

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HARK C. CHAN,

Plaintiff,

v.

AT&T MOBILITY LLC,

Defendant.

CASE NO. C11-1766JLR

ORDER ON MOTION TO
DISMISS

I. INTRODUCTION

This matter comes before the court on Defendant AT&T Mobility LLC's ("AT&T") motion to dismiss (Mot. (Dkt. # 32)) Plaintiff Hark Chan's first amended complaint (Am. Compl. (Dkt. # 29)). Having considered the submissions of the parties, the balance of the record, and the relevant law, and deeming oral argument unnecessary,

1 the court GRANTS AT&T's motion to dismiss (Dkt. # 32) but with leave for Dr. Chan to
2 file a second amended complaint within 20 days of the date of this order.¹

3 II. BACKGROUND

4 This is a patent infringement case. Dr. Chan alleges that he is the sole inventor of
5 United States Patent No. 7,856,217 ("the '217 Patent"). (Am. Compl. ¶ 4.) Dr. Chan
6 alleges that AT&T makes, uses, sells, sold, or offers to sell products that infringe at least
7 one claim of the '217 Patent. (*Id.* ¶ 11.) In support of this claim, he alleges a non-
8 exhaustive list of infringing products and their manufacturers. (*Id.*) Dr. Chan alleges that
9 AT&T is infringing the '217 Patent "either literally or by equivalents, and either directly
10 or by inducement or contribution." (*Id.* ¶ 12.) He also alleges that AT&T is "actively
11 inducing direct infringement by vendors, distributors, retails, and end-users who sell,
12 offer for sale, purchase, and/or use the [a]ccused [d]evice." (*Id.* ¶ 13.)

13 III. ANALYSIS

14 Dr. Chan alleges direct literal infringement, direct equivalent infringement,
15 indirect infringement by inducement, and indirect contributory infringement by AT&T.
16 (Am. Compl. ¶ 12.) AT&T makes three primary arguments in support of its motion to
17 dismiss each claim. (*See generally* Mot.) First, AT&T argues that Dr. Chan's claims
18 should be dismissed because they are conditionally pleaded. (Mot. at 6.) Second, AT&T
19 contends that Dr. Chan fails to adequately allege direct equivalent infringement. (*Id.* at

20
21 ¹ AT&T has requested oral argument, however the court deems this matter to be
22 appropriate for resolution without a hearing and therefore denies AT&T's request. Dr. Chan did
not request oral argument.

1 4-6.) Finally, AT&T argues that Dr. Chan fails to sufficiently allege his indirect
2 infringement claims. (*Id.* at 6-11.) The court is not persuaded by AT&T’s first
3 argument; however, the court concludes that Dr. Chan has failed to sufficiently plead
4 direct and indirect infringement and therefore grants AT&T’s motion to dismiss.

5 **A. Legal Standard**

6 A motion to dismiss a patent infringement case under Federal Rule of Civil
7 Procedure 12(b)(6) is a “purely procedural question not pertaining to patent law,” and
8 thus courts apply the “the law of the regional circuit,” rather than the Federal Circuit.
9 *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1355-56 (Fed. Cir. 2007).

10 To survive a motion to dismiss pursuant to Rule 12(b)(6), “a complaint must
11 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
12 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
13 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). It is not enough for a complaint to
14 “plead[] facts that are ‘merely consistent with’ a defendant’s liability.” *Id.* (quoting
15 *Twombly*, 550 U.S. at 557). Rather, “[a] claim has facial plausibility when the plaintiff
16 pleads factual content that allows the court to draw the reasonable inference that the
17 defendant is liable for the misconduct alleged.” *Id.* Although a court considering a Rule
18 12(b)(6) motion to dismiss must accept all of the factual allegations in the complaint as
19 true, the court is not required to accept as true legal conclusions presented as factual
20 allegations. *Id.*

1 **B. Conditional Pleading**

2 AT&T asserts that Dr. Chan's conditional pleading is grounds for dismissal.
3 (Mot. at 3.) Dr. Chan's amended complaint alleges in relevant part that AT&T is
4 infringing the '217 Patent "either literally or by equivalents, and either directly or by
5 inducement or contribution." (Am. Compl. ¶ 12.) Here, Dr. Chan has not conditioned
6 his arguments as AT&T claims; rather, he has alleged multiple theories for relief. This is
7 consistent with pleading in the alternative.

8 The Federal Rules of Civil Procedure expressly allow for pleading in the
9 alternative: "A party may set out 2 or more statements of a claim or defense alternatively
10 or hypothetically, either in a single count or defense or in separate ones. If a party makes
11 alternative statements, the pleading is sufficient if any one of them is sufficient." Fed. R.
12 Civ. P. 8(d)(2); *see also Molsbergen v. United States*, 757 F.2d 1016, 1018 (9th Cir.
13 1985). Additionally, "[a] party may state as many separate claims or defenses as it has,
14 regardless of consistency." Fed. R. Civ. P. 8(d)(3). Therefore, the Federal Rules of Civil
15 Procedure allow for Dr. Chan's method of pleading.

16 Moreover, even if the court accepted AT&T's argument that the allegations are
17 conditional (rather than pleaded in the alternative), the cases on which AT&T relies do
18 not support its position that such pleading is grounds for dismissal. In *Elan*
19 *Microelectronics Corp. v. Apple, Inc.*, C 09-01531 RS, 2009 WL 2972374 (N.D. Cal.
20 Sept. 14, 2009), the court dismissed the claims because the pleadings were merely a
21 "threadbare recital of the elements of a cause of action, supported by mere conclusory
22 statements," not because of conditional pleading. *Id.* at *2. Likewise, in *Xpoint*

1 | *Technologies, Inc. v. Microsoft Corp.*, 730 F. Supp. 2d 349 (D. Del. 2010), the court
2 | dismissed the complaint because it “resorted to a mere recitation of the elements.” *Id.* at
3 | 357. Although the court also noted that conditional pleading is disfavored, it did not state
4 | that conditional pleading was grounds for dismissal. *Id.* at 357 n.11. Accordingly, the
5 | court declines to dismiss the claims in the amended complaint on the basis that they were
6 | conditionally pleaded or alleged in the alternative.

7 | **C. Direct Infringement**

8 | Dr. Chan alleges that AT&T infringed the '217 Patent by direct literal and direct
9 | equivalent infringement. (Am. Compl. ¶ 12.) The parties agree that compliance with
10 | Federal Rule of Civil Procedure Form 18 is sufficient for pleading direct literal
11 | infringement. (Mot. at 4; Resp. (Dkt. # 33) at 3.) The parties, however, disagree on
12 | whether pleading in compliance with Form 18 is sufficient to allege direct equivalent
13 | infringement. (Mot. at 4; Resp. at 3.) AT&T argues that Form 18 is not sufficient and
14 | that *Iqbal* and *Twombly*'s heightened pleading standard applies to equivalent
15 | infringement claims. (Mot. at 4.) Dr. Chan argues that Form 18 is sufficient to plead
16 | such claims. (Resp. at 3.)

17 | As an initial matter, the court need only resolve the parties' dispute if it concludes
18 | that Dr. Chan's amended complaint fails to comply with *Iqbal* and *Twombly*'s pleading
19 | standard. The court concludes that the amended complaint does not comply. The
20 | allegations in Dr. Chan's amended complaint are insