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14 **MICHAEL TERPIN**

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 MICHAEL TERPIN,  
18 Plaintiff,  
19 v.  
20 AT&T Mobility, LLC; and DOES 1-  
21 25,  
22 Defendants.

23 Case No. 2:18-cv-6975-ODW-KS  
24 **SECOND AMENDED COMPLAINT**  
25 **FOR:**  
26 **(1) DECLARATORY RELIEF;**  
27 **UNENFORCEABILITY OF AT&T**  
28 **CONSUMER AGREEMENT AS**  
**UNCONSCIONABLE AND**  
**CONTRARY TO PUBLIC POLICY;**  
**(2) UNAUTHORIZED**  
**DISCLOSURE OF CUSTOMER**  
**CONFIDENTIAL PROPRIETARY**  
**INFORMATION AND**  
**PROPRIETARY NETWORK**  
**INFORMATION, FEDERAL**  
**COMMUNICATIONS ACT, 47**  
**U.S.C. §§ 206, 222; (3) DECEIT BY**  
**CONCEALMENT, CAL. CIV.**  
**CODE §§ 1709, 1710;**  
**(4) MISREPRESENTATION;**  
**(5) NEGLIGENCE; (6) NEGLIGENT**  
**SUPERVISION AND TRAINING;**  
**(7) NEGLIGENT HIRING; and**  
**(8) BREACH OF CONTRACT—**  
**AT&T PRIVACY POLICY**  
**DEMAND FOR JURY TRIAL**

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1 Plaintiff Michael Terpin, by and through his counsel, complains and  
2 alleges as his Second Amended Complaint as follows against AT&T Mobility, LLC  
3 (“AT&T”):

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over this matter under 28 U.S.C.  
6 § 1331 because this case arises under federal question jurisdiction under the Federal  
7 Communications Act (“FCA”). The Court has supplemental jurisdiction under 28  
8 U.S.C. § 1367 over the state law claims because the claims are derived from a  
9 common nucleus of operative facts. The Court also has jurisdiction over this matter  
10 under 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000 and  
11 Plaintiff and Defendants are citizens of different states in that Plaintiff, Michael  
12 Terpin is domiciled in Puerto Rico with a residence in California, and Defendants  
13 AT&T, Inc. and AT&T Mobility, Inc., are corporations with their principal places  
14 of business, respectively, in Texas and Georgia.

15 2. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1),  
16 (b)(2), (c) and (d) because a substantial part of the events or omissions giving rise  
17 to this Complaint occurred in this District. Plaintiff Michael Terpin has a residence  
18 in Los Angeles County, California. Mr. Terpin obtained wireless services from  
19 AT&T in Los Angeles County in or about the mid-1990’s. AT&T does business in  
20 and is subject to the Court’s jurisdiction in this District. AT&T’s violation of Mr.  
21 Terpin’s privacy in those services is the subject of this complaint. Mr. Terpin  
22 continued at all times relevant to the allegations herein to receive wireless services  
23 from AT&T for a telephone number with a Southern Californian area code.

24 **INTRODUCTION**

25 3. AT&T solemnly promises its cellular telephone subscribers that  
26 it will safeguard their private information—and particularly their data-rich SIM  
27 cards—from any unauthorized disclosure. Besides the numerous promises that  
28 AT&T makes in its own Privacy Policy and Code of Business Conduct, federal and

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1 state law impose a strict duty on the nation’s second largest cellular telephone  
2 carrier to take all necessary steps to preserve the privacy of its almost 140 million  
3 customers. In AT&T’s case, this mandate has fallen on deaf ears.

4 4. In one notorious instance, AT&T employees were found  
5 culpable for stealing personal information for over 200,000 customers and selling it  
6 to criminals to unlock mobile phones. This massive security failure prompted the  
7 Federal Communications Commission to levy a record fine of \$25 million and  
8 secure a Consent Decree requiring AT&T to implement detailed measures to  
9 enhance its subscribers’ protection against unauthorized disclosures of their private  
10 information. AT&T did not learn its lesson.

11 5. More recently, AT&T employees, as has been widely reported  
12 by law enforcement, are participating in a new species of fraud—SIM swap fraud—  
13 which is a metastasizing cancer attacking AT&T customers and allowing hackers  
14 readily to bypass AT&T security to rob AT&T customers of valuable personal  
15 information and millions of dollars of cryptocurrency.

16 6. A “SIM swap” is a practice whereby a hacker gains access to a  
17 victim’s telephone account or number in order to intercept communications,  
18 including text messages, to the mobile telephone. A perpetrator of a SIM swap  
19 typically arranges through bribery of someone with access to customer information  
20 to change the SIM card assigned to a user to a telephone under the control of the  
21 hacker or the hacker’s accomplices. Once the SIM transfer has occurred, the hacker  
22 uses the hacker’s phone which contains a SIM card associated with the victim’s  
23 account to impersonate the victim with service providers, such as e-mail providers,  
24 and uses the victim’s phone number to request changes to account settings and to  
25 reset passwords to take control of the victim’s accounts and private information.  
26 This is a direct, intentional form of theft, similar to stealing the key to a car (the key  
27 is not the car itself, but it directly enables the theft of the car without the owner’s  
28 permission). The sole reason for these bribes is the enabling of thieves to hack into

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1 bank accounts, credit card records and digital assets, including cryptocurrency,  
2 stored in digital wallets that would not have otherwise been accessible without the  
3 theft of the digital identity “key” found in the SIM.

4 7. Since the SIM swap described herein, AT&T has done virtually  
5 nothing to prevent ongoing SIM swap frauds. As a result, there have been hundreds  
6 of millions of dollars in subsequent direct losses by its customers of assets allegedly  
7 “protected” by this authentication scheme promoted by AT&T to its users and to  
8 software providers as providing additional safety. Even after learning of the  
9 complicity of its employees from law enforcement, AT&T has continued not to  
10 supervise low-level clerks to prevent them from turning over the digital “keys” of  
11 its customers’ accounts to hackers.

12 8. AT&T’s subscriber privacy protection system is thus a veritable  
13 modern-day Maginot Line: a lot of reassuring words that promote a false sense of  
14 security whereas AT&T knows that hackers are readily able to bypass its weak  
15 security by co-opting AT&T’s own employees. AT&T persists in not providing  
16 adequate security or providing security that is easily evaded by hackers and/or its  
17 own employees even though it knows that hackers target its systems because the  
18 hackers know they are riddled with flaws. Most troubling, AT&T has not improved  
19 its protections even though it knows from numerous incidents that some of its  
20 employees actively cooperate with hackers in SIM swap frauds by giving hackers  
21 direct access to customer information and by overriding AT&T’s security  
22 procedures. On information and belief, Jahmil Smith, the AT&T agent involved in  
23 Mr. Terpin’s hack, was bribed by a criminal gang in order to allow the hackers  
24 access to the “private keys” to cryptocurrency assets that otherwise would be  
25 unavailable to them.

26 9. In recent incidents, including incidents that have led to  
27 criminal complaints against individuals involved in SIM swaps, including AT&T  
28 employees, law enforcement has even confirmed that AT&T employees profited

1 from bribes for working directly with cyber terrorists and thieves in SIM swap  
2 frauds. Such was the case regarding two AT&T contract employees in Tucson,  
3 Jarratt White and Robert Jack, who facilitated 41 SIM swaps in the single month of  
4 May 2018 for a total bribe from the hackers of \$4,300 that resulted in the theft of  
5 approximately \$2,143,471.59. *See* Exhibit F (Criminal Complaint in *United States*  
6 *v. White*).

7 10. The porosity of AT&T's privacy program is dramatically  
8 evident in this case, which follows a pattern well known to AT&T and which has  
9 been repeated on countless times before and after the events that befell Mr. Terpin.  
10 An experienced, high profile cryptocurrency investor, Plaintiff Michael Terpin was  
11 a longtime AT&T subscriber who entrusted his sensitive private information to  
12 AT&T and relied on AT&T's assurances and its compliance with applicable laws.  
13 Given all the carrier's hype about protecting customer security, Plaintiff believed  
14 that it would keep its promises about absolutely safeguarding him from a data  
15 breach that could lead to the theft of tens of millions of dollars of cryptocurrency.  
16 In reality, however, Plaintiff was victimized by not one, but two hacks within seven  
17 months.

18 11. On information and belief Terpin further alleges that even after  
19 AT&T had placed vaunted additional protection on his account after an earlier  
20 hacking incident, an AT&T retail clerk (Jahmil Smith) was easily able to fabricate  
21 information indicating that Mr. Terpin visited the store and showed identification  
22 when in fact Mr. Terpin did not visit the store. Smith then transferred the key to the  
23 digital identity of Mr. Terpin in the SIM for his telephone account to an eager gang  
24 of hackers.

25 12. Importantly, the precise mechanics of that hack are best known  
26 by the hackers. Upon information and belief, Terpin alleges that the AT&T  
27 employee's cooperation allowed a criminal gang to use their control of Mr. Terpin's  
28 telephone account to intercept communications, including text messages, to reset

1 passwords for Mr. Terpin’s accounts and to access files under those accounts  
2 containing confidential information used to access cryptocurrency wallets and/or  
3 exchanges. This system long promoted by AT&T and other phone companies is  
4 called “two factor authentication” in that it provides a second factor to prove  
5 identity to access a protected software account (the first factor is typically an email  
6 address and/or a password). Once the perpetrators gained unauthorized access to the  
7 wallets, they transferred Mr. Terpin’s cryptocurrency to wallets and/or accounts  
8 controlled by the perpetrator(s). In the case of Mr. Terpin, Mr. Terpin is informed  
9 and believes that the hackers intercepted 2FA messages to a phone under their  
10 control with Mr. Terpin’s AT&T account to gain access to deleted files and  
11 fragments accessible by hackers through sophisticated techniques on a password-  
12 protected cloud that contained confidential information that allowed them to gain  
13 access to Mr. Terpin’s electronic wallets holding almost \$24 million of  
14 cryptocurrency. Put simply, the SIM was an absolutely necessary component of the  
15 hack, without which the cryptocurrency could never have been accessed, much less  
16 stolen.

17 13. Although AT&T’s privacy and security officers were well aware  
18 of the porosity of its protections of its customers’ personal information, AT&T  
19 provided hackers with access to Mr. Terpin’s telephone account through enabling  
20 its employees and agents the unfettered ability to falsify records and transfer the  
21 SIM to a phone under their control, without adhering to its security procedures, that  
22 allowed the cryptocurrency theft to occur by allowing the hackers to take  
23 possession of Mr. Terpin’s account and digital identity to intercept 2FA messages.  
24 What AT&T did was like a hotel giving a thief with a fake ID a room key *and* a key  
25 to the room safe to steal jewelry in the safe from the rightful owner, or, even worse,  
26 simply handing over the same keys to a known impostor when someone slipped  
27 them a \$20 bill.  
28

1           14. Since the hack to Mr. Terpin has occurred and this lawsuit has  
2 been filed, he has been contacted by more than 50 SIM swap victims of AT&T,  
3 including many who had cryptocurrency stolen under nearly identical  
4 circumstances. Cryptocurrency investors are particularly vulnerable because  
5 cryptocurrency transfers cannot be reversed. AT&T's failure to protect  
6 cryptocurrency investors is thus undermining the stability of transactions in this  
7 important new \$300 billion marketplace. Moreover, AT&T's stubborn refusal to  
8 implement relatively easy fixes to its security system—despite the myriad of  
9 complaints, news stories, and incidents of fraud—has laid bare the fact that the  
10 telecommunication provider's failure to guard against criminals working in their  
11 retail stores is the weak link of the 2FA security system.

12           15. AT&T is doing virtually nothing to protect its almost 140  
13 million customers from SIM card fraud and the subsequent theft of assets that  
14 AT&T promised to protect through its 2FA system (in particular, through its higher  
15 level of protection that it promised Mr. Terpin) that follows as surely as night  
16 follows day. AT&T is therefore directly culpable for these attacks because it is  
17 well aware that hackers are readily able to avoid its security protections to subject  
18 its customers to SIM swap fraud and that such hackers rely on such fraud and theft  
19 to obtain 2FA communications that lead them directly to customers' private  
20 communications and valuable digital assets. AT&T does almost nothing to protect  
21 its customers from such fraud because it has become too big to care. Indeed,  
22 AT&T has sacrificed its customers for its own financial gain because it is unwilling  
23 to install basic security precautions for preventing its employees to fraudulently  
24 transfer a SIM card to a criminal gang--something that law enforcement statistics  
25 show has happened very frequently to AT&T, with many more thefts unreported.

26           16. This lawsuit seeks to hold AT&T accountable for its abject  
27 failure to protect subscribers like Mr. Terpin from the theft of protection to their  
28 digital identity by its own employees. Apparently, AT&T preferred to buy Time

1 Warner for over \$85 billion than pay for a state-of-the art security system and hire,  
2 train, and supervise competent and ethical employees—even when it was well  
3 known to AT&T that its system was vulnerable to precisely the type of hack  
4 experienced by Mr. Terpin. Indeed, AT&T knew that Mr. Terpin himself has  
5 previously been subject to SIM swap fraud. And, Mr. Terpin is informed and  
6 believes that AT&T further knew that SIM swapping fraud has become more and  
7 more prevalent as a gateway to the access of customers’ accounts, resulting in a  
8 wide variety of harms including, as was the case with Mr. Terpin, the theft of  
9 cryptocurrencies.

10 17. On information and belief, law enforcement has approached  
11 AT&T frequently to ask for satellite records as evidence of whether and when a  
12 SIM transfer has occurred and whether it occurred in a store, as noted in the AT&T  
13 transaction log, or whether the transfer occurred hundreds of miles away by a  
14 hacker. After this many thefts and subpoenas by law enforcement, AT&T cannot  
15 proclaim that it lacks knowledge of the crimes being committed by its own  
16 employees and agents due to its lax security practices. A verdict for \$24 million of  
17 compensatory damages and over \$200 million for punitive damages might attract  
18 the attention of AT&T’s senior management who have long ignored this practice so  
19 that they will spend serious money on an acceptable customer protection program  
20 and measures to ensure that its own employees are not complicit in theft and fraud.  
21 Then and only then will AT&T’s promise to protect the types of personal  
22 information that directly led to the hacking of Mr. Terpin’s accounts ring true.

### 23 THE PARTIES

24 18. Mr. Terpin is well known for his involvement with  
25 cryptocurrency. Cryptocurrency (also known as “crypto”) is digital or virtual  
26 currency used as a medium of exchange, store of value, and hedge against other  
27 investment assets such as stocks and bonds. that uses cryptography to secure the  
28



1 transaction. Typically, the holder of cryptocurrency has both a “public” and a  
2 “private” key or address that the holder uses to receive, transfer, use or store  
3 cryptocurrency. The private key, which is under the control of the owner of the  
4 cryptocurrency, is used to write in a public ledger to transfer cryptocurrency but is  
5 not displayed publicly. The private key is a cryptographically secure series of  
6 letters and numbers, which is typically filed in a “wallet.” Because the key can be  
7 used to “spend” cryptocurrency, owners of cryptocurrency typically keep such keys  
8 secure. Cryptocurrency is decentralized, operates independently of a central bank,  
9 and is often traded by parties through “exchanges.” The total market value of all  
10 cryptocurrency exceeded \$800 Billion on the day of Mr. Terpin’s theft.

11 19. Mr. Terpin is a prominent member of the blockchain and  
12 cryptocurrency community. In 2013, he started BitAngels, the first angel group for  
13 investing in bitcoin and blockchain companies, and CoinAgenda, the first high-end  
14 investor series for family offices and funds investing in digital assets. Mr. Terpin  
15 also runs Transform Group, the preeminent public relations and advisory firm in the  
16 cryptocurrency and blockchain sectors. Like others in the blockchain community,  
17 Mr. Terpin is a high-profile hacker target because of his publicized involvement in  
18 cryptocurrency enterprises.

19 20. AT&T, Inc. is a Delaware Corporation with its principal place  
20 of business in Dallas, Texas. Defendant AT&T Mobility, LLC (“AT&T  
21 Mobility”), which is marketed as “AT&T,” is a wholly-owned subsidiary of AT&T,  
22 Inc. with its principal place of business in Brookhaven, Georgia. AT&T Mobility  
23 provides wireless service to subscribers in the United States, Puerto Rico, and the  
24 U.S. Virgin Islands. AT&T Mobility is a “common carrier” governed by the  
25 Federal Communications Act (“FCA”), 47 U.S.C. § 151 *et seq.* AT&T Mobility is  
26 regulated by the Federal Communications Commission (“FCC”) for its acts and  
27 practices, including those occurring in this District. AT&T, Inc. and AT&T  
28 Mobility are herein referred to collectively as “AT&T.”

1           21. Defendant AT&T Mobility is the second largest wireless  
2 provider in the United States with 138.8 million subscribers as of the third quarter  
3 of 2017. AT&T, Inc., as it is presently constituted, is the result of the  
4 recombination of many of the companies split off from the original AT&T (also  
5 known as “The Telephone Company” or “Ma Bell.”) AT&T, Inc. is a behemoth  
6 which, in 2017, had operating revenues of over \$160 billion and assets of over \$444  
7 billion.

