&T
10 also identified by name thirteen additional contract, compliance, and program managers.

11 142. AT&T identified Twila Lively as the “Contract Manager” for WSCA II and as the
12 “Program Manager” for the RFO. She was represented to be “100% dedicated to supporting the
13 contract as a single point of contact . . . [and would] work with Account Management, Service
14 Management, Product Management, Systems Support Management, and AT&T Senior Management
15 to verify that AT&T is meeting WSCA performance requirements, resolving issues, and addressing
16 customer service concerns.” AT&T further identified the following additional “key personnel/staff
17 to be responsible for performance”: Ronald Saenz, “Director – Contracts and Compliance”; Jon
18 Wellinger, “Area Sales VP Technical Overlay”; Ron Montague, “Senior Manager Program
19 Management and Contract Compliance”; Marcellus Brooks, “Contract Manager”; “Compliance
20 Managers” Mark Barros, Matt Phillips, Michael Swenson, and Kelly Yarborough; , “Contract
21 Managers” Christine Donabedian, Ann Gillio, and Theresa Page; Mark Flister, “Program Manager”;
22 Brenda Ritchson, “Operations Manager”; and “Reporting Performance Managers” Denise Cuffie and
23 Lori Oliver. Xavier D. Williams, “Senior Vice-President Public Sector & Healthcare,” submitted the
24 response on behalf of AT&T to WSCA II and executed the Certification of Compliance representing
25 that AT&T would comply with the RFP.

26 143. David Lampkin, T-MOBILE’s “Divisional Director, Business Sales,” signed
27 T-MOBILE’s response to the RFO, indicating that “[m]y signature below indicates that I have
28 authorized T-Mobile to submit the attached proposal subject to the below conditions T-Mobile

1 accepts the State of California terms and conditions as indicated in the RFO except as noted in the
2 attached exceptions document.” Philip Healy, “Regional Account Manager,” was identified as the
3 Contract Manager in T-MOBILE’s RFO response.

4 144. In response to WSCA II, T-MOBILE again identified Mr. Lampkin as authorized to
5 bind T-MOBILE. Mr. Lampkin signed Attachment B1, by which T-MOBILE certified its
6 compliance with the terms and conditions of the RFP. T-MOBILE also identified as the contract
7 managers two “Senior Managers of Business Sales,” David Bezzant and Jacqueline Lee, who would
8 be “responsible for . . . the contract’s overall performance, requirements, ongoing unresolved issues,
9 [and] overall customer service.” In response to the RFP’s request to identify employees with the
10 expertise to support the RFP’s requirements, T-MOBILE stated that it had three “Senior Leadership
11 Individuals,” including an unnamed “Director” in California, as well as “31 WSCA Regional
12 Account Managers,” “5 Government Sales Coordinators,” and four “Dedicated Care Representatives
13 for escalated WSCA reporting needs.”

14 145. As described above, the Carrier Defendants deliberately responded to the RFPs and
15 RFO in a false and misleading way. They had reason to know the contracts’ requirements, and if
16 they did not, they had an obligation to inquire as to them.

17 146. Carrier Defendants knew and understood, and so attested, that to the extent the
18 narrative portion of their responses to the RFPs conflicted with the terms of the RFPs, those
19 conflicting statements had no effect.

20 147. Carrier Defendants also knew from experience with their large commercial customers
21 what optimization reports are. All Carrier Defendants regularly entered into contracts with non-
22 governmental enterprise customers that required rate plan optimization. With these private
23 customers, the Carrier Defendants regularly fulfilled their contractual obligations by providing
24 optimization reports, typically by contracting with an outside vendor. The Carrier Defendants’
25 actions with these corporate clients demonstrate their knowledge of rate plan optimization, its
26 definition, and its industry usage.

27 148. Carrier Defendants deliberately violated, deliberately ignored, or negligently and
28 recklessly disregarded their material obligations to provide optimization reports each quarter and to

1 bill the Plaintiffs at the lowest cost available. Because the Carrier Defendants were awarded the
2 contracts based on their false and misleading representations, each and every invoice they submitted
3 to the Government Plaintiffs was false. And, after receiving the award, the Carrier Defendants knew
4 they were in breach of the contracts' material requirements, but continued to bill the government for
5 services without reduction and at amounts in excess of the lowest cost available, which also rendered
6 those invoices false.

7 **The Carrier Defendants Overcharged the Government Plaintiffs**
8 **Hundreds of Millions of Dollars**

9 149. The False Claims Intervenors that procured wireless services from AT&T under one
10 or more of the contracts at issue include City of Long Beach; City of Ripon; City of Sacramento;
11 City of Santa Cruz Public Libraries; City of Vernon; City of Victorville; Los Angeles County;
12 Orange County; the Regents of the University of California; Riverside County; Sacramento County;
13 San Bernardino County; San Diego Unified School District; Sonoma County; and Stanislaus County.

14 150. The False Claims Intervenors that procured wireless services from SPRINT under one
15 or more of the contracts at issue include City of Capitola; City of Long Beach; City of Sacramento;
16 City of San Bernardino; City of Vernon; City of Victorville; Kings Canyon Unified School District;
17 Los Angeles County; Orange County; the Regents of the University of California; Riverside County;
18 Rosemead School District; Sacramento County; San Bernardino County; San Diego Unified School
19 District; Sonoma County; and Stanislaus County.

20 151. The False Claims Intervenors that procured wireless services from T-MOBILE under
21 one or more of the contracts at issue include City of Capitola; City of Long Beach; Los Angeles
22 County; the Regents of the University of California; Riverside County; and Sacramento County.

23 152. The False Claims Intervenors that procured wireless services from VERIZON under
24 one or more of the contracts at issue include City of Chino; City of Fortuna; City of Long Beach;
25 City of Oxnard; City of Rancho Cucamonga; City of Ripon; City of Sacramento; City of San
26 Bernardino; City of Santa Cruz Public Libraries; City of Santa Rosa; City of Vernon; City of
27 Victorville; Kings Canyon Unified School District; Los Angeles County; Olivenhain Municipal
28 Water District; Orange County; the Regents of the University of California; Riverside County;

1 Rosemead School District; Sacramento County; San Bernardino County; San Diego Unified School
2 District; Santa Cruz County; Sonoma County; Sonoma County Water Agency; Stanislaus County;
3 Victor Valley Transit Authority; Whittier Union High School District; and Woodbridge Fire District.

4 153. Because they failed to provide rate plan optimization, the Carrier Defendants
5 regularly submitted invoices for payment to the Government Plaintiffs under one or more of the
6 contracts described above at costs that were substantially above the “lowest cost available.” The
7 Government Plaintiffs, in turn, paid these invoices.

8 154. Both the CWC and the Participating Addenda for the WSCA contracts provided that
9 invoices were to be available in different forms, based on an individual customer’s request. At a
10 minimum, the Carrier Defendants were obligated to and did provide monthly billings in either
11 electronic or hard copy form to the Government Plaintiffs.

12 155. Exhibit B to this First Amended Complaint and Complaint in Intervention contains
13 sample invoices that each Carrier Defendant submitted to the Government Plaintiffs. Because of the
14 voluminous number of invoices the Carrier Defendants submitted to the Government Plaintiffs
15 during the relevant time period, as well as the template format of each Carrier Defendants’ invoice,
16 Plaintiffs allege the sample invoices are representative of the entire body of invoices the Carrier
17 Defendants have submitted. Plaintiffs are informed and believe that the invoices are all in
18 possession of the Carrier Defendants.

19 156. The “lowest cost available” for wireless services requires the Carrier Defendants to
20 provide rate plan recommendations for each line of service so the Government Plaintiffs could be
21 assigned to the optimal rate plan for that line’s usage pattern. Because the Carrier Defendants did
22 not provide rate plan optimization reports, or otherwise optimize the Government Plaintiffs’ lines,
23 the Government Plaintiffs were overcharged by 20-30%.

24 157. A number of Plaintiffs hired third party optimization firms to prepare rate plan
25 optimization reports. Those reports and the resulting savings demonstrate the magnitude of the
26 damages suffered as a proximate result of the Carrier Defendants’ conduct.

