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

UNITED STATES OF AMERICA *v.* JOHN LETCHER EDENS	Criminal Action No. 1:15-CR-158-ELR-JFK

United States' Response to Defendant's Sentencing Memorandum

The United States of America, by John A. Horn, United States Attorney, and Jolee Porter, Assistant United States Attorney for the Northern District of Georgia, files this Response to Defendant's Sentencing Memorandum. The government argues that the pre-sentence report correctly calculates Defendant's Guideline range of 27-33 months' confinement. In the alternative, an upward variance to 27 months pursuant to the factors listed in 18 U.S.C. § 3553(a) is appropriate to ensure Defendant's sentence is commensurate with his criminal history, pattern of conduct, and the crimes in this case.

PROCEDURAL HISTORY

On May 6, 2015, a grand jury for the Northern District of Georgia returned a seven-count indictment against Defendant. (Doc. 1.) The indictment charges Defendant with false impersonation of a Deputy United States Marshal from

October 21, 2014 through November 26, 2014, in violation of 18 U.S.C. § 912. (*Id.*) Defendant was arraigned on the indictment on May 12, 2015. (Doc. 5.) On September 24, 2015, Defendant entered a plea of guilty to the first six counts of the indictment, which carry a combined statutory maximum punishment of eighteen (18) years' imprisonment. (Doc. 24-1 (under seal); PSR at Part D). The final Pre-Sentence Investigation Report ("PSR") was prepared and provided to the parties on December 2, 2015.

In the PSR, the Probation Officer calculated the total offense level for Defendant to be 14. This consists of a base offense level of 6 under U.S.S.G. § 2J1.4, increased by 6 levels under U.S.S.G. § 2J1.4(b)(1) because the impersonation was committed for the purpose of conducting an unlawful search, increased by 5 levels under U.S.S.G. § 3D1.4 because the separate counts with separate victims do not group, and reduced by 3 levels under U.S.S.G. § 3E1.1 for acceptance of responsibility. The Probation Officer determined that Defendant qualified for seven criminal history points under U.S.S.G. § 4A1.1, placing him in criminal history category IV. With a total offense level of 14 at criminal history category IV, the resulting advisory guidelines sentencing range would be 27 to 33 months' imprisonment.

On February 3, 2016, Defendant filed a Sentencing Memorandum arguing that the PSR incorrectly calculates the Guidelines Range. (Doc. 29). Defendant is scheduled to be sentenced on February 10, 2016.

FACTS

Defendant impersonated a U.S. Marshal seven times from October 21, 2014 through November 26, 2014 in order to obtain location information on a total of fourteen victims. (*See* Doc. 1; PSR at ¶¶ 6-8). Defendant sought "Real-Time Location of the Mobile Device (E911 Locator)" information on private phones. (*See e.g.* Exigent Requests submitted by Defendant to T-Mobile (Oct. 21, 2014 – Nov. 26, 2014) (attached as Gov. Ex. 7)).[1] E911 data provides precise information, in the form of geographic coordinates, about the location of a target phone.[2] (*See* e-mail from Simone.Ray8@t-mobile.com to jeff.cromer@gafugitivetaskforce1.net (providing exact location of 404-988-XXXX, "Lat: 33.754338 Lon: -84:470077") (attached as Gov. Ex. 1)). In order to obtain that information, Defendant not only

[1] Gov. Ex. 7 has been filed under seal due to the sensitive nature of its contents. A copy has been provided to the court and defense counsel.

[2] E911 data is more precise than cell-site information, which identifies the cell tower used to route communications to or from the target phone and permits investigators to determine the general area in which the target phone is located at the time that a communication occurs. *See United States v. Davis*, 785 F.3d 498, 501 (11th Cir.) cert. denied, 136 S. Ct. 479, 193 L. Ed. 2d 349 (2015).

fraudulently represented himself as a U.S. Marshal, but he also told T-Mobile that "[t]he urgency of the situation (and/or other factors) renders it unfeasible to obtain a search warrant or probable cause court order" but that a "warrant [was] requested and coming." (Gov. Ex. 7). Defendant told T-Mobile that extreme and dangerous circumstances necessitated T-Mobile providing location information before a search warrant could be obtained. (*Id.*). Specifically, Defendant claimed:

- on October 21, 2014, "a group of 11 abducted a 7 year child in south Atlanta. This child's life in obvious danger";
- on October 29, 2014, "a 5 year old has been abducted and is being held hostage in Georgia, North Carolina, or Michigan";
- on November 4, 2014 , "Atlanta drug war escalates again. 3 children taken at gunpoint. Very much life threatening. Children abducted and the suspects all go in different directions";
- on November 6, 2014, "[t]he last of 3 abducted children is still missing";
- on November 12, 2014, "[e]arlier this afternoon in Atlanta 3 children were abducted by drug gangs. These kids are in extreme danger at this time";
- on November 13, 2014, he again advised that "[e]arlier this afternoon in Atlanta 3 children were abducted by drug gangs. These kids are in extreme danger at this time";

- on November 26, 2014, "[a]n emotionally unstable Houston man has kidnapped a 9 year old child in Georgia. He is armed and dangerous and has plane access."

(*Id.*; PSR at ¶ 7). Upon his arrest on May 7, 2015, Defendant admitted to impersonating a U.S. Marshal. (PSR at ¶ 9). Defendant explained that he "felt the Marshals owed [him]" from a previous arrest where he fought with U.S. Marshals as they attempted to take him into custody. (*Id.*).

Defendant's victimization of others extended beyond fraudulently obtaining individuals' private location information and using that information to find those individuals. Defendant called one victim and "stated [that Defendant was] from the U.S. Marshal's," and "began to call everyday 3 to 4 times a day, threatening." ("RJ" Victim Stmt.)[3] Defendant told that victim, "RJ," that he "had a warrant for [her] arrest, . . . came to [her] home [at] all hours of the night[,] and showed up at [her] place of employment." (*Id.*).

The victimization of RJ was not Defendant's first time harassing another person. On February 25, 2011, Defendant was convicted of aggravated stalking and harassing phone calls in the Superior Court of Forsyth County. (PSR at ¶ 60). In that case, "in violation of a temporary protective order," Defendant

[3] The full victim impact statement submitted by "RJ" has been submitted to the Court.

"serveilled [sic] and contacted Lisa Edens for the purpose of harassing and intimidating her" in 2009. (*Id.*). Defendant was simultaneously convicted of forgery for submitting a forged doctor's "Action Form" to Georgia Probation Management. (*Id.* at ¶ 61). For the two separate convictions, Defendant was "sentenced to confinement for the period of five (5) years." (*State v. Edens*, 10-CR-212 (Mar. 3, 2011) (Gov. Ex. 2)). Under the First offender Act, however, Defendant was permitted to serve the five year sentence on probation provided that he complied with the terms of his probation. (*Id.*). Under those terms, Defendant was required not to "violate the criminal laws of any governmental unit." (*Id.*). Defendant's probation under the First Offender Act was revoked on July 15, 2015 after he was indicted in the instant case. (PSR at ¶ 60-61). Defendant is scheduled to be released from state custody for his violations of state law on February 24, 2016. (PSR at ¶ 60-61).

Defendant harassed yet another victim the prior year in 2008. In 2009, a default judgment was entered against Defendant, also known as "John Anderson," in the amount of $33,312.00 in the Eastern District of California. (*Hartung v. Anderson, a/k/a John Edens, et al.*, Findings and Rec., 1:08-cv-00960, ECF No. 81 at 18 (June 26, 2009) (Gov. Ex. 3); *see also*, *Hartung v. Anderson, a/k/a John Edens, et al.*, Order Adopting Findings and Rec., 1:08-cv-00960, ECF No. 83 at 2

(Sept. 1, 2009) (Gov. Ex. 4)). Similar to the facts in this case, Defendant used T-Mobile to obtain private citizen information and employed that information to find, harass, and threaten the victim. The Court's Findings and Recommendations state:

> On or about January 14, 2008, Anderson [a/k/a John Edens] allegedly contacted T-Mobile and identified himself as Plaintiff's father requesting that T-Mobile add him as a user on Plaintiff's T-Mobile account. Thereafter, Defendant allegedly used information obtained from T-Mobile including Plaintiff's home address to begin unlawful and harassing collection attempts by frequently calling and text messaging Plaintiff.
>
> Specifically, the complaint alleges that on January 16, 2008, through January 22, 2008, Anderson began calling Plaintiff in an attempt to collect the debt. On more than one occasion, Anderson called and/or sent text messages to Plaintiff several times a day in a harassing manner. Plaintiff told Anderson to cease and desist several times. Over the course of these five days, Defendant allegedly sent Plaintiff a total of 17 messages in which he was extremely angry, menacing, and intimidating. These messages included the following:
>
> > . . .
> > 4) After Plaintiff told Anderson to cease and desist communication he called her back continuously. Plaintiff instructed Anderson to cease, each time to no avail;
> > 5) Anderson falsely stated that he would have Plaintiff arrested if she did not let him have the car;
> > 6) On January 17, 2008, Anderson sent the following text message to Plaintiff : "Turn the car in or I [sic] send the Sheriff, you [sic] illegally took the car out of state I cant [sic] verify insurance or address." Received 11:15 am, sender 5000-John;
> > . . .

> 25) On January 20, 2008, Anderson sent the following text message to Plaintiff: "[I]'m hoping to God you see the light and figure out I will just take your car." Received 5:49 pm, Sender 5000- R & J Recovery;
> 26) On January 20, 2008, Anderson sent the following message to Plaintiff : "Porky Pig 200 pound slob in a double wide. Figure. I got some picture messages of you today. Oink oink. Ryan must like mountain climbing." Received 5:57 pm, Sender 5000;
> 27) On January 22, 2008, Plaintiff called Anderson and told him to stop calling. In response, Anderson stated, "I don't have to stop it's my job";

(*Id*. at 2-5). Defendant openly admitted to harassing the victim about her weight when he was interviewed about the case on ABC's 20/20. (*See* Joseph Rhee and Alexa Valenti, *Debt Collector Owes Over $33K for Making Woman's Life 'Hell'*, ABC News (Nov. 28, 2014), *available at* http://abcnews.go.com/Business/debt-collector-owes-33k-making-womans-life-hell/story?id=27093191 (Gov. Ex. 5)). Defendant detailed, "[the victim] said, 'I have a refund coming.' I said, 'A tax refund or a Jenny Craig refund?' ... meaning that she was overweight." (*Id*. (video interview embedded)). Just three years earlier, on June 2, 2006, Defendant was convicted of battery after he "caused visible bodily harm to Lisa Edens, his spouse, by kicking her in the shin and grabbing her arms." (PSR at ¶ 59).

ARGUMENT

The PSR correctly calculates Defendant's Guideline Range where (1) Defendant impersonated a U.S. Marshal for the purpose of obtaining private

citizens' real-time location information, which constitutes a search under the Guidelines, (2) each count involves separate victims, so the individual counts of conviction should not group, and (3) Defendant does not claim his criminal history score was incorrectly calculated. A sentence within Defendant's Sentencing Guideline range of 27 to 33 months is, therefore, appropriate. Even if this Court were to find that Defendant's guideline range was incorrectly calculated, an upward variance would be appropriate in light of both the seriousness of the offense in this case and Defendant's history of stalking and harassing victims. *See* 18 U.S.C. § 3553(a).

1. THE PSR CORRECTLY CALCULATED DEFENDANT'S GUIDELINE RANGE OF 27 TO 33 MONTHS

a. The PSR Correctly Concluded Defendant's Impersonation was Committed for the Purpose of a Search Under the Guidelines

Under the Sentencing Guidelines, Defendant's offense level should be increased by six-levels because the "impersonation was for the purpose of conducting an unlawful arrest, detention, or search." U.S.S.G. § 2J1.4(b)(1). The Sentencing Guidelines do not define the term "search," nor do they limit it to a Fourth Amendment search. Even if this Court entertains Defendant's interpretation of "search" in U.S.S.G. § 2J1.4(b)(1), Defendant conducted a search where he sought "Real-Time Location," or "E911" data, of cell phones belonging to private citizens using exigent request forms stating that a search warrant was pending.

To limit "search" in U.S.S.G. § 2J1.4(b)(1) to only Fourth Amendment searches would either render the enhancement virtually useless, or read language into the

Guideline that the Sentencing Commission has opted not to include. The Fourth Amendment "proscribes only governmental action" *United States v. Bomengo*, 580 F.2d 173, 175 (5th Cir. 1978), or (2). Therefore, under Defendant's proposed reading of the Guideline, private citizens could not receive the enhancement, as "a search by a private individual for purely private reasons does not raise Fourth Amendment implications." *Id*. Alternatively, Defendant's reading of the Guideline requires the addition of the words "what would be for a government actor" before the term "search" in § 2J1.4(b)(1). "To properly interpret the Sentencing Guidelines, [a Court] begins with the language of the Guidelines, considering both the Guidelines and the commentary." *United States v. Panfil*, 338 F.3d 1299, 1302 (11th Cir.2003) (citation omitted). "The language of the Sentencing Guidelines, like the language of a statute, must be given its plain and ordinary meaning," *United States v. Sutton*, 302 F.3d 1226, 1227 (11th Cir.2002), because "[a]s with Congress, we presume that the Sentencing Commission said what it meant and meant what it said," *United States v. Shannon*, 631 F.3d 1187, 1190 (11th Cir.2011) (quotation marks omitted). When interpreting the Guidelines, the Eleventh Circuit applies the "traditional rules of statutory construction, including the prohibition on rewriting statutes." *Shannon*, 631 F.3d at 1189 (citation omitted). If the Sentencing Commission wanted to include additional language limiting the definition of "search" to a Fourth Amendment search, it could have done so. The Sentencing Commission, however, chose not to limit the definition of "search" in the Guidelines. A Fourth Amendment search, therefore, is not required under U.S.S.G. § 2J1.4(b)(1).

Even if this Court entertains Defendant's premise that a "search" under the Guidelines is confined to a Fourth Amendment search, Defendant impersonated a U.S. Marshal for the purpose of conducting a search where he sought "Real-Time Location," or "E911" data, of cell phones belonging to private citizens. Defendant's own representations to T-Mobile acknowledged that the exigent requests were for the purpose of searches when he submitted forms stating, "[t]he urgency of the situation (and/or other factors) renders it unfeasible to obtain a search warrant or probable cause court order" and that a "[search] warrant [was] requested and coming."

Certainly, there has been a robust debate and fluctuation in the law relating to whether the Fourth Amendment applies to various types of location data. The Supreme Court, however, resolved much of the debate in 2012 in *United States v. Jones*, 132 S.Ct. 945 (2012), when it held that "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search" within the meaning of the Fourth Amendment. Following the *Jones* decision, the Department of Justice advises Assistant United States Attorneys to obtain a search warrant when seeking E911 location information on cellular phones. Further, under Department of Justice policy "law enforcement agencies must now obtain a search warrant supported by probable cause" in order to use a cell-site simulator[4] to locate a known cellular device. ("Department of Justice Policy Guidance: Use of Cell-Site Simulator

[4] Cell-site simulators function by transmitting as a cell tower and help identify the location of a cellular device.

Technology" (Sept. 2015), *available at* http://www.justice.gov/opa/file/767321/download (attached as Gov. Ex. 6)). Defendant would not have obtained the E911 location data of his victims without affirming that exigent circumstances required T-Mobile to provide the information before a search warrant could be obtained, and that a search warrant was pending. (*See* Gov. Ex. 7).

Defendant relies on *Davis*, which held that the defendant had no expectation of privacy in business records showing historical cell-site information. *United States v. Davis*, 785 F.3d 498, 511 (11th Cir. 2015) (en banc). Historical cell-site information identifies the tower used to route communications to or from the target phone. *See United States v. Davis*, 785 F.3d 498, 501 (11th Cir.) *cert. denied*, 136 S. Ct. 479, 193 L. Ed. 2d 349 (2015). Taken together with the location of the relevant cell towers, these records permit investigators to determine the general area in which the target phone is located at the time that a communication occurs. *See id*. In contrast, in this case, Defendant sought E911 data, which provides more precise information, in the form of geographic coordinates, about the location of a target phone. (*See e.g.* Gov. Exs. 1, 7). Those precise coordinates pointed to the victim's real-time location (assuming she was with her cell phone). *Davis*, therefore, is distinguishable and does not apply to the facts of this case.

b. The PSR Correctly Concluded the Individual Counts of Conviction Should Not Group Because Each Count Involved Individual Victims

The PSR correctly calculated and applied the multiple count adjustment in this case. (*See* PSR ¶ 49 (citing U.S.S.G. §§ 3D1.2 and 1.4)). Whether 18 U.S.C.

§ 912 offenses are grouped requires a "case-by-case determination" that is "based upon the facts of the case and the applicable guidelines (including specific offense characteristics and other adjustments)." U.S.S.G. § 3D1.2(d). The Guidelines provide that "[a]ll counts involving substantially the same harm shall be grouped together into a single Group." U.S.S.G. § 3D1.2. Providing further guidance, the Guidelines continue:

> Counts involve substantially the same harm within the meaning of this rule:
> (a) When counts involve the same victim and the same act or transaction.
> (b) When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan.
> (c) When one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.
> (d) When the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

Id. Applying § 3D1.2, the Probation Office concluded that because each count involves separate victims, the counts should not be grouped together. (PSR at ¶ 49).

Although counts One through Six of the Indictment are connected by "a common criminal objective or constituting part of a common scheme or plan," the conduct involves separate victims and, therefore, separate harms. U.S.S.G. § 3D1.2(b). Specifically, in each count Defendant impersonated a United States

Marshal in order to obtain the real-time location of at least one unique victim. U.S.S.G. § 3D1.2(a), (b). Defendant then used that information to find the victim, repossess the victim's vehicle, and, as to at least one victim, harass and threaten the victim.

Defendant argues that "all six of his counts group together" because T-Mobile is the only victim and the counts are "connected by a common criminal objective or constituting part of a common scheme or plan." (Doc. 29 at 23-24). The Guidelines explain that a "victim" is the "person who is directly and most seriously affected by the offense." U.S.S.G. § 3D1.2(b). The individuals whose private information was fraudulently obtained by Defendant were the direct victims who were the "most seriously affected" in this case. When an individual's private location information is obtained, and she is thereby exposed to harm by having her precise location known to a non-law enforcement stranger, she is a victim under any definition of the word. In this case, Defendant not only used the location information to find the victims, but also to harass and threaten at least one victim. Importantly, if counts One through Six were not to group, Defendant would receive no incremental punishment for the additional criminal acts. *See* U.S.S.G. § 3D1.2 (d). Under Defendant's reading of the Guidelines, it would not matter if Defendant had impersonated a U.S. Marshal to fraudulently obtain the location information of one victim or one thousand victims; his punishment would be the same. The PSR correctly calculated and applied the multiple count adjustment in this case, and

Defendant's offense level should be increased by five levels under U.S.S.G. § 3D1.4. (*See* PSR at ¶ 49).

c. Defendant Does Not Claim His Criminal History Score Was Incorrectly Calculated and a Downward Departure is Not Warranted

Defendant argues that his criminal history points do not accurately represent his criminal history and propensity to commit additional criminal offenses because the "points are derived from offense conduct that stemmed from incidents involving his then- and subsequently ex-wife, and the resulting entanglement in the judicial system." (Doc. 29 at 26). Defendant received one criminal history point for battering his ex-wife, three points for stalking and harassing his ex-wife, one point for forging a document he submitted to his Probation office, and two points for committing the instant offense while on probation. (*See* PSR ¶¶ 59-63). That Defendant received multiple criminal history points for battering, stalking, and harassing his ex-wife does imply that he is not likely to recidivate. Defendant's criminal conduct is not limited to domestic disputes, rather his criminal acts involving his ex-wife were part of a broader pattern of stalking and harassing victims perpetuated by Defendant. *See infra* Analysis § 2.A. Moreover, Defendant has demonstrated an utter disregard for the law in this case where he pretended to be the law. Defendant does not even argue that the PSR incorrectly calculates his criminal history score. Defendant's criminal history, therefore, is accurately reflected in the PSR.

2. IN THE ALTERNATIVE, THE COURT SHOULD VARY UPWARD AND IMPOSE A SUBSTANTIVELY REASONABLE SENTENCE OF 27 MONTHS UNDER 18 U.S.C. § 3553.

A district court has significant discretion in deciding whether the factors listed in Title 18, United States Code, Section 3553(a) justify a variance from the applicable Guidelines' range at sentencing, and in deciding the extent of an appropriate variance. *United States v. Sharma*, 407 F. App'x 401, 404 (11th Cir. 2011) (citing *United States v. Shaw*, 560 F.3d 1230, 1238 (11th Cir. 2009)). The Court must first correctly calculate the applicable Guidelines' range, and then it may weigh the 3553(a) factors to determine whether a variance is warranted. *United States v. Magana*, 376 F. App'x 892, 893 (11th Cir. 2010). Section 3553(a) requires the sentencing court to consider:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) the need for the sentence imposed—
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner . . . .

18 U.S.C. 3553(a). The weight to accord each of the 3553(a) factors is left to the Court's discretion. *Magana*, 376 F. App'x at 893. In this case, the Court should impose a substantively reasonable sentence of 27 months 18 U.S.C. 3553(a).

A. Defendant's History of Stalking and Harassment and the Nature of the Crimes in this Case Warrant a Commensurate Sentence.

Defendant's history and the nature of his crimes in this case reveal a pattern of harassment, stalking, and threats by Defendant. In 2006, Defendant physically battered his then-wife by kicking her and grabbing her arms. In 2008, Defendant, in the process of repossessing the victim's vehicle, harassed his victim through frequent calls and text messages. Defendant threatened to have the victim arrested and mocked her because of her weight. In 2009, Defendant harassed, intimidated, and conducted surveillance on his ex-wife who had a temporary protective order against him. And in 2015, Defendant harassed "RJ," a victim in this case, by calling her multiple times a day, showing up at her home and at her place of work, and threatening to arrest her.

For the instant offenses, Defendant faces a combined statutory maximum sentence of eighteen years. Defendant's criminal history, his clear pattern of harassing and stalking victims, and the nature of his offenses in this case require a commensurate sentence of 27 months; a sentence that is well below the combined statutory maximum his crimes carry. *See Magana*, 376 F. App'x at 893

(granting upward variance based on violent nature of defendant's crimes and his past history of violence); *United States v. Dukes*, 380 F. App'x 971, 973 (11th Cir. 2010) (affirming upward variance where Defendant had two prior felony convictions).

B. A Commensurate Sentence Will Protect the Public From Further Crimes of the Defendant.

Defendant needs to be incarcerated to keep him from preying on members of the public. He has demonstrated his propensity for harassing, stalking, and threatening victims. A sentence of 27 months, therefore, is necessary "to protect the public from further crimes of the defendant." 18 U.S.C. 3553(a)(2)(C).

C. A Commensurate Sentence Promotes Respect for the Law, Affords Adequate Deterrence, and Provides Just Punishment for the Offense.

Defendant's previous sentence of probation failed to deter his criminal conduct. Defendant also has demonstrated an utter disrespect for the law in this case, where he pretended to be the law. In fact, Defendant blamed his crimes in this case on his feeling that "the Marshals owed [him]" from a previous arrest where he fought with U.S. Marshals. A sentence of 27 months is necessary to promote respect for the law and afford adequate deterrence. 18 U.S.C. 3553(a)(2)(A).

CONCLUSION

For the foregoing reasons, the government respectfully argues that the PSR correctly calculates Defendant's Guideline range of 27 to 33 months' confinement. In the alternative, an upward variance to 27 months pursuant to the factors listed in 18 U.S.C. § 3553(a) is appropriate to ensure Defendant's sentence is commensurate with his criminal history, pattern of conduct, and the crimes in this case.

Respectfully submitted,

JOHN A. HORN
Acting United States Attorney

/s/JOLEE PORTER
Assistant United States Attorney
Provisionally admitted
per Local Rule 83.1(A)(3)
Jolee.Porter@usdoj.gov

Certificate of Service

I served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

Richard Holcomb

February 5, 2016

/s/ JOLEE PORTER

JOLEE PORTER

Assistant United States Attorney

EXHIBIT 1

From: [redacted]
To:
Subject: Fw: [FWD: Location Alert] (John Edens)
Date: Monday, January 26, 2015 3:43:24 PM
Attachments: imageId.png

Frank Lempka
Deputy U.S. Marshal
N/GA
[redacted]

From: [redacted]
Sent: Tuesday, January 6, 2015 7:13 PM
To: Lempka, Frank (USMS)
Subject: Fwd: [FWD: Location Alert] (John Edens)

Sent from my iPhone so please excuse unnatural auto corrects!

Valerie [redacted]
Asset Management Service
[redacted]

Begin forwarded message:

From: "Deputy Marshall Jeff Cromer" <jeff.cromer@gafugitivetaskforce1.net>
Date: October 21, 2014 at 1:25:05 PM CDT
To: [redacted]
Subject: [FWD: Location Alert]

> -------- Original Message --------
> Subject: Location Alert
> From: <Simone.[redacted]@t-mobile.com>
> Date: Tue, October 21, 2014 11:14 am
> To: <Simone.[redacted]@t-mobile.com>

Cc: jeff.cromer@gafugitivetaskforce1.net

Location of 404988[redacted] at 10/21/2014 11:14:28 AM Pacific Daylight Time === Result === Lat: 33.754338 Lon: -84.470077 Uncertainty: 810m https://maps.google.com/maps?q=33.754338,-84.470077

EXHIBIT 2

IN THE SUPERIOR COURT OF FORSYTH COUNTY, GEORGIA **FINAL DISPOSITION**

STATE OF GEORGIA

CASE NO. 10CR0212 AND 10CR0213
(CONSOLIDATED FOR SENTENCING)

VS

OFFENSE(S) 10CR0212 – CT. I: AGGRAVATED STALKING, CT. II: HARASSING PHONE CALLS; 10CR0213 – CT. I: FORGERY 1ST DEGREE

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE
MAR 03 2011
CLERK SUPERIOR COURT

JOHN EDENS

NOVEMBER ADJOURN TERM 2010

X **PLEA**
X NEGOTIATED
X GUILTY ON COUNT(S) I & II 10CR0212
X GUILTY ON COUNT 1 10CR0213
___ (GUILTY)(NOLO) TO LESSER INCLUDED OFFENSE(S) _____ ON COUNT(S) _____

___ **VERDICT (JURY)(NON-JURY)**
___ GUILTY ON COUNT(S) _____
___ NOT GUILTY ON COUNT(S) _____
___ GUILTY OF INCLUDED OFFENSE(S) OF _____ ON COUNT(S) _____

___ **OTHER DISPOSITION**
___ NOLLE PROSEQUI ORDER ON COUNT(S) _____
___ DEAD DOCKET ORDER ON COUNT(S) _____
___ COUNT(S) _____ MERGES INTO COUNT _____ (SEE SEPARATE ORDER)

FELONY SENTENCE

FIRST OFFENDER SENTENCE

WHEREAS, THE DEFENDANT HAS NOT PREVIOUSLY BEEN CONVICTED OF A FELONY NOR USED THE PROVISIONS OF THE FIRST OFFENDER ACT (O.C.G.A. 42-8-60). **NOW, THEREFORE,** THE DEFENDANT CONSENTING HERETO, IT IS HEREBY ORDERED AND ADJUDGED BY THE COURT WITHOUT ENTERING A JUDGMENT OF GUILTY HEREIN THAT FURTHER PROCEEDINGS BE DEFERRED AND THE DEFENDANT IS HEREBY SENTENCED TO CONFINEMENT FOR THE PERIOD OF FIVE (5) YEARS IN THE STATE PENAL SYSTEM, OR SUCH OTHER INSTITUTION AS THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS MAY DIRECT, TO BE COMPUTED AS PROVIDED BY LAW. **IT IS FURTHER ORDERED** THAT DEFENDANT PAY A TOTAL FINE OF $ 2000; AND THE FOLLOWING SURCHARGES: P.O.S.T.: $ 50; JAIL: $ 200; V.A.P.: $ 100; D.A.T.E.: $ ---; D.U.I.: $ ---; S.I.T.F.: $ ---; LAW LIBRARY FEE: $ 5; CRIME LAB FEE: $ 50; INDIGENT DEFENSE FUND $ 200

IT IS THE FURTHER ORDER OF THE COURT:

X 1) THAT THE SENTENCE MAY BE SERVED ON PROBATION AS TO COUNT(S) I & II OF 10CR0212 AND CT. I OF 10CR0213;

_____ 2) THAT UPON SERVICE OF _____ AS TO COUNT(S) _____, THE REMAINDER OF _____ MAY BE SERVED ON PROBATION;

PROVIDED, THAT THE DEFENDANT COMPLIES WITH THE FOLLOWING GENERAL, SPECIAL, AND OTHER CONDITIONS HEREIN IMPOSED AS PART OF THIS SENTENCE, INCLUDING THOSE SPECIAL CONDITIONS LISTED ON THE REVERSE SIDE OF THIS SENTENCE WHICH BY REFERENCE ARE MADE A PART OF THIS SENTENCE. UPON FULFILLMENT OF THE TERMS OF THIS SENTENCE, OR UPON RELEASE OF THE DEFENDANT BY THE COURT PRIOR TO THE TERMINATION OF THIS SENTENCE, THE DEFENDANT SHALL STAND DISCHARGED OF ABOVE OFFENSE(S) WITHOUT COURT ADJUDICATION OF GUILT AND SHALL BE COMPLETELY EXONERATED OF GUILT OF SAID OFFENSE(S) CHARGED.

IT IS THE FURTHER ORDER OF THE COURT, AND THE DEFENDANT IS HEREBY ADVISED, THAT THE COURT MAY AT ANY TIME REVOKE OR MODIFY ANY CONDITIONS OF THIS PROBATION AND/OR DISCHARGE THE DEFENDANT FROM PROBATION. THE DEFENDANT SHALL BE SUBJECT TO ARREST FOR VIOLATION OF ANY CONDITION OF PROBATION HEREIN GRANTED. IF SUCH PROBATION IS REVOKED, THE COURT MAY ENTER AN ADJUDICATION OF GUILT AS TO THE ABOVE OFFENSE(S) AND PROCEED TO SENTENCE THE DEFENDANT TO THE MAXIMUM SENTENCE AS PROVIDED BY THE LAW, WITH OR WITHOUT CREDIT FOR TIME SERVED ON PROBATION.

LET A COPY OF THIS ORDER BE FORWARDED TO THE DEPARTMENT OF CORRECTIONS, GEORGIA CRIME INFORMATION CENTER, AND THE IDENTIFICATION DIVISION OF THE FEDERAL BUREAU OF INVESTIGATION.

GENERAL CONDITIONS OF PROBATION

1) DO NOT VIOLATE THE CRIMINAL LAWS OF ANY GOVERNMENTAL UNIT.
2) AVOID INJURIOUS AND VICIOUS HABITS; ESPECIALLY ALCOHOLIC INTOXICATION, AND USE OF NARCOTICS OR OTHER DANGEROUS DRUGS UNLESS PRESCRIBED LAWFULLY.
3) AVOID PERSONS OR PLACES OF DISREPUTABLE OR HARMFUL CHARACTER.
4) REPORT TO THE PROBATION OFFICER AS DIRECTED AND PERMIT SUCH OFFICER TO VISIT YOU AT HOME OR ELSEWHERE.
5) WORK FAITHFULLY AT SUITABLE EMPLOYMENT INSOFAR AS MAY BE POSSIBLE.
6) DO NOT CHANGE YOUR PLACE OF ABODE, MOVE OUTSIDE THE JURISDICTION OF THE COURT, OR LEAVE THE STATE FOR ANY PERIOD OF TIME WITHOUT PRIOR PERMISSION OF THE PROBATION OFFICER.
7) SUPPORT YOUR LEGAL DEPENDENTS, IF ANY, TO THE BEST OF YOUR ABILITY.
8) SUBMIT TO EVALUATIONS AND TESTING RELATING TO REHABILITATION AND PARTICIPATE IN AND SUCCESSFULLY COMPLETE REHABILITATIVE PROGRAMMING AS DIRECTED BY THE DEPARTMENT OF CORRECTIONS.

OTHER SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ORDERED THAT DEFENDANT PAY APPOINTED ATTORNEY FEES AS APPROVED, NOT TO EXCEED $ ---; RESTITUTION OF $ ---; AND A $32.00 MONTHLY PROBATION FEE. ALL COURT-ORDERED MONIES SHALL BE PAID TO THE GEORGIA DEPARTMENT OF CORRECTIONS WITHIN 60 MONTHS AT THE RATE OF $ 125 PER MONTH, BEGINNING 3/25/11.

SPECIAL CONDITIONS OF PROBATION

IN ACCORDANCE WITH O.C.G.A. §42-8-34.1, THE COURT HEREBY IMPOSES THE FOLLOWING SPECIAL CONDITIONS OF PROBATION. THE VIOLATION OF ANY OF THESE CONDITIONS COULD RESULT IN THE COURT REVOKING THE PROBATION AND REQUIRING THE DEFENDANT TO SERVE THE BALANCE OF THE SENTENCE IN CONFINEMENT.

IT IS FURTHER ORDERED THAT THE DEFENDANT:

(1) SHALL NOT TAKE INTO HIS/HER BODY ANY SUBSTANCE PROHIBITED OR CONTROLLED BY ANY LAW OF THE STATE OF GEORGIA OR THE UNITED STATES EXCEPT PURSUANT TO A PHYSICIANS' PRESCRIPTION WHICH SHALL BE SUBMITTED TO THE PROBATION OFFICER FOR INSPECTION AND COPY PRIOR TO INGESTING ANY OF THE PRESCRIBED SUBSTANCES.

(2) SHALL, FROM TIME TO TIME, UPON ORAL OR WRITTEN REQUEST BY THE PROBATION OFFICER PRODUCE A SPECIMEN OF ANY BODILY SUBSTANCE FOR ANALYSIS FOR THE PRESENCE OF A SUBSTANCE PROHIBITED BY ANY LAW OF THE STATE OF GEORGIA OR THE UNITED STATES. THIS WILL ALSO INCLUDE ETG TESTING.

(3) SHALL SUBMIT TO A SEARCH OF HIS/HER PERSON, HOUSES, PAPERS, AND/OR EFFECTS AS THESE TERMS OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION ARE DEFINED BY THE COURTS, ANY TIME OF THE DAY OR NIGHT, WITH OR WITHOUT A SEARCH WARRANT, WHENEVER REQUESTED TO DO SO BY A PROBATION OFFICER OR A DESIGNATED LAW ENFORCEMENT OFFICER AND HE/SHE SPECIFICALLY CONSENTS TO THE USE OF ANYTHING SEIZED AS EVIDENCE IN ANY JUDICIAL PROCEEDINGS OR TRIAL.

(4) SHALL REPORT ALL ARRESTS FOR ANY REASON TO THE PROBATION OFFICER WITHIN FORTY-EIGHT (48) HOURS.

(5) SHALL NOT POSSESS ANY ALCOHOLIC BEVERAGES, FIREARMS, OR ILLEGAL CONTROLLED SUBSTANCES, NOR OCCUPY ANY RESIDENCE OR VEHICLE WHERE SUCH IS PRESENT.

(6) SHALL PERFORM 120 HOURS OF COMMUNITY SERVICE AT THE RATE OF NOT LESS THAN EIGHT (8) HOURS PER WEEK, OR AS OTHERWISE DIRECTED BY THE PROBATION OFFICER.

(7) SHALL NOT CONSUME ***ANY*** ALCOHOLIC BEVERAGES, TO INCLUDE ANY OVER-THE-COUNTER MEDICATIONS CONTAINING ALCOHOL.

(8) SHALL AVOID ANY CONTACT: PERSONAL, BY TELEPHONE, MAIL OR OTHERWISE WITH VICTIMS NICOLE HALPIN WITH GEORGIA PROBATION MANAGEMENT, LISA EDENS, RON VAVALA OR DR. SANDRA WILLIAMS.

(9) THE DEFENDANT MUST ENTER AND SUCCESSFULLY COMPLETE A FAMILY VIOLENCE INTERVENTION PROGRAM AS DIRECTED BY THE PROBATION OFFICER.

10CR0212 COUNT I: 5 YEARS PROBATION
10CR0212 COUNT II: 12 MONTHS PROBATION CONCURRENT
10CR0213 COUNT I: 5 YEARS PROBATION CONCURRENT

THE DEFENDANT WAS REPRESENTED BY THE HONORABLE JEFF PURVIS, ATTORNEY AT LAW, FORSYTH COUNTY.

