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9 AVAYA INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

13 AVAYA INC., a Delaware corporation,

14 Plaintiff,

15 v.

16 RAYMOND BRADLEY PEARCE, a/k/a  
"BRAD" PEARCE, an individual; JASON  
17 HINES, an individual and doing business as  
DBSI and TELBEST.COM; DEDICATED  
18 BUSINESS SYSTEMS INTERNATIONAL  
LLC, doing business as DBSI.NET, a New  
19 Jersey limited liability company; ATLAS  
SYSTEMS, INC., doing business as  
20 ATLASPHONES.COM and "THE  
TELECOM DEALER," a Michigan  
21 corporation; TELEPHONE MAN OF  
AMERICA LLC, doing business as  
22 TELEPHONEMANOFAMERICA.COM and  
"TELEPHONEMANOFAMERICA," a  
23 Florida limited liability company; THE  
TELECOM SPOT, doing business as  
24 THETELECOMSPOT.COM, a Texas business  
entity; and, DOES 1 through 50, inclusive,

25 Defendants.  
26  
27  
28

CASE NO. 3:19-cv-00565

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

1. **FEDERAL TRADEMARK  
INFRINGEMENT AND  
COUNTERFEITING, 15 U.S.C. § 1114;**
2. **FEDERAL UNFAIR COMPETITION,  
15 U.S.C. § 1125;**
3. **FEDERAL DIRECT AND INDIRECT  
COPYRIGHT INFRINGEMENT, 17  
U.S.C. §§ 501 et seq.;**
4. **VIOLATIONS OF THE DIGITAL  
MILLENNIUM COPYRIGHT ACT, 17  
U.S.C. §§ 1201. et seq. ;**
5. **VIOLATIONS OF THE COMPUTER  
FRAUD AND ABUSE ACT, 18 U.S.C. §§  
1030, et seq. ;**
6. **VIOLATIONS OF THE COMPUTER  
DATA ACCESS AND FRAUD ACT,  
CAL. PENAL CODE § 502;**
7. **VIOLATIONS OF 18 U.S.C. § 2318; and,**
8. **UNJUST ENRICHMENT/  
RESTITUTION/CONSTRUCTIVE  
TRUST**

**Demand for Jury Trial**

1 Plaintiff AVAYA INC. (“Avaya” or “Plaintiff”) hereby complains and alleges against  
 2 Defendants RAYMOND BRADLEY PEARCE, a/k/a “BRAD” PEARCE (“Pearce”); JASON  
 3 HINES, for himself and doing business as DBSI and TELBEST.COM (“Hines”); DEDICATED  
 4 BUSINESS SYSTEMS INTERNATIONAL LLC, doing business as DBSI.NET (“DBSI”);  
 5 ATLAS SYSTEMS, INC. doing business as ATLASPHONES.COM and “THE TELECOM  
 6 DEALER” (“Atlas”); TELEPHONE MAN OF AMERICA LLC, doing business as  
 7 TELEPHONEMANOFAMERICA.COM and “TELEPHONEMANOFAMERICA” (“Telephone  
 8 Man”); THE TELECOM SPOT, doing business as THETELECOMSPOT.COM (“Telecom  
 9 Spot”); and DOES 1 through 50, inclusive (collectively “Defendants”) as follows:

### 10 INTRODUCTION

11 1. For years, Defendants have been perpetrating a massive illegal software piracy  
 12 operation, which resulted in the theft and subsequent resale of thousands of unauthorized Avaya  
 13 Internal Use Software Licenses (“Internal Use Licenses”) to end customers duped into buying  
 14 pirated software, rather than buying genuine Avaya software licenses through authorized Avaya  
 15 distribution channels.

16 2. Long-term Avaya employee Defendant Pearce, in collusion with former Avaya  
 17 authorized reseller Defendant Hines, willfully resold and distributed, and facilitated the further  
 18 distribution and resale of, thousands of Avaya Internal Use Licenses, worth millions of dollars, all  
 19 without Avaya’s authorization, knowledge, or consent. The Internal Use Licenses were created by  
 20 Pearce by entering Avaya’s computer system using his employee account, as well as Avaya  
 21 employee accounts hijacked by Pearce, which had been doctored to conceal the scheme and to  
 22 avoid internal controls. Pearce and Hines then covertly distributed the stolen Internal Use  
 23 Licenses through Hines’ companies DBSI and Telbest, as well as through numerous other online  
 24 resellers, including at least Defendants Atlas, Telephone Man, and Telecom Spot.

25 3. Adding to the injury, Defendant Atlas has been caught not only offering for sale  
 26 and distributing these pirated Internal Use Licenses, but in addition, Atlas has been caught  
 27 reselling over a thousand counterfeit Avaya phones, as well as apparently genuine Avaya phones –  
 28 marketed and sold as “new” – that were repackaged and resold with counterfeit labels that closely

1 mimicked genuine Avaya factory labels, including counterfeit Avaya trademarks.

2 4. Defendants' unlawful schemes, as alleged in more detail below, have not only  
3 caused Avaya significant monetary damages, but also they have significantly undermined Avaya's  
4 brand, goodwill, and reputation with customers. Thousands of end customers have been duped  
5 into believing they were receiving a genuine high-quality Avaya product and/or lawful software  
6 license, rather than a counterfeit and otherwise infringing product or pirated software license that  
7 conveys no actual license rights at all to the end customer.

8 5. Of course, none of these unlawful and infringing products and software licenses  
9 should ever have been sold/resold at all, nor should any be sold/resold in the future. Accordingly,  
10 Avaya brings this Action to put a stop to Defendants' unlawful and infringing conduct, to enjoin  
11 further unlawful and infringing conduct, and to recover full damages for the significant harm they  
12 have caused.

### 13 PARTIES

14 6. Avaya is, and at all times mentioned herein was, a Delaware corporation, with its  
15 principal place of business at 4655 Great America Parkway, Santa Clara, California. Avaya owns  
16 the trademarks that are used in marketing and selling Avaya-branded products and the copyrights  
17 in the Avaya software infringed by Defendants.

18 7. Avaya is informed and believes, and thereon alleges, that Defendant Pearce is an  
19 Oklahoma resident, residing in Tuttle, Oklahoma. Defendant Pearce was an employee of Avaya  
20 from 2000 to 2018, working in an Avaya call center in Oklahoma City, Oklahoma.

21 8. Avaya is informed and believes, and thereon alleges, that Defendant Hines is a  
22 New Jersey resident, residing in Caldwell, New Jersey. Avaya is informed and believes, and  
23 thereon alleges, that Defendant Hines is the owner and operator of Defendant Dedicated Business  
24 Systems International LLC, doing business as www.dbsi.net and also known as "DBSI". Avaya is  
25 informed and believes, and thereon alleges, that Defendant DBSI is a New Jersey Limited  
26 Liability Company with its principal place of business in Fairfield, New Jersey and offices in New  
27 York City. Avaya is further informed and believes, and thereon alleges, that Defendant Hines has  
28 done, and continues to do, business under the fictitious business names of TelBest (TelBest.com),

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1 Direct Business Systems International LLC, Empire Telephone LLC, and US Tel, LLC. A  
2 number of these fictitious business names appear to have been at one time registered with New  
3 Jersey or New York by Defendant Hines, although none of these business names currently appears  
4 to be an active business entity in New York or New Jersey.

5 9. Avaya is informed and believes, and thereon alleges, that Defendant Atlas is a  
6 Michigan corporation, with its principal place of business in Auburn Hills, Michigan, with an  
7 online store at atlasphones.com. Avaya is informed and believes, and thereon alleges, that  
8 Defendant Atlas also operates an eBay store using the dba “The Telecom Dealer,” under the ebay  
9 seller name thetelecomdealer, and leveraged the eBay platform, which is located in San Jose,  
10 California, in the course of its business including the infringing business alleged in this Complaint.

11 10. Avaya is informed and believes, and thereon alleges, that Defendant Telephone  
12 Man is a Florida limited liability company, with its principal place of business in Plant City,  
13 Florida, with an online store at telephonemanofamerica.com. Avaya is informed and believes, and  
14 thereon alleges, that Defendant Telephone Man operates an eBay store, under the seller name  
15 telephonemanofamerica, and leveraged the eBay platform, which is located in San Jose,  
16 California, in the course of its business including the infringing business alleged in this Complaint.

17 11. Avaya is informed and believes, and thereon alleges, that Defendant Telecom Spot  
18 is a Texas business entity, with an online store at thetelecomspot.com, and with its principal place  
19 of business in Austin, Texas.

20 12. The true names and capacities, whether individual, corporate, associate, or  
21 otherwise, of the Defendants named herein as DOES 1 through 50, inclusive, are unknown to  
22 Avaya who, therefore, sues said Defendants by such fictitious names. Avaya will amend this  
23 Complaint to reflect the true names and capacities of these DOE Defendants when the same shall  
24 have been fully and finally ascertained.

25 13. Avaya is informed and believes, and thereon alleges, that each of the Defendants  
26 designated herein as a DOE is legally responsible, in some manner, for the events and happenings  
27 herein referred to, and legally caused damages to Avaya as herein alleged.

28 14. Avaya is informed and believes, and thereon alleges, that at all times relevant to

1 this action, each Defendant, including those fictitiously named Defendants, was the agent, servant,  
 2 employee, partner, joint venturer, accomplice, conspirator, alter ego or surety of the other  
 3 Defendants and was acting within the scope of that agency, employment, partnership, venture,  
 4 conspiracy, or suretyship with the knowledge and consent or ratification of each of the other  
 5 Defendants in doing the unlawful activities alleged in this Complaint.

### 6 JURISDICTION

7 15. This is an Action founded upon violations of Federal trademark and copyright laws,  
 8 pursuant to 15 U.S.C. §§ 1051, *et seq.*, 17 U.S.C. §§ 501, *et seq.*, and 17 U.S.C. §§ 1201, *et seq.*  
 9 In addition, this Action is founded upon violations of the Computer Fraud and Abuse Act, 18  
 10 U.S.C. § 1030, as well as violations of 18 U.S.C. § 2318. This Court has original subject matter  
 11 jurisdiction over this Action pursuant to 28 U.S.C. §§ 1331 and 1338(a)-(b), and 15 U.S.C. §  
 12 1121. This Court has supplemental jurisdiction over Avaya's state law claims for relief pursuant  
 13 to 28 U.S.C. §§ 1338(b) and 1367 because the claims are so related to Avaya's claims under  
 14 Federal law that they form part of the same case or controversy and derive from a common  
 15 nucleus of operative facts.

16 16. This Court has personal jurisdiction over Defendants because Defendants have  
 17 willfully infringed intellectual property rights of Avaya, a known forum resident, including by  
 18 trafficking in pirated Avaya software and otherwise causing tortious injury to Avaya, including to  
 19 its trademarks and copyrights, within California, and within this District in particular. Further,  
 20 Defendants have performed intentional acts expressly aimed at Avaya in this forum and thereby  
 21 caused damage that they knew would be suffered by Avaya in this forum. In addition, Defendants  
 22 have marketed, advertised, and offered infringing Avaya software licenses for sale into California  
 23 and, upon information and belief, transacted other business within California specifically related to  
 24 the infringing distribution scheme. Defendants have also misrepresented the authentic nature of  
 25 the counterfeit and/or otherwise infringing "Avaya" products to residents of California, including  
 26 within this District.

### 27 VENUE

28 17. Venue for this action properly lies in the Northern District of California pursuant to

1 28 U.S.C. § 1391(b)(2) because Defendants committed acts here in furtherance of their illegal  
 2 business operations, a substantial part of the events giving rise to the claim occurred in this  
 3 District, and a substantial part of the property that is the subject of this action is located within this  
 4 District. Further, Defendants have either sold or offered to sell the infringing software licenses at  
 5 issue in this Action into this District and/or knowing such software would be resold into this  
 6 District. Further, Defendants' acts of infringement are likely to have caused, and are likely to  
 7 continue to cause, consumer confusion within this District. Further, venue is also proper in this  
 8 District under 28 U.S.C. § 1400(a) because Defendants are subject to personal jurisdiction here  
 9 due to having performed intentional acts expressly aimed at the forum and thereby caused damage  
 10 that they knew would be suffered by Avaya in this District.

11 **INTRA-DISTRICT ASSIGNMENT**

12 18. In accordance with LR 3-2(c), this Action is properly assigned on a district-wide  
 13 basis because it relates to Intellectual Property.

14 **FACTUAL ALLEGATIONS RELATING TO AVAYA AND ITS IP**

15 19. Avaya is a subsidiary of Avaya Holdings Corporation, a publicly traded U.S.-based  
 16 multinational business communications company headquartered in Santa Clara, California. Avaya  
 17 was spun off from Lucent Technologies in 2000. Avaya provides an extensive portfolio of  
 18 hardware, software, and services for contact center and unified communications, such as voice and  
 19 video calling, audio conferencing, and mobility solutions. Avaya provides communications  
 20 solutions to a broad range of companies, from small businesses to large multinational enterprises  
 21 and government organizations. As of 2018, Avaya had a presence in approximately 180 countries  
 22 worldwide and has in the past three fiscal years conducted business with more than 90% of the  
 23 Fortune 100 organizations.