27 158. For example, San Bernardino County hired a firm called Wireless Watchdogs to
28 provide telecommunications expense management services, including rate plan optimization. From

1 the inception of the contract to May 2015, Wireless Watchdogs saved San Bernardino County
2 departments an average of 52% on wireless services, which AT&T, SPRINT, and VERIZON
3 provided to the County.

4 159. In mid-2012, Riverside County hired another third party vendor, ISys LLC, to
5 optimize the wireless services AT&T, SPRINT, and VERIZON provided to the County. ISys
6 prepared an optimization analysis covering the period from April 2011 to March 2012, which
7 identified approximately \$1 million in optimization and optimization-related savings. VERIZON
8 billed Riverside County in excess of \$860,000 during that period for voice, data, broadband,
9 messaging, and other features. ISys's analysis estimated that if VERIZON optimized and properly
10 billed the County's lines, it would have spent under \$500,000, or more than 40% less. SPRINT
11 billed the County almost \$1.5 million from April 2011 to March 2012. ISys estimated the County
12 would have saved more than \$650,000, or nearly 45% of what it paid to SPRINT, if the carrier had
13 optimized and properly billed for the County's wireless services.

14 160. ISys's analysis for Riverside County revealed the Carrier Defendants had not been
15 optimizing the County's wireless services or providing optimization reports on a quarterly basis.
16 Although VERIZON and SPRINT claimed that they had provided the reports as the WSCA contracts
17 required, when ISys and the County requested the carriers produce those or other documentation
18 showing that they were in fact provided, VERIZON and SPRINT failed to provide any responsive
19 materials. When Riverside County sought reimbursement from the carriers for the overcharges, they
20 refused to pay.

21 161. After it completed the Riverside County optimization analysis covering the period
22 from April 2011 to March 2012, ISys continued to perform optimization analyses for the County.
23 From April 2012 until December 2014, the County realized optimization-related savings totaling
24 nearly \$2 million, demonstrating that optimization results in savings over time.

25 162. Short of hiring third party vendors to optimize their wireless services, some
26 Government Plaintiffs dedicated their own resources to optimizing rate plans. In one instance, two
27 staff members in the University of California Office of the President worked for several months in
28 2012 to identify lower cost plans for each line of service that department purchased from AT&T and

1 VERIZON under the WSCA II contract. The Government Plaintiffs would not have spent time and
2 money on this effort if the Carrier Defendants had not knowingly breached their contractual
3 obligations to provide rate plan optimization analyses.

4 163. Those Government Plaintiffs who did not receive optimization reports from the
5 Carrier Defendants and instead sought optimization and optimization-related services from third
6 party vendors best illustrate the savings that optimization yields. These savings are consistent with
7 industry experience and reflect the degree to which the Carrier Defendants overcharged the
8 government. As well, the Government Plaintiffs that hired outside optimization providers had to pay
9 for these services, adding to their damages.

10 164. The Government Plaintiffs were damaged as a foreseeable result of the Carrier
11 Defendants' conduct. The Government Plaintiffs suffered damages that are the difference between
12 the amounts the Government Plaintiffs paid on the Carrier Defendants' invoices and the amounts
13 that would have been due had the Government Plaintiffs been able to use rate plan optimization
14 reports to select the lowest cost rate plans available. Further, as to those Government Plaintiffs that
15 paid third parties to prepare rate plan optimization reports, their damages include the sums paid to
16 these entities.

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of the California False Claims Act**
19 **California Government Code § 12651(a)(1)**

20 **(On behalf of Government Plaintiffs and Qui Tam Plaintiff against All Defendants)**

21 165. The allegations contained in paragraphs 1 through 164 are incorporated in full as if
22 set forth herein.

23 166. This is a claim for treble damages and forfeitures under the False Claims Act, Cal.
24 Gov't Code §§ 12650 et seq.

25 167. Through the acts described above, the Defendants, their agents, and employees,
26 knowingly presented and caused to be presented materially false and fraudulent claims to the
27 Government Plaintiffs, and knowingly failed to disclose material facts, in order to obtain payment
28 and approval from the Plaintiffs.

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THIRD CLAIM FOR RELIEF

Unfair Business Practices
California Business & Professions Code §§ 17200 et seq.

(On behalf of False Claims Intervenor Plaintiffs against All Defendants)

175. The allegations contained in paragraphs 1 through 174 are incorporated in full as if set forth herein.

176. At all relevant times, Defendants were engaged in “business practices” as that phrase is defined in the California Unfair Business Practices Act, Cal. Bus. & Prof. Code §§ 17200 et seq.

177. Defendants’ business practices constitute unfair competition within the meaning of Business and Professions Code § 17200, being unlawful, unfair, and/or fraudulent within the meaning of the statute in that, among other reasons, Defendants have failed to optimize the Government Plaintiffs’ rate plans, enabling Defendants to receive substantial overpayments under their contracts.

178. As a direct and proximate result of their unlawful, unfair, and/or fraudulent business practices, Defendants have acquired and will continue to acquire substantial revenues from the Government Plaintiffs in the form of overpayments. The Government Plaintiffs are entitled to disgorgement and restitution of Defendants’ ill-gotten gains pursuant to Business and Professions Code § 17203.

179. The Government Plaintiffs are further entitled, pursuant to Business and Professions Code §§ 17200 et seq., to an injunction enjoining Defendants from continuing their illegal practices.

Wherefore, Plaintiffs pray for relief as set forth below.

FOURTH CLAIM FOR RELIEF

Breach of Written Contract

(On behalf of False Claims Intervenor Plaintiffs against All Defendants)

180. The allegations contained in paragraphs 1 through 179 are incorporated in full as if set forth herein.

181. The False Claims Intervenor Plaintiffs entered into agreements with Carrier Defendants whereby the Carrier Defendants sold, and the False Claims Intervenor Plaintiffs purchased, wireless services.

PRAYER FOR RELIEF

1
2 Qui Tam Plaintiff and False Claims Intervenors pray for judgment against the Defendants,
3 and each of them, as follows:

4 1. For damages in an amount equal to three times the amount of damages the
5 Government Plaintiffs sustained as a result of the Defendants' unlawful conduct;

6 2. For damages in an amount equal to all damages proximately caused by Defendants'
7 conduct in an amount to be proven at trial;

8 3. For judgment in the amount that Defendants were unjustly enriched, in an amount to
9 be proven at trial;

10 4. For civil monetary penalties for each false and fraudulent claim submitted to the
11 Government Plaintiffs;

12 5. For an order directing Defendants to make full restitution;

13 6. For a permanent injunction enjoining the Defendants from violating the False Claims
14 Act and the Unfair Business Practices Act;

15 7. For attorneys' fees and costs, including the Qui Tam Plaintiff's attorneys' fees and
16 costs;

17 8. For an order awarding the Qui Tam Plaintiff the maximum award allowed by the
18 False Claims Act; and

19 9. For such other further relief as the Court may deem just and proper.

20 Dated: March 24, 2016

CONSTANTINE CANNON LLP

21
22
23 By: _____



Anne Hayes Hartman

Attorneys for Plaintiffs Regents of the University
of California; Political Subdivisions, and Relator
OnTheGo Wireless, LLC

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EXHIBIT A

False Claims Intervenors

- Regents of the University of California
- Los Angeles County
- Madera County
- Marin County
- Orange County
- Riverside County
- Sacramento County
- San Bernardino County
- Santa Cruz County
- Sonoma County
- Stanislaus County
- Yuba County
- City of Capitola
- City of Chino
- City of Corona
- City of Farmersville
- City of Fortuna
- City of Fresno
- City of Long Beach
- City of Oxnard
- City of Rancho Cucamonga
- City of Ripon
- City of Riverside
- City of Sacramento
- City of San Bernardino
- City of San Mateo
- City of Santa Cruz
- City of Santa Rosa
- City of Vernon
- City of Victorville
- Grossmont Union High School District
- Irvine Unified School District
- Kings Canyon Unified School District
- Olivenhain Municipal Water District
- Sonoma County Water Agency
- Rosemead School District
- Saddleback Valley Unified
- San Diego Unified School District
- Santa Ana Unified School District
- Santa Cruz Public Libraries
- Torrance Unified School District
- Victor Valley Transit Authority
- Whittier Union High School District
- Woodbridge Fire District