SO ORDERED THIS 25TH DAY OF FEBRUARY, 20 11.

JUDGE, SUPERIOR COURT

CERTIFICATE OF SERVICE...THIS IS TO CERTIFY THAT A TRUE AND CORRECT COPY OF THIS SENTENCE HAS BEEN DELIVERED IN PERSON TO THE DEFENDANT, WHO HAS BEEN DULY INSTRUCTED REGARDING THE CONDITIONS AS SET FORTH HEREIN.

THIS 25TH DAY OF FEBRUARY, 20 11.

PROBATION OFFICER

COPY RECEIVED AND INSTRUCTIONS REGARDING SENTENCE AND CONDITIONS ACKNOWLEDGED.

THIS 25TH DAY OF FEBRUARY, 2011.

PROBATIONER

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

JESSICA HARTUNG, Plaintiff, vs. J.D. BYRIDER, INC., JD BYRIDER OF CHANDLER; CARNOW ACCEPTANCE COMPANY; JOHN ANDERSON; and T-MOBILE USA INC and DOES 1 through 10 inclusive, Defendants.	1:08-cv-00960 AWI GSA FINDINGS AND RECOMMENDATIONS REGARDING AMENDED MOTION FOR DEFAULT JUDGMENT (Document 72)

Plaintiff Jessica Hartung ("Plaintiff") filed the instant Amended Motion for Default Judgment against Defendant John Anderson, aka, John Edens, on March 24, 2009. No opposition to the motion was filed. A damages hearing was held on May 15, 2009. Plaintiff's counsel Jeremy S. Golden appeared telephonically on behalf of Plaintiff. Plaintiff also personally appeared. Plaintiff's counsel subsequently filed a declaration on May 20, 2009, as well as a supplemental brief on May 23, 2009. Having considered all of the pleadings and the evidence in this case, the Court recommends that Plaintiff's Motion for Default Judgment be GRANTED IN PART.

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BACKGROUND

On March 11, 2008, Plaintiff filed a complaint in the United States District Court, Northern District of California against Defendants J.D. Byrider, Inc., JD Byrider of Chandler, Carnow Acceptance Company, John Anderson, T-Mobile USA, Inc., and Does 1 through 10.[1] The Complaint alleges violations of the Fair Debt Collection Practices Act 15 U.S.C. § 1692, et seq. (Hereinafter, "FDCPA") (first cause of action), California's Rosenthal Fair Debt Collect Practices Act, Cal. Civ. Code § 1788 et seq (Hereinafter, "Rosenthal Act") (the second cause of action), negligence (third and forth causes of action), and invasion of privacy (fifth cause of action).

According to the complaint, Plaintiff purchased a used car from J.D. Byrider and obtained financing from CNAC. She fell behind on her payments in October 2007. J.D. Byrider and CNAC allegedly assigned her debt to Defendant Anderson for collection. On or about January 14, 2008, Anderson allegedly contacted T-Mobile and identified himself as Plaintiff's father requesting that T-Mobile add him as a user on Plaintiff's T-Mobile account. Thereafter, Defendant allegedly used information obtained from T-Mobile including Plaintiff's home address to begin unlawful and harassing collection attempts by frequently calling and text messaging Plaintiff.

Specifically, the complaint alleges that on January 16, 2008, through January 22, 2008, Anderson began calling Plaintiff in an attempt to collect the debt. On more than one occasion, Anderson called and/or sent text messages to Plaintiff several times a day in a harassing manner. Plaintiff told Anderson to cease and desist several times. Over the course of these five days, Defendant allegedly sent Plaintiff a total of 17 messages in which he was extremely angry, menacing, and intimidating. These messages included the following:

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[1] In July 2008, the parties stipulated to dismiss defendant Grace Auto, Inc, which was erroneously sued and served as J.D. Byrider of Chandler (Doc. 30). On September 9, 2008, Defendants Byrider Franchising, Inc. (erroneously sued and served as J.D. Byrider, Inc.) and Grace Finance, Inc. d/b/a CNAC (erroneously sued and served as Carnow Acceptance Company) filed a motion to stay the proceedings and compel arbitration. On October 17, 2008, this court issued Findings and Recommendations recommending that the motion to compel arbitration and the motion to stay the proceedings be granted as to these defendants. These Findings and Recommendations were adopted by Chief Judge Anthony W. Ishii on December 17, 2008. T-Mobile USA was dismissed from this case on December 9, 2008 pursuant to a settlement agreement (Docs. 45 and 60).

1) On January 16, 2008, Anderson falsely stated he was an attorney hired by the Defendant CNAC and claimed that he was hired to "smooth out" issues between Defendant CNAC and Plaintiff;

2) On January 17, 2008, Anderson called Plaintiff and stated that he knew her T-MOBILE bill was being sent to her address in Modesto;

3) On January 17, 2008, Plaintiff told Anderson to cease and desist communication and ended the conversation;

4) After Plaintiff told Anderson to cease and desist communication he called her back continuously. Plaintiff instructed Anderson to cease, each time to no avail;

5) Anderson falsely stated that he would have Plaintiff arrested if she did not let him have the car;

6) On January 17, 2008, Anderson sent the following text message to Plaintiff : "Turn the car in or I [sic] send the Sheriff, you [sic] illegally took the car out of state I cant [sic] verify insurance or address." Received 11:15 am, sender 5000-John;

7) On January 17, 2008, Anderson sent the following text message to Plaintiff: "[Y]ou have various bills going to crows landing. I can tell by talking to you you're smarter than this. So [sic] I guess we'll see." Received 11:19 am, sender 5000-John;

8) On January 17, 2008, Anderson sent the following test message to Plaintiff: "you [sic] might want to tell your amigo Rudy to get a job, I just faxed maricopa [sic] paperwork to stanislaus sheriff department [sic]." Received 11:35 am, sender 5000-John;

9) On January 17, 2008, Anderson sent the following text message to Plaintiff: "I want o make thsi [sic] clear, your money is not what I want. I want the car. If you don't give it up, get yourself some bail money." Received 11:37 am , sender 5000-John;

10) After Plaintiff received this text message she was in great fear and told the caller to stop calling. She then called the police;

11) On January 17, 2008, Anderson sent the following text message to Plaintiff: "Calling [sic] me will not help you. Park the car [sic] tell Rudy to warm up the Impala." Received 11:39 am,

sender 5000-John;

12) On January 17, 2008, Anderson sent the following text message to Plaintiff: "[I]t upsets me a smart girl like you is iwith [sic] a guy is [sic] doing nothing at 11:30 a.m. but when he doesn't have a free car he'll leave." Received 11:43 am sender 5000-John;

13) On January 17, 2008, Anderson sent the following text message to Plaintiff: "[M]ake sure and have the [sic] deputy call me, nad [sic] show him your DL too." Received 12:03 p.m. sender 5000;

14) After Plaintiff received this text message the deputy sheriff arrived at her house. The deputy sheriff called Anderson leaving a voice mail message ordering Anderson to stop contacting Plaintiff;

15) On or about January 17, 2008, Plaintiff called CNAC and spoke to Rose and explained that she felt harassed and intimidated and requested that Anderson cease and desist;

16) On January 18, 2008, Anderson called Plaintiff four times. In three of those conversations, Plaintiff instructed Anderson to cease and desist and stated that she would have to call the police again;

17) On January 18, 2008, Anderson sent the following text message to Plaintiff: "[D]oes mr. bogens[sic] know you have no DL, no insurance, and no registartion [sic] yet your [sic] on the road doing work." Received 1:38 p.m. sender 5000-John;

18) On January 18, 2008, Anderson placed an unanswered call to Lawrence Borgens, Plaintiff's employer;

19) On January 19, 2008, Anderson sent the following text message to Plaintiff : "Lawrence Borgens will see me first thing Monday, you should not have been rude to my employee." Received 12:25 pm, sender 5000-R&J Recovery;

20) On January 19, 2008, Anderson sent the following text message to Plaintiff: "[W]hat makes you think you can drive a car you don't pay for? My company tows for the local police and sheriff both." Received 12:27 pm, sender 5000-R&J Recovery;

21) On January 19, 2008, Anderson sent the following text message to Plaintiff:

"[A]pparently you think you're above the law. I don't wnt[sic] any trouble. [W]e're just doing our job." Received 12:29 pm, sender 5000-R&J Recovery;

22) On January 19, 2008, Anderson sent the following text message to Plaintiff: "[T]he guy in [G]eorgia has been removed from the case. Now its my entire staff versus you." Received 12:32 pm, Sender 5000-R&J Recovery;

23) On January 19, 2008, Anderson sent the following text message to Plaintiff: "[T]hat lady you were rude to means a lot to me I think an apology is in order." Received 12:33 pm, Sender-R & J Recovery;

24) On January 19, 2008, Plaintiff spoke to an employee at R & J Recovery and he indicated that they had not sent any text messages to the Plaintiff;

25) On January 20, 2008, Anderson sent the following text message to Plaintiff: "[I]'m hoping to God you see the light and figure out I will just take your car." Received 5:49 pm, Sender 5000- R & J Recovery;

26) On January 20, 2008, Anderson sent the following message to Plaintiff : "Porky Pig 200 pound slob in a double wide. Figure. I got some picture messages of you today. Oink oink. Ryan must like mountain climbing." Received 5:57 pm, Sender 5000;

27) On January 22, 2008, Plaintiff called Anderson and told him to stop calling. In response, Anderson stated, "I don't have to stop it's my job";

28) On or about January 22, 2008, Plaintiff called CNAC and spoke to Rose who stated that CNAC hired Anderson and that she will get Anderson to cease and desist.

As a result of the above, Plaintiff alleges she was forced to provide personal information to her employer and friends so they would not reveal private information, as well as to ensure the safety of those involved. Declaration of Jessica Hartung dated March 24, 2009 at pg. 5. (Doc. 74). Plaintiff subsequently voluntarily surrendered the car. Id. In addition, Plaintiff contends that she suffered tenseness, headaches, nervousness, fear, worry, unhappiness, loss of sleep, nightmares, crying jags, loss of appetite, loss of concentration, loss of enjoyment of life, shortness of breath, humiliation, and extreme emotional distress. Id. Moreover, Plaintiff alleges that Defendant's actions

aggravated her anxiety disorder, post-traumatic stress disorder, back injury, and asthma which forced her to obtain medication from her psychiatrist. Id.

Defendant was served with a copy of the complaint on April 9, 2008. (Doc. 8). Defendant failed to respond to the complaint or otherwise appear in this action. On September 30, 2008, Plaintiff requested entry of default against Defendant. (Doc 49). The Clerk of the Court entered Defendant's default on October 1, 2008. (Doc. 50). On November 14, 2008, Plaintiff filed a Motion for Default Judgment against John Anderson, aka, John Edens. (Doc. 58). The matter was set for a damages hearing, however, the Court became aware that Defendant may not have been properly served with the complaint and issued an order on January 14, 2009, informing Plaintiff of the difficulties with the proof of service. (Doc. 65). On January 21, 2009, Defendant subsequently moved to withdraw the Motion for Default. (Doc. 66). The court granted Plaintiff's Motion to Withdraw the Motion for Default Judgment and vacated the default issued on October 1, 2008. (Doc. 68).

Plaintiff subsequently served Defendant with the summons, complaint, and statement of damages on January 29, 2009. (Doc. 69). The Defendant failed to appear in this action again and default was entered by the Clerk of the Court against him on March 16, 2009. (Doc. 71). Plaintiff filed the instant Amended Motion for Default Judgment on March 23, 2009. (Doc. 72). Defendant John Anderson is named in the first, second, and fifth causes of action of the complaint for violations of the of the FDCPA, the Rosenthal Act, and for Invasion of Privacy, respectively. Based on these violations, Plaintiff seeks a total award of $58,929.00. More specifically, Plaintiff seeks the following relief:

1. $50,000.00 in emotional damages;
2. $2,000.00 in statutory damages;
3. Attorneys' fees in the amount of $6,579.00; and
5. Costs in the amount of $350.

DISCUSSION

Plaintiff moves for entry of default judgment pursuant to Federal Rule of Civil Procedure

55(b)(2), which provides that judgment may be entered:

> (2) By the Court. In all other cases, the party must apply to the court for default judgment. A default judgment may be entered against an infant or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared. If the party against whom default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing. The court may conduct hearings or make referrals - preserving any federal statutory right to a jury trial - when, to enter or effectuate judgment, it needs to : (A) conduct an account; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter.

Upon default, the well-pleaded allegations of the complaint relating to liability are taken as true. Dundee Cement Co. v. Highway Pipe & Concrete Products, Inc. 722 F.2d 1319, 1323 (7th Cir. 1983); TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-918 (9th Cir. 1987). Thus, "[a]t the time of entry of default, the facts alleged by the plaintiff in the complaint are deemed admitted." 10 J. Moore, Moore's Federal Practice §55.11 (3d ed. 2000). While the allegations related to liability are true, the amount of damages suffered are ordinary not. Dundee Cement Co. v. Highway Pipe & Concrete Products, Inc. 722 F.2d at 1323. However, a judgment by default may be entered without a hearing on damages if the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits. Id. In this case, Plaintiff is seeking a considerable amount in emotional distress damages which is not capable of being ascertained from the declaration submitted. Accordingly, the Court held a damages hearing on May 15, 2009.

A. Plaintiff is Entitled to Entry of Default Judgment

Factors which may be considered by courts in exercising discretion regarding the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-1472 (9th Cir. 1986).

The Court has evaluated the factors listed above and finds that the facts in this case weigh

heavily in favor of granting default judgment. First, Plaintiff would suffer prejudice if the court does not enter default judgment because she would have no other means of recovery. Second, as outlined below, Plaintiff's complaint properly alleges the necessary elements of each cause of action which satisfies the second and third factors; the merits of the substantive claim, and the sufficiency of the complaint. The fourth factor is also met since there is a significant amount of money at stake in this action in the form of actual damages, which as discussed below, are authorized under law.

The fifth factor, the possibility of a dispute concerning the material facts is also met. Defendant never appeared in this action. Therefore, Defendant is not in a position to defend the action, or to dispute material facts. Given Defendant's non-appearance, the sixth factor is also satisfied since there is also no evidence that default resulted from excusable neglect. With regard to the last factor, although cases should be decided on the merits when reasonably possible, such preference alone is not dispositive. PepsiCo Inc., v. California Security Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Defendant's failure to respond and defend this action, renders a decision on the merits impractical. Finally, Defendant does not appear to be an infant or incompetent person, and is not in the military service or otherwise exempted under the War and National Defense Servicemember's Civil Relief Act.

B. Sufficiency of the Complaint and Damages

1. The FDCPA

The FDCPA was enacted in response to inadequate laws to redress injuries to consumers from abusive, deceptive, and unfair debt collection practices by debt collectors. 15 U.S.C. § 1692. The FDCPA broadly prohibits: (1) unfair or unconscionable collection methods, (2) conduct which harasses, oppresses, or abuses any debtor, and (3) any false, deceptive, or misleading statements in connection with the collection of a debt. 15 U.S.C. § 1692d-f. To bring a valid FDCPA action, the defendant must be a "debt collector" and the plaintiff must be a "consumer" within meaning of FDCPA. 15 U.S.C.A. § 1692a. The FDCPA creates a private right of action against a debt collector. 15 U.S.C. § 1692k.

Anderson is a debt collector and Hartung is a consumer under the FDCPA. Beginning on

January 16, 2008, Defendant unlawfully obtained Plaintiff's contact information from a third party. Thereafter, he sent a series of harassing messages and used continuous abusive tactics to collect a debt including misrepresenting that he was an attorney, threatening to contact Plaintiff's employer, and making a phone call to Plaintiff's employer. Furthermore, Defendant Anderson told Plaintiff that he would have her arrested if she did not pay the debt or return the car, called her names, told Plaintiff he had taken pictures of her, and made inappropriate sexual comments.

Based on the allegations in complaint, Anderson's actions violate the following sections of the FDCPA: 15 U.S.C. § 1692c (b) (prohibits the improper use of third party contacts); 15 U.S.C. § 1692d (prohibits harassment or abuse); 15 U.S.C. § 1962d (2) (prohibits profane language and/or other abusive language); 15 U.S.C. § 1692d (5) (prohibits repeated telephone calls); 15 U.S.C. § 1692e (prohibits false representations); 15 U.S.C. § 1692e (2)(A) (prohibits false impression of legal status of debt); 15 U.S.C. § 1692e (3) (prohibits false impression that an individual is an attorney); 15 U.S.C. § 1692e (4) (prohibits false impression that nonpayment will result in arrest); 15 U.S.C. § 1692e (5) (prohibits threat to take action that cannot be legally taken); 15 U.S.C. § 1692e (7) (prohibits giving a consumer the impression that they have committed a crime) 15 U.S.C. § 1692e (10) (generally prohibits false representations and deceptive means); 15 U.S.C. § 1692f (prohibits unfair and unconscionable means to collect a debt); and 15 U.S.C. § 1692f (6) (prohibits threats to unlawfully disable Plaintiff's property).

a. Actual Damages based on the FDCPA

Plaintiff requests actual damages in the amount of $50,000. Under the FDPCA actual damages may be awarded to a Plaintiff as a result of a defendant's failure to comply with the Act. 15 U.S.C. § 1692k(a)(1). However how to interpret the "actual damage" language with respect to emotional distress is a controversial issue that has not yet been addressed by the Ninth Circuit. Bolton v. Pentagroup Financial Services, LLC., 2009 WL 734038 at *10-11 (E.D. Cal., Mar 17, 2009); Costa v. National Action Financial Services, 2007 WL 4526510 at *7-8 (E.D. Cal., December 19, 2007). District courts nationally have issued conflicting decisions regarding this issue. Some courts have determined that under the FDPCA a Plaintiff is not required to meet the state law

standards for intentional infliction on emotional distress ("IIED"). Costa v. National Action Financial Services, 2007 WL 4526510 at *7-8. Courts that do not require state law requirements have analogized the FDCPA to the Fair Credit Reporting Act. ("FCRA"). Id. citing, Panahiasal v. Gurney, 2007 WL 738642 at *2 (N.D. Cal. March 8, 2007); Donahue v. NFS, Inc., 781 F. Supp. 188 (W.D.N.Y. 1991)("A plaintiff's right to recovery of actual damages under the FDCPA predicated on claimed emotional distress remains independent of the plaintiff's right, if any, to recover for emotional distress under state law"); see also Clodfelter v. United Processing, Inc., 2008 WL 4225557 (C.D. Ill. Sept. 12, 2008).

Alternatively, other courts, including two in this district, require a plaintiff to prove a claim for IIED under state law in order to collect damages for emotional distress. Bolton v. Pentagroup Financial Services, LLC., 2009 WL 734038 at *10-11 (Plaintiff's transitory stress failed to meet state IIED standard); Costa v. National Action Financial Services, 2007 WL 4526510 at *7-8 (same); See also Pflueger v. Auto Finance Group, Inc., 1999 WL 33738434 at *4 (C.D. Cal., 1999); cf. Carrigan v. Central Adjustment Bureau, Inc., 502 F. Supp. 468, 470-471 (N.D. Ga. 1980) (holding Plaintiff's FDCPA's claim for intentional infliction of mental distress met state requirements under Florida tort law); Venes v. Professional Service Bureau, Inc., 353 N.W. 2d 671, 674-675 (Minn. Ct. App. 1984) (finding Plaintiff satisfied state elements of IIED and could thus recover emotional distress damages).

Consistent with the decisions issued in this district and the approach adopted by Chief Judge Ishii, the Court will apply the California IIED standard. See, Bolton v. Pentagroup Financial Services, LLC., 2009 WL 734038 at *10-11. Under California law, to prove a claim for IIED, a plaintiff must show: (1) extreme and outrageous conduct by the defendant; (2) extreme or severe emotional distress to the plaintiff; and (3) actual and proximate causation between the two. Spinks v. Equity Residential Briarwood Apartments, 171 Cal.App.4th 1004, 1045, Cal. App 6 Dist. (2009) citing Firestone Tire & Rubber Co., 6 Cal.4th 965, 1001, 25 Cal. Rptr. 2d 550 (1993). To be outrageous, the defendant's conduct must be either intentional or reckless, and it must be so extreme as to exceed all bounds of decency in a civilized community. Id. "Behavior may be considered

outrageous if a defendant : (1) abuses a relation or position which gives him power to damage the plaintiff's interest; 2) know the plaintiff is susceptible to injuries through mental distress, or 3) acts intentionally or unreasonably with the recognition that the actions are likely to result in illness through mental distress." Kiseskey v. Carpenters' Trust for So. California, 144 Cal. App. 3d 222, 230, 192 Cal Rptr. 492 Cal. App. 2 Dist. (1983). Courts have long recognized in collection cases that the very nature of collection efforts often cause a debtor to suffer emotional distress. Bundren v. Superior Court, 145 Cal. App. 3d 784, 193 Cal. Rptr 671 (1983); Bowden v. Spiegel, 96 Cal. App. 2d 793, 789 (1950). To be actionable as an IIED claim, the conduct must go beyond "all reasonable bounds of decency." Bundren v. Superior Court, 145 Cal. App. 3d at 789.

When considering whether a Plaintiff has suffered severe emotional distress, courts have noted that "complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining its severity. It appears therefore, that in this context, severe emotional distress means, emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it." Fletcher v. Western National Life Ins. Co., 10 Cal.App.3d 376, 397, 89 Cal.Rptr. 78, Cal.App.4th Dist. (1970). Such injury may include all highly mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry and nausea. Golden v. Dungan 20 Cal. App.3d 295, 311, 97 Cal. Rptr. 577 (1971); Fletcher v. Western Life Ins., Co., 10 Cal. App. 3d at 397.

There is no requirement under California law that a Plaintiff provide corroborating evidence in order to establish a claim for emotional distress. [2] However, a damages award cannot be based

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[2] In other circuits involving violations of the FDCPA, when courts have not required a Plaintiff to meet the more stringent state IIED requirements, a plaintiff alleging intangible loss must set forth evidence with specificity including corroborating testimony or medical or psychological evidence in support of the damage award. Cousins v. Trans Union Co., 246 F. 3d 359, 371 (5th Cir. 2001). Unsupported self-serving testimony by a plaintiff is not sufficient. Wantz v. Experian Info. Systems, 386 F. 3d 829, 834 (7th Cir. 2004), aborgated on other grounds in Safeco Ins. Co. of America v. Burr, 551 U.S. 47

solely on conjecture or speculation. There must be competent proof of emotional distress suffered by the Plaintiff. Austero v. Washington National Ins. Co. 132 Cal.App.3d 408, 417, 182 Cal.Rptr. 919, (1982) disapproved on another ground in Brandt v. Superior Court, 37 Cal.3d 813, 816-817, 210 Cal.Rptr. 211, 693 P.2d 796. (1985). Testimony of the plaintiff alone will suffice. Tan Jay International, Ltd. v. Canadian Indemnity Co. 198 Cal.App.3d 695, 708, 243 Cal.Rptr. 907 (1988); see also, Young v. Bank of America National Trust & Savings Assoc., 141 Cal. App. 3d 108, 190 Cal. Rptr., 122 (1983) (Plaintiff's testimony that she experienced embarrassment, shame, helplessness, nervousness, headaches, insomnia, and frustration because of bank's failure to adjust her credit card was sufficient evidence warranting jury instruction on emotional distress damages).[3]

b. Summary Plaintiff's Testimony

At the hearing on May 15, 2009, Plaintiff testified that she had been diagnosed with post-traumatic stress disorder and generalized anxiety disorder following her service in the United States Air Force in April 2005. At the time of the incident alleged in the complaint, she was under a psychiatrist's care for the above conditions and also had history of migraine headaches. Prior to this incident, she would suffer panic attacks in which she experienced bouts of extreme panic, crying and anxiety induced asthma attacks which resulted in difficulty breathing. She had been prescribed Prozac, Valium and Albuterol to control these conditions at the time she was contacted by Defendant John Anderson. Additionally, she was prescribed Pergaset to treat her migraine headaches. While she was taking the Prozac daily, the Valium, Albuterol, and Pergaset, was only prescribed on an as

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(2007).

[3] While the Ninth Circuit has not specifically ruled on whether corroborating testimony or other evidence is necessary to establish emotional distress damages pursuant to FDCPA, the court has held that emotional distress damages generally may be proven in a number of ways, including through corroborating medical evidence or non-expert testimony establishing "manifestations of mental anguish [and the occurrence of] significant emotional harm. Dawson v. Wash. Mut. Bank., F.A. 390 F. 3d 1139, 1149-50 (9th Cir. 2004) (finding that damages for emotional distress are available under bankruptcy law when a creditor violates the automatic stay that follows from the filing of a bankruptcy petition.). Emotional distress damages can also be readily apparent without corroborative evidence where a plaintiff was a victim of egregious conduct or where the "circumstances make it obvious that a reasonable person would suffer significant emotional harm. Id. at 1150; See also, Zhang v. American Gem Seafoods, 339 F. 3d 1020, 1040 (9th Cir. 2003) (upholding emotional distress damages based only on testimony.); Fausto v. Credigy Services Corp., et al., 598 F. Supp. 1049 (N.D. Cal., Feb. 17, 2009).

needed basis which she had not used regularly prior to this incident.

After Defendant contacted Plaintiff, Plaintiff began experiencing severe panic attacks which resulted in uncontrollable crying throughout the day, insomnia, headaches, lack of energy, a loss of appetite and difficulty breathing. She needed to take Valium tablets twice a day to calm her down, as well as use her Albuterol inhaler more frequently. She also increased her use of Pergaset to manage her migraine headaches, as well as over the counter medications to help her sleep.

Over the course of the five day period, Plaintiff contacted her psychiatrist because she was afraid she would run out of the Valium. She made an appointment to see her psychiatrist as a result of Defendant's contact. Plaintiff was particularly troubled when she learned that an unauthorized user had been added to her T-Mobile account and contacted the police to report a false identity claim. Moreover, the fact that Defendant was sending her messages about close friends and knew specific personal information about them caused her considerable stress. Finally, Plaintiff was very scared when she received a text message from Defendant indicating that he had taken pictures of her late one evening. This was particularly disturbing because she lives in a rural area, she was home alone, and did not know whether Defendant was outside her house.

Prior to the contact with Defendant, Plaintiff believed that her condition was getting better. However, when she received the text messages from Defendant she "snapped" and did not know what to do. On a scale of 1 to 10 Plaintiff reported that her stress level was the highest it could be. She believes that this incident set her treatment back and resulted in an aggravation of her pre-existing condition. The aggravated symptoms lasted for approximately eight to nine months after Plaintiff surrendered the car. Plaintiff has only recently returned to her level of functioning prior to this incident.

c. Amount of Actual Damages Under the FDCPA

Based on Plaintiff's testimony, the Court finds that she has met the state requirements of an IIED claim as Defendant's conduct goes beyond all reasonable bounds of decency. Defendant engaged in extreme and outrageous conduct including abusing his position of authority as a debt collector to harass, lie and intimidate Plaintiff. He contacting her repeatedly, took pictures of her,

obtained personal information about her and her friends, and fraudulently added himself to Plaintiff's T-Mobile account. It is clear that given the nature and the duration of distress experienced by Plaintiff that she suffered severe emotional distress as a result of Defendant's actions. The severity of her distress is evidenced by her need to take additional prescribed and over the counter medications, as well as the need to consult her psychiatrist about the incident. She experienced panic attacks which exacerbated her asthma, suffered from increased migraine headaches, had difficulty sleeping, and would cry uncontrollably. This incident set Plaintiff's treatment for post-traumatic stress and anxiety disorders back and it has taken Plaintiff several months to return to her prior level of functioning. The distress Plaintiff experienced exceeds that which any reasonable person in a civilized society should endure.

The remaining issue is the amount of actual damages that should awarded in this case. Plaintiff has not provided the Court with any state IIED cases defining an appropriate damages award.[4] Plaintiff has, however, cited Panahiasal v. Gurney, 2007 WL 738642 in support of her request for $50,000 in actual damages. Panahiasal v. Gurney was a case involving two plaintiffs based on violations of the FDCPA. One plaintiff was awarded $50,000 in emotional damages based on abusive debt collection practices which included repeated telephone abuse resulting in embarrassment, fear, anger, panic, humiliation, nervousness, crying fits, difficulty eating and sleeping, and diarrhea. Panahiasal v. Gurney, 2007 WL 738642 at *2. However, the other plaintiff in Panahiasal v. Gurney was only awarded $10,000 after suffering from embarrassment, humiliation, harassment, anger, anxiety, lack of concentration, and stress. Id. Plaintiff has also cited Clodfelter v. United Processing, Inc., 2008 WL 4225557 (C.D. Ill. Sept. 12, 2008) in which a motion for default judgment against a debt collector was granted awarding $351,000 in damages including $100,000 in actual damages. This case involved a debt collection company with a long history of using abusive tactics that called Plaintiff, his family members, and Plaintiff's employer, as well as threatening criminal prosecution for failure to pay a $400 debt.

[4] The Court was unable to locate any California cases identifying the amounts of emotional distress damages awarded in IIED cases involving debt collection actions.

An examination of the cases applying the federal FDPCA standard reveals that the cases cited by Plaintiff are on the high end of the damages award spectrum as most district courts have awarded between $1,000 and $5,000. See, Baruch v. Healthcare Receivable Management, Inc., 2007 WL 3232090 (E.D.N.Y. 2007) ($5,000 awarded when consumer received numerous threatening telephone calls and letters and as a result lost sleep, became depressed and suffered heart problems); Cooper v. Ellis Crosby & Assoc., Inc., 2007 WL 1322380 (D. Conn. 2003) ($3,000 emotional distress damages when debt collector misrepresented he was an investigator from the bank, threatened to call Plaintiff's boss and to subpoena Plaintiff's hard drive on her computer); Gervais v. O'Connell, Harris & Assoc., Inc., 297 F. Supp.2d 435 (D. Conn. 2003) ($1,500 emotional damages awarded when defendant withdrew $2,500 from debtor's bank account and Plaintiff did not seek medical attention but was taking anxiety medication for condition unrelated to Defendant's actions); Chiverton v. Fed. Finance Group Inc., 399 F. Supp. 2d 96 (D. Conn. 2005) (Damages of $5,000 awarded for consumer's emotional distress under the FDCPA for debt collection practices that lasted over a period of several months which included repeated phone calls to consumer's workplace, leading consumer to fear losing his job, as well as directly contacting consumer's supervisor); Teng v. Metropolitan Retail Assoc., 851 F. Supp. 61 (E.D.N.Y. 1994) ($1,000 awarded when debt collector who called plaintiff's place of employment several times and obtained the phone number of plaintiff's supervisor, and identified himself as a city marshal threatening to take away plaintiff's furniture). One jury award of $85,000 in emotional distress damages due to debt collections agency's violation of FDCPA was upheld when violations of the FDCPA had occurred over several months. Nelson v. Equifax Services, LLC, 522 F. Supp. 2d 1222, 1239 (C.D. Cal. 2007).

Here, Defendant's actions were egregious. The Court is also mindful that Plaintiff had existing emotional conditions that were exacerbated by Defendant's conduct resulting in her need to see a psychiatrist and obtain medication. However, even after considering all of these factors, Plaintiff's request for $50,000 appears to be excessive given that Plaintiff was exposed to Defendant's actions for a limited period of time. The Court has considered Plaintiff's declaration

and testimony, as well as the awards given in similar cases. Accordingly, the Court recommends that Plaintiff be awarded $25,000 in actual damages.

d. Amount of Statutory Damages Under the FDCPA

Under the FDCPA, plaintiffs are entitled to statutory damages up to $1,000 pursuant to 15 U.S.C. § 1692(a)(2)(A). A court shall consider among other factors, "the frequency and persistence of the noncompliance, and the extent to which the noncompliance was not intentional." 15 U.S. C. § 1692k(b)(1). The Court has concluded that based on the unanswered allegations in the complaint and the nature of the allegations, Defendant's actions were intentional. Plaintiff is entitled to $1,000 in statutory damages under this provision.

2. The Rosenthal Act

The Rosenthal Act requires an intent that is knowing and willing. Based on the unanswered allegations in the complaint and the nature of the allegations, Defendant's actions were intentional. Moreover, California Civil Code § 1788.17 states that every violation of the FDCPA is ipso facto violation of the Rosenthal Act. Pursuant to Cal. Civ. Code § 1788.30(b), Plaintiff is entitled to $1,000 statutory damage award based on this violation.

3. Invasion of Privacy

In order to recover for the tort of invasion of privacy (intrusion upon seclusion), Plaintiff must prove the following elements : (1) an intentional intrusion (physical or otherwise); 2) on the solitude or seclusion of another; (3) that would be highly offensive to a reasonable person. Panahiasal v. Gurney, 2007 WL 738642 at *2 citing Kuhn v. Account Control Technology, 865 F. Supp. 1443 (D. Nev. 1994). Moreover, "improper conduct in knowingly and intentionally pursuing a person to force payment of a debt, whether or not he owes it, may under some circumstances, give rise to a right to damages for an invasion of privacy." Panahiasal v. Gurney, 2007 WL 738642 at *2 quoting Montgomery Ward v. Larragoite, 467 Pd. 399, 401 (Supreme Court of New Mexico 1970). A number of courts have held that repeated and continuous calls in an attempt to collect a debt give rise to a claim for intrusion upon seclusion. Joseph v. J.J. Mac Intyre Companies, 281 F. Supp. 2d 1156, 1169 (N.D. Ca. 2002), citing, Shulman v. Group W. Prod. Inc., 18 Cal. 4th 200 (1998); See

also, Lowe v. Surpas Resource Corp. et al., 253 F. Supp. 2d 1209 (D. Kan. 2003).

Plaintiff has not requested an award for any damages for this cause of action. Furthermore, while Defendant's abusive conduct meets all elements of this tort, Plaintiff has already been awarded damages for emotional distress under the FDCPA. The Court will not recommend additional damages be awarded based on this cause of action.

4. Attorney's Fees

The FDCPA and the Rosenthal Act specifically authorize an award of attorney's fees to a prevailing plaintiff. 15 U.S.C. § 1692k(a)(3) & Cal. Civil Code. § 1788.30 (c). The Court determines an attorney fee award by calculating the "lodestar figure" which entails taking the numbers of hours reasonably expended on the litigation and multiplying it by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Ferland v. Conrad Credit Corp., 244 F. 3d 1145 (9th Cir. 2001) (In a FDCPA case, district court must calculate awards for attorney's fees using "lodestar" method"). However, the court may enhance or reduce the lodstar figure. Fischer v. SJB-P.D., Inc., 214 F. 3d 1115 (9th Cir. 2004). Additionally, "[a] court is justified in relying on a requesting counsel's recently awarded fees when setting that counsel's reasonable hourly rate." Lowe v. Elite Recovery Solutions, 2008 WL 324777 at *5 (E.D. Cal. Feb. 5, 2008) quoting Abad v. Williams, Cohen & Gray, Inc., 2007 WL 1839914 at *4 (N.D. Cal. 2007).

In the first Motion for Default Judgment, counsel requested $12,240.00 in attorney's fees which included fees for work done on this case related to other defendants. Plaintiff was ordered to file a brief justifying this amount. Plaintiff's counsel has requested $6,579.00 in the current motion and requests fees which apply only to this defendant. He has indicated that hourly billing rate is $295 an hour. However, two courts, including one in this district, reduced this counsel's billing rate to $250 an hour. Lowe v. Elite Recovery Solutions, 2008 WL 324777 at *5 (E.D. Cal. Feb. 5, 2008); Scheuneman v. 1st Credit of America, 2007 WL 1969708 (N.D. Cal. 2007). Counsel's rate was also reduced to $275 an hour in Civitello v. 1st Credit of America, Northern District of California, Case No. CO5-04944.

The Court finds that $250.00 per hour is a reasonable billing rate in this case. A review of

the documents submitted by counsel in support of his request for attorney's fees indicates that he has spent hours 22.1 hours on this case which totals $5,525.00 when the $250 per hour rate is applied. There was also an additional 3.8 hours billed for legal services provided at a rate of $115.00 per hour amounting to $437.00. The Court will also recommend that this request be granted. Accordingly, the Court will recommend that Plaintiff's counsel be awarded at total of $5,962.00 in attorney's fees. The request for $350.00 for other costs is also reasonable.

RECOMMENDATION

For the reasons discussed above, the Court RECOMMENDS that Plaintiff's Amended Motion for Default Judgment in favor of Plaintiff and against Defendant John Anderson, aka John Edens, be GRANTED IN PART and DENIED IN PART for a total award amount of $ 33,312.00 to be broken down as follows ;

2. Plaintiff be AWARDED actual damages in the amount of $25,000;
3. Plaintiff be awarded a total of $2,000.00 in statutory damages including $1,000 under the Rosenthal Act and $1,000 under the FDCPA respectively;
4. Attorneys' fees be awarded in the amount of $5,962.00; and
5. Costs in the amount of $350.

These findings and recommendations are submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B). Within fifteen (15) court days of service of this recommendation, any party may file written objections to these findings and recommendation with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the district judge's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: June 26, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 4

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSICA HARTUNG, Plaintiff, v. J.D. BYRIDER, INC.; JD BYRIDER OF CHANDLER; CARNOW ACCEPTANCE COMPANY; JOHN ANDERSON; and T-MOBILE USA, INC., and DOES 1 through 10 inclusive, Defendants.	1:08-cv-00960 AWI GSA ORDER ADOPTING FINDINGS AND RECOMMENDATIONS ORDER GRANTING DEFAULT JUDGMENT AND DISMISSING DEFENDANTS (Documents 72, 81, & 82)

On June 26, 2009, the Magistrate Judge issued Findings and Recommendations that Plaintiff's Amended Motion for Default Judgment against Defendant John Anderson, aka John Edens, filed on March 24, 2009, be granted in part, and denied in part, for a total award amount of $33,312.00. These Findings and Recommendations were served on all parties appearing in the action, and contained notice that any objections to the Findings and Recommendations were to be filed within fifteen (15) days of the date of service of the order. More than fifteen (15) days have passed and no party has filed objections.

On August 11, 2009, the parties filed a stipulation to dismiss Defendants Byrider Franchising, Inc. (erroneously sued and served as J.D. Byrider, Inc.) and Grace Finance, Inc. dba CNAC (erroneously sued as CarNow Acceptance Company) with prejudice.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court finds that the Findings and Recommendations are supported by the record and proper analysis. The court also believes the stipulated dismissal is in the best interests of the parties and the courts.

Accordingly, IT IS HEREBY ORDERED that:

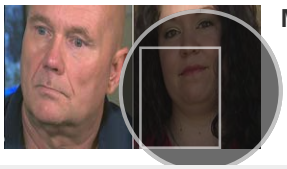
1. The Findings and Recommendations issued on June 26, 2009, are ADOPTED IN FULL;
2. Plaintiff's Amended Motion for Default Judgment in favor of Plaintiff and against Defendant John Anderson, aka John Edens, is GRANTED IN PART and DENIED IN PART for a total award amount of $ 33,312.00 broken down as follows ;
   a. Plaintiff is AWARDED actual damages in the amount of $25,000.00;
   b. Plaintiff is awarded a total of $2,000.00 in statutory damages including $1,000.00 under the Rosenthal Act and $1,000.00 under the FDCPA respectively;
   c. Attorneys' fees are awarded in the amount of $5,962.00; and
   d. Costs in the amount of $350.00.
3. Pursuant to the parties stipulation, Defendants Byrider Franchising, Inc. (erroneously sued and served as J.D. Byrider, Inc.) and Grace Finance, Inc. dba CNAC (erroneously sued as CarNow Acceptance Company) are DISMISSED WITH PREJUDICE.
4. This order having resolved all outstanding claims against all Defendants, the Clerk of the Court is DIRECTED to close this action.

IT IS SO ORDERED.

Dated: August 31, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 5

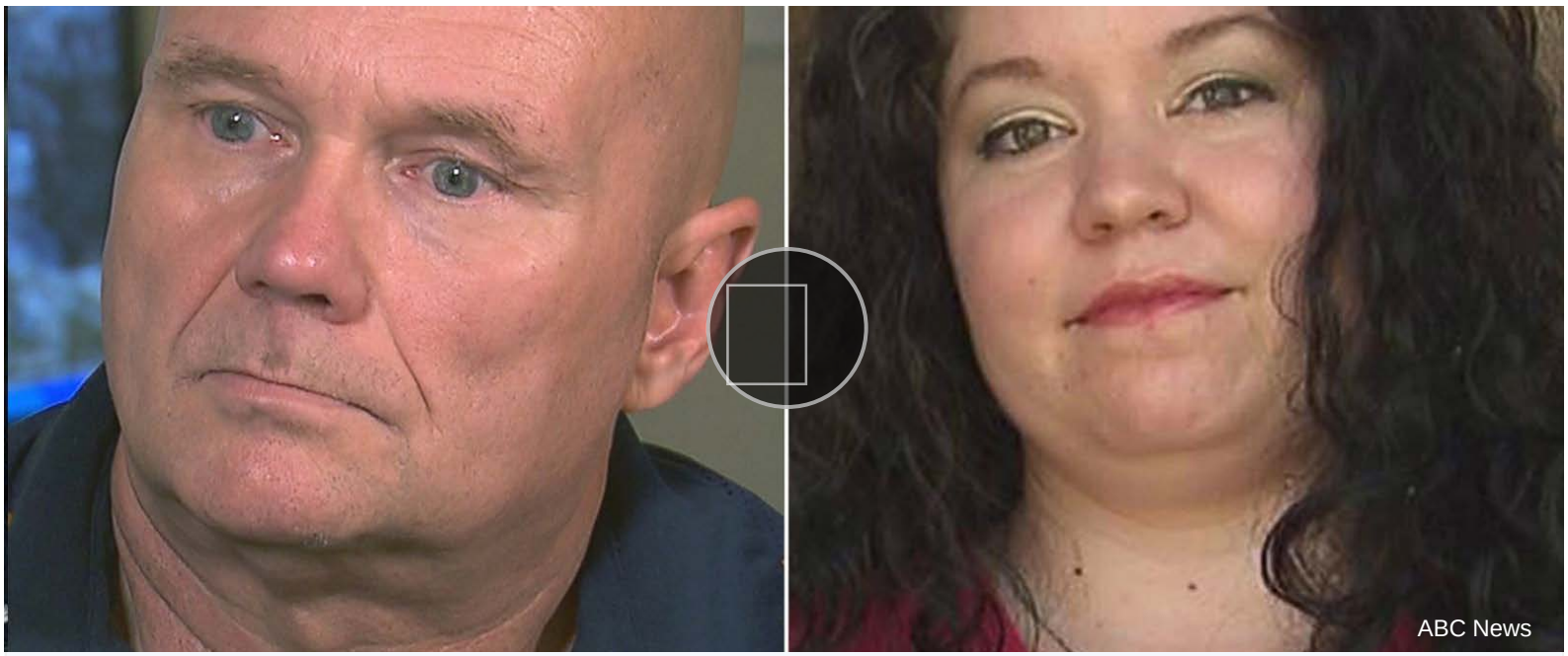


Man Goes From Debt Collector To Debtor

Debt Collector Owes Over $33K for Making Woman's Life 'Hell'

By JOSEPH RHEE ALEXA VALIENTE

Nov 28, 2014, 8:59 AM ET



WATCH | Man Goes From Debt Collector To Debtor

A debt collector who uses the name “John Anderson” when making calls is now a debtor himself after a California woman sued him and the debt collection agency he worked for.

Anderson, whose real name and employer ABC News’ “20/20” has agreed not to divulge, said he’s “one of the best in the world” at his job. He said he follows the law, for the most part.

“[I] push the edges a little bit sometimes,” Anderson told “20/20.” “You’re not supposed to call after 9

o'clock at night. I might call at 9:15 [p.m.]."

US Faces Epidemic of Phony Debt Collectors: Prosecutor

Debt Collectors Respond to Your Top Complaints

When Debt Collector Robocalls Illegally Hijack Your Cell Phone

But after a court judgment, Anderson currently owes over $33,000 to Jessica Burke, who said Anderson called her several times a day over $350 in late payments for a used car she bought in Arizona in 2007.

"He suggested that because he was a private investigator, he knows everything. He could find me no matter where I was," Burke said. "He knew who I worked for, and he had contacted my boss at that time and released the information that I had a debt."

Although she had never even seen the caller in person, Burke said he was even able to learn some of the names of her coworkers and friends.

Anderson denied harassing Burke. "I wasn't really the one pursuing Jessica. The finance company pursued her more than I did," Anderson told "20/20."

However, Anderson said he did get angry after he claims Burke got into a physical altercation with a woman he sent out to repossess the car, which Burke denies. Anderson also admitted that he did make remarks about Burke's weight on the phone.

"She said, 'I have a refund coming.' I said, 'A tax refund or a Jenny Craig refund?' ... meaning that she was overweight," Anderson said. "It's probably not the proper thing to do."

Richard Doane, president of the Debt Collection Trade Group, told "20/20" that most collectors scrupulously obey the law and provide an important public service.

"We're not terrible people. The industry as a whole is a good thing," Doane said. "We return $52 billion to the economy every year as an industry. That is a major amount of money."

But Burke said the collector she dealt with wasn't so careful about following the rules and would text her constantly. She said she received around fifteen text messages a day, saying things such as, "Turn the car in or I send the sheriff," and "Porky Pig, two hundred-pound slob in a double-wide."

Anderson said that he never sent Burke those text messages, instead claiming that it was a "collections manager at that particular car lot."

"[That's] not in my vocabulary. That's not something I would say," Anderson said.

Even when Burke said she turned over the car to the finance company and repaid her debt, she said the collector would not stop tormenting her.

“I can’t tell you how many times I told him to stop,” Burke said. “There were times where I was crying on the phone, begging him to stop.”

Finally fed up with being harassed daily, Burke hired an attorney and learned her privacy rights and what she was entitled to as a debtor. She sued the debt collector and his agency for violating federal law by using abusive collection tactics.

“That person made my life hell for a little bit,” Burke said. “I was terrified for weeks.”

Anderson never appeared in court. On June 29, 2009, the federal judge awarded Burke over $33,000, but Anderson said he won’t pay.

“She’s not collected a dime. She never will,” Anderson said. “Because I don’t have it to pay her.”

Burke said she can’t be bothered to chase him for the money and is moving on.

“If I never see the money, that’s not really what matters to me,” Burke said. “I came out on top. I fought back. He can’t bother me anymore.”

306 Comments

Virginia Tech Student 'Excited' to Be Part of Alleged Murder,

EXHIBIT 6

Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology

Cell-site simulator technology provides valuable assistance in support of important public safety objectives. Whether deployed as part of a fugitive apprehension effort, a complex narcotics investigation, or to locate or rescue a kidnapped child, cell-site simulators fulfill critical operational needs.

As with any law enforcement capability, the Department must use cell-site simulators in a manner that is consistent with the requirements and protections of the Constitution, including the Fourth Amendment, and applicable statutory authorities, including the Pen Register Statute. Moreover, any information resulting from the use of cell-site simulators must be handled in a way that is consistent with the array of applicable statutes, regulations, and policies that guide law enforcement in how it may and may not collect, retain, and disclose data.

As technology evolves, the Department must continue to assess its tools to ensure that practice and applicable policies reflect the Department's law enforcement and national security missions, as well as the Department's commitments to accord appropriate respect for individuals' privacy and civil liberties. This policy provides additional guidance and establishes common principles for the use of cell-site simulators across the Department.[1] The Department's individual law enforcement components may issue additional specific guidance consistent with this policy.

BACKGROUND

Cell-site simulators, on occasion, have been the subject of misperception and confusion. To avoid any confusion here, this section provides information about the use of the equipment and defines the capabilities that are the subject of this policy.

Basic Uses

Law enforcement agents can use cell-site simulators to help locate cellular devices whose unique identifiers are already known to law enforcement, or to determine the unique identifiers of an unknown device by collecting limited signaling information from devices in the simulator user's vicinity. This technology is one tool among many traditional law enforcement techniques, and is deployed only in the fraction of cases in which the capability is best suited to achieve specific public safety objectives.

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[1] This policy applies to the use of cell-site simulator technology inside the United States in furtherance of criminal investigations. When acting pursuant to the Foreign Intelligence Surveillance Act, Department of Justice components will make a probable-cause based showing and appropriate disclosures to the court in a manner that is consistent with the guidance set forth in this policy.