24 20. Avaya's current annual sales are approximately \$3 billion and it employs  
 25 approximately 8,100 employees, of whom nearly 2,800 are located in the United States. Avaya  
 26 sells its products and services directly to customers and indirectly through approximately 4,700  
 27 contractually-authorized channel partners, which account for about 71% of total product revenue.  
 28 For indirect sales through partners, Avaya utilizes a two-tiered distribution structure wherein

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1 Avaya sells directly to a relatively small number of authorized distributors that are required to sell  
 2 only to contractually-authorized resellers. Those resellers are contractually obligated to sell  
 3 directly to end-user customers.

4 21. Avaya products and services include software, hardware, professional and support  
 5 services, and cloud services. Among Avaya’s product offerings, Avaya offers a product called IP  
 6 Office (“IPO”), a scalable mid-market and small business telephone system which supports  
 7 anywhere from five to thousands of users at up to 150 different physical locations. Currently,  
 8 there are five “editions” of IPO, each of which entail increasing features and capabilities. All  
 9 editions require per-endpoint software licensing, meaning each phone or computer on the system  
 10 must be licensed in the IPO software. Additional features, such as voicemail, require additional  
 11 software licenses on a per-endpoint basis. Thus, each individual phone on a customer’s system  
 12 may be licensed to several feature sets and enabled by multiple software licenses. These IPO  
 13 software licenses are sold by Avaya and its authorized partners, and then distributed to the  
 14 licensed end users through unique software license keys.

15 22. Avaya has developed a strong name and reputation within the trade and among  
 16 members of the consuming public as a leading provider of contact center and unified  
 17 communications solutions, including hardware and software of the highest quality. Avaya has  
 18 invested substantial effort and resources to develop and promote public recognition of the Avaya  
 19 trade name and of the family of Avaya-related marks. Avaya has used the family of Avaya  
 20 trademarks to identify goods and services as being genuine Avaya products, and the Avaya marks  
 21 and name are well-recognized signifiers of Avaya’s high quality products, software, and related  
 22 services (the Avaya marks and name are hereinafter referred to as “Avaya Marks”).

23 23. Avaya has caused several Avaya Marks to be registered on the Principal Register of  
 24 the U.S. Patent and Trademark Office in connection with a range of telecommunications,  
 25 computer hardware and software products and services, and Avaya owns all rights, title, and  
 26 interest in numerous federal trademark registrations, including at least:

27

Mark	Registration Number	Registration Date
AVAYA	2,697,002	March 18, 2003

28

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1 AVAYA	2,696,985	March 18, 2003
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2 24. Avaya has also expended significant resources and effort to develop and promote  
 3 public recognition of the Avaya trade name and the family of Avaya-related marks throughout the  
 4 world, in part by placing Avaya Products and Avaya Marks in its advertising and promotional  
 5 materials, which reach global consumers through a variety of media, including television, radio,  
 6 newspapers, magazines, billboards, social media, and the internet.

7 25. Avaya has taken substantial steps and expended significant resources to research  
 8 and develop strict quality-control standards for all of its products to ensure that products, software,  
 9 and services bearing Avaya Marks continue to be of the highest quality.

10 26. As a result of Avaya’s extensive advertising and promotional efforts and its  
 11 continuous use of its core Avaya Marks for more than 15 years, Avaya has attained one of the  
 12 highest levels of brand recognition. As a result of Avaya’s longstanding and widespread use and  
 13 promotion of Avaya Marks, Avaya’s customers worldwide have come to rely upon Avaya Marks  
 14 to identify Avaya’s high-quality goods and services, including software. Many of Avaya’s  
 15 products are purchased by the U.S. Government, including branches of the military, and by other  
 16 industries, for use in critical applications.

17 27. Avaya has also expended significant resources and effort to research and develop  
 18 world-class software products that enable, enhance, and interoperate with its high-quality  
 19 hardware. Avaya has caused numerous Avaya software copyrights to be registered with the U.S.  
 20 Copyright Office in connection with its IP Office products, including but not limited to:

Title	Copyright Number	Date
Avaya IP Office R9.0	TX0008595990	2013
Avaya IP Office R9.1	TX0008592908	2014
Avaya IP Office R10.0	TX0008592913	2016

25 28. The above software copyright registrations include the copyrighted software  
 26 covering the Avaya IP Office software licenses referred to in the Complaint above and below.

27 29. In addition, Avaya has instituted certain technological measures to control access to  
 28 its copyright-protected software, including the software identified above. One of those



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1 technological measures is the use of software license keys that control access to the Avaya  
 2 software, including but not limited to the registered software listed above.

3 **FURTHER FACTUAL ALLEGATIONS RELATED TO THE UNLAWFUL SCHEME**

4 30. Avaya has recently uncovered a large scale unlawful conspiracy, which generated  
 5 millions of dollars of profit at Avaya’s expense based upon the creation and distribution of  
 6 thousands of pirated Avaya Internal Use Only copyright-protected software licenses.

7 31. Avaya does not sell its software at all, and certainly does not authorize third parties  
 8 to sell its software on third-party marketplaces. Instead, Avaya offers its software to be licensed  
 9 through authorized channels, not including third-party marketplaces. Further, all Avaya software  
 10 is subject to an End User License Agreement (“EULA”), which licenses that software to a specific  
 11 end user for use only by that end user and is generally non-transferrable. Avaya’s EULA is  
 12 attached hereto as Exhibit A and incorporated into this Complaint. As such, it appears that  
 13 Defendants have been selling pirated Avaya software licenses in competition with authorized and  
 14 licensed Avaya software and trading off of Avaya’s trademarks to do so, by misrepresenting the  
 15 source of the software licenses as being “new” software from Avaya. Thus, the use of the Avaya  
 16 marks was not intended to describe the product, but rather to make it appear that the software  
 17 license was sanctioned, endorsed, and authorized for distribution and resale by Avaya:

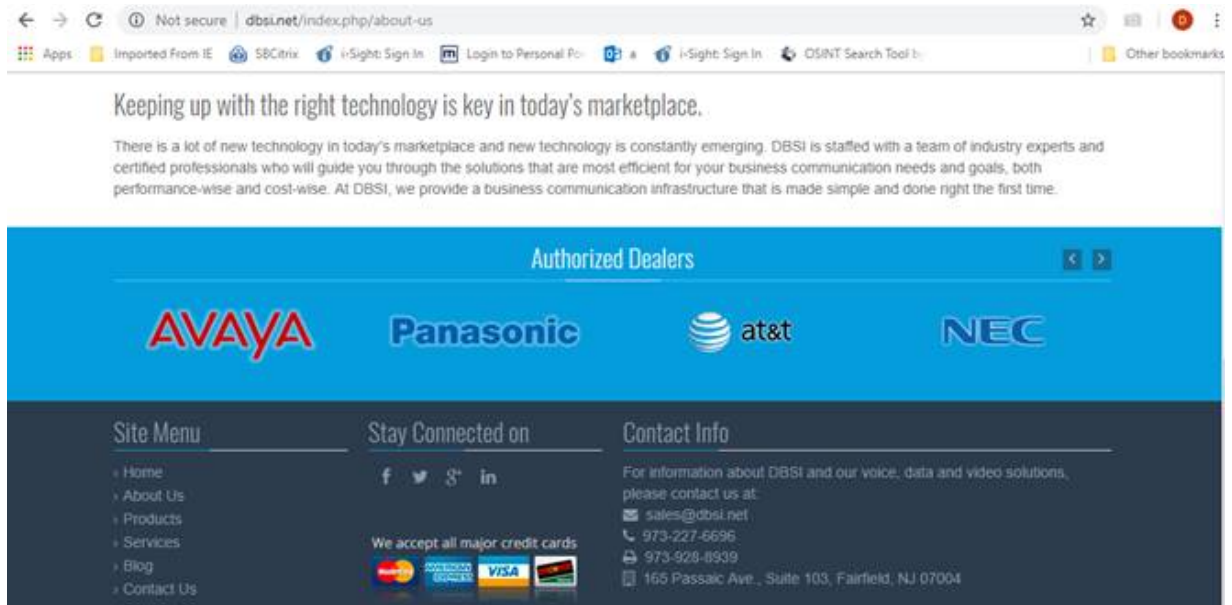


1           32.     The Avaya software licenses that Defendants were distributing illegally as “new”  
2 genuine and authorized software turned out to be Internal Use Licenses that Defendant Pearce  
3 stole from Avaya, using his own internal access and using multiple hijacked employee accounts.  
4 Pearce’s primary job responsibility was to assist with the resolution of customer issues, which  
5 includes generation of Internal Use Licenses for various administrative purposes as needed to  
6 support Avaya’s customers regarding the software they have properly licensed from Avaya. From  
7 a functionality perspective, Internal Use Licenses are no different from the software licenses  
8 delivered to Avaya’s paying customers; however, Internal Use Licenses are billed to Avaya at no  
9 cost, rather than the sale price to Avaya’s distributor or end-customer, as would otherwise occur.

10           33.     For years, Pearce has generated Internal Use Licenses for thousands of Avaya  
11 customer systems, of which Avaya is informed and believes, and thereon alleges, included  
12 millions of dollars in Internal Use Licenses distributed without Avaya’s authorization, as there is  
13 no associated revenue, no related customer orders, and no logical business explanation for the  
14 magnitude of this software license generation. Through purchasing sample software licenses  
15 resold by Defendants, Avaya was able to track the generation of these infringing and illegal  
16 software licenses back to Pearce. To accomplish this theft, Pearce accessed the Avaya software  
17 license generation system far beyond his authorization and in completely unauthorized ways,  
18 including by hijacking accounts tied to former employees and/or contractors that he could activate,  
19 control, and leverage to steal further software licenses while also avoiding internal controls he  
20 knew were in place.

21           34.     Defendant Pearce was then in contact with at least Hines to distribute the stolen  
22 Avaya Internal Use Licenses. Defendant Hines would then download the Internal Use Licenses  
23 generated by Pearce and distribute them, or facilitate their distribution, to end customers or other  
24 third party resellers, including at least Defendants DBSI, Atlas, Telephone Man, and Telecom  
25 Spot. Defendant DBSI, run by Hines, was previously an authorized Avaya reseller; however,  
26 DBSI and Hines were de-authorized by Avaya in 2013. This de-authorization cut off their  
27 authorized access to Avaya’s license key systems also in 2013. However, even though Defendants  
28 DBSI and Hines knew they had no authorization to access Avaya’s license key systems, they

1 leveraged the access of an authorized Avaya distributor to reactivate their access to Avaya’s  
 2 computer systems to enable them to download and distribute the pirated software licenses  
 3 described in this Complaint. Indeed, DBSI and Hines continue to falsely claim on their website,  
 4 DBSI.net, to be an Avaya “Authorized Dealer,” and specifically use Avaya’s Marks to further the  
 5 false claim of endorsement and authorization by Avaya:



16 35. Defendant Hines, through his companies DBSI and TelBest, as well as through  
 17 numerous other online resellers, including at least Defendants Atlas, Telephone Man, and Telecom  
 18 Spot, then together distributed and/or facilitated the distribution of these pirated Internal Use  
 19 Licenses to thousands of end user customers, in exchange for millions of dollars. Defendants  
 20 Hines, through his companies DBSI and TelBest, as well as Defendants Atlas, Telephone Man,  
 21 and Telecom Spot all offer and/or have offered these pirated Internal Use Licenses for sale online,  
 22 representing that the corresponding software is “new” and genuine Avaya software, which is fully  
 23 licensed and authorized by Avaya. Such representations in connection with the resale of these  
 24 pirated Internal Use Licenses are false and misleading, as pirated software licenses do not convey  
 25 any actual license rights to the purchaser. Meanwhile, the end customers who purchased the  
 26 pirated software from Defendants are now unwittingly also infringing Avaya’s copyrights by  
 27 running the Avaya software without any valid license. Avaya is further harmed by sales of such  
 28 unlicensed software, as Avaya then must support these customers regarding software that they

1 never actually licensed from Avaya.

2 36. After the sale had been consummated, Defendants continued to represent that such  
3 Internal Use Licenses were valid and authorized by Avaya, including by for example using  
4 Avaya's trade name and Avaya Marks to imply endorsement and/or authorization by Avaya. For  
5 example, the following was included in an email from Telecom Spot distributing the Avaya  
6 software:



8  
9 Excel spreadsheet and macro to reformat downloaded Licence.Key files for printing in a more readable format.

10 Please save the contents of the Zip file to a directory first  
11 Open the File with the name starting as "RUN"  
12 Click the Button "Create All Views"

13 This will create additional work sheets as follows:

14 All keys - all data from the download is presented with column filters to allow selection of data if required  
15 Single sheet print - is a printable list that will print each different serial number or certificate on a separate page, use 'file/print'  
16 nnnnnnn.csv - IP Office Manager import format. One sheet will be created for each serial number and an nnnnnnn.csv file saved to disk. Rename to 'keys.txt' for import via IP Office SD card.

17 37. Defendants Pearce, Hines, and DBSI thereby willfully and knowingly infringed  
18 Avaya's copyrights and trademarks, and the other reseller defendants, including at least Atlas,  
19 Telephone Man, and Telecom Spot, either acted willfully and knowingly in supporting this  
20 unlawful scheme or with willful blindness and complete disregard for the harm caused to Avaya  
21 and its end customers as a result of their direct and substantial involvement in enabling this vast  
22 illegal operation and in thereby infringing Avaya's intellectual property. Defendants are each  
23 jointly and severally liable for their direct and substantial involvement in, and actions taken in  
24 support of, the alleged infringing distribution chain, and each Defendant profited handsomely for  
25 their part in this scheme. Defendants are also indirectly liable for the infringement related to their  
26 downstream customers due to Defendants' conduct alleged above in (i) controlling the distribution  
27 of infringing products and directly profiting therefrom, and (ii) knowingly inducing, causing,  
28 and/or materially contributing to the infringing activity of their downstream customers.