1 **Non-Intervening Real Party in Interest Political Subdivision Government Plaintiffs**

- 2 County of Alameda
- 3 County of Butte
- 4 County of Colusa
- 5 County of Contra Costa
- 6 County of El Dorado
- 7 County of Fresno
- 8 County of Glenn
- 9 County of Humboldt
- 10 County of Kern
- 11 County of Kings
- 12 County of Lake
- 13 County of Mendocino
- 14 County of Merced
- 15 County of Monterey
- 16 County of Napa
- 17 County of Nevada
- 18 County of Placer
- 19 County of Plumas
- 20 County of San Benito
- 21 County of San Diego
- 22 County of San Joaquin
- 23 County of San Luis Obispo
- 24 County of San Mateo
- 25 County of Santa Barbara
- 26 County of Santa Clara
- 27 County of Shasta
- 28 County of Siskiyou
- County of Solano
- County of Sutter
- County of Tehama
- County of Trinity
- County of Tulare
- County of Ventura
- County of Yolo
- City and County of San Francisco
- City of Alameda
- City of Anaheim
- City of Azusa
- City of Bakersfield
- City of Bell Gardens
- City of Blythe
- City of Calexico
- City of Carlsbad
- City of Carmel By The Sea
- City of Chula Vista
- City of Clear Lake
- City of Concord
- City of Costa Mesa
- City of Del Mar
- City of El Cajon
- City of El Cerrito
- City of Elk Grove
- City of Encinitas

Non-Intervening Real Party in Interest Political Subdivision Government Plaintiffs

- 1
- 2 City of Eureka
- 3 City of Fortuna
- 4 City of Fremont
- 5 City of Fullerton
- 6 City of Garden Grove
- 7 City of Glendale
- 8 City of Hanford
- 9 City of Hawaiian Gardens
- 10 City of Hollister
- 11 City of Huntington Beach
- 12 City of Imperial
- 13 City of Irvine
- 14 City of Lancaster
- 15 City of Lemoore
- 16 City of Loma Linda
- 17 City of Los Altos
- 18 City of Marina
- 19 City of Martinez
- 20 City of Menifee
- 21 City of Menlo Park
- 22 City of Modesto
- 23 City of Monterey
- 24 City of Moreno Valley
- 25 City of Morro Bay
- 26 City of Mountain View
- 27 City of Nevada City
- 28 City of Newark
- City of Newport Beach
- City of Oakland
- City of Oakley
- City of Oceanside
- City of Ontario
- City of Palmdale
- City of Pasadena
- City of Paso Robles
- City of Penn Valley
- City of Petaluma
- City of Pismo Beach
- City of Pomona
- City of Rancho Palos Verdes
- City of Red Bluff
- City of Redding
- City of Redlands
- City of Redondo Beach
- City of Rialto
- City of Richmond
- City of San Bruno
- City of San Diego
- City of San Francisco
- City of San Jose
- City of San Marino
- City of San Rafael
- City of Santa Ana

1 **Non-Intervening Real Party in Interest Political Subdivision Government Plaintiffs**

- 2 City of Santa Barbara
City of Santa Clarita
3 City of Santa Maria
City of Santa Paula
4 City of Sebastapol
City of South San Francisco
5 City of Stockton
City of Taft
6 City of Ventura
City of Whittier
7 ABC Unified School District
Alameda-Contra Costa Transit District
8 Anaheim Union High School District
Antelope Valley Hospital District
9 Antelope Valley Union High School District
Antioch Unified School District
10 Bakersfield Elementary School District
Calexico Unified School District
11 Capistrano Unified School District
Carpinteria-Summerland Fire Protection District
12 Chico Unified School District
Chino Valley Unified
13 Cloverdale Fire Protection District
Clovis Unified School District
14 Colton Joint Unified School District
Compton Unified School District
15 Contra Costa Fire Protection District
Corona-Norco Unified School District
16 Cuyama Joint Unified School District
Desert Sands Unified School District
17 Desert Water Agency
Durham Unified School District
18 East Bay Municipal Utility District
East Side Union High
19 Elk Grove Unified School District
Emeryville Police Department
20 Escondido Union High School District
Fontana Unified School District
21 Foothill DeAnza Community College District
Foresthill Fire Protection District
22 Fremont Unified School District
Fresno Unified School District
23 Garden Grove Unified School District
Glendale Community College District
24 Glendale Unified
Golden Empire Transit District
25 Goleta Sanitary District
Goleta Water District
26 Grant Joint Union High School District
Great Basin Unified Air Pollution Control District
27 Greater Vallejo Recreation District
Greenfield Fire Protection District
28 Hacienda La Puente Unified