8           22. Over the past decade, AT&T has gone on a buying spree costing  
9 over \$150 billion, acquiring: Bell South (including Cingular Wireless and  
10 Yellowpages.com), Dobson Communications, Edge Wireless, Cellular One,  
11 Centennial, Wayport, Qualcomm Spectrum, Leap Wireless, DirecTV, and Iusacell  
12 and NII Holdings (now AT&T Mexico). During the same period, AT&T’s mobile  
13 phone business was rated as the worst among major providers. *Consumer Reports*  
14 named it the “worst carrier” in 2010, and the next year, J.D. Power found AT&T’s  
15 network the least reliable in the country—a dubious achievement that it also earned  
16 in prior years. Little wonder that its customers were the least happy of subscribers  
17 of the Big Four carriers according to the American Consumer Index. In the  
18 meantime, AT&T has purchased for a total equity value of \$85.4 billion Time  
19 Warner Inc.—the owner of HBO, Warner Bros, CNN, Turner Broadcasting,  
20 Cartoon Network, Turner Classic Movies, TBS, TNT and Turner Sports.

21           23. According to media reports, AT&T mobile telephone customers  
22 have been the subject of more privacy violations than subscribers to other cell  
23 phone companies. The Electronic Frontier Foundation has recently called out  
24 AT&T’s “hypocrisy” in calling for an “Internet Bill of Rights” when in fact “few  
25 companies have done more to combat privacy and network neutrality than AT&T.”  
26 <https://www.eff.org/deeplinks/2018/01/hypocrisy-atts-internet-bill-rights> AT&T  
27 has even lobbied the FCC to stop applying the privacy provisions of the FCA to its  
28 broadband services, while arguing (unsuccessfully) that it was not subject to the

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1 jurisdiction of the Federal Trade Commission (“FTC”) to govern privacy and data  
2 security pursuant to its jurisdiction to regulate unfair and deceptive acts under  
3 Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1)(2).

4           24. As further detailed below, AT&T has also been and continues to  
5 be subject to numerous incidents of SIM card swap fraud, including incidents  
6 involving prominent members of the cryptocurrency community. It is further aware  
7 that its employees are complicit in such fraud and can bypass AT&T’s security  
8 concerns. Indeed, a growing number of its employees and/or agents have been  
9 charged in criminal cases for participating in SIM swap fraud and their involvement  
10 in such fraud has been highlighted by law enforcement authorities. And, plaintiff is  
11 informed and believes that AT&T has knowledge of the involvement of a growing  
12 number of employees and/or agents in such incidents. Despite the incidents, AT&T  
13 persists in not securing its system against a cresting wave of such fraudulent  
14 activity.

15           25. Since Mr. Terpin’s hack occurred, AT&T customers continue to  
16 be subject to widespread SIM swap fraud. On information and belief, AT&T’s  
17 response to complaints about these hacks has been brusque, if not callous. AT&T  
18 has made it virtually impossible for customers to contact its fraud department,  
19 refused to provide even basic information about the SIM swaps, has denied  
20 knowledge of the hacks, and has even flatly told customers that it has no intent of  
21 investigating the involvement of its own employees in such frauds. Even though,  
22 on information and belief, AT&T has a portal to directly report suspect incidents to  
23 the FCC, it has denied the applicability of the privacy provisions of the FCA to  
24 hacks even when hackers have taken entire control of a customer’s phone.

25           26. Given AT&T’s dismal track record on consumer privacy,  
26 including the FCC’s fine and Consent Decree referenced below and its failure to  
27 prevent fraud of the sort that victimized Mr. Terpin, it ought to have invested its  
28 money and attention to protecting its cellular telephone subscribers from the

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1 onslaught of hacking and insider data breaches before it spent billions of dollars for  
2 new companies, like Time Warner. After all, AT&T was historically a *telephone*  
3 company.

4 27. Plaintiff is ignorant of the true names or capacities of the  
5 defendants sued herein under the fictitious names DOES ONE through TWENTY-  
6 FIVE inclusive. Plaintiff further alleges that each of the fictitiously named  
7 Defendants is responsible in some manner for the occurrences herein alleged,  
8 proximately caused plaintiff’s damages, and was acting as agent for the others.

9  
10 **FACTUAL ALLEGATIONS**

11 **AT&T’S STATUTORY OBLIGATION TO PROTECT**  
12 **CUSTOMERS’ PERSONAL INFORMATION**  
13 **UNDER THE FEDERAL COMMUNICATIONS ACT**

14 28. As a common carrier, AT&T is obligated to protect the  
15 confidential personal information of its customers under Section 222 of the FCA,  
16 47 U.S.C. § 222.

17 29. Section 222(a), 47 U.S.C. § 222(a), provides that “[e]very  
18 telecommunications carrier has a duty to protect the confidentiality of proprietary  
19 information of, and relating to . . . customers . . .” The “confidential proprietary  
20 information” referred to in Section 222(a), is abbreviated herein as “CPI.”

21 30. Section 222(c), 47 U.S.C. § 222(c), additionally provides that  
22 “[e]xcept as required by law or with the approval of the customer, a  
23 telecommunications carrier that receives or obtains customer proprietary network  
24 information by virtue of its provision of a telecommunications service shall only  
25 use, disclose, or permit access to individually identifiable customer proprietary  
26 network information in its provision of (A) the telecommunications service from  
27 which such information is derived, or (B) services necessary to, or used in, the  
28 provision of such telecommunications service, including the publishing of

1 directories.” The “customer proprietary network information” referred to in  
 2 Section 222(c) is abbreviated herein as “CPNI.”

3 31. Section 222(h)(1), 47 U.S.C. § 222(h)(1), defines CPNI as  
 4 “(A) information that relates to the quantity, technical configuration, type,  
 5 destination, location, and amount of use of a telecommunications service subscribed  
 6 to by any customer of a telecommunications carrier, and that is made available to  
 7 the carrier by the customer solely by virtue of the carrier-customer relationship; and  
 8 (B) information contained in the bills pertaining to telephone exchange service or  
 9 telephone toll service received by a customer of a carrier, except that term does not  
 10 include subscriber list information.”

11 32. The FCC has promulgated rules to implement Section 222 “to  
 12 ensure that telecommunications carriers establish effective safeguards to protect  
 13 against unauthorized use or disclosure of CPNI.” *See* 47 CFR § 64.2001 *et seq.*  
 14 (“CPNI Rules”); *CPNI Order*, 13 FCC Rcd. at 8195 ¶ 193. The CPNI Rules limit  
 15 disclosure and use of CPNI without customer approval to certain limited  
 16 circumstances (such as cooperation with law enforcement), none of which are  
 17 applicable to the facts here. 47 CFR § 64.2005.

18 33. The CPNI Rules require carriers to implement safeguards to  
 19 protect customers’ CPNI. These safeguards include: (i) training personnel “as to  
 20 when they are and are not authorized to use CPNI”; (ii) establishing “a supervisory  
 21 review process regarding carrier compliance with the rules;” and (iii) filing annual  
 22 compliance certificates with the FCC. 47 CFR § 64.2009(b), (d), and (e).

23 34. The CPNI Rules further require carriers to implement measures  
 24 to prevent the disclosure of CPNI to unauthorized individuals. 47 CFR § 64.2010.  
 25 For example, “carriers must take reasonable measures to discover and protect  
 26 against attempts to gain unauthorized access to CPNI.” 47 CFR § 64.2010(a).  
 27 Moreover, “carriers must properly authenticate a customer prior to disclosing CPNI  
 28 based on customer-initiated telephone contact, online account access, or an in-store

1 visit.” *Id.* In the case of in-store access to CPNI, “[a] telecommunications carrier  
 2 may disclose CPNI to a customer who, at a carrier’s retail location, *first presents to*  
 3 *the telecommunications carrier or its agent a valid photo ID matching the*  
 4 *customer’s account information.*” 47 CFR § 64.2010(d) (emphasis added). “Valid  
 5 photo ID” is defined in 47 CFR § 64.2003(r) as “a government-issued means of  
 6 personal identification with a photograph such as a driver’s license, passport, or  
 7 comparable ID that is not expired.”

8 35. The FCC has determined that information obtained from  
 9 customers through a common social engineering ploy known as “pretexting” is  
 10 CPNI. *See In the Matter of Implementation of the Telecommunications Acts of*  
 11 *1996: Telecommunications Carriers’ Use of Customer Proprietary Network*  
 12 *Information and Other Customer Information*, 22 FCC Rcd. 6927 (2007)  
 13 (“Pretexting Order”). Pretexting is “the practice of pretending to be a particular  
 14 customer or other authorized person in order to obtain access to that customer’s call  
 15 detail or other private communications records.” *Id.*, n. 1. Such “call detail” and  
 16 “private communications” are CPI and CPNI under the FCA. *Id.* at 6928 *et seq.*  
 17 The FCC concluded that “pretexters have been successful at gaining unauthorized  
 18 access to CPNI” and that “carriers’ record on protecting CPNI demonstrate[d] that  
 19 the Commission must take additional steps to protect customers from carriers that  
 20 have failed to adequately protect CPNI.” *Id.* at 6933. The FCC modified its rules to  
 21 impose additional security for carriers’ disclosure of CPNI and to require that law  
 22 enforcement and customers be notified of security breaches involving CPNI. *Id.* at  
 23 6936-62.

24 36. In its Pretexting Order, the FCC stated that it “fully expect[s]  
 25 carriers to take every reasonable precaution to protect the confidentiality of  
 26 proprietary or personal customer information.” *Id.* at 6959, ¶ 64. The FCC further  
 27 stated that “[w]e decline to immunize carriers from possible sanction for disclosing  
 28 customers’ private information without appropriate authorization.” *Id.* at 6960,

1 ¶ 66. In a statement directly relevant to the facts alleged below, the FCC also  
 2 stressed the fact that *someone having obtained information fraudulently is strong*  
 3 *evidence of the carrier’s failure to satisfy the requirements of section 222.* The  
 4 FCC stated that “we hereby put carriers on notice that the Commission henceforth  
 5 will infer from evidence that a pretexter has obtained unauthorized access to a  
 6 customer’s CPNI that the carrier did not sufficiently protect that customer’s CPNI.  
 7 A carrier then must demonstrate that the steps it has taken to protect CPNI from  
 8 unauthorized disclosure, including the carrier’s policies and procedures, are  
 9 reasonable *in light of the threat posed* by pretexting and the *sensitivity of the*  
 10 *customer information at issue.”* *Id.* at 6959, ¶ 63 (emphasis added).

11 37. As further alleged below, AT&T violated Section 222 of the  
 12 FCA and the CPNI Rules and ignored the warning in the Pretexting Order on  
 13 January 7, 2018 when its employees provided hackers with Mr. Terpin’s SIM cards  
 14 containing or allowing access to Mr. Terpin’s personal information, including CPI  
 15 and CPNI, without Mr. Terpin’s authorization or permission, and without requiring  
 16 that the individual accessing Mr. Terpin’s account present valid identification or  
 17 comply with AT&T’s own procedures.

18 38. Despite its statutory duties to protect the privacy of AT&T’s  
 19 customers, the FCC, under its current “business friendly” leadership, has not made  
 20 any response to the ongoing plague of SIM swap cases. Mr. Terpin’s lawsuit thus  
 21 fulfills a valuable public function of publicizing the complicity of AT&T in SIM  
 22 swaps and its refusal to take even elementary measures to protect the privacy of its  
 23 own customers.

24 **AT&T EMPLOYEES’ DISCLOSURE OF CUSTOMERS’ PERSONAL**  
 25 **INFORMATION AND THE APRIL 8, 2015 FCC CONSENT DECREE**

26 39. On April 8, 2015, the FCC fined AT&T a record \$25 million for  
 27 violating Section 222 of the FCA by allowing its employees to hand over to thieves  
 28 the CPNI of almost 280,000 customers. In addition to being forced to pay \$25

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1 million to the FCC, AT&T entered into a consent decree requiring it to implement  
2 measures to protect CPNI. The April 8, 2015 consent decree (“Consent Decree”)  
3 remains in full force and effect.

4 40. In the Consent Decree and the FCC’s adopting order (“Adopting  
5 Order”), the FCC highlights AT&T’s lax security practices and dismal failure to  
6 supervise and monitor employees that led to its unprecedented breach of its  
7 customers’ confidential and private information. *See In the Matter of AT&T*  
8 *Services, Inc.*, 30 FCC Rcd. 2808 (April 8, 2015 Adopting Order and Consent  
9 Decree) (attached hereto as Exhibit A).

10 41. The FCC investigation revealed that numerous AT&T call  
11 center employees provided the CPNI of hundreds of thousands of customers,  
12 including names, phone numbers and Social Security Numbers to unauthorized  
13 third parties, who used this information to gain access to unlock codes for mobile  
14 telephones and to remove territorial and network restrictions. *Id.* at 2808. The  
15 investigation further revealed that employees were frequently paid by criminals to  
16 hand over AT&T customers’ personal sensitive information, including account-  
17 related CPNI. *Id.* at 2808, 2813-15.

18 42. The FCC found that AT&T employees used their login  
19 credentials to access the confidential information of almost 280,000 customers.  
20 The FCC concluded that AT&T’s data security measures “failed to prevent or  
21 timely detect a large and ongoing Data Breach.” *Id.* at 2813 (Consent Decree ¶ 8).

22 43. The FCC also found that AT&T had not properly supervised its  
23 employees’ access to its customers’ personal information, including CPNI. The  
24 FCC concluded that AT&T’s “failure to reasonably secure customers’ proprietary  
25 information violates a carrier’s statutory duty under the Communications Act to  
26 protect that information and constitutes an unjust and unreasonable practice in  
27 violation of the Act.” *Id.* at 2808 (Adopting Order § 2).  
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1           44. In the Adopting Order, the FCC emphasized the importance of  
2 AT&T’s obligation to adhere to the obligations embodied in Section 222 of the  
3 FCA. According to the Adopting Order, the purpose of Section 222 is to “ensure  
4 that consumers can trust that carriers have taken appropriate steps to ensure that  
5 unauthorized persons are not accessing, viewing or misusing their personal  
6 information.” *Id.* Carriers like AT&T are thus required to take “‘every reasonable  
7 precaution’ to protect their customers’ data” and to notify consumers regarding any  
8 breaches in order to “aid in the pursuit and apprehension of bad actors and provide  
9 valuable information that helps affected consumers [to] be proactive in protecting  
10 themselves in the aftermath of a data breach.” *Id.*

11           45. As a condition of terminating the FCC’s investigation of  
12 AT&T’s violations of Sections 201(b) and 222 of the FCA, the FCC imposed  
13 numerous requirements on AT&T to improve its supervision of employees and to  
14 adhere to its legal obligation to protect the privacy of AT&T’s customers.  
15 Moreover, the Consent Decree imposed obligations not only on AT&T itself, but  
16 also on AT&T’s “Covered Employees,” who are defined as “all employees and  
17 agents of AT&T who perform or directly supervise, oversee, or manage the  
18 performance of duties that involve access to, use, or disclosure of Personal  
19 Information or Customer Proprietary Network Information at Call Centers managed  
20 and operated by AT&T Mobility.” *Id.* at 2811. “Call Center” is defined broadly in  
21 the Consent Decree as call centers operated by AT&T or its contractors “that  
22 provide mobility customer service or wireless sale service for AT&T Mobility  
23 consumer customers.” *Id.* at 2810.

24           46. Paragraph 17 of the FCC Consent Decree requires AT&T to  
25 designate “a senior corporate manager with the requisite corporate and organization  
26 authority to serve as a Compliance Officer . . .” *Id.* at 2816. AT&T’s Compliance  
27 Officer must be “responsible for developing, implementing, and administering the  
28

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1 Compliance Plan and ensuring that AT&T complies with the terms and conditions  
2 of the Compliance Plan and this Consent Decree.” *Id.*

3 47. Paragraph 18 of the FCC Consent Decree requires AT&T to  
4 institute a “Compliance Plan designed to ensure future compliance with the [FCA]  
5 and with the terms and conditions of this Consent Decree.” *Id.* The Compliance  
6 Plan must include a Risk Assessment, Information Security Program, Ongoing  
7 Monitoring and Improvement, and a Compliance Review. *Id.*

8 48. The “Information Security Program” required in  
9 Paragraph 18(b) must be “reasonably designed to protect CPNI and Personal  
10 Information from unauthorized access, use, or disclosure by Covered Employees . .  
11 ..” *Id.* AT&T’s program must be documented in writing and include:

- 12 (i) administrative, technical, and physical safeguards reasonably  
13 designed to protect the security and confidentiality of Personal  
14 Information and CPNI;
- 15 (ii) reasonable measures to protect Personal Information and CPNI  
16 maintained by or made available to Vendors, Covered Employees, and  
17 Covered Vendor Employees. . . ;
- 18 (iii) access controls reasonably designed to limit access to Personal  
19 Information and CPNI to authorized AT&T employees, agents, and  
20 Covered Vendor Employees;
- 21 (iv) reasonable processes to assist AT&T in detecting and responding  
22 to suspicious or anomalous account activity, including whether by  
23 malware or otherwise, involving Covered Employees and Covered  
24 Vendor Employees; and
- 25 (v) a comprehensive breach response plan that will enable AT&T to  
26 fulfill its obligations under applicable laws, with regard to breach  
27 notifications, including its obligations under paragraph 20 while that  
28 paragraph remains in effect.

1           49. Paragraph 18(c) of the Consent Decree requires AT&T to  
2 “monitor its Information Security Program on an ongoing basis to ensure that it is  
3 operating in a manner reasonably calculated to control the risks identified through  
4 the Risk Assessment, to identify and respond to emerging risks or threats, and to  
5 comply with the requirements of Section 222 of the [FCA], the CPNI Rules, and  
6 this Consent Decree.” *Id.* at 2817. In addition, Paragraph 18(g) requires AT&T to  
7 “establish and implement a Compliance Training Program [for employees] on  
8 compliance with Section 222, the CPNI Rules, and the Operating Procedures.” *Id.*  
9 All “Covered Employees” are required to be trained within six months of hire and  
10 periodically thereafter. *Id.*

11           50. AT&T must report noncompliance with the terms and  
12 conditions of the Consent Decree within fifteen (15) days after discovery of such  
13 noncompliance. *Id.* at 2819 (Consent Decree ¶ 20). In addition, “AT&T shall also  
14 report to the FCC any breaches of Personal Information or CPNI involving any  
15 Covered Employees or Covered Vendor Employees that AT&T is required by any  
16 federal or state law to report to any Federal or state entity or any individual.” *Id.*  
17 Moreover, AT&T is required to file compliance reports with the FCC six (6)  
18 months after the Effective Date, twelve (12) months after the Effective Date, and  
19 thirty-six (36) months after the Effective Date.” *Id.* (Consent Decree ¶ 21).

20           51. The provisions in Paragraphs 17 and 18 of the Consent Decree  
21 were applicable at all relevant dates to the acts and omissions alleged in this  
22 Complaint. *Id.* at 2820 (Consent Decree ¶ 22 (Paragraphs 17-18 expire seven (7)  
23 years after the “Effective Date,” *i.e.*, April 7, 2022)). As further alleged below,  
24 AT&T violated numerous terms of the April 8, 2015 Consent Decree by failing to  
25 implement adequate security procedures to protect Mr. Terpin’s personal  
26 information, including CPNI, by failing to supervise and monitor its employees, by  
27 failing to ensure that its employees were ethical and competent, by failing to follow  
28 its security procedures and by failing to follow its legal obligations to protect Mr.

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1 Terpin’s personal information under the FAC, CPNI Rules, and the Consent  
2 Decree. Mr. Terpin alleges on information and belief that AT&T also failed to  
3 report to the FCC the two data breaches involving Mr. Terpin, as required by FCC  
4 regulations and the Consent Decree. Mr. Terpin further alleges on information and  
5 belief that AT&T has failed to report to the FCC numerous additional data breaches  
6 involving victims of fraud where AT&T employees provided hackers access  
7 AT&T’s customers’ telephone numbers who stole money from the customers. Mr.  
8 Terpin’s lawsuit thus serves the valuable function of publicizing AT&T’s abject  
9 failure to prevent the wholesale theft of its customers’ personal information,  
10 including the active participation of its own employees in such theft, to prevent  
11 future harm to AT&T’s customers. It also publicizes AT&T’s complicity in the  
12 thefts of the information and assets of its own customers.

13 **AT&T’S PRIVACY AND SECURITY COMMITMENTS TO CUSTOMERS**  
14 **IN ITS PRIVACY POLICY AND CODE OF BUSINESS CONDUCT**

15 52. In its Privacy Policy (“Privacy Policy”) and Code of Business  
16 Conduct (“COBC”), AT&T acknowledges its responsibilities to protect customers’  
17 “Personal Information” under the FCA, the CPNI Rules and other regulations. A  
18 true and correct copy of the Privacy Policy in effect in January 2018 available at  
19 [http://about.att.com/sites/privacy\\_policy](http://about.att.com/sites/privacy_policy) is attached hereto as Exhibit B. A true  
20 and correct copy of the COBC in effect in January 2018 available at  
21 <https://ebiznet.sbc.com/attcode/index.cfm> is attached hereto as Exhibit C.

22 53. In its Privacy Policy and COBC, AT&T makes binding  
23 promises and commitments to Mr. Terpin, as its customer, that it will protect and  
24 secure his “Personal Information.” The Privacy Policy defines “Personal  
25 Information” as “[i]nformation that identifies or reasonably can be used to figure  
26 out the identity of a customer or user, such as your name, address, phone number  
27 and e-mail address.” AT&T states that, among the information that it collects from  
28 and about its customers, are “your name, address, telephone number, e-mail

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1 address” and service-related details such as payment history, security codes, service  
2 history and similar information. AT&T also collects information relating to the use  
3 of its networks, products and services. “Personal Information” thus includes both  
4 CPI and CPNI under Section 222 of the FCA and the CPNI Rules.

5 54. In its Privacy Policy AT&T promises that it takes its  
6 responsibility “to safeguard your [*i.e.*, the customer’s] Personal Information  
7 seriously” and that it will not share its customers’ Personal Information except for  
8 legitimate business purposes. It further states that “we will not sell [users’]  
9 Personal Information to anyone, for any purpose. Period.”

10 55. AT&T further promises that it has numerous safeguards in place  
11 to protect the Personal Information of its customers and makes the following  
12 promises to its customers:

13 We’ve worked hard to protect your information. *And we’ve established*  
14 *electronic and administrative safeguards designed to make the information*  
15 *we collect secure.* Some examples of those safeguards include:

- 16 • All of our employees are subject to the AT&T Code of Business  
17 Conduct (COBC)

18 ([https://www.att.com/Common/about\\_us/downloads/att\\_code\\_of\\_busi](https://www.att.com/Common/about_us/downloads/att_code_of_business_conduct.pdf)  
19 [ness\\_conduct.pdf](https://www.att.com/Common/about_us/downloads/att_code_of_business_conduct.pdf)) and certain state-mandated codes of conduct.

20 Under the COBC, all employees must follow the laws, rules,  
21 regulations, court and/or administrative orders that apply to our  
22 business—including, specifically, the legal requirements and company  
23 policies surrounding the privacy of communications and the security  
24 and privacy of your records. We take this seriously, and any of our  
25 employees who fail to meet the standards we’ve set in the COBC are  
26 subject to disciplinary action. That includes dismissal.

27  
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- We’ve implemented technology and security features and strict policy guidelines to safeguard the privacy of your Personal information. Some examples are:
  - Maintaining and protecting the security of computer storage and network equipment, and using our security procedures that require employee user names and passwords to access sensitive data;
  - Applying encryption or other appropriate security controls to protect Personal Information when stored or transmitted by us;
  - Limiting access to Personal Information to only those with jobs requiring such access; and
  - *Requiring caller/online authentication before providing Account Information so that only you or someone who knows your Account Information will be able to access or change this information.*

(Emphasis added.)

56. AT&T’s COBC also makes binding commitments to Mr. Terpin, as an AT&T customer, that it will protect his Personal Information and that it will adhere to all its legal obligations. Those legal obligations include, by implication, Section 222 of the FCA, the CPNI Rules, and other legal obligations that govern protection of confidential and private information. For example, AT&T’s chairman and chief executive, Randall Stephenson, and its chief compliance officer, David Huntley promise that because “[o]ur customers count on us” “[t]hat we will follow not only the letter of the law, but the spirit of the law” and “that we will always take responsibility.” *The COBC also specifically promises that AT&T will “protect the privacy of our customers’ communications” because “[n]ot only do our customers demand this, but the law requires it.*

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1 *Maintaining the confidentiality of communication is, and always has been, a*  
2 *crucial part of our business.”* (Emphasis added.)

3 57. AT&T further promises in the COBC that it “protect[s] the  
4 information about our customers that they entrust to us.” Acknowledging that  
5 “AT&T possesses sensitive, detailed information about our customers, who rely on  
6 AT&T to safeguard that information” and that “[l]aws and regulations tell us how  
7 to treat such data,” AT&T promises Mr. Terpin, as an AT&T customer, that “[a]ny  
8 inappropriate use of confidential customer information violates our customers’ trust  
9 and may also violate a law or regulation. *Preserving our customers’ trust by*  
10 *safeguarding their private data is essential to our reputation.”* (Emphasis added.)

11 58. Although AT&T acknowledges in its Privacy Policy, as it must,  
12 that it could not “guarantee” that Mr. Terpin’s “Personal Information will never be  
13 disclosed in a manner inconsistent with [AT&T’s] Policy (for example, as the result  
14 of unauthorized acts by third parties that violate the law or this Policy),” it did not  
15 disclose the porosity of its promises to “safeguard[] [customers’] private data.” *See*  
16 *Exh. B at 96.* As shown by the events alleged herein, AT&T did not provide even  
17 rudimentary protections to protect its own systems from misuse or evasion by its  
18 own employees. Indeed, AT&T’s employees and individuals working in concert  
19 with them were able to avoid what minimal security measures were put in place.  
20 Mr. Terpin is not alleging that AT&T failed to have perfect security; rather that it  
21 did not even have basic and minimal protections, particularly given its knowledge  
22 of the porosity of its current level of protection.

23 59. As alleged below, AT&T flagrantly and repeatedly violated its  
24 commitments to Mr. Terpin in its Privacy Policy and COBC, as well as its legal  
25 obligations under the FCA, the CPNI Rules, the Consent Decree, and California  
26 law, by willingly turning over to hackers Mr. Terpin’s wireless number that allowed  
27 hackers to access his “Personal Information” including CPNI. AT&T’s betrayal of  
28 its obligations caused Mr. Terpin to lose nearly \$24 million worth of

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1 cryptocurrency. On information and belief, AT&T has also violated its obligations  
2 to protect the Personal Information, including CPNI, of numerous other customers  
3 who have become victims of SIM theft due to AT&T’s negligence and refusal to  
4 implement elementary security precautions.

5 **THE PREVALENCE OF SIM CARD SWAP FRAUD**

6 60. AT&T is directly liable for the harm suffered by Mr. Terpin  
7 because it has long known that its customers are subject to SIM swap fraud (also  
8 called SIM swapping, SIM hijacking, or “port out scam”) perpetrated by hackers  
9 often with the active cooperation of its own employees and/or agents who readily  
10 evade AT&T’s ineffectual security measures. SIM swapping (also known as SIM  
11 theft or SIM-jacking) consists of the unauthorized insertion of a “SIM” or  
12 “Subscriber Identity Module” (also known as a “SIM card”) into a mobile device  
13 enabling the device to communicate with the service provider. A SIM contains data  
14 necessary to make a successful connection between the mobile phone and the  
15 telecommunications provider. SIM cards store files that are used to uniquely  
16 identify them.

17 61. A “SIM swap” is a practice whereby a hacker gains access to a  
18 victim’s telephone account or number by having the carrier install a SIM card for  
19 the victim’s account into the hacker’s phone to redirect communications, including  
20 text messages, sent to the victim’s mobile telephone on a telephone controlled by  
21 the hacker. A perpetrator of a SIM-jack typically arranges through bribery of some  
22 person (often an employee of a telecommunications provider) with access to  
23 customer information at the carrier to have the carrier change the SIM card assigned  
24 to a user to a telephone under the control of the hacker or the hacker’s accomplices.  
25 Once the SIM transfer has occurred, the hacker uses his or her phone to  
26 impersonate the victim with service providers, such as e-mail providers, in order to  
27 locate accounts owned by the victim or to request changes to account settings, such  
28 as resetting passwords, to take control of the victim’s accounts or data.



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1           62. Perpetrators of SIM swap fraud frequently intercept 2-Factor  
2 Authentication (or “2FA”) messages sent to the victim’s telephone. 2FA is  
3 frequently used as a security mechanism for authentication purposes for online  
4 accounts, particularly for password changes or for authorization to access an  
5 account. Perpetrators of SIM swaps intercept the messages to gain access to the  
6 accounts owned by the victim, including cryptocurrency accounts or other accounts  
7 that provide access to wallets or accounts. Once the perpetrator gains access to a  
8 cryptocurrency wallet or account, the perpetrator transfers the cryptocurrency to  
9 wallets or accounts controlled by the perpetrator.

10           63. The perpetrator of SIM swap fraud and subsequent theft—SIM  
11 jackers—specifically target victims who they believe to be investors in  
12 cryptocurrency because of the nature of cryptocurrency transactions. The digital  
13 assets embodied by cryptocurrency (such as Bitcoin or Ethereum) are a medium of  
14 exchange and store of value that uses cryptography to secure the transaction, as  
15 well as to store the value. Typically, the holder of cryptocurrency has both a  
16 “public” and a “private” key or address that the holder uses to receive, transfer, or  
17 use cryptocurrency. The private key, which is individual to the owner of the  
18 cryptocurrency, is used to write in the public ledger to transfer cryptocurrency.  
19 Because the key can be used to “spend” cryptocurrency, owners typically keep such  
20 keys secure. Such keys are complex. For example, in the case of Bitcoin, a 256-bit  
21 private key may contain 64 characters consisting of numbers and capitalized and  
22 uncapitalized letters.

23           64. Once a transfer of cryptocurrency has occurred, it cannot be  
24 reversed. Cryptocurrency thus makes an attractive target for perpetrators of SIM  
25 swap fraud because the perpetrators can transfer stolen digital assets to wallets  
26 and/or accounts that are not readily traced or reversed and can be accessed  
27 anywhere in the world free from more traditional banking and electronic payments  
28 controls.

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1           65. The nature of SIM swapping has been described in several  
2 recent indictments of SIM-jackers. For example, in *United States v. Freeman et al.*,  
3 Case No. 2:19-cr-20246 (E.D. Michigan), which is attached hereto as Exhibit E, the  
4 indictment described “SIM Hijacking” or “SIM Swapping” as a “tactic [that]  
5 enabled The Community [a group of hackers] to gain control of a victim’s mobile  
6 phone number by linking that number to a subscriber identity module (‘SIM’) card  
7 controlled by The Community—resulting in the victim’s phone calls and short  
8 message service (‘SMS’) messages being routed to a device controlled by a  
9 member of The Community. Once The Community had control of a victim’s phone  
10 number, it was leveraged as a gateway to gain control of online accounts such as  
11 the victim’s email, cloud storage, and cryptocurrency exchange accounts.  
12 Sometimes this was achieved by requesting a password-reset link be sent via SMS  
13 to the device controlled by The Community. Sometimes passwords were  
14 compromised by other means, and The Community’s device was used to receive  
15 two-factor authentication (‘2FA’) messages sent via SMS intended for the victim.”  
16 See Indictment ¶¶ 3-4.

17           66. The Indictment in *Freeman* further notes that during SIM swap  
18 attacks that hackers “appropriate the online identity of the victim” and that “SIM  
19 Hijacking was often facilitated by bribing an employee of a mobile phone provider”  
20 or by impersonating the victim. *Id.* ¶¶ 6-8.

21           67. This description of SIM swapping is echoed in the Criminal  
22 Complaint in *United States v. White et al.*, Case No. 2:19-mj-30227 (E.D.  
23 Michigan), which was filed on May 2, 2019 and is attached hereto as Exhibit F. In  
24 an Affidavit for Probable Cause in *White*, a Special Agent for Homeland Security  
25 Investigations, Mark R. Koch, describes SIM swapping in virtual identical terms to  
26 that in the *Freeman* case. He further outlines the involvement of Jarratt White and  
27 Robert Jack, former contract employees of AT&T in Tucson, in helping to facilitate  
28

1 the thefts of a total of \$2,143,471.59 in 41 SIM swaps in the single month of May  
2 2018 for a bribe from the hackers of \$4,300.

3 68. In addition to the foregoing cases, authorities in Santa Clara  
4 County have also brought highly publicized felony complaints against three  
5 perpetrator of SIM swaps. See [https://stopsimcrime.org/legal/criminal/california-v-](https://stopsimcrime.org/legal/criminal/california-v-ortizfelony-criminal-complaint/)  
6 [ortizfelony-criminal-complaint/](https://stopsimcrime.org/legal/criminal/california-v-ortizfelony-criminal-complaint/). One of these cases involves Joel Ortiz. As  
7 described in a July 30, 2018 *Motherboard* article Ortiz was one of a group of  
8 criminals from Boston, who “used the increasingly popular technique known as  
9 SIM swapping or SIM hijacking to steal bitcoin, other cryptocurrencies and social  
10 media accounts.” In a fraud that mirrors the one suffered by Mr. Terpin some  
11 months earlier, Ortiz “*specifically targeted people involved in the world of*  
12 *cryptocurrency and blockchain,*” including in an incident where he *stole more than*  
13 *\$1.5 million from a cryptocurrency entrepreneur who was an AT&T customer.*”  
14 (Emphasis added)

15 69. The SIM swapping indictments referenced above have also  
16 gained considerable attention from commentators, who have highlighted the  
17 culpability of the telecommunications carriers as the weak link. See, e.g., Brian  
18 Krebs, “Nine Charged in Alleged SIM Swapping Ring,” May 10, 2019:  
19 <https://krebsonsecurity.com/2019/05/nine-charged-in-alleged-sim-swapping-ring/>,  
20 “More Alleged SIM Swappers Face Justice,” February 6, 2019:  
21 <https://krebsonsecurity.com/2019/02/more-alleged-sim-swappers-face-justice/>;  
22 “Alleged SIM Swapper Arrested in California,” August 22, 2018  
23 <https://krebsonsecurity.com/2018/08/alleged-sim-swapper-arrested-in-california/>;  
24 “Florida Man Arrested in SIM Swap Conspiracy,” August 7, 2018  
25 <https://krebsonsecurity.com/2018/08/florida-man-arrested-in-sim-swap-conspiracy/>

26 70. These reports also confirm the nature of SIM swaps. For  
27 example, in an article in *Motherboard* entitled ““Tell Your Dad to Give Us  
28

1 Bitcoin:’ How a Hacker Allegedly Stole Millions by Hijacking Phone Numbers,”  
2 available at [https://motherboard.vice.com/en\\_us/article/a3q7mz/hacker-allegedly-](https://motherboard.vice.com/en_us/article/a3q7mz/hacker-allegedly-stole-millions-bitcoin-sim-swapping)  
3 [stole-millions-bitcoin-sim-swapping](https://motherboard.vice.com/en_us/article/a3q7mz/hacker-allegedly-stole-millions-bitcoin-sim-swapping) the author states that “SIM swapping consists  
4 of tricking a provider like AT&T or T-Mobile into transferring the target’s phone  
5 number to a SIM card controlled by the criminal. Once they get the phone number,  
6 fraudsters can leverage it to reset the victims’ passwords and break into their online  
7 accounts (cryptocurrency accounts are common targets.) In some cases, this works  
8 even if the accounts are protected by two-factor authentication. This kind of attack,  
9 also known as ‘port out scam,’ is relatively easy to pull off and has become  
10 widespread, as a recent Motherboard investigation showed.” Indeed, it is now  
11 known that the hack reported in this *Motherboard* article was done by “The  
12 Community” with the active involvement of the AT&T employees criminally  
13 charged in *United States v. White*.

14 71. Similarly, the leading security reporter Brian Krebs wrote on  
15 August 18, 2018 ([https://krebsonsecurity.com/2018/08/florida-man-arrested-in-](https://krebsonsecurity.com/2018/08/florida-man-arrested-in-sim-swap-conspiracy/)  
16 [sim-swap-conspiracy/](https://krebsonsecurity.com/2018/08/florida-man-arrested-in-sim-swap-conspiracy/) ) that “SIM swaps are frequently abused by scam artists who  
17 trick mobile providers into tying a target’s service to a new SIM card and mobile  
18 phone that the attackers control. Unauthorized SIM swaps often are perpetrated by  
19 fraudsters who have already stolen or phished a target’s password, as many banks  
20 and online services rely on text messages to send users a one-time code that needs  
21 to be entered in addition to a password for online authentication.” As Mr. Krebs  
22 also wrote: “[i]n some cases, fraudulent SIM swaps succeed thanks to lax  
23 authentication procedures at mobile phone stores. *In other instances, mobile store*  
24 *employees work directly with cyber criminals to help conduct unauthorized SIM*  
25 *swaps. . . .*” (Emphasis added.)

26 72. One of the key common denominators of SIM swap fraud is the  
27 temporal proximity between the fact that a victim’s phone has been deactivated  
28 (once the hackers take over the number) and the loss of cryptocurrency. Typically,

1 the hackers rapidly transfer cryptocurrency out of the victim’s wallet or account to  
2 wallets and/or accounts under their own control, after which they may “blend” or  
3 launder the cryptocurrency to make recovery more difficult if not impossible.

4 73. As AT&T knows and as these reports and indictments confirm,  
5 the prevalence of SIM swapping is facilitated by the active involvement or  
6 negligence of AT&T and its employees who faced no restrictions or impediments  
7 or either readily overcame or simply bypassed the inadequate security measures that  
8 AT&T claims to put in place. This was highlighted by the statements of  
9 representatives of the REACT Task Force located in Santa Clara County which has  
10 made it its mission to investigate SIM swaps and apprehend hackers. In an  
11 interview with Brian Krebs, Caleb Tuttle of REACT stated that SIM swapping  
12 happens “in one of three ways. The first is when the attacker bribes or blackmails a  
13 mobile store employee into assisting in the crime. The second involves current  
14 and/or former store employees who knowingly abuse their access to customer data  
15 and the mobile company’s network. Finally, crooked store employees may trick  
16 unwitting associates at other stores into swapping a target’s existing SIM card with  
17 a new one.” See Brian Krebs, “Busting SIM Swappers and SIM Swap Myths,”  
18 *Krebs on Security*, November 7, 2018, available at

19 <https://krebsonsecurity.com/2018/11/busting-sim-swappers-and-sim-swap-myths/>

20 As noted by Mr. Krebs, these attacks are not sophisticated technologically, but are  
21 accomplished or aided by coopted AT&T employees who make an end run around  
22 the ineffectual protections placed in effect by AT&T.

23 74. Representatives of the REACT task force directly blamed  
24 mobile carriers for the prevalence of SIM swaps stating that “*it’s still very, very*  
25 *easy to SIM swap*” and that “*someone needs to light a fire under some folks [at the*  
26 *telecommunications providers] to get these protections in place.*” (Emphasis  
27 added.) Sgt. Terazi of REACT also noted that “there’s a vast disconnect between a  
28 mobile company’s corporate offices and security policies at the local store level.

1 ‘These are multi-billion companies, and in any big company it’s fairly common that  
2 the left hand doesn’t know what the right hand is doing.’” *Id.*

3 75. Mr. Terpin alleges on information and belief that AT&T knew  
4 well before the attacks on Mr. Terpin that it was subject to widespread SIM swap  
5 fraud through the active involvement of its employees. Mr. Terpin further alleges  
6 on information and belief that the top echelons of AT&T’s parent company, AT&T,  
7 Inc., knew of the involvement of AT&T employees in SIM swaps. Based on  
8 publicly available information (which is the only information that Mr. Terpin has  
9 prior to discovery), Mr. Terpin alleges on information and belief that AT&T’s  
10 Senior Vice President and Chief Security Officer Bill O’Hern, who has headed  
11 AT&T’s security operations since 2016 and AT&T’s Executive Vice President &  
12 Chief Compliance Officer David S. Huntley both had knowledge regarding the  
13 structural security flaws and lapses that allowed AT&T employees ready  
14 involvement in SIM swapping. *See*

15 <https://about.att.com/innovationblog/030116billohern>; *see also*

16 <https://investors.att.com/corporate-governance/leadership> (article on David S.

17 Huntley states that since 2014 he “is responsible for developing policies to  
18 safeguard the privacy of customer and employee information, verifying compliance  
19 with the legal and regulatory requirements of the countries and jurisdictions where  
20 AT&T operates, and ensuring adherence to internal compliance requirements.”) In  
21 addition, Mr. Terpin alleges that other AT&T officers, including the executives to  
22 whom Mr. O’Hern and Mr. Huntley report, were likely to have had knowledge  
23 regarding AT&T’s failure to implement adequate security protections against SIM  
24 swapping.

25 76. Mr. Terpin alleges further that AT&T knew that  
26 cryptocurrency investors like Plaintiff were specifically targeted by SIM swapping  
27 through interception of SMS or 2FA messages for password changes and account  
28 access and that AT&T was the weak link in such fraud. This is confirmed in

1 numerous articles on SIM swap fraud, including that of Brian Krebs and a July 31,  
 2 2018 article in bitcoinist.com entitled “Sim-Swapping Bitcoin Thief Charged in  
 3 California Court,” available at [https://bitcoinist.com/sim-swapping-bitcoin-thief-  
 4 charged-california-court/](https://bitcoinist.com/sim-swapping-bitcoin-thief-charged-california-court/). The bitcoinist.com article states that “the liability for  
 5 [SIM swapping] attacks [lies] squarely at the feet of the service providers [which  
 6 the article calls the ‘weakest link’] as security procedures for confirming identity  
 7 should not be bypass-able using a few pieces of personal information easily  
 8 obtained online.”

9           77. Mr. Terpin also alleges on information and belief that AT&T’s  
 10 officers, including Chief Compliance Officer David S. Huntley and Chief Security  
 11 Officer Bill O’Hern because of their job responsibilities for privacy and security  
 12 knew or should have known that its employees frequently cooperated with hackers  
 13 and thieves to bypass its security procedures. This is confirmed not only by the  
 14 reports cited above but also by Brian Krebs, who wrote that “mobile store  
 15 employees work directly with cyber criminals,” and in an August 3, 2018 article in  
 16 *Motherboard* entitled “How Criminals Recruit Telecom Employees to Help them  
 17 Hijack SIM Cards,” available at  
 18 [https://motherboard.vice.com/en\\_us/article/3ky5a5/criminals-recruit-telecom-  
 19 employees-sim-swapping-port-out-scam](https://motherboard.vice.com/en_us/article/3ky5a5/criminals-recruit-telecom-employees-sim-swapping-port-out-scam), which describes how scammers routinely  
 20 recruit and pay employees of AT&T and other Telecoms called “plugs” to perform  
 21 illegal SIM swaps.

22           78. Mr. Terpin further alleges on information and belief that despite  
 23 its knowledge that its employees and agents actively cooperate with hackers to rob  
 24 its own customers, AT&T, including Bill O’Hern and David S. Huntley, is doing  
 25 nothing to prevent such scams. As an AT&T employee confirmed in the August 3,  
 26 2018 *Motherboard* article, “if a criminal finds a corrupt insider, ‘there aren’t  
 27 enough safeguards [in place] to stop that employee,’ . . .” The AT&T employee  
 28 further told the author of the article that “*the system is designed so that some*

1 *employees have the ability to override security features such as the phone passcode*  
2 *that AT&T (and other companies) now require when porting numbers. ‘From there*  
3 *the passcode can be changed,’ the employee said in an online chat, referring to a*  
4 *customer information portal that they showed Motherboard. ‘With a fresh*  
5 *passcode the number can be ported out with no hang ups.’” (Emphasis added.)*

6 79. AT&T officers Bill O’Hern, who is in charge of security, and  
7 David S. Huntley, who is in charge of privacy, knew or should have known about  
8 the privacy and security flaws that are rampant at AT&T and allowed employees  
9 readily to gain access to customer accounts to facilitate SIM swapping.

10 80. Mr. Terpin alleges on information and belief that countless  
11 AT&T customers have been and are continuing to be the victims of SIM swapping  
12 and that those customers have lost hundreds of millions of dollars or more because  
13 of the fraud. This is confirmed by the indictments that have been brought against  
14 hackers and in numerous news stories referenced herein. These indictments  
15 literally are the tip of the iceberg of a phenomenon that is plaguing the  
16 cryptocurrency community and others, including owners of valuable Instagram and  
17 social media accounts.

18 81. This is further confirmed in the August 18, 2018 article by Brian  
19 Krebs, which describes the arrest of Ricky Joseph Handschumacher in Florida, who  
20 was charged with grand theft and money laundering for draining cryptocurrency  
21 accounts through SIM fraud. According to Krebs, Handschumacher’s group came  
22 to light “when a Michigan woman called police after she overheard her son talking  
23 on the phone and pretending to be an AT&T employee. Officers responding to the  
24 report searched the residence and found multiple cell phones and SIM cards, as well  
25 as files on the kid’s computer that included ‘an extensive list of names and phone  
26 numbers of people from around the world.’”

27 82. Krebs’ report further revealed that “[t]he Pasco County [Florida]  
28 Sheriff’s office says their surveillance of the Discord [voice chat] server revealed



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1 that the group *routinely paid employees at cellular phone companies to assist in*  
2 *their attacks, and that they even discussed a plan to hack accounts belonging to the*  
3 *CEO of cryptocurrency exchange Gemini Trust Company.”* (Emphasis added.)

4 83. Mr. Terpin alleges on information and belief that AT&T is fully  
5 aware of these and numerous other SIM swapping incidents involving its  
6 customers, including incidents where its own employees were complicit with  
7 hackers. Mr. Terpin further alleges that Bill O’Hern and David S. Huntley and  
8 other AT&T executives knew of such incidents because they headed up the security  
9 and privacy efforts at AT&T and would thus have been aware of allegations in the  
10 press and inquiries of law enforcement authorities. For example, the *Motherboard*  
11 article confirms that AT&T had provided investigators with the victim’s call  
12 records “for the days when the hacker was allegedly in control of the investor’s  
13 numbers.” Indeed, those records were used by law enforcement in issuing a  
14 warrant for e-mails from the phone which produced incriminating evidence against  
15 Ortiz.

16 84. Mr. Terpin further alleges on information and belief that federal  
17 enforcement agencies have compiled proof that insiders at AT&T cooperated in  
18 SIM swap fraud that was directed at members of the cryptocurrency community  
19 and that AT&T officers, including Bill O’Hern and David S. Huntley, were aware  
20 of the actions and investigations of these law enforcement agencies Mr. Terpin  
21 further alleges that such insiders actively cooperated with hackers to provide them  
22 customer list information.

23 85. The prevalence of SIM swap fraud and AT&T’s knowledge of  
24 such fraud, including the active participation of its own employees in the fraud,  
25 demonstrate that the January 7, 2018 SIM swap fraud on Mr. Terpin that led to the  
26 theft of nearly \$24 million in cryptocurrency was neither an isolated nor an  
27 unforeseeable event.  
28

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**THE JUNE 11, 2017 HACK**

1  
2 86. On or about June 11, 2017, Mr. Terpin discovered that his  
3 AT&T cell phone number had been hacked when his phone suddenly became  
4 inoperable. As Mr. Terpin learned from AT&T a few days later, his AT&T  
5 password had been changed remotely after 11 attempts in AT&T stores had failed.  
6 By obtaining control over Mr. Terpin’s phone, the hackers diverted Mr. Terpin’s  
7 personal information, including telephone calls and text messages, to get access to  
8 accounts that use telephone numbers as a means of verification or authentication  
9 through the process of 2FA and to change the passwords of those accounts.

10 87. After the hackers took charge of Mr. Terpin’s telephone number,  
11 the hackers accessed Mr. Terpin’s telephone to divert texts and telephone calls to  
12 gain access to Mr. Terpin’s cryptocurrency accounts using the SIM swapping  
13 method described above. The hackers also used their phone (which now had Mr.  
14 Terpin’s number) to hijack Mr. Terpin’s Skype account to impersonate him. By  
15 that means, the hackers convinced a client of Mr. Terpin to send them  
16 cryptocurrency and diverted a payment due to Mr. Terpin to themselves. AT&T  
17 finally cut off access by the hackers to Mr. Terpin’s telephone number on June 11,  
18 2017, but only after the hackers had stolen substantial funds from Mr. Terpin.  
19 Moreover, because of the hack, Mr. Terpin expended a substantial amount of time  
20 investigating the hack and attempting to repair his computer accounts. As with  
21 other SIM swaps, there was a close temporal proximity between Mr. Terpin losing  
22 control over his phone and his loss of funds.

23 88. On or about June 13, 2017, Mr. Terpin met with AT&T  
24 representatives in Puerto Rico to discuss the June 11, 2017 hack. Mr. Terpin  
25 explained to AT&T that he had been hacked and that the hackers had stolen a  
26 substantial amount of money from him. Mr. Terpin expressed concern about  
27 AT&T’s ineffective security protections and asked how he could protect the  
28

1 security of his phone number and account against future unauthorized access,  
2 including hackers attempting to perpetrate SIM swap fraud.

3 89. In response to Mr. Terpin's request for greater security for his  
4 account and in order to induce Mr. Terpin to continue as an AT&T customer,  
5 AT&T promised that it would place his account on a "higher security level" with  
6 "special protection." AT&T told Mr. Terpin that this "higher security level" would  
7 require anyone accessing or changing Mr. Terpin's account to provide a six-digit  
8 passcode to AT&T to access or change the account. Anyone requesting AT&T to  
9 transfer Mr. Terpin's telephone number to another phone must provide the code.  
10 AT&T promised Mr. Terpin at this meeting that the higher security that it was  
11 placing on his account, which it also called "high risk" or "celebrity" protection,  
12 would ensure that Mr. Terpin's account was much less likely to be subject to SIM  
13 swap fraud. AT&T further told Mr. Terpin that the implementation of the increased  
14 security measures would prevent Mr. Terpin's number from being moved to  
15 another phone without Mr. Terpin's explicit permission, because no one other than  
16 Mr. Terpin and his wife would know the secret code. AT&T made all of these  
17 promises to convince Mr. Terpin to continue to be an AT&T customer.

18 90. Mr. Terpin alleges on information and belief that AT&T's "high  
19 risk" or "celebrity" protection was created with the knowledge and approval of  
20 AT&T's officers, including Bill O'Hern and David S. Huntley, who are in charge  
21 of AT&T's security and privacy efforts. Indeed, Mr. Huntley's biography on the  
22 AT&T website states that he has direct responsibility for "developing policies to  
23 safeguard the privacy of customer . . . information," such as the "high risk"  
24 program that AT&T promoted to Mr. Terpin to get him to remain with AT&T after  
25 the first SIM swap.

26 91. As alleged above, AT&T (including Mr. O'Hern and Mr.  
27 Huntley) was well aware at the time of the June 11, 2017 incident that its users  
28 were subject to SIM swap fraud. It was also well aware that its employees

1 cooperated in such fraud and that the employees could bypass its security  
2 procedures. Mr. Terpin alleges on information and belief that AT&T had been  
3 previously contacted numerous times by law enforcement authorities about such  
4 frauds involving its own employees who actively cooperated with hackers. Given  
5 their responsibilities in the company, Mr. O’Hern and Mr. Huntley would have  
6 been aware of such contacts and communicated such risks to other executives at  
7 AT&T at the highest level. Nonetheless, AT&T recommended that customers who  
8 were concerned about fraudulent actions on their account add AT&T’s purported  
9 “extra security” by adding a “wireless security password” to protect their account.  
10 AT&T touted the benefits of such “extra” security on its website because it would  
11 require a password for “*managing your account in any retail store.*” See  
12 <https://www.att.com/esupport/article.html#!/wireless/KM1051397> (emphasis  
13 added).

14 92. Mr. Terpin relied upon AT&T’s promises that his account  
15 would be much more secure against hacking, including SIM swap fraud, after it  
16 implemented the increased security measures. Mr. Terpin had no means of  
17 knowing that these promises were false and that AT&T, including officers such as  
18 Mr. O’Hern and Mr. Huntley, knew that these measures were inadequate because  
19 they were being readily bypassed or evaded. Because of AT&T’s promises that  
20 such measures would be effective, Mr. Terpin retained his account with AT&T.  
21 But for these express promises and assurances regarding greater security, Mr.  
22 Terpin would have canceled his AT&T account and contracted with a different  
23 cellular telephone provider and he would not have lost nearly \$24 million from  
24 hackers.

25 93. Mr. Terpin further alleges on information and belief that AT&T,  
26 including officers such as Mr. O’Hern and Mr. Huntley, knew at the time that it  
27 recommended that he adopt additional security on his account that the additional  
28 security measures were not adequate and could be overridden or ignored by its

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1 employees. In reality, the vaunted extra protection was, like the Maginot Line, a  
2 useless defense that was easily evaded by AT&T’s own employees, who it knew or  
3 should have known actively cooperated with hackers in SIM swap fraud. Despite  
4 AT&T’s knowledge of the futility of these actions, AT&T falsely promised Mr.  
5 Terpin, to his detriment, that he should implement such additional security  
6 measures.

7 **THE JANUARY 7, 2018 SIM SWAP FRAUD**

8 94. AT&T’s promises proved to be false and the increased security  
9 illusory. On Sunday January 7, 2018, an employee in an AT&T store cooperated  
10 with an imposter committing SIM swap fraud. Unbeknownst to Mr. Terpin, AT&T  
11 had grossly misrepresented its ability to secure Mr. Terpin’s Personal Information  
12 after the June 11, 2017 incident. Not only had AT&T failed to disclose that it did  
13 not properly supervise, train or monitor its employees to ensure that they  
14 scrupulously followed AT&T’s security procedures, but it also failed to disclose  
15 that it knew that its employees could readily bypass the higher security protection  
16 placed on Mr. Terpin’s account after the June 11, 2017 hack.

17 95. On January 7, 2018, Mr. Terpin’s phone with his AT&T  
18 wireless number went dead. Mr. Terpin was again a victim of SIM swap fraud that  
19 allowed a hacker to take control of his phone and to divert 2FA messages to change  
20 passwords for and to gain access to Mr. Terpin’s accounts and files. As AT&T  
21 later admitted, an employee in an AT&T store in Norwich, Connecticut ported over  
22 Mr. Terpin’s wireless number to an imposter in violation of AT&T’s commitments  
23 and promises, including the higher security that it had supposedly placed on Mr.  
24 Terpin’s account after the June 11, 2017 hack that had supposedly been  
25 implemented to prevent precisely such fraud. Through the January 7, 2018 hack,  
26 thieves gained control over Mr. Terpin’s accounts and stole nearly \$24 million  
27 worth of cryptocurrency from him on January 7 and 8, 2018. There was thus again  
28

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1 a close temporal proximity between Mr. Terpin losing control of his phone and the  
2 theft of his cryptocurrency.

3 96. Although the precise method of the theft is known only to the  
4 hackers, Mr. Terpin alleges on information and belief that: the hackers used a  
5 mobile telephone in their possession with a SIM card with Mr. Terpin’s telephone  
6 number to identify Mr. Terpin’s password protected files or programs; once they  
7 had identified such programs, they sent a password reset request to the program or  
8 programs which then sent a 2FA message to Mr. Terpin’s telephone number, which  
9 was by virtue of the SIM swap in the hackers’ possession; having gained access to  
10 the program or programs with a new password which the hackers constructed, the  
11 hackers located a file with confidential information to access Mr. Terpin’s wallets  
12 and/or accounts holding nearly \$24 million of Mr. Terpin’s cryptocurrency; and  
13 inputting Mr. Terpin’s confidential information, they then transferred or attempted  
14 to transfer the cryptocurrency to wallets and/or accounts under their control. When  
15 he discovered that his cryptocurrency had been transferred, Mr. Terpin requested  
16 that exchanges reverse the transactions. It was too late. Virtually all of the  
17 cryptocurrency taken by the hackers had been transferred to wallets or accounts  
18 exclusively under the hackers’ control.

19 97. When Mr. Terpin’s telephone went dead on January 7, 2018, he  
20 instantly attempted to contact AT&T to have the telephone number immediately  
21 canceled so that the hackers would not gain access to his Personal Information and  
22 accounts. Ignoring Mr. Terpin’s urgent request, AT&T failed promptly to cancel  
23 Mr. Terpin’s account, which gave the hackers sufficient time to obtain information  
24 about Mr. Terpin’s cryptocurrency holdings and to spirit off funds to their own  
25 accounts. Adding insult to injury, AT&T placed Mr. Terpin’s wife on endless hold  
26 (over an hour!) when she asked to be connected to AT&T’s fraud department while  
27 Mr. Terpin was furiously attempting to see what damage was being done to his  
28 accounts. Mr. Terpin’s wife never reached AT&T’s fraud department because it

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1 apparently does not work (or is unavailable) on Sundays. But the hackers work on  
2 Sunday!

3 98. The employees at the AT&T store who unlawfully handed over  
4 Mr. Terpin’s telephone number to thieves were either blind or complicit. It was  
5 impossible to look at Mr. Terpin’s account information on the AT&T computer  
6 screen and not see the multiple warnings about the need for heightened vigilance,  
7 particularly the requirement of a six-digit password. Nonetheless, as AT&T had  
8 reason to know before the January 7, 2018 incident (but had never informed Mr.  
9 Terpin or other customers), its employees could readily bypass its much-touted  
10 security procedures.

11 99. In cooperating willingly with hackers committing SIM swap  
12 fraud to plunder Mr. Terpin’s accounts, AT&T violated its own policies as well as  
13 the requirements of Section 222 of the FCA and the FCC Consent Decree. On  
14 information and belief, AT&T knew that its employees were frequently complicit  
15 with SIM swap frauds and could readily bypass its security procedures. Mr. Terpin  
16 further alleges that AT&T did not even attempt to require the hacker to provide the  
17 six-digit code that AT&T required for access to Mr. Terpin’s “high profile” account  
18 or to require a supervisor to approve the manual override. Indeed, AT&T admitted  
19 to Mr. Terpin on February 4, 2018 that a sales associate in AT&T’s Norwich,  
20 Connecticut location had violated AT&T’s procedures by not only failing to ask for  
21 the six-digit code, but also by bypassing its requirement that the hacker have a  
22 scannable ID to obtain a replacement SIM card for Mr. Terpin’s wireless number.  
23 On information and belief, Mr. Terpin alleges that the employee in the AT&T store  
24 who handed over the SIM card to the imposter had a criminal record and was  
25 cooperating with the hacker and that AT&T had failed properly to supervise the  
26 employee, despite its knowledge that its employees cooperated in precisely this  
27 type of fraud.  
28

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1 100. Because of AT&T’s cooperation and failure to follow its own  
2 policies, the hackers were able to intercept Mr. Terpin’s personal information,  
3 including telephone calls and text messages, change passwords, access programs  
4 and files and locate information that allowed them to gain access to his  
5 cryptocurrency wallets and/or accounts.

6 101. Because of AT&T’s willing cooperation with the hacker, gross  
7 negligence, violation of its statutory duties, and failure to adhere to its  
8 commitments in its Privacy Policy and COBC, as well as its obligations under the  
9 FCC Consent Degree and its commitments to Mr. Terpin after the June 11, 2017  
10 hack, Mr. Terpin lost nearly \$24 million worth of cryptocurrency.

11 102. To Mr. Terpin’s knowledge, AT&T never informed either the  
12 FCC, the FBI or any other law enforcement or regulatory authority about the  
13 January 7, 2018 SIM swap. Nor did AT&T ever provide Mr. Terpin with a written  
14 explanation of how the SIM swap fraud occurred or a claim form, let alone an  
15 apology for facilitating the hack. In contrast, Mr. Terpin himself reported the  
16 January 7, 2018 SIM swap to the FBI and the Secret Service Cyber Crimes Unit  
17 and has actively sought an investigation of the hack and recovery of the stolen  
18 funds.

19 103. On information, Mr. Terpin alleges that AT&T did not  
20 discipline or terminate the employee who turned over a SIM card for his telephone  
21 number to imposters and who facilitated the theft of nearly \$24 million worth of  
22 Mr. Terpin’s cryptocurrency.

23 **MR. TERPIN’S SPECIAL RELATIONSHIP WITH AT&T**

24 104. As alleged herein, and to the extent that it is determined to be  
25 applicable to certain claims, Mr. Terpin had a “special relationship with AT&T” as  
26 defined in *J’Aire Corporation v. Gregory*, 24 Cal. 3d 799, 804 (1979) (“*J’Aire*”).  
27 Mr. Terpin undoubtedly had a contract for services with AT&T where he and  
28



1 AT&T were in contractual privity. The services consisted of the provision of  
 2 mobile telephone services, including the ability not only to make telephone calls,  
 3 but also to receive messages (including SMS and 2FA communications), access the  
 4 Internet, send e-mail messages, and access and use a wide variety of programs and  
 5 applications. *See Riley v. California*, 134 S.Ct. 2473, 2489 (2014) (“The term ‘cell  
 6 phone’ is itself misleading shorthand; many of these devices are in fact  
 7 minicomputers that happen to have the capacity to be used as a telephone”). AT&T  
 8 is well aware of the increasingly sophisticated nature of telephone devices, and  
 9 actively participates in their selling and leasing, and has a variety of plan options  
 10 for services that are geared toward the ever-expanding uses of such devices.

11 105. The transaction between AT&T and Mr. Terpin was  
 12 undoubtedly meant to benefit Mr. Terpin by providing him the ability to use his  
 13 mobile telephone (or mini-computer) for all of the purposes which he expected and  
 14 which were intended by AT&T. *See J’Aire*, 24 Cal. 3d at 804.

15 106. Moreover, it was entirely foreseeable to AT&T that Mr. Terpin  
 16 would be harmed if he would not longer to be able to use his telephone for its  
 17 intended purposes and instead that private communications intended for Mr. Terpin  
 18 were intercepted by hackers. For example, the harm that results from a hacker  
 19 intercepting a password reset 2FA message is entirely foreseeable in that the hacker  
 20 changes the password and thus gains control of the program in question (e.g., mail  
 21 or a file storage site) and can then extract the information in the program for the  
 22 hacker’s own purposes, including accessing cryptocurrency wallets and/or accounts  
 23 and exfiltrating cryptocurrency to the hacker’s own wallets and/or accounts. *Id.*

24 107. In this case, Mr. Terpin certainly suffered injury by being  
 25 deprived of almost \$24 million in cryptocurrency. *Id.*

26 108. As required by *J’Aire*, there is also a close connection between  
 27 AT&T’s conduct and the injury suffered by Mr. Terpin. But for AT&T’s allowing  
 28 the hackers to swap Mr. Terpin’s SIM into a phone controlled by them, the theft of

1 cryptocurrency could not have happened in close proximity to the swap because the  
2 hackers would have had no means of accessing files belonging to Mr. Terpin,  
3 resetting his passwords by accessing 2FA message, gaining access to the accounts  
4 protected by such passwords, using the information in the accounts to access  
5 cryptocurrency wallets and/or accounts, and transferring funds to wallets and/or  
6 accounts of their own control. This close connection is further reinforced by the  
7 temporal proximity between the SIM swap and the hacks of Mr. Terpin's accounts,  
8 as well as the broader general evidence of the increase in SIM swapping and reports  
9 of other hacks. *Id.*

10 109. AT&T's conduct also involves moral blame. Aware of the  
11 vulnerability of its customers in having their Personal Information stolen through  
12 SIM swapping, AT&T has done nothing to prevent that practice, including  
13 enforcing its own privacy policy and adhering to its promises to provide special or  
14 additional protection to its customers' accounts. AT&T is also morally culpable in  
15 failing to reign in its own employees' knowing or negligent participation in these  
16 fraudulent practices. AT&T's behavior is particularly reprehensible regarding Mr.  
17 Terpin. AT&T was fully aware that Mr. Terpin had been the victim of SIM jacking  
18 and promised that it would put extra protection on his account to retain him as a  
19 customer. In fact, AT&T did nothing to protect Mr. Terpin. As one of the world's  
20 largest companies, AT&T has the resources to do better and yet it turns an  
21 indifferent eye to the widespread violation of the privacy of its own customers. *Id.*

22 110. Mr. Terpin's lawsuit fulfills the policy of preventing future  
23 harm. *J'Aire*. Mr. Terpin's complaint against AT&T has received widespread  
24 publicity and has publicized the phenomenon of SIM swapping and the complicity  
25 of AT&T in such practice. Because the FCC is apparently not taking an active role  
26 in policing AT&T's violations of the FCA, it is up to plaintiffs like Mr. Terpin  
27 through lawsuits to help stem AT&T's culpable involvement in a practice that is  
28 leading to widespread harm. This is all the more urgent because AT&T claims to

1 be immune from class actions which would otherwise be a potential vehicle for  
2 victims of SIM swaps. See AT&T wireless customer agreement discussed in the  
3 First Claim for Relief.

4 **FIRST CLAIM FOR RELIEF**

5 **(Declaratory Relief:**

6 **Unenforceability of AT&T Consumer Agreement as Unconscionable and**  
7 **Contrary to Public Policy)**

8 111. Mr. Terpin brings this claim for declaratory relief under 28  
9 U.S.C. § 2201 to have the Court declare that AT&T’s wireless customer agreement  
10 (the “Agreement”) is unconscionable, void against public policy under Cal. Civ.  
11 Code §§ 1670.5 and 1668, and unenforceable in its entirety.

12 112. Mr. Terpin initially entered into a wireless contract with AT&T  
13 in or about 2011 when he transferred the account from his wife. Mr. Terpin has  
14 asked AT&T for a copy of his agreement, but AT&T refused to provide it to him.  
15 Mr. Terpin thus has no copy of any agreement with AT&T for wireless services.

16 113. The agreement was presented to Mr. Terpin, like all other  
17 wireless users, on a take-it-or-leave-it basis. Mr. Terpin had no ability to negotiate  
18 any term of the agreement. In contrast, AT&T has virtually unlimited power over  
19 its customers, including Mr. Terpin, as seen below by the fact that it purports to  
20 hold Mr. Terpin and all other wireless users to the terms of an agreement that they  
21 may well have never seen or read.

22 114. The version of the Agreement posted in early 2018 purports to  
23 govern AT&T’s provision of wireless service to all customers, including Mr.  
24 Terpin who first contracted with AT&T over two decades ago. A true and correct  
25 copy of the Agreement posted on AT&T’s website in early 2018 at  
26 <https://www.att.com/legal/terms.wirelessCustomerAgreement-list.html> is attached  
27 hereto as Exhibit D. As alleged below, the Agreement contains numerous  
28 unconscionable terms that renders it unenforceable in its entirety because its

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1 “central purpose . . . is tainted with illegality.” *Ingle v. Circuit City Stores, Inc.*,  
2 328 F.3d 1165, 1180 (9<sup>th</sup> Cir. 2003) (holding invalid an agreement that obstructs the  
3 ability of customers to bring any claims against defendant).

4 115. The Agreement states that the Agreement and other agreements  
5 that are “not otherwise described below that are posted on applicable AT&T  
6 websites or devices, and any documents expressly referred to herein or therein,  
7 make up the complete agreement between you and AT&T and supersede any and  
8 all prior agreements and understandings relating to the subject matter of this  
9 Agreement.” Through such vague language, AT&T apparently contends that not  
10 only the Agreement, but other unspecified and unknown agreements, bind all  
11 wireless customers, whether or not such customers have seen the Agreement or are  
12 aware of its terms. In other words, every time AT&T mints a new (and more  
13 onerous) version of its agreements, its unsuspecting customers are purportedly  
14 bound by the new terms. This practice highlights the fact that not only are these  
15 contracts not negotiable, they are invisible. What you don’t see, you still get.

16 116. The Agreement is a classic contract of adhesion imposed by  
17 AT&T upon a party with no bargaining power. In contrast, AT&T has unchecked  
18 power to insist upon its own terms even if the consumer is unaware of the terms of  
19 the Agreement itself. There is no ability to negotiate any term of the Agreement. It  
20 is literally “take it or leave it.”

21 117. The Agreement is void as against public policy under Cal. Civ.  
22 Code § 1668 as a contract of adhesion purporting to bind customers who have never  
23 heard or seen the agreement and most likely are entirely unaware of its provisions.  
24 The Agreement is void and unenforceable in its entirety because it also contains  
25 exculpatory provisions, damage waivers, and an indemnification provision that  
26 purport to prevent consumers from bringing *any* claims against AT&T or obtaining  
27 redress for their claims -- even for billing errors.

28

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1 118. The exculpatory provision in Paragraph 4.1 of the Agreement  
2 (“Exculpatory Provision”) contains numerous provisions that are contrary to public  
3 policy under Cal. Civ. Code § 1668 because they attempt to exempt AT&T from  
4 responsibility for its own gross negligence, fraud, and violations of law. In  
5 pertinent part, the Exculpatory Provision states that:

6 ***WE DO NOT GUARANTEE YOU UNINTERRUPTED SERVICE***  
7 ***OR COVERAGE. . . . AT&T MAKES NO WARRANTY,***  
8 ***EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS***  
9 ***FOR A PARTICULAR PURPOSE, SUITABILITY, ACCURACY,***  
10 ***SECURITY OR PERFORMANCE REGARDING ANY SERVICES,***  
11 ***SOFTWARE OR GOODS, AND IN NO EVENT SHALL AT&T BE***  
12 ***LIABLE, WHETHER OR NOT DUE TO ITS OWN NEGLIGENCE,***

13 for any:

- 14 a. act or omission of a third party;
- 15 b. mistakes, omissions, interruptions, errors, failures to transmit,  
16 delays, or defects in the Services or Software provided by or through  
17 us;
- 18 c. ***damages or injury caused by the use of Services, Software, or***  
19 ***Device,*** including use in a vehicle . . .

20 (Capitalization in original; emphasis added in bold and italics.)

21 119. The Exculpatory Provision renders the entire Agreement  
22 unenforceable on public policy grounds under Cal. Civil Code §§ 1668 and 1670.5  
23 because it purports to exempt AT&T from its gross negligence, statutory violations  
24 and willful behavior, including the egregious conduct alleged herein. The  
25 Exculpatory Provision is further against public policy because it purports to exempt  
26 AT&T from violation of statutory obligations, including the obligation to maintain  
27 the confidentiality and security of its customers’ private and personal information  
28 under Section 222 of the FCA, the FCC Consent Degree, and numerous provisions

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1 of California State law, including California unfair competition law, the Consumer  
2 Legal Remedies Act, and the California Customer Records Act. Thus, even where,  
3 as here, AT&T willfully violates its statutory duties under the FCA and the Consent  
4 Decree, not to mention its promises in its Privacy Policy and the COBC, a customer  
5 is prevented by the Exculpatory Provision from bringing a claim for negligent or  
6 willful disclosure of the customer’s Personal Information, including CPNI, because  
7 such claim seeks redress for “damages or injury caused by the use of Services,  
8 Software, or Device . . .” and is waived by the Exculpatory Provision.

9 120. AT&T also seeks in the contract to have customers waive any  
10 damages, except for providing a “credit equal to a pro-rata adjustment of the  
11 monthly Services fee for the time period your Services was unavailable, not to  
12 exceed the monthly Service fee” when a customer’s services are interrupted.

13 121. Section 4.1 of the Agreement (“Damages Restriction”) is also  
14 void under Cal. Civ. Code §§ 1668 and 1670.5 because it purports to exempt  
15 AT&T for all other damages:

16 Unless prohibited by law, AT&T isn’t liable for any indirect, special,  
17 punitive, incidental or consequential losses or damages you or any  
18 third party may suffer by use of, or inability to use, Services, Software  
19 or Devices provided by or through AT&T, including loss of business  
20 or goodwill, revenue or profits, or claims of personal injuries.

21 122. The Exculpatory Provision is invalid under Civil Code § 1670.5  
22 because it allocates all the risks to the consumer with AT&T disclaiming any  
23 damages for its own conduct—even fraud, gross negligence, and statutory  
24 violations, including those governed by the FCA. Thus, even if AT&T deliberately  
25 handed over a customer’s CPNI to hackers in violation of Section 222 of the FCA,  
26 a customer would not be entitled to the full range of damages afforded by that  
27 statute under the Damages Restriction.  
28

1           123. The Damages Restriction included in a contract of adhesion as  
2 to which AT&T's users, including Mr. Terpin, have no bargaining authority, is void  
3 because it is plainly unconscionable and against public policy. The Damages  
4 Restriction is contained in a lengthy form contract drafted by a domineering  
5 telecommunication provider with vast assets in a far superior bargaining position to  
6 the wireless user. Indeed, it is no exaggeration to say that the consumer has no  
7 bargaining power as regards AT&T, particularly as to the Damages Restriction and  
8 other draconian provisions in the Agreement. Because the Damages Restriction is  
9 found in a document posted on a website that, by fiat, is automatically made  
10 applicable to customers, customers may not even be aware that they have virtually  
11 no redress against AT&T, unless they diligently monitor changes in the website.  
12 Moreover, the Damages Restriction is contained in a complex and lengthy contract  
13 that provides essential wireless services—without which most customers have no  
14 means of communication (including for emergency services), let alone essential  
15 computing, geolocation, texting, research or other services.

16           124. The Damages Restriction is also substantively unconscionable  
17 because it allocates risks in an objectively unreasonable manner. *See Armendariz v.*  
18 *Foundation Health Psychcare Services, Inc.*, 24 Cal. 4<sup>th</sup> 83, 113-114 (2000). The  
19 allocation of risks under the Agreement is objectively unreasonable because  
20 AT&T—a telecommunications behemoth with billions of dollars of assets and tens  
21 of millions of customers—takes upon itself virtually no liability (other than  
22 minimal recompense for interrupted services) and purports to exempt itself from  
23 virtually all damages, including those arising out of its own deliberate, grossly  
24 negligent, or fraudulent acts.

25           125. The Agreement is further unenforceable because customers are  
26 purportedly required to indemnify AT&T for all claims arising out of the services  
27 provided by AT&T, including claims that arise due to AT&T's negligence, gross  
28

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1 negligence, deliberate conduct, or statutory violations. The indemnity provision in  
2 Paragraph 4.1 of the Agreement (“Indemnity”) states:

3 To the full extent allowed by law, you hereby release, indemnify, and  
4 hold AT&T and its officers, directors, employees and agents harmless  
5 from and against *any and all claims of any person or entity for*  
6 *damages of any nature arising in any way from or relating to, directly*  
7 *or indirectly, service provided by AT&T* or any person’s use thereof  
8 (including, but not limited to vehicular damage and personal injury),  
9 *INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM*  
10 *THE ALLEGED NEGLIGENCE OF AT&T*, or any violation by you of  
11 this Agreement.

12 (Capitalization in original; emphasis added.)

13 126. Read literally, the Indemnity requires a consumer, such as Mr.  
14 Terpin, to hold AT&T harmless for AT&T’s own negligence, deliberate behavior,  
15 gross negligence, statutory violations (including disclosure of CPNI under the  
16 FCA), or fraud if the conduct is related “directly or indirectly” to any “service  
17 provided by AT&T.” On its face, the indemnity provision in a contract of adhesion  
18 renders the entire Agreement unconscionable and unenforceable because it defeats  
19 the entire purpose of the contract by making it impossible for consumers to bring  
20 claims against AT&T for the entire range of statutory rights to which a consumer,  
21 such as Mr. Terpin, is entitled. Indeed, the Indemnity would totally obviate  
22 AT&T’s commitment to privacy in its Privacy Policy as well as its legal obligations  
23 under the FCA, the CPNI Rules, and the Consent Decree.

24 127. Because the entire Agreement is unenforceable because the  
25 central purpose of the Agreement is “tainted with illegality . . . [so that] the contract  
26 as a whole cannot be enforced,” the arbitration provision in Paragraph 2.2 of the  
27 Agreement (“Arbitration Provision”) is also unenforceable. *See, Armendariz*, 24  
28 Cal. 4<sup>th</sup> at 89-90.



1           128. The Arbitration Provision would require Mr. Terpin to arbitrate  
2 his claims “without affording the full range of statutory remedies, including  
3 punitive damages and attorney fees” that are available to him under the claims  
4 alleged herein. *Armendariz*, 24 Cal. 4<sup>th</sup> at 103 (damages limitation unlawful if  
5 applied to statutory claims). For example, Mr. Terpin, if required to arbitrate this  
6 claim, would be forced by the Damages Limitation to forego his entitlement to  
7 punitive damages for AT&T’s fraud and negligence. Moreover, the Arbitration  
8 Provision would require Mr. Terpin to forego the full range of damages to which he  
9 is entitled under his Second Claim for Relief under the Federal Communications  
10 Act § 222. These defects render not only the Arbitration Provision, but also the  
11 entire Agreement, unenforceable.

12           129. Because the defenses raised by Mr. Terpin as to the  
13 unconscionability of the Agreement are “enforced evenhandedly” and do not  
14 “interfere[] with the fundamental attributes of arbitration,” they do not run afoul of  
15 *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2010). The Court’s decision in  
16 *Concepcion* did not abrogate the savings clause of the FAA that provides that  
17 arbitration agreements may be declared unenforceable “upon such grounds as exist  
18 at law or in equity for the revocation of any contract,” including “generally  
19 applicable contract defenses, such as fraud, duress, or unconscionability.”  
20 *Concepcion* at 339, quoting 9 U.S.C. § 2 and *Doctors Associates, Inc. v. Casarotto*,  
21 517 U.S. 681, 687 (1996). For the reasons alleged in this claim, such defenses  
22 apply squarely to the Agreement.

23           130. There is an actionable and justiciable controversy between Mr.  
24 Terpin and AT&T in that Mr. Terpin contends that the Agreement, including the  
25 Exculpatory Provision, Damages Restriction, Indemnity and Arbitration Provision,  
26 is unenforceable in its entirety because it is unconscionable and void against public  
27 policy since it prevents consumers, such as Mr. Terpin, from obtaining redress  
28

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1 against AT&T even for deliberate acts in violation of its legal duties. AT&T  
2 undoubtedly disagrees.

3 131. A judicial declaration of the enforceability of the Agreement,  
4 including the Exculpatory Provision, Damages Restriction, Indemnity and  
5 Arbitration Provision and all other provisions of the Agreement, is necessary and  
6 appropriate.

7 132. Mr. Terpin seeks a judgment declaring that the Agreement in its  
8 entirety is unenforceable as unconscionable and against public or, in the alternative  
9 that (a) the Exculpatory Provision is unenforceable as against Mr. Terpin; (b) the  
10 Damages Restriction is unenforceable against Mr. Terpin; (c) the Indemnity is  
11 unenforceable as against Mr. Terpin; and (d) the Arbitration Provision is  
12 unenforceable as against Mr. Terpin

13 **SECOND CLAIM FOR RELIEF**

14 **(Unauthorized Disclosure of Customer Confidential Proprietary Information**  
15 **and Proprietary Network Information**

16 **(Federal Communications Act, 47 U.S.C. §§ 206, 222))**

17 133. Plaintiff realleges the allegations in Paragraphs 1-132 as if fully  
18 set forth herein.

19 134. AT&T is a “common carrier” engaging in interstate commerce  
20 by wire regulated by the Federal Communications Act (“FCA”) and subject to the  
21 requirements, *inter alia*, of sections 206 and 222 of the FCA.

22 135. Under section 206 of the FCA, 47 U.S.C. § 206, “[i]n case any  
23 common carriers shall do, or cause or permit it to be done, any act, matter, or thing  
24 in this chapter prohibited or declared to be unlawful, or shall omit to do any act,  
25 matter, or thing in this chapter required to be done, such common carrier shall be  
26 liable to the person or persons injured thereby for the full amount of damages  
27 sustained in consequence of any such violation of the provisions of this chapter,  
28 together with a reasonable counsel or attorney’s fee, to be fixed by the court in

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1 every case of recovery, which attorney’s fee shall be taxed and collected as part of  
2 the costs in the case.”

3 136. Section 222(a) of the FCA, 47 U.S.C. § 222(a), requires every  
4 telecommunications carrier to protect, among other things, the confidentiality of  
5 proprietary information of, and relating to, customers (“CPI”).

6 137. Section 222(c)(1) of the FCA, 27 U.S.C. § 222(c)(1) further  
7 requires that, “[e]xcept as required by law or with the approval of the customer, a  
8 telecommunications carrier that receives or obtains customer proprietary  
9 information by virtue of its provision of a telecommunications service shall only  
10 use, disclose, or permit access to customer proprietary network information  
11 [‘CPNI’] in its provision of (A) telecommunications services from which such  
12 information is derived, or (B) services necessary to or used in the provision of such  
13 telecommunication services. . . .”

14 138. The information disclosed to hackers by AT&T in the January 7,  
15 2018 SIM swap fraud transferring Mr. Terpin’s telephone number, was CPI and  
16 CPNI under Section 222 of the FCA.

17 139. AT&T failed to protect the confidentiality of Mr. Terpin’s CPI  
18 and CPNI, including his wireless telephone number, account information, and his  
19 private communications, by divulging that information to hackers in the January 7,  
20 2018 SIM swap fraud. Through its negligence, gross negligence and deliberate  
21 acts, including inexplicable failures to follow its own security procedures, supervise  
22 its employees, the CPNI Regulations, the terms of the Consent Decree, the  
23 warnings of the Pretexting Order, its Privacy Policy and the COBC, and by  
24 allowing its employees to bypass such procedures, AT&T permitted hackers to  
25 access Mr. Terpin’s telephone number, telephone calls, and text messages, which  
26 gave them access to 2FA messages, which they used to reset the passwords on Mr.  
27 Terpin’s accounts by use of one or more 2FA messages to gain access to files on  
28 those accounts that contained the confidential information necessary to access Mr.

1 Terpin's wallets. Once they had access to the wallets, they transferred the  
2 cryptocurrency into wallets and/or accounts under their control which resulted in a  
3 loss to Mr. Terpin of nearly \$24,000,000 worth of his cryptocurrency.

4 140. As a direct consequence of AT&T's violations of the FCA, Mr.  
5 Terpin has been damaged by loss of nearly \$24,000,000 worth in cryptocurrency  
6 which AT&T allowed to fall into the hands of thieves, and for other damages in an  
7 amount to be proven at trial. The connection between AT&T, the SIM swap and  
8 the loss of Mr. Terpin's cryptocurrency is alleged herein, *inter alia*, in Paragraphs  
9 12-13, 59-82, and 91-92.

10 141. Mr. Terpin is also entitled to his attorney's fees under the FCA  
11 in bringing this action against AT&T for its gross negligence and fraudulent  
12 misrepresentation as to the security that it provides for customer accounts as  
13 required by the FCA, the CPNI Regulation, and the Consent Decree.

### 14 **THIRD CLAIM FOR RELIEF**

#### 15 **(Deceit by Concealment—Cal. Civ. Code §§ 1709, 1710)**

16 142. Mr. Terpin realleges the allegations of Paragraphs 1-141 as if  
17 fully set forth herein.

18 143. As alleged above, AT&T, including Chief Security Officer Bill  
19 O'Hern and Chief Compliance Officer David S. Huntley, who are respectively in  
20 charge of AT&T's security and privacy protections, knew that its data security  
21 measures were grossly inadequate, that its employees and agents could readily  
22 bypass the procedures, that its employees actively cooperated with hackers and  
23 thieves, and that it was incapable of living up to its commitments to consumers,  
24 including to Mr. Terpin, under state and federal law, as well as under its own  
25 Privacy Policy, to protect his Personal Information, including CPI and CPNI.  
26 Nonetheless, to induce Mr. Terpin to remain as an AT&T customer after the June  
27 11, 2017 hack, AT&T promised Mr. Terpin that it would implement AT&T's  
28 additional levels of security requiring a six-digit passcode to make modifications to

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1 his account. Because of their responsibilities at AT&T, Mr. O’Hern and Mr.  
2 Huntley were aware of this program and of its inadequacies. In contrast, Mr.  
3 Terpin took what he was told about this AT&T program at face value and was  
4 unaware that AT&T’s security measures were not state of the art. In contrast to  
5 other carriers, such as T-Mobile, AT&T did not provide a SIM lockdown with its  
6 higher level of security.

