19 20 21 22 23 and Verizon Consolidated Complaint, 24 Dkt. 125 25

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## NOTICE OF MOTION AND MOTION TO DISMISS

## TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 21, 2007, at 2:00 p.m., in the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, in Courtroom 6 (17th floor), the following Motion To Dismiss filed by Defendants Verizon Communications Inc., Verizon Northwest Inc., Verizon Florida Inc., and MCI Communications Services, Inc. (hereinafter "Defendants") will be heard.

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants hereby move to dismiss the "Master Consolidated Complaint Against MCI Defendants and Verizon Defendants" (Dkt. # 125) in In re National Security Agency Telecommunications Record Litigation, MDL No. 06-1791 (VRW) (N.D. Cal.) (hereinafter "the Complaint"), based on the United States' invocation of the state secrets privilege (Dkt. # 254). In addition, the Complaint should be dismissed because it fails to state a claim upon which relief may be granted: (1) Plaintiffs fail to state claims under 18 U.S.C. §§ 2511, 2702(a)(1), 2702(a)(2), 2702(a)(3), and 47 U.S.C. § 605, because none of those statutory provisions prohibits the acts alleged. (2) Plaintiffs fail to plead facts to state a claim for unlawful "divulgence" of call records under 18 U.S.C. § 2702(a)(3). (3) The First Amendment to the Constitution prohibits the imposition of liability based on the alleged divulgence of call record information to the government in the circumstances alleged in the Complaint, and the statutes upon which plaintiffs base their claims must be construed as not imposing liability based on the facts alleged. (4) Plaintiffs' state-law claims are preempted by federal law. (5) Plaintiffs fail to state deception and breach-of-contract claims. (6) Plaintiff's claims against MCI are barred by the bankruptcy discharge.

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1	This motion is based or	n this notice of motion	on and motion, the acc	companying memorandum	
1 2	of law, all pleadings and records on file in these actions, and any other arguments presented to this				
3	Court at or before the hearing on this motion.				
4	court at or ourore the nearing of				
5	Dated: April 30, 2007		WILMER CUTLER PICKERING HALE AND DORR LLP		
6					
7			MUNGER, TOLLES & OLSON LLP		
8			Randal S. Milch		
9		By: /s/ John A. Rogovin			
10		John A. Rogovin			
11			Attorneys for Verizon Communications Inc., Verizon Northwest Inc., Verizon Florida Inc., and MCI Communications Services, Inc.		
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