1 **Non-Intervening Real Party in Interest Political Subdivision Government Plaintiffs**

- 2 Hayfork Fire Protection District
Hayward Unified School District
3 Helix Water District
Hillsborough School District
4 Imperial Irrigation District
Jurupa Community Services District
5 Jurupa Unified School District
Kern Community College District-Bakersfield College
6 Kern High School District
Lake Tahoe Unified School District
7 Liberty Rural County Fire Protection District
Lindsay Strathmore Irrigation District
8 Lodi Unified School District
Long Beach Unified School District
9 Los Angeles Community College District
Los Angeles County Metro Transit Authority
10 Los Angeles County Sanitation District
Los Angeles Unified School District
11 Los Molinos Unified School District
Lynwood Unified School District
12 Menlo Park City School District
Metrolink [Southern California Regional Rail Authority]
13 Metropolitan Transportation Commission
Modesto Irrigation District
14 Montebello Unified School District
Monterey Peninsula Regional Park District
15 Moreno Valley Unified School District
Mount Diablo Unified School District
16 Mt San Jacinto Community College District
North County Fire Protection District
17 Northern Humboldt Union High School District
Northshore Fire Protection District
18 Northstar Community Services District
Norwalk La Mirada Unified School District
19 Oakdale Joint Unified School District
Oakland Unified School District
20 Olivehurst Public Utility District
Ontario-Montclair Elementary
21 Orange County Transportation Authority
Orange Unified School District
22 Pajaro Valley Unified School District
Palomar Pomerado Hospital District
23 Pasadena Area Community College District
Pasadena Unified School District
24 Petaluma School District
Placentia-Yorba Linda Unified School District
25 Placer Hills Fire Protection District
Pomona Unified School District
26 Port San Luis Harbor District
Porterville Developmental Center
27 Poway Unified School District
Rialto Unified School District
28 Rincon Ranch Community Services District

1 **Non-Intervening Real Party in Interest Political Subdivision Government Plaintiffs**

- 2 Rincon Valley Unified School District
Rio Hondo Community College District
3 Ripon Unified School District
Riverdale Unified School District
4 Riverside Community College District
Riverside Unified School District
5 Russian River Fire Protection District
Sacramento City Unified School District
6 Sacramento Municipal Utility District
Sacramento Regional Transit District
7 San Bernardino City Unified School District
San Diego Community College District
8 San Francisco Bay Area Rapid Transit District
San Francisco Unified School District
9 San Jacinto Unified School District
San Joaquin Regional Rail Commission
10 San Jose Unified School District
San Juan Unified School District
11 San Miguel School District
Santa Fe Irrigation District
12 South Coast Air Quality Management District
Stanislaus County Registrar of Voters
13 Stockton East Water District
Stockton Unified School District
14 Sundale Union Elementary School
Sweetwater Union High School District
15 Temecula Valley Unified School District
Turlock Irrigation District
16 Twin Rivers Unified School District
University of California, Irvine, Office of Academic Affairs
17 Ventura Port District
Victor Elementary School District
18 Vineland School District
Visalia Unified School District
19 Vista Irrigation District
Vista Unified School District
20 Walnut Valley Water District
West Bay Sanitary District
21 West Contra Costa Unified School District
West County Wastewater District
22 Western Municipal Water District
Willow Creek Community Services District
23 Willow Creek Fire Protection District
Windsor Fire Protection District
24 Wiseburn School District
Yorba Linda Water District
25 Yosemite Community College District
Yreka Police Department
26 Yreka Union School District
Yuba Community College District
27 Yuma Municipal Water District