7 144. To reiterate, Mr. Terpin alleges on information and belief that  
8 AT&T, authorized by Mr. O’Hern and Mr. Huntley, made the following specific  
9 concealments of material facts: (1) In June 2017, after the initial SIM swap, AT&T  
10 representatives encouraged Mr. Terpin to adopt additional security measures  
11 (adding a six digit code) without telling Mr. Terpin that such security measures  
12 could readily be evaded or bypassed by AT&T employees acting in concert with  
13 individuals perpetrating SIM swap fraud; (2) at all times herein relevant prior to the  
14 second SIM swap in January 2018, AT&T concealed the fact that its employees  
15 frequently acted in concert with individuals perpetrating SIM swap fraud to provide  
16 such individuals with personal information about its mobile users; (3) at all times  
17 herein relevant prior to the second SIM swap in January 2018, AT&T concealed the  
18 fact that its employees frequently acted in concert with individuals perpetrating  
19 SIM swap fraud to provide such individuals with direct access to their customers’  
20 accounts, which enabled such individuals to intercept 2FA messages to customers;  
21 and (4) because of the inadequacies of AT&T’s security measures and the active  
22 participation of its employees in SIM swaps that AT&T’s promises in its Privacy  
23 Policy had no value.

24 145. As further alleged above, AT&T, including Mr. O’Hern and Mr.  
25 Huntley, knew or should have known from prior incidents and contacts with law  
26 enforcement that its system was subject to SIM swap fraud, that its employees  
27 cooperated with hackers in such fraud, that such fraud was prevalent in the  
28 cryptocurrency community, and that its security measures were ineffective in

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1 preventing the fraud. Mr. O’Hern should have been well aware of this because he  
2 is in charge of security and AT&T and Mr. Huntley should have known because he  
3 is in charge of insuring that AT&T protects the privacy of its customers.

4 146. In response to these facts, AT&T chose to do nothing to protect  
5 Mr. Terpin and instead made false promises to him to induce him to remain as an  
6 AT&T customer.

7 147. Although AT&T stated in the Privacy Policy that it could not  
8 “guarantee” that customers’ “Personal Information will never be disclosed in a  
9 manner inconsistent with [AT&T’s] Policy . . .,” it knew that its low level  
10 employees and contractors could readily sidestep AT&T security protections or that  
11 such protections were non-existent. Such employees were also susceptible to  
12 relatively small bribes from SIM swappers. Although Mr. Terpin understands that  
13 no security measure is perfect, he reasonably relied on AT&T’s promises in the  
14 privacy policy that it would protect his personal information against obvious and  
15 easily avoidable security flaws. Mr. Terpin’s expectations were reasonable given  
16 AT&T’s vast resources. Mr. Terpin is not alleging that AT&T erred by not having  
17 perfect security, but by not having any security worth the name.

18 148. AT&T representatives also specifically promised Mr. Terpin  
19 additional protection after the initial June 2017 SIM swap. Mr. Terpin accepted  
20 their promises at face value. Mr. Terpin had no reason to doubt that these security  
21 measures would be effective and had no knowledge at that time that an AT&T  
22 employee had been involved in his initial SIM swap.

23 149. At all times, including at the time it promised Mr. Terpin  
24 additional security after his initial June 2017 SIM swap, AT&T had an obligation to  
25 disclose to Mr. Terpin that his Personal Information, including CPI and CPNI, was  
26 readily obtained by hackers and that its own employees handed such information to  
27 hackers, and yet did not implement measures to protect Mr. Terpin or willfully  
28 failed to adhere to any measures that were in place, including its so-called “higher

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1 security level” for high profile or celebrity accounts and its required security and  
2 training measures under the Consent Decree. AT&T’s promises of security, which  
3 come from officers such as Bill O’Hern and David S. Huntley, who are in charge of  
4 security and privacy at the company, were false and it knew at the time it made  
5 such promises that they were ineffective and could be readily overridden by its  
6 employees. As AT&T’s officers knew, AT&T’s so-called security system more  
7 resembles a thin slice of swiss cheese than a sophisticated network of “heightened  
8 security.”

9 150. AT&T did not disclose these things to Mr. Terpin and willfully  
10 deceived Mr. Terpin by concealing the true facts concerning its data security, which  
11 AT&T was legally obligated and had a duty to disclose. It did so in order to induce  
12 Mr. Terpin to remain as its customer. It is far easier to penetrate AT&T’s system  
13 than obtaining a new password from Walmart.

14 151. Had AT&T disclosed the true facts about its dangerously poor  
15 data security practices, its inadequate supervision and training of its employees, and  
16 the fact that its employees can readily bypass the additional security measures that  
17 it encouraged Mr. Terpin to place on his account, Mr. Terpin would have taken  
18 further measures to protect himself and would have ceased being a customer of  
19 AT&T. Mr. Terpin justifiably relied on AT&T’s statements, including statements  
20 after the June 11, 2017 hack regarding the effectiveness of the additional security it  
21 encouraged for his account, and further relied on AT&T to provide accurate and  
22 complete information about its data security in continuing to be AT&T’s customer.

23 152. Rather than disclosing the inadequacies in its security, including  
24 the additional security it encouraged Mr. Terpin to place on his account, AT&T  
25 willfully suppressed any information relating to such inadequacies.

26 153. AT&T’s actions are “deceit” under Cal. Civ. Code § 1710 in  
27 that they are the suppression of a fact by one who is bound to disclose it, or who  
28

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1 gives information of other facts which are likely to mislead for want of  
2 communication of that fact.

3 154. Because of the deceit by AT&T, it is liable under Cal. Civ. Code  
4 § 1709 for “any damage which [Mr. Terpin] thereby suffers.”

5 155. Because of this deceit by Defendants, Mr. Terpin’s Personal  
6 Information, including his CPI and CPNI, as described above, *inter alia*, in  
7 Paragraphs 91-92 was compromised by hackers and he was deprived of nearly \$24  
8 million worth of cryptocurrency. The connection between AT&T, the SIM swap  
9 and the loss of Mr. Terpin’s cryptocurrency is alleged herein, *inter alia*, in  
10 Paragraphs 12-13, 59-82, and 91-92. In addition, Mr. Terpin’s Personal  
11 Information is now easily available to hackers, including through the Dark Web.  
12 Mr. Terpin is further damaged to the extent of the amounts that he has paid AT&T  
13 for wireless services, because those services were either worth nothing or worth less  
14 than was paid for them because of lack of security. Mr. Terpin has also suffered  
15 substantial out-of-pocket costs because of AT&T’s inadequate security.

16 156. Because AT&T’s deceit is fraud under Civil Code § 3294(c)(3),  
17 and AT&T’s conduct was done with malice, fraud and oppression, Mr. Terpin is  
18 entitled to punitive damages under Civil Code § 3294(a). Mr. Terpin further alleges  
19 on information and belief that Bill O’Hern, who has been in charge of security at  
20 AT&T since 2016, and David S. Huntley, who has been in charge of privacy, had  
21 advance knowledge of the inadequacies of AT&T’s security, the participation of  
22 AT&T employees in evading or bypassing security, and they committed or ratified  
23 the acts of oppression, fraud or malice alleged herein.

24 **FOURTH CLAIM FOR RELIEF**  
25 **(Misrepresentation)**

26 157. Mr. Terpin realleges Paragraphs 1 through 156 as if fully set  
27 forth herein.

28



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1 158. As alleged herein, *inter alia*, in Paragraphs 104-110, and to the  
2 extent determined to be applicable to this claim, Mr. Terpin and AT&T have a  
3 special relationship as such term is used in *J'Aire*.

4 159. AT&T made numerous representations and false promises in its  
5 Privacy Policy and COBC as well as in its advertising, that it would maintain the  
6 security of its customers' personal information, including Mr. Terpin's Personal  
7 Information. Separate from the documents, an AT&T employee made specific  
8 promises to Mr. Terpin after the June 11, 2017 hack regarding the security  
9 protection that would be given to Mr. Terpin's personal information by adding a  
10 six-digit security code on the account. The AT&T employee did so in order to  
11 persuade Mr. Terpin not to cancel his AT&T service.

12 160. AT&T did not intend to perform either its promises in the  
13 Privacy Policy or after the June 11, 2017 hack because it knew that its security  
14 protections, including the six-digit security code, were ineffectual and could easily  
15 be evaded or bypassed by its employees. Such representations and promises were  
16 also false because AT&T was using outdated security procedures and failed to  
17 disclose that it did not adhere to its own standards, including the heightened  
18 security standards that it implemented for Mr. Terpin after the June 11, 2017 hack,  
19 the CPNI Rules or the procedures mandated by the Consent Decree. AT&T further  
20 knew that it did not have in place state-of-the-art security protections, such as a  
21 SIM lock out. Mr. Terpin further alleges on information and belief that AT&T  
22 decided not to implement technological measures to prevent SIM swapping because  
23 it did not want to expend the money for such measures and did not wish to hamper  
24 the lucrative practice of having mobile users swap or upgrade their devices.

25 161. AT&T's misrepresentations and false promises, including those  
26 made after the June 11, 2017 hack, were material to Mr. Terpin who reasonably  
27 relied upon the representations and promises. Specifically, Mr. Terpin relied on  
28 AT&T's false promise regarding the effectiveness of the additional six-digit code

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1 protection on his account to continue as an AT&T customer. Mr. Terpin would not  
2 have agreed to continue to use and pay for AT&T’s services if he had known that  
3 the additional security protection was ineffective and that AT&T’s other security  
4 measures were not as secure as represented by AT&T and would not have lost  
5 nearly \$24 million.

6 162. AT&T intended that Mr. Terpin rely on their representations and  
7 promises, including those made after the June 11, 2017 hack, as it knew that Mr.  
8 Terpin would not entrust his Personal Information to unreasonable security risks,  
9 particularly because Mr. Terpin had been subject to the June 11, 2017 hack. In  
10 reliance upon AT&T’s representations and promises, Mr. Terpin continued to  
11 maintain a wireless account with AT&T and to use his AT&T phone number for  
12 verification and other purposes.

13 163. As a direct and proximate result of AT&T’s wrongful actions,  
14 Mr. Terpin has been damaged by paying monthly fees to AT&T and having thieves  
15 steal nearly \$24 million worth of cryptocurrency through the January 7, 2018 SIM  
16 swap fraud. The connection between AT&T, the SIM swap and the loss of Mr.  
17 Terpin’s cryptocurrency is alleged herein, *inter alia*, in Paragraphs 12-13, 59-82,  
18 and 91-92.

19 164. AT&T’s misconduct is fraud under Civil Code § 3294(c)(3) in  
20 that it was deceit or concealment of a material fact known to AT&T conducted with  
21 the intent on the part of AT&T of depriving Mr. Terpin of legal rights or otherwise  
22 causing injury. AT&T’s conduct was done with malice, fraud or oppression under  
23 Civil Code § 3294(c)(1) and (2) and Mr. Terpin is entitled to punitive damages  
24 against AT&T under Civil Code §3294(a).

25 165. Mr. Terpin further alleges on information and belief that Bill  
26 O’Hern, who has been in charge of security at AT&T since 2016, and David S.  
27 Huntley, who has been in charge of privacy, had advance knowledge of the  
28 inadequacies of AT&T’s security, the participation of AT&T employees in evading

1 or bypassing security, and they committed or ratified the acts of oppression, fraud  
2 or malice alleged herein.

3  
4 **FIFTH CLAIM FOR RELIEF**

5 **(Negligence)**

6 166. Plaintiff realleges the allegations in Paragraphs 1 through 165 as  
7 if fully set forth herein.

8 167. As alleged herein, *inter alia*, in Paragraphs 104=110, and to the  
9 extent determined to be applicable to this claim, AT&T and Mr. Terpin had a  
10 special relationship as such term is used in *J’Aire*.

11 168. AT&T owed a duty to Mr. Terpin to exercise reasonable care in  
12 safeguarding and protecting his Personal Information, including CPI and CPNI, and  
13 keeping it from being compromised, lost, stolen, misused and/or disclosed to  
14 unauthorized parties. This duty included, among other things, designing,  
15 maintaining, and testing its security systems to ensure that Mr. Terpin’s Personal  
16 Information, including CPI and CPNI, was adequately secured and protected.  
17 AT&T had a further duty to implement and adhere to the “high security” or  
18 “celebrity” protocol that it had promised Mr. Terpin that it would place on his  
19 account to protect his Personal Information and had a duty to adhere to the FCA,  
20 CPNI Rules, and the provisions of the Consent Decree.

21 169. AT&T knew that Mr. Terpin’s Personal Information, including  
22 CPI and CPNI, was confidential and sensitive. Indeed, AT&T acknowledged this  
23 in its Privacy Policy and in agreeing, at Mr. Terpin’s request, to place additional  
24 “high security” measures on Mr. Terpin’s account to prevent hackers from  
25 committing SIM swap fraud on Mr. Terpin. AT&T further promoted its “extra  
26 security” on its website. AT&T likewise knew that Mr. Terpin’s Personal  
27 Information was vulnerable to hacks by thieves and other criminals both because it  
28

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1 acknowledged such in its Privacy Policy and because it had been informed by Mr.  
2 Terpin of the June 11, 2017 hack. AT&T thus knew of the substantial harms that  
3 could occur to Mr. Terpin if it did not place adequate security on his Personal  
4 Information and did not follow its own “high security” measures for the account.

5 170. By being entrusted by Mr. Terpin to safeguard his Personal  
6 Information, including CPI and CPNI, AT&T had a special relationship with Mr.  
7 Terpin. Mr. Terpin signed up for AT&T’s wireless services and agreed to provide  
8 his Personal Information to AT&T with the understanding that AT&T would take  
9 appropriate measures to protect it. But AT&T did not protect Mr. Terpin’s  
10 Personal Information and violated his trust. AT&T knew its security was  
11 inadequate in part due to the FCC investigation that led to the Consent Decree.  
12 AT&T is morally culpable, given prior security breaches involving its own  
13 employees.

14 171. AT&T breached its duty to exercise reasonable care in  
15 safeguarding and protecting Mr. Terpin’s Personal Information, including CPI and  
16 CPNI, by failing to adopt, implement, and maintain adequate security measures to  
17 safeguard that information, including its duty under the FCA, CPNI Rules, the  
18 Consent Decree, and its own Privacy Policy.

19 172. AT&T’s failure to comply with federal and state requirements  
20 for security further evidences AT&T’s negligence in failing to exercise reasonable  
21 care in safeguarding and protecting Mr. Terpin’s Personal Information, including  
22 CPI and CPNI.

23 173. But for AT&T’s wrongful and negligent breach of its duties  
24 owed to Mr. Terpin, his Personal Information, including his CPI and CPNI, would  
25 not have been compromised, stolen, viewed, and used by unauthorized persons.  
26 AT&T’s negligence was a direct and legal cause of the theft of Mr. Terpin’s  
27 Personal Information and the legal cause of his resulting damages, including, but  
28 not limited to, the theft of nearly \$24 million worth of cryptocurrency. The

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1 connection between AT&T, the SIM swap and the loss of Mr. Terpin’s  
2 cryptocurrency is alleged herein, *inter alia*, in Paragraphs 12-13, 59-82, and 91-92.

3 174. The injury and harm suffered by Mr. Terpin was the reasonably  
4 foreseeable result of AT&T’s failure to exercise reasonable care in safeguarding  
5 and protecting Mr. Terpin’s Personal Information, including his CPI and CPNI.  
6 The harm was additionally foreseeable in that AT&T was aware that Mr. Terpin  
7 was a holder and user of cryptocurrency and a potential victim of hacking following  
8 the June 11, 2017 hack.

9 175. AT&T’s misconduct as alleged herein is malice, fraud or  
10 oppression under Civil Code § 3294(c)(1) and (2) in that it was despicable conduct  
11 carried on by AT&T with a willful and conscious disregard of the rights or safety of  
12 Mr. Terpin and despicable conduct that has subjected Mr. Terpin to cruel and unjust  
13 hardship in conscious disregard of his rights. As a result, Mr. Terpin is entitled to  
14 punitive damages against AT&T under Civil Code § 3294(a).

15 176. Mr. Terpin further alleges on information and belief that Bill  
16 O’Hern, who has been in charge of security at AT&T since 2016, and David S.  
17 Huntley, who has been in charge of privacy, had advance knowledge of the  
18 inadequacies of AT&T’s security, the participation of AT&T employees in evading  
19 or bypassing security, and they committed or ratified the acts of oppression, fraud  
20 or malice alleged herein.

21 **SIXTH CLAIM FOR RELIEF**

22 **(Negligent Supervision and Training)**

23 177. Mr. Terpin realleges the allegations of Paragraphs 1 through 176  
24 as if fully set forth herein.

25 178. As alleged herein, *inter alia*, in Paragraphs 104-110, and to the  
26 extent determined to be applicable to this claim, AT&T and Mr. Terpin had a  
27 special relationship as such term is used in *J’Aire*.  
28

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1           179. AT&T owed a duty to Mr. Terpin to exercise reasonable care in  
2 supervising and training its employees to safeguard and protect his Personal  
3 Information, including CPI and CPNI, and to keep it from being compromised, lost,  
4 stolen, misused and/or disclosed to unauthorized parties. This duty included  
5 AT&T’s instructing its employees to adhere to the “high security” or “extra  
6 security” protocols that AT&T had promised Mr. Terpin it would place on his  
7 account to protect his Personal Information.

8           180. AT&T was aware of the ability of its employees to bypass its  
9 security measures and the fact that its employees actively participated in fraud  
10 involving its customers, including pretexting and SIM card swap fraud, by  
11 bypassing such security measures.

12           181. AT&T knew that Mr. Terpin’s Personal Information, including  
13 CPI and CPNI, was confidential and sensitive. AT&T further knew that Mr.  
14 Terpin’s Personal Information was vulnerable to hacks and SIM swap fraud by  
15 thieves and other criminals because it had been informed by Mr. Terpin of the  
16 June 11, 2017 hack.

17           182. By being entrusted by Mr. Terpin to safeguard his Personal  
18 Information, including CPI and CPNI, AT&T had a special relationship with Mr.  
19 Terpin. Mr. Terpin signed up for AT&T’s wireless services and agreed to provide  
20 his Personal Information to AT&T with the understanding that AT&T’s employees  
21 would take appropriate measures to protect it. AT&T also made promises in the  
22 COBC that its employees would respect its customers’ privacy and was further  
23 required by the Consent Decree to supervise and train its employees to adhere to its  
24 legal obligations to protect their Personal Information.

25           183. AT&T breached its duty to supervise and train its employees to  
26 safeguard and protect Mr. Terpin’s Personal Information, including CPI and CPNI,  
27 by not requiring them to adhere to its obligations under the CPNI Rules, the  
28 Consent Decree and other legal provisions. On January 7, 2018, AT&T’s

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1 employees facilitated SIM swap fraud on Mr. Terpin by not requiring individuals  
2 requesting Mr. Terpin’s telephone number to present valid identification. AT&T  
3 employees also failed to follow AT&T’s “higher” or “extra” security by not  
4 requiring the individual requesting Mr. Terpin’s telephone number to provide the  
5 secret six-digit code that AT&T had given Mr. Terpin to prevent precisely such  
6 fraud.

7 184. AT&T knew its supervision and monitoring of its employees  
8 was inadequate through: a) the FCC investigation that led to the Consent Decree  
9 mandating measures to improve such training and monitoring; and b) its knowledge  
10 from prior incidents that its employees cooperated with hackers in SIM swap fraud.  
11 AT&T is morally culpable, given prior security breaches involving its own  
12 employees.

13 185. AT&T breached its duty to exercise reasonable care in  
14 supervising and monitoring its employees to protect Mr. Terpin’s Personal  
15 Information, including CPI and CPNI.

16 186. AT&T’s failure to comply with the Consent Decree and to  
17 follow the requirements of the FCA and CPNI Rules further evidence AT&T’s  
18 negligence in adequately supervising and monitoring its employees so that they  
19 would safeguard and protect Mr. Terpin’s Personal Information, including CPI and  
20 CPNI.

21 187. But for AT&T’s wrongful and negligent breach of its duties to  
22 supervise and monitor its employees, Mr. Terpin’s CPI and CPNI would not have  
23 been disclosed to unauthorized individuals through SIM swap fraud. The  
24 connection between AT&T, the SIM swap and the loss of Mr. Terpin’s  
25 cryptocurrency is alleged herein, *inter alia*, in Paragraphs 12-13, 59-82, and 91-92.  
26 AT&T’s negligence was a direct and legal cause of the theft of Mr. Terpin’s  
27 Personal Information and the legal cause of his resulting damages, including, but  
28 not limited to, the theft of nearly \$24 million worth of cryptocurrency.

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1 188. The injury and harm suffered by Mr. Terpin was the reasonably  
2 foreseeable result of AT&T’s failure to supervise and monitor its employees in  
3 safeguarding and protecting Mr. Terpin’s Personal Information, including his CPI  
4 and CPNI.

5 189. AT&T’s misconduct as alleged here is done with malice, fraud  
6 and oppression under Civil Code § 3294(c)(1) and (2) in that it was despicable  
7 conduct carried on by AT&T with a willful and conscious disregard of the rights or  
8 safety of Mr. Terpin and despicable conduct that has subjected Mr. Terpin to cruel  
9 and unjust hardship in conscious disregard of his rights. As a result, Mr. Terpin is  
10 entitled to punitive damages against AT&T under Civil Code § 3294(a).

11 190. Mr. Terpin further alleges on information and belief that Bill  
12 O’Hern, who has been in charge of security at AT&T since 2016, and David S.  
13 Huntley, who has been in charge of privacy, had advance knowledge of the  
14 inadequacies of AT&T’s security, the participation of AT&T employees in evading  
15 or bypassing security, and they committed or ratified the acts of oppression, fraud  
16 or malice alleged herein.

17 **SEVENTH CLAIM FOR RELIEF**  
18 **(Negligent Hiring)**

19 191. Mr. Terpin realleges the allegations in Paragraphs 1 through 190  
20 as if fully set forth herein.

21 192. As alleged herein, *inter alia*, in Paragraphs 104-110, and to the  
22 extent determined to be applicable to this claim, AT&T and Mr. Terpin had a  
23 special relationship as such term is used in *J’Aire*.

24 193. AT&T owed a duty to Mr. Terpin to exercise reasonable care in  
25 hiring competent, honest, and ethical employees to safeguard and protect his  
26 Personal Information, including CPI and CPNI, to keep it from being compromised,  
27 lost, stole, misused and/or disclosed to unauthorized parties. AT&T also owed a  
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1 duty to exercise reasonable care in the operation of AT&T stores, including by third  
2 parties, and their hiring of employees for those AT&T stores.

3 194. AT&T knew that Mr. Terpin’s Personal Information, including  
4 CPI and CPNI, was confidential and sensitive. AT&T further knew that Mr.  
5 Terpin’s Personal Information was vulnerable to hacks and SIM swap fraud by  
6 thieves and other criminals because it had been informed by Mr. Terpin of the June  
7 11, 2017 hack. AT&T further knew from the investigation that led to the Consent  
8 Decree that its employees had cooperated with hackers and thieves by turning over  
9 to them the CPNI of its customers to facilitate fraud and theft. It also knew from  
10 prior incidents of SIM swap fraud that its employees cooperated with hackers and  
11 thieves defrauding AT&T’s own customers.

12 195. By being entrusted by Mr. Terpin to safeguard his Personal  
13 Information, including CPI and CPNI, AT&T had a special relationship with Mr.  
14 Terpin. Mr. Terpin signed up for AT&T’s wireless services and agreed to provide  
15 his Personal Information to AT&T with the understanding that AT&T’s employees  
16 would take appropriate measures to protect it. AT&T also made promises in the  
17 COBC that its employees would adhere to AT&T’s ethical and legal obligations,  
18 including respecting its customers’ privacy. AT&T was further required by the  
19 Consent Decree to correct the practices that had led to hiring employees who had  
20 cooperated with hackers and thieves and stolen customers’ personal information.

21 196. AT&T breached its duty to hire employees who would  
22 safeguard and protect Mr. Terpin’s Personal Information, including CPI and CPNI.  
23 Mr. Terpin alleges on information and belief, that the employees who facilitated the  
24 SIM swap fraud perpetrated on Mr. Terpin did not live up to AT&T’s purported  
25 ethical standards, as expressed in the COBC, or to their legal obligations to Mr.  
26 Terpin. Mr. Terpin further alleges on information and belief, that the employee at  
27 the AT&T store who ported Mr. Terpin’s telephone number to the hackers on  
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1 January 7, 2018, had a criminal record and colluded with the hackers in perpetrating  
2 the fraud on Mr. Terpin.

3 197. AT&T knew that its hiring of employees was inadequate  
4 through the FCC investigation that led to the Consent Decree that revealed that  
5 employees had actively handed over the Personal Information of its customers to  
6 hackers and thieves. AT&T is morally culpable, given the prior conduct of its  
7 employees.

8 198. AT&T breached its duty to properly hire competent, honest and  
9 ethical employees to protect Mr. Terpin's Personal Information, including CPI and  
10 CPNI.

11 199. AT&T's failure to comply with the Consent Decree is further  
12 evidence of its failure to investigate employees to ensure that they adhered to  
13 AT&T's ethical and legal responsibilities.

14 200. On information and belief, the employee or agent at the AT&T  
15 store who gave Mr. Terpin's SIM card to the imposter on January 7, 2018 was  
16 Jahmil Smith. Smith has a criminal record which AT&T should have discovered  
17 before or after hiring him.

18 201. But for AT&T's wrongful and negligent breach of its duties to  
19 hire ethical and competent employees, Mr. Terpin's CPI and CPNI would not have  
20 been disclosed to unauthorized individuals through SIM swap fraud. The  
21 connection between AT&T, the SIM swap and the loss of Mr. Terpin's  
22 cryptocurrency is alleged herein, *inter alia*, in Paragraphs 12-13, 60-85, and 95-96.  
23 AT&T's negligence was a direct and legal cause of the theft of Mr. Terpin's  
24 Personal Information and the legal cause of his resulting damages, including, but  
25 not limited to, the theft of nearly \$24 million worth of cryptocurrency.

26 202. The injury and harm suffered by Mr. Terpin was the reasonably  
27 foreseeable result of AT&T's failure to hire competent and ethical employees who  
28 would safeguard and protect Mr. Terpin's Personal Information, including his CPI

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1 and CPNI. Indeed, this failure on the part of AT&T led to the January 7, 2018 SIM  
2 swap fraud.

3 203. AT&T’s misconduct as alleged herein is malice, fraud and  
4 oppression under Civil Code § 3294(c)(1) and (2) in that it was despicable conduct  
5 carried on by AT&T with a willful and conscious disregard of the rights or safety of  
6 Mr. Terpin and despicable conduct that has subjected Mr. Terpin to cruel and unjust  
7 hardship in conscious disregard of his rights. As a result, Mr. Terpin is entitled to  
8 punitive damages against AT&T under Civil Code § 3294(a).

9 204. Mr. Terpin further alleges on information and belief that Bill  
10 O’Hern, who has been in charge of security at AT&T since 2016, and David S.  
11 Huntley, who has been in charge of privacy, had advance knowledge of the  
12 inadequacies of AT&T’s security, the participation of AT&T employees in evading  
13 or bypassing security, and they committed or ratified the acts of oppression, fraud  
14 or malice alleged herein.

15 **EIGHTH CLAIM FOR RELIEF**

16 **(Breach of Contract – Privacy Policy)**

17 205. Mr. Terpin realleges the allegations in Paragraphs 1 through 204  
18 as if fully set forth herein.

19 206. The Privacy Policy is a binding contract between AT&T and  
20 Mr. Terpin.

21 207. AT&T breached the contract with respect to at least the  
22 following provisions of the Privacy Policy:

- 23 • AT&T’s promise that it will not sell or disclose users’
- 24 “Personal Information” to anyone;
- 25 • AT&T’s commitments that it has “worked hard to protect
- 26 your information” and has “established electronic and
- 27 administrative safeguards designed to make the information
- 28 we collect secure”;

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- AT&T’s promise that its employees must follow its COBC and that “all employees must follow the laws, rules, regulations, court and/or administrative orders that apply to our business—including, specifically, the legal requirements and company policies surrounding the privacy of communications and the security and privacy of your records”;
- AT&T’s promise that it subjects employees who do not meet its security standards to “disciplinary action” and dismissal;
- AT&T’s promise that it has “implemented technology and security features and strict policy guidelines to safeguard the privacy of your Personal Information”;
- AT&T’s promise that it “maintain[s] and protect[s] the security of computer storage and network equipment”;
- AT&T commitment that it limits access to Personal Information “to only those with jobs requiring such access”; and
- AT&T’s promise that it “[r]equire[s] caller/online authentication before providing Account Information so that only you or someone who knows your Account Information will be able to access or change this information.”

208. AT&T also breached its COBC by failing to follow “not only the letter of the law, but the spirit of the law” and failing to “protect the privacy of our customers’ communications because “not only do our customers demand this, but the law requires it.”

209. AT&T breached these provisions of its Privacy Policy and COBC by not having proper safeguards in accordance with law, including the FCA, CPNI Rules, and the Consent Decree, and Cal. Civ. Code §1798.81.5, to protect

1 Mr. Terpin’s “Personal Information,” including CPI and CPNI. AT&T further  
2 breached its promises by not limiting access to Mr. Terpin’s Personal Information  
3 to authorized or properly trained individuals. AT&T likewise violated its  
4 commitments to maintain the confidentiality and security of Mr. Terpin’s Personal  
5 Information by failing to comply with its own policies and applicable “law, rules,  
6 regulations, court and/or administrative orders that apply to our business—  
7 including, specifically, the legal requirements and company policies surrounding  
8 the privacy of communications and the security and privacy of your records.”  
9 AT&T thus breached its obligations under the FCA, CPNI Rules, the Consent  
10 Decree and California law.

11           210. The January 7, 2018 SIM swap fraud was a direct and legal  
12 cause of the injuries and damages suffered by Mr. Terpin, including loss of nearly  
13 \$24 million of crypto currency.

14           211. To the extent that AT&T maintains that the Exculpatory  
15 Provision, Damages Restriction, and the Indemnity in the Agreement apply to the  
16 promises made by AT&T in the Privacy Policy and the COBC, such provisions, as  
17 well as the Agreement in its entirety, are unenforceable and do not apply to the  
18 Privacy Policy and COBC. *See* Cal. Civ. Code §§1670.5, 1668 (contracts are  
19 unenforceable if unconscionable or void against public policy); *Ingle v. Circuit City*  
20 *Stores, Inc.*, 328 F.3d 1165, 1180 (9<sup>th</sup> Cir. 2003) (contracts void if central purpose is  
21 tainted with illegality). Moreover, such provisions are unconscionable under  
22 California law because an entity cannot exculpate itself from its obligations to  
23 maintain the privacy and security of personal information under federal and  
24 California law, as further set forth herein in Paragraphs 70 to 82. *See Health Net of*  
25 *California, Inc. v. Department of Health Services*, 113 Cal. App. 4<sup>th</sup> 224, 244  
26 (2004) (California courts for 85 years have invalidated “contract clauses that relieve  
27 a party from responsibility for future statutory and regulatory violations”)  
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Mr. Terpin was harmed due to AT&T’s breach of the terms of the Privacy Policy and COBC, because his “Personal Information,” including CPI and CPNI, was breached in the January 7, 2018 SIM swap fraud, which led to monetary losses of nearly \$24 million. The connection between AT&T, the SIM swap and the loss of Mr. Terpin’s cryptocurrency is alleged herein, *inter alia*, in Paragraphs 12-13, 60-85 and 95-96.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Michael Terpin demands judgment against Defendants as follows:

1. For general damages against Defendants, and each of them, jointly and severally, in an amount to be determined at trial, but in no event less than \$24,000,000, less credits for any amounts recovered by Plaintiff from others;
2. For exemplary and punitive damages against Defendants, and each of them, in an amount to be determined at trial, but in no event greater than nine times the amount of general and special damages awarded to Plaintiff (\$216 million);
3. For preliminary and permanent injunctive relief against Cross-Defendants, and each of them, enjoining and restraining them from continue to engage in unfair competition, unfair practices, violation of privacy, and other actions;
4. For a declaration that the Agreement in its entirety is unenforceable as unconscionable and against public policy or, in the alternative, that (a) the Exculpatory Provision is unenforceable as against Plaintiff; (b) the Damages Resolution is unenforceable against Plaintiff; and (c) the Indemnity is unenforceable against Mr. Terpin;
5. For attorney’s fees under the FCA and any other applicable statutory provision;

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6. For interest and costs of suit and such other and further relief as the Court deems just and proper.

DATED: March 16, 2020

GREENBERG GLUSKER FIELDS  
CLAMAN & MACTINGER LLP

By: /s/Pierce O'Donnell  
PIERCE O'DONNELL (SBN 081298)  
Attorneys for Plaintiff Michael Terpin

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury.

DATED: March 16, 2020

GREENBERG GLUSKER FIELDS  
CLAMAN & MACHTINGER LLP

By:/s/ Pierce O'Donnell  
\_\_\_\_\_  
PIERCE O'DONNELL (SBN 081298)  
Attorneys for Plaintiff Michael Terpin

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