**FURTHER FACTUAL ALLEGATIONS RELATED TO ATLAS PHONES**

38. Avaya has also recently uncovered additional direct infringement and  
counterfeiting by Defendant Atlas, doing business as Atlasphones.com. In or about mid-2016,  
Avaya was informed about a purchase of over a thousand Avaya phone systems by an end

1 customer, which were represented as “new” Avaya IP Phones. The end customer complained of a  
2 high rate of failure of these “Avaya” branded IP Phones. Upon analysis, over a thousand of these  
3 supposedly new “Avaya” IP Phones turned out to be counterfeit. These counterfeit phones had  
4 fake serial numbers, fake manufacturing codes, internal components that had been hacked and  
5 programmed to bypass internal software controls, and counterfeit factory seal box labels. This  
6 large sale of counterfeit Avaya products traced back to Atlas. This is but one example of Atlas’  
7 counterfeiting, and therefore, Avaya is informed and believes and thereon alleges that, if left  
8 unchecked, Atlas will continue to resell counterfeit products with impunity.

9 39. In addition, Avaya has confirmed through additional test purchases that Atlas is  
10 also purchasing gray market Avaya products originally sold overseas in bulk and then repackaging  
11 and reselling these previously sold phones as “new.” To convince their end customers that the  
12 phones are new and authorized by Avaya, Atlas sells these phones in new packaging that  
13 counterfeits the Avaya Marks and tradename and that counterfeits Avaya’s genuine factory seals  
14 with counterfeit factory labels that closely mimic genuine Avaya factory labels.

15 **ADDITIONAL FACTUAL ALLEGATIONS RELATED TO CONFUSION**

16 40. The above unlawful conduct has a high likelihood of causing substantial consumer  
17 confusion, and Avaya is informed and believes and thereon alleges, that Defendants’ illegal  
18 conduct caused significant actual consumer confusion. To that end, the purchase of thousands of  
19 counterfeit phones similarly reflects a belief by the customer that they were purchasing genuine  
20 Avaya phones. Further, in looking at the online sites through which Defendants made their sales,  
21 neither those sites nor the customer reviews for Defendants’ license sales shows any  
22 acknowledgment of the illicit nature of the software licenses being bought and sold, and therefore  
23 reflects the confusion by these customers about the lack of authorization and lack of genuineness  
24 of these “Avaya” branded software license sales. Avaya is informed and believes, and thereon  
25 alleges, that Defendants intentionally and willfully traded on Avaya’s Marks, reputation, and  
26 goodwill to increase Defendants’ sales by causing consumers to believe that their unlawful  
27 product and software sales were somehow associated with, affiliated with, and authorized by,  
28 Avaya, when they are not and when the unlawful products and/or software, as alleged in detail

1 above, are non-genuine and/or are counterfeit within the meaning of the Lanham Act.

2 **AVAYA’S CLAIMS FOR RELIEF**

3 **FIRST CLAIM FOR RELIEF**

4 **Federal Trademark Infringement and Counterfeiting**

5 *15 U.S.C. § 1114*

6 **(Against All Defendants)**

7 41. Avaya incorporates the preceding paragraphs of this Complaint as if fully set forth  
8 herein.

9 42. The Avaya Marks are valid, protectable trademarks that have been registered as  
10 marks on the principal register in the United States Patent and Trademark Office.

11 43. Avaya is the owner and registrant of the Avaya Marks.

12 44. As described in more detail above, Defendants have used and counterfeited the  
13 Avaya Marks in connection with the marketing, promotion, and sale of goods without Avaya’s  
14 consent, in a manner that is likely to cause, and has actually caused, confusion and/or mistake, or  
15 that has deceived members of the consuming public and/or the trade. Indeed, Defendants  
16 counterfeiting and infringing activities are likely to cause and are actually causing confusion,  
17 mistake, and deception among members of the trade and the general consuming public as to the  
18 origin, sponsorship, and quality of Defendants’ infringing products, counterfeit packaging, and  
19 infringing software licenses. As of the filing of this Complaint, Defendants are continuing to  
20 infringe the Avaya Marks unabated as alleged further above.

21 45. Defendants’ infringement of the Avaya Marks is willful and their conduct, as  
22 alleged herein, constitutes an exceptional case under 15 U.S.C. § 1117.

23 46. Avaya has been, and continues to be, damaged by Defendants’ infringement,  
24 including by suffering irreparable harm through the diminution of trust and goodwill among  
25 Avaya consumers and members of the general consuming public and the trade. Avaya has no  
26 adequate remedy at law. As a result of Defendants’ infringement of the Avaya Marks, Avaya is  
27 entitled to an injunction, and an order of destruction of all of Defendants’ infringing materials.

28 47. As a direct and proximate result of their infringements, Defendants have realized

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1 unjust profits, gains, and advantages at the expense of Avaya, including as set forth above. In  
 2 addition, Avaya has suffered substantial loss and damages to its property and business, including  
 3 significant monetary damages as a direct and proximate result of Defendants' infringements,  
 4 including as set forth above. The harm caused by Defendants' unlawful conduct entitles Avaya to  
 5 recovery of all available remedies under the law, including but not limited to actual damages,  
 6 infringers' profits, treble damages, statutory damages (if elected), reasonable attorney fees, costs,  
 7 and prejudgment interest.

8 **SECOND CLAIM FOR RELIEF**

9 **Federal Unfair Competition**

10 *15 U.S.C. § 1125(a)*

11 **(Against All Defendants)**

12 48. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
 13 set forth herein.

14 49. Defendants did, without authorization, use in commerce the Avaya Marks, and also  
 15 make false designations of origin, false or misleading descriptions of fact, and/or false or  
 16 misleading representations of fact, which were and are likely to cause confusion, or to cause  
 17 mistake, or to deceive customers as to the affiliation, connection, or association of Defendants  
 18 with Avaya, and/or as to the origin, sponsorship, or approval of the Defendants' goods, services,  
 19 or commercial activities.

20 50. Avaya alleges on information and belief that Defendants' acts have been committed  
 21 with knowledge of Avaya's exclusive rights and goodwill in Avaya Marks, as well as with  
 22 willfulness, bad faith, and the intent to cause confusion, mistake and/or to deceive. Defendants'  
 23 conduct, as alleged herein, constitutes an exceptional case under 15 U.S.C. § 1117.

24 51. Defendants' unauthorized use of counterfeit copies of Avaya's Marks falsely  
 25 represents Defendants' counterfeit "Avaya" products as emanating from, or being authorized by,  
 26 Avaya and places beyond Avaya's control the quality of products bearing Avaya Marks.

27 52. Avaya has been, and continues to be, damaged by Defendants' infringement,  
 28 including by suffering irreparable harm through the diminution of trust and goodwill among

1 Avaya consumers and members of the general consuming public and the trade. Avaya has no  
2 adequate remedy at law. As a result of Defendants' infringement of the Avaya Marks, Avaya is  
3 entitled to an injunction, and an order of destruction of all of Defendants' infringing materials.

4 53. As a direct and proximate result of their infringements, Defendants have realized  
5 unjust profits, gains and advantages at the expense of Avaya, including as set forth above. In  
6 addition, Avaya has suffered substantial loss and damages to its property and business, including  
7 significant monetary damages as a direct and proximate result of Defendants' infringements,  
8 including as set forth above. The harm caused by Defendants' unlawful conduct entitles Avaya to  
9 recovery of all available remedies under the law, including but not limited to actual damages,  
10 infringers' profits, treble damages, statutory damages (if elected), reasonable attorney fees, costs,  
11 and prejudgment interest.

### 12 **THIRD CLAIM FOR RELIEF**

#### 13 **Federal Direct and Indirect Copyright Infringement**

14 *17 U.S.C. §§ 501, et seq.*

15 **(Against All Defendants)**

16 54. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
17 set forth herein.

18 55. Avaya's copyrighted software contains a substantial amount of original material  
19 (including without limitation code, specifications, documentation and other materials) that is  
20 copyrightable subject matter under the Copyright Act, 17 U.S.C. §§ 101, *et seq.* Avaya owns  
21 valid copyrights in the IPO software, including but not limited to U.S. Copyright Reg. Nos.  
22 TX0008595990, TX0008592908, and TX0008592913.

23 56. Without consent, authorization, approval, or license, Defendants knowingly,  
24 willingly, and unlawfully copied, prepared, published, and distributed Avaya's copyrighted works,  
25 portions thereof, and/or derivative works of the same.

26 57. As alleged above, Defendants distributed numerous copies of Avaya's copyright-  
27 registered software without authorization and in violation of Avaya's copyrights. Such  
28 distribution and use was not licensed. In addition, Defendants have thereby induced, caused, and



1 materially contributed to the infringing acts of their customers by encouraging, inducing, allowing  
2 and assisting them to use, copy, and distribute Avaya's copyrighted works, and works derived  
3 therefrom.

4 58. Defendants' direct and indirect infringements are, and have been, knowing and  
5 willful. By this unlawful copying, use, and distribution, Defendants have violated Avaya's  
6 exclusive rights under 17 U.S.C. § 106 of the Copyright Act.

7 59. Avaya is entitled to an injunction restraining Defendants from engaging in any  
8 further such acts in violation of the United States copyright laws. Unless Defendants are enjoined  
9 and prohibited from infringing Avaya's copyrights, inducing others to infringe Avaya's  
10 copyrights, and unless all infringing software, including but not limited to all pirated software  
11 license keys, is seized and impounded pursuant to Section 503 of the Copyright Act, Defendants  
12 will continue to intentionally infringe and induce infringement of Avaya's registered copyrights.

13 60. Defendants' aforesaid conduct is causing immediate and irreparable injury to  
14 Avaya and to Avaya's goodwill, and will continue to damage Avaya unless enjoined by this Court.  
15 Avaya has no adequate remedy at law. As a direct and proximate result of their infringements,  
16 Defendants have realized unjust profits, gains and advantages at the expense of Avaya, including  
17 as set forth above. In addition, Avaya has suffered substantial loss and damages to its property  
18 and business, including significant monetary damages as a direct and proximate result of  
19 Defendants' infringements, including as set forth above. The harm caused by Defendants'  
20 unlawful conduct entitles Avaya to recovery of all available remedies under the law, including but  
21 not limited to actual damages, infringers' profits, statutory damages (if elected), reasonable  
22 attorney fees, costs, and prejudgment interest.

23 **FOURTH CLAIM FOR RELIEF**

24 **Violations of the Digital Millennium Copyright Act**

25 *17 U.S.C. §§ 1201, et seq.*

26 **(Against All Defendants)**

27 61. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
28 set forth herein.

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1           62.     Avaya’s has registered copyrights in its software.

2           63.     Avaya employs many technological measures to effectively control access to its  
3 copyright-protected software, including but not limited to software license keys.

4           64.     Defendants have circumvented technological measures that Avaya put in place to  
5 effectively control access to Avaya’s copyright-protected software. The pirated Internal Use  
6 Licenses that Defendants have sold online avoid, bypass, decrypt, and deactivate a technological  
7 protection measure without Avaya’s authority for the purpose of gaining unauthorized access to  
8 Avaya’s copyrighted works. As alleged further above, Defendants offered to the public, provided  
9 or otherwise trafficked in pirated Internal Use Licenses, which constitutes technology that is  
10 primarily designed or produced for the purpose of either circumventing Avaya’s technological  
11 protection measures that effectively control access to copyrighted works, or allowing third parties  
12 to access Avaya’s copyrighted works without authorization. Such pirated Internal Use Licenses  
13 have only limited commercially significant purpose or use other than to circumvent a  
14 technological protection measure that effectively controls access to copyrighted works, or are  
15 marketed by Defendant for use in circumventing a technological protection measure that  
16 effectively controls access to copyrighted works. Further, as alleged further above, at least  
17 Defendant Atlas has trafficked in Avaya phones with internal components, which were hacked and  
18 programmed to bypass internal software controls.

19           65.     Defendants have realized significant profit by virtue of their circumvention of  
20 Avaya’s technological protection measures and trafficking in technology to circumvent those  
21 measures. Further, Avaya has sustained economic damage as a result of Defendants’  
22 circumvention of technological protection measures and trafficking in technology to circumvent  
23 those measures in an amount to be proven at trial.

24           66.     Avaya is therefore entitled to an injunction restraining Defendants from engaging  
25 in any further such acts in violation of the United States copyright laws. Defendants’ aforesaid  
26 conduct is causing immediate and irreparable injury to Avaya and to Avaya’s goodwill, and will  
27 continue to damage Avaya unless enjoined by this Court. Avaya has no adequate remedy at law.  
28 Unless Defendants are enjoined and prohibited from infringing Avaya’s copyrights, inducing

1 others to infringe Avaya’s copyrights, and unless all pirated software license keys are seized and  
 2 impounded pursuant to 17 U.S.C. Section 1203, Defendants will continue to be able to circumvent  
 3 technological measures to effectively control access to Avaya’s copyright-protected software and  
 4 to traffic in technology to circumvent Avaya’s technological protection measures.

5 67. Defendants’ acts of software access control circumvention, alleged further above,  
 6 are and have been knowing and willful. As a direct and proximate result of their infringements,  
 7 Defendants have realized unjust profits, gains and advantages at the expense of Avaya, including  
 8 as set forth above. In addition, Avaya has suffered substantial loss and damages to its property  
 9 and business, including significant monetary damages as a direct and proximate result of  
 10 Defendants’ infringements, including as set forth above. The harm caused by Defendants’  
 11 unlawful conduct entitles Avaya to recovery of all available remedies under the law, including but  
 12 not limited to actual damages, infringers’ profits, statutory damages (if elected), reasonable  
 13 attorney fees, costs, and prejudgment interest.

14 **FIFTH CLAIM FOR RELIEF**

15 **Violation of the Computer Fraud and Abuse Act**

16 *18 U.S.C. §§ 1030, et seq.*

17 **(Against Defendants Pearce, Hines, and DBSI)**

18 68. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
 19 set forth herein.

20 69. Avaya’s computer systems are involved in interstate and/or foreign commerce and  
 21 communication, and are protected computers under 18 U.S.C. § 1030(e)(2).

22 70. Defendants Pearce, Hines, and DBSI, through Hines, (together the “Computer  
 23 Fraud Defendants”) knowingly and intentionally accessed Avaya’s computer systems without  
 24 authorization or in excess of authorization.

25 71. Leveraging that access, the Computer Fraud Defendants obtained and used valuable  
 26 information from Avaya’s protected computers in transactions involving interstate or foreign  
 27 commerce and/or communications. This information included pirated and/or stolen Internal Use  
 28 Licenses, as well as password and other login information to enable them to hijack and leverage

1 other user accounts.

2 72. Thus, the Computer Fraud Defendants also knowingly, willfully, and with an intent  
3 to defraud accessed Avaya's computers without authorization or in excess of authorization and  
4 obtained valuable information from Avaya's computers that the Computer Fraud Defendants used  
5 to obtain something of value. The Computer Fraud Defendants also knowingly, willfully, and  
6 with an intent to defraud trafficked in login information through which Avaya computers were  
7 accessed without authorization, affecting interstate commerce.

8 73. Avaya has suffered irreparable harm and injuries resulting from the Computer  
9 Fraud Defendants' conduct, which harm will continue unless the Computer Fraud Defendants are  
10 enjoined from further unauthorized access of Avaya's protected computers. Avaya has no  
11 adequate remedy at law.

12 74. The Computer Fraud Defendants' conduct has caused a loss to Avaya during a one-  
13 year period in excess of \$5,000. Avaya has been harmed by the Computer Fraud Defendants'  
14 actions, including but not limited to being forced to expend significant resources to investigate the  
15 unauthorized access and abuse of its computer network and to address the harm to Avaya and its  
16 computer network caused by that unlawful conduct. The harm caused by the Computer Fraud  
17 Defendants' unlawful conduct entitles Avaya to recovery of all available remedies under the law,  
18 including but not limited to damages and equitable relief.

19 **SIXTH CLAIM FOR RELIEF**

20 **Violations of the California Computer Data Access and Fraud Act**

21 ***California Penal Code § 502***

22 **(Against Defendants Pearce, Hines, and DBSI)**

23 75. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
24 set forth herein.

25 76. The Computer Fraud Defendants knowingly accessed and without permission used  
26 data from Avaya's computers, computer systems, and/or computer network in order to devise  
27 and/or execute a scheme to defraud and deceive in violation of California Penal Code § 502(c)(1).  
28 The Computer Fraud Defendants knowingly accessed and without permission took, copied, and/or

1 used data from Avaya's computers, computer systems and/or computer network in violation of  
 2 California Penal Code § 502(c)(2). The Computer Fraud Defendants knowingly and without  
 3 permission used or caused to be used Avaya's computer services in violation of California Penal  
 4 Code § 502(c)(3). The Computer Fraud Defendants knowingly accessed and without permission  
 5 altered and added data to Avaya's computers, computer systems, and/or computer network in  
 6 violation of California Penal Code § 502(c)(4). The Computer Fraud Defendants knowingly and  
 7 without permission accessed or caused to be accessed Avaya's computers, computer systems,  
 8 and/or computer network in violation of California Penal Code § 502(c)(7).

9 77. Avaya suffered and continues to suffer damage as a result of the Computer Fraud  
 10 Defendants' violations of the California Penal Code § 502 identified above.

11 78. The Computer Fraud Defendants' conduct also caused irreparable harm and injuries  
 12 to Avaya, and, unless enjoined, will cause further irreparable injury, for which Avaya has no  
 13 adequate remedy at law. Avaya is therefore entitled to an injunction restraining the Computer  
 14 Fraud Defendants from engaging in any further such acts in violation of the law.

15 79. The Computer Fraud Defendants willfully violated California Penal Code § 502 in  
 16 disregard and derogation of Avaya's rights, and their actions as alleged above were carried out  
 17 with oppression, fraudulent intent, and malice.

18 80. The harm caused by the Computer Fraud Defendants' unlawful conduct entitles  
 19 Avaya to recovery of all available remedies under the law, including but not limited to  
 20 compensatory damages, punitive or exemplary damages, reasonable attorney fees, costs, and  
 21 prejudgment interest.

22 **SEVENTH CLAIM FOR RELIEF**

23 **Trafficking In Counterfeit Or Illicit Labels**

24 ***18 U.S.C. § 2318***

25 **(Against All Defendants)**

26 81. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
 27 set forth herein.

28 82. 18 U.S.C. § 2318 provides in pertinent part that it is a federal crime for persons to

1 knowingly traffic in counterfeit or illicit labels, documentation, or packaging accompanying a  
2 copy of a computer program. Any copyright owner who is injured, or is threatened with injury, by  
3 a violation of 18 U.S.C. § 2318(a) may bring a civil action.

4 83. In order to access and run Avaya's copyright protected software, licensees must  
5 validate their copies of Avaya's software with license keys that are generated through Avaya's  
6 computer systems. The license keys are encrypted alphanumeric codes that are encoded with the  
7 authorized software features that have been licensed and a unique serial number of a memory card  
8 that is physically inserted into the Avaya-built server running the Avaya software. In this way, the  
9 Avaya software license keys are designed to distribute Avaya software to licensed end users and to  
10 prevent distribution, copying, and infringement by unlicensed users or in excess of a user's  
11 license.

12 84. Avaya's software license keys are identifying labels accompanying and designed to  
13 accompany copies of Avaya's computer programs. Defendants knowingly trafficked in illicit  
14 labels by pirating Avaya Internal Use Licenses. The pirated Avaya Internal Use Licenses that  
15 Defendants all trafficked in constitute illicit labels within the meaning of 18 U.S.C. § 2318, as  
16 they are genuine licensing documents that are used by Avaya to verify that a copy of a computer  
17 program is not infringing of any Avaya copyright.

18 85. Defendants' acts in the commission of the above unlawful conduct used or intended  
19 to use interstate and/or foreign commerce. Further, the Avaya software license keys must  
20 accompany the delivery of Avaya software, as without the license key the Avaya software will not  
21 operate.

22 86. Defendants' conduct in violation of 18 U.S.C. § 2318 alleged above are, and have  
23 been, knowing and willful. Defendants' aforesaid conduct is causing immediate and irreparable  
24 injury to Avaya and to Avaya's goodwill, and will continue to damage Avaya unless enjoined by  
25 this Court. Avaya has no adequate remedy at law. Avaya is entitled to an injunction restraining  
26 Defendants from engaging in any further such acts in violation of 18 U.S.C. § 2318. Unless  
27 Defendants are enjoined and prohibited from such conduct, and unless all illicit and/or counterfeit  
28 labels, including but not limited to all pirated software license keys, are seized and impounded

1 pursuant to 18 U.S.C. § 2318, Defendants will continue to traffic in such illicit and/or counterfeit  
2 labels.

3 87. As a direct and proximate result of their unlawful conduct in violation of 18 U.S.C.  
4 § 2318, Defendants have realized unjust profits, gains and advantages at the expense of Avaya,  
5 including as set forth above. In addition, Avaya has suffered substantial loss and damages to its  
6 property and business, including significant monetary damages as a direct and proximate result of  
7 Defendants' infringements, including as set forth above. The harm caused by Defendants'  
8 unlawful conduct entitles Avaya to recovery of all available remedies under the law, including but  
9 not limited to actual damages, infringers' profits, statutory damages (if elected), reasonable  
10 attorney fees, costs, and prejudgment interest.

11 **EIGHTH CLAIM FOR RELIEF**

12 **Unjust Enrichment/Restitution/Constructive Trust**

13 ***Common Law***

14 **(Against All Defendants)**

15 88. Avaya incorporates each of the foregoing paragraphs of this Complaint as if fully  
16 set forth herein.

17 89. Defendants unjustly received benefits at the expense of Avaya through their  
18 wrongful conduct, as alleged further above. Defendants continue to unjustly retain these benefits  
19 at the expense of Avaya. The unjust receipt of the benefits obtained by Defendants lacks any  
20 adequate legal basis and thus cannot conscientiously be retained by Defendants. Therefore, the  
21 circumstances of the receipt and retention of such benefits are such that, as between Avaya and  
22 Defendants, it is unjust for Defendants to retain any such benefits. As alleged above, Defendants'  
23 wrongful conduct and retention of the unjust benefits obtained through that wrongful conduct was  
24 willful and undertaken with fraudulent intent.

25 90. The harm caused by the Defendants' unlawful conduct entitles Avaya to recovery  
26 of all available remedies under the law, including but not limited to full restitution of all amounts  
27 and/or other benefits in which Defendants have been unjustly enriched at Avaya's expense, in an  
28 amount to be proven at trial, and/or imposition of a constructive trust over such amounts in favor

1 of Avaya, as well as punitive or exemplary damages, reasonable attorney fees, costs, and  
2 prejudgment interest to the fullest extent available under the law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Avaya respectfully prays that the Court enter judgment as follows:

5 A. For entry of judgment holding Defendants liable for their unlawful conduct,  
6 including but not limited to their infringement of Avaya copyrights and trademarks set forth  
7 above;

8 B. For an order preliminarily and permanently enjoining Defendants, their officers,  
9 agents, servants, employees, attorneys, and affiliated companies, their assigns and successors in  
10 interest, and those persons in active concert or participation with them, from any continued or  
11 further acts of counterfeiting or infringement of any Avaya trademarks and/or copyrights,  
12 including inducing infringement by any other party, as well as from further acts of unfair  
13 competition, trafficking in illicit and/or counterfeit labels, and/or circumvention of Avaya  
14 technological measures controlling access to its copyright-protected software, and enjoining the  
15 Computer Fraud Defendants from their officers, agents, servants, employees, attorneys, and  
16 affiliated companies, their assigns and successors in interest, and those persons in active concert or  
17 participation with them, from any continued or further acts of computer fraud;

18 C. For an order that any counterfeit or infringing products, or derivative works  
19 therefrom, including but not limited to all unlicensed Avaya software and/or unauthorized Avaya  
20 software licenses, as well as any illicit and/or counterfeit labels in Defendants’ possession,  
21 custody, or control, be seized, impounded, and transferred to Avaya or to the Court or destroyed,  
22 pursuant to 15 U.S.C. § 1118, 17 U.S.C. §§ 503 & 1203, and/or 18 U.S.C. § 2318;

23 D. For an order from the Court that an asset freeze and/or constructive trust be  
24 imposed over all monies and profits in Defendants’ possession, custody, or control, which  
25 rightfully belongs or should be restored or delivered to Avaya;

26 E. For Avaya’s damages according to proof resulting from Defendants’ unlawful and  
27 infringing conduct as alleged above as well as Defendants’ profits to the fullest extent available  
28 under the law;

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- 1 F. For statutory damages to the fullest extent available under the law and to the extent  
2 elected by Avaya prior to the rendering of final judgment;
- 3 G. For prejudgment interest;
- 4 H. For reasonable attorney fees and costs to the fullest extent available under the law;
- 5 I. For treble damages, enhanced damages, punitive damages, and/or exemplary  
6 damages to the fullest extent available under the law;
- 7 J. For full restitution, including but not limited to restoration of all property  
8 unlawfully taken from Avaya, as well as any ill-gotten gains from the unlawful conduct alleged  
9 above;
- 10 K. For an order that Avaya be awarded injunctive, specific performance, and other  
11 provisional remedies, as appropriate; and,
- 12 L. For such other and further relief as the Court deems just and proper.

13 DATED: January 31, 2019

SIDEMAN & BANCROFT LLP

14 By:                     /s/ Zachary J. Alinder                      
15 *Zachary J. Alinder*  
16 *Attorneys for Plaintiff*  
17 *AVAYA INC.*

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**JURY DEMAND**

Pursuant to Civ. L.R. 3-6 and Fed. R. Civ. Proc. 38, Plaintiff Avaya Inc. hereby demands a trial by a jury on all issues herein so triable.

DATED: January 31, 2019

SIDEMAN & BANCROFT LLP

By:         /s/ Zachary J. Alinder                  
Zachary J. Alinder  
Attorneys for Plaintiff  
AVAYA INC.