How They Function

Cell-site simulators, as governed by this policy, function by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in the proximity of the device identify the simulator as the most attractive cell tower in the area and thus transmit signals to the simulator that identify the device in the same way that they would with a networked tower.

A cell-site simulator receives and uses an industry standard unique identifying number assigned by a device manufacturer or cellular network provider. When used to locate a known cellular device, a cell-site simulator initially receives the unique identifying number from multiple devices in the vicinity of the simulator. Once the cell-site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone. When used to identify an unknown device, the cell-site simulator obtains signaling information from non-target devices in the target's vicinity for the limited purpose of distinguishing the target device.

What They Do and Do Not Obtain

By transmitting as a cell tower, cell-site simulators acquire the identifying information from cellular devices. This identifying information is limited, however. Cell-site simulators provide only the relative signal strength and general direction of a subject cellular telephone; they do not function as a GPS locator, as they do not obtain or download any location information from the device or its applications. Moreover, cell-site simulators used by the Department must be configured as pen registers, and may not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3127(3). This includes any data contained on the phone itself: the simulator does not remotely capture emails, texts, contact lists, images or any other data from the phone. In addition, Department cell-site simulators do not provide subscriber account information (for example, an account holder's name, address, or telephone number).

MANAGEMENT CONTROLS AND ACCOUNTABILITY[2]

Cell-site simulators require training and practice to operate correctly. To that end, the following management controls and approval processes will help ensure that only knowledgeable and accountable personnel will use the technology.

1. Department personnel must be trained and supervised appropriately. Cell-site simulators may be operated only by trained personnel who have been authorized by their agency to use the technology and whose training has been administered by a qualified agency component or expert.

[2] This policy guidance is intended only to improve the internal management of the Department of Justice. It is not intended to and does not create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in an administrative, judicial, or any other proceeding.

2. Within 30 days, agencies shall designate an executive-level point of contact at each division or district office responsible for the implementation of this policy, and for promoting compliance with its provisions, within his or her jurisdiction.

3. Prior to deployment of the technology, use of a cell-site simulator by the agency must be approved by an appropriate individual who has attained the grade of a first-level supervisor. Any emergency use of a cell-site simulator must be approved by an appropriate second-level supervisor. Any use of a cell-site simulator on an aircraft must be approved either by the executive-level point of contact for the jurisdiction, as described in paragraph 2 of this section, or by a branch or unit chief at the agency's headquarters.

Each agency shall identify training protocols. These protocols must include training on privacy and civil liberties developed in consultation with the Department's Chief Privacy and Civil Liberties Officer.

LEGAL PROCESS AND COURT ORDERS

The use of cell-site simulators is permitted only as authorized by law and policy. While the Department has, in the past, appropriately obtained authorization to use a cell-site simulator by seeking an order pursuant to the Pen Register Statute, as a matter of policy, law enforcement agencies must now obtain a search warrant supported by probable cause and issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure (or the applicable state equivalent), except as provided below.

As a practical matter, because prosecutors will need to seek authority pursuant to Rule 41 *and* the Pen Register Statute, prosecutors should, depending on the rules in their jurisdiction, either (1) obtain a warrant that contains all information required to be included in a pen register order pursuant to 18 U.S.C. § 3123 (or the state equivalent), or (2) seek a warrant and a pen register order concurrently. The search warrant affidavit also must reflect the information noted in the immediately following section of this policy ("Applications for Use of Cell-Site Simulators").

There are two circumstances in which this policy does not require a warrant prior to the use of a cell-site simulator.

1. *Exigent Circumstances under the Fourth Amendment*

Exigent circumstances can vitiate a Fourth Amendment warrant requirement, but cell-site simulators still require court approval in order to be lawfully deployed. An exigency that excuses the need to obtain a warrant may arise when the needs of law enforcement are so compelling that they render a warrantless search objectively reasonable. When an officer has the requisite probable cause, a variety of types of exigent circumstances may justify dispensing with a warrant. These include the need to protect human life or avert serious injury; the prevention of the imminent destruction of evidence; the hot pursuit of a fleeing felon; or the prevention of escape by a suspect or convicted fugitive from justice.

In this circumstance, the use of a cell-site simulator still must comply with the Pen Register Statute, 18 U.S.C. § 3121, *et seq.*, which ordinarily requires judicial authorization before use of the cell-site simulator, based on the government's certification that the information sought is relevant to an ongoing criminal investigation. In addition, in the subset of exigent situations where circumstances necessitate emergency pen register authority pursuant to 18 U.S.C. § 3125 (or the state equivalent), the emergency must be among those listed in Section 3125: immediate danger of death or serious bodily injury to any person; conspiratorial activities characteristic of organized crime; an immediate threat to a national security interest; or an ongoing attack on a protected computer (as defined in 18 U.S.C. § 1030) that constitutes a crime punishable by a term of imprisonment greater than one year. In addition, the operator must obtain the requisite internal approval to use a pen register before using a cell-site simulator. In order to comply with the terms of this policy and with 18 U.S.C. § 3125,[3] the operator must contact the duty AUSA in the local U.S. Attorney's Office, who will then call the DOJ Command Center to reach a supervisory attorney in the Electronic Surveillance Unit (ESU) of the Office of Enforcement Operations.[4] Assuming the parameters of the statute are met, the ESU attorney will contact a DAAG in the Criminal Division[5] and provide a short briefing. If the DAAG approves, the ESU attorney will relay the verbal authorization to the AUSA, who must also apply for a court order within 48 hours as required by 18 U.S.C. § 3125. Under the provisions of the Pen Register Statute, use under emergency pen-trap authority must end when the information sought is obtained, an application for an order is denied, or 48 hours has passed, whichever comes first.

2. *Exceptional Circumstances Where the Law Does Not Require a Warrant*

There may also be other circumstances in which, although exigent circumstances do not exist, the law does not require a search warrant and circumstances make obtaining a search warrant impracticable. In such cases, which we expect to be very limited, agents must first obtain approval from executive-level personnel at the agency's headquarters and the relevant U.S. Attorney, and then from a Criminal Division DAAG. The Criminal Division shall keep track of the number of times the use of a cell-site simulator is approved under this subsection, as well as the circumstances underlying each such use.

In this circumstance, the use of a cell-site simulator still must comply with the Pen Register Statute, 18 U.S.C. § 3121, *et seq.*, which ordinarily requires judicial authorization before use of the cell-site simulator, based on the government's certification that the information sought is relevant to an ongoing criminal investigation. In addition,

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[3] Knowing use of a pen register under emergency authorization without applying for a court order within 48 hours is a criminal violation of the Pen Register Statute, pursuant to 18 U.S.C. § 3125(c).

[4] In non-federal cases, the operator must contact the prosecutor and any other applicable points of contact for the state or local jurisdiction.

[5] In requests for emergency pen authority, and for relief under the exceptional circumstances provision, the Criminal Division DAAG will consult as appropriate with a National Security Division DAAG on matters within the National Security Division's purview.

if circumstances necessitate emergency pen register authority, compliance with the provisions outlined in 18 U.S.C. § 3125 is required (see provisions in section 1 directly above).

APPLICATIONS FOR USE OF CELL-SITE SIMULATORS

When making any application to a court, the Department's lawyers and law enforcement officers must, as always, disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Law enforcement agents must consult with prosecutors[6] in advance of using a cell-site simulator, and applications for the use of a cell-site simulator must include sufficient information to ensure that the courts are aware that the technology may be used.[7]

1. Regardless of the legal authority relied upon, at the time of making an application for use of a cell-site simulator, the application or supporting affidavit should describe in general terms the technique to be employed. The description should indicate that investigators plan to send signals to the cellular phone that will cause it, and non-target phones on the same provider network in close physical proximity, to emit unique identifiers, which will be obtained by the technology, and that investigators will use the information collected to determine information pertaining to the physical location of the target cellular device or to determine the currently unknown identifiers of the target device. If investigators will use the equipment to determine unique identifiers at multiple locations and/or multiple times at the same location, the application should indicate this also.

2. An application or supporting affidavit should inform the court that the target cellular device (*e.g.*, cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. The application may also note, if accurate, that any potential service disruption to non-target devices would be temporary and all operations will be conducted to ensure the minimal amount of interference to non-target devices.

3. An application for the use of a cell-site simulator should inform the court about how law enforcement intends to address deletion of data not associated with the target phone. The application should also indicate that law enforcement will make no affirmative investigative use of any non-target data absent further order of the court, except to identify and distinguish the target device from other devices.

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[6] While this provision typically will implicate notification to Assistant United States Attorneys, it also extends to state and local prosecutors, where such personnel are engaged in operations involving cell-site simulators.

[7] Courts in certain jurisdictions may require additional technical information regarding the cell-site simulator's operation (*e.g.*, tradecraft, capabilities, limitations or specifications). Sample applications containing such technical information are available from the Computer Crime and Intellectual Property Section (CCIPS) of the Criminal Division. To ensure courts receive appropriate and accurate information regarding the technical information described above, prior to filing an application that deviates from the sample filings, agents or prosecutors must contact CCIPS, which will coordinate with appropriate Department components.

DATA COLLECTION AND DISPOSAL

The Department is committed to ensuring that law enforcement practices concerning the collection or retention[8] of data are lawful, and appropriately respect the important privacy interests of individuals. As part of this commitment, the Department's law enforcement agencies operate in accordance with rules, policies, and laws that control the collection, retention, dissemination, and disposition of records that contain personal identifying information. As with data collected in the course of any investigation, these authorities apply to information collected through the use of a cell-site simulator. Consistent with applicable existing laws and requirements, including any duty to preserve exculpatory evidence,[9] the Department's use of cell-site simulators shall include the following practices:

1. When the equipment is used to locate a known cellular device, all data must be deleted as soon as that device is located, and no less than once daily.

2. When the equipment is used to identify an unknown cellular device, all data must be deleted as soon as the target cellular device is identified, and in any event no less than once every 30 days.

3. Prior to deploying equipment for another mission, the operator must verify that the equipment has been cleared of any previous operational data.

Agencies shall implement an auditing program to ensure that the data is deleted in the manner described above.

STATE AND LOCAL PARTNERS

The Department often works closely with its State and Local law enforcement partners and provides technological assistance under a variety of circumstances. This policy applies to all instances in which Department components use cell-site simulators in support of other Federal agencies and/or State and Local law enforcement agencies.

TRAINING AND COORDINATION, AND ONGOING MANAGEMENT

Accountability is an essential element in maintaining the integrity of our Federal law enforcement agencies. Each law enforcement agency shall provide this policy, and training as appropriate, to all relevant employees. Periodic review of this policy and training shall be the

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[8] In the context of this policy, the terms "collection" and "retention" are used to address only the unique technical process of identifying dialing, routing, addressing, or signaling information, as described by 18 U.S.C. § 3127(3), emitted by cellular devices. "Collection" means the process by which unique identifier signals are obtained; "retention" refers to the period during which the dialing, routing, addressing, or signaling information is utilized to locate or identify a target device, continuing until the point at which such information is deleted.

[9] It is not likely, given the limited type of data cell-site simulators collect (as discussed above), that exculpatory evidence would be obtained by a cell-site simulator in the course of criminal law enforcement investigations. As in other circumstances, however, to the extent investigators know or have reason to believe that information is exculpatory or impeaching they have a duty to memorialize that information.

responsibility of each agency with respect to the way the equipment is being used (*e.g.*, significant advances in technological capabilities, the kind of data collected, or the manner in which it is collected). We expect that agents will familiarize themselves with this policy and comply with all agency orders concerning the use of this technology.

Each division or district office shall report to its agency headquarters annual records reflecting the total number of times a cell-site simulator is deployed in the jurisdiction; the number of deployments at the request of other agencies, including State or Local law enforcement; and the number of times the technology is deployed in emergency circumstances.

Similarly, it is vital that all appropriate Department attorneys familiarize themselves with the contents of this policy, so that their court filings and disclosures are appropriate and consistent. Model materials will be provided to all United States Attorneys' Offices and litigating components, each of which shall conduct training for their attorneys.

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Cell-site simulator technology significantly enhances the Department's efforts to achieve its public safety and law enforcement objectives. As with other capabilities, the Department must always use the technology in a manner that is consistent with the Constitution and all other legal authorities. This policy provides additional common principles designed to ensure that the Department continues to deploy cell-site simulators in an effective, appropriate, and consistent way.

EXHIBIT 7
UNDER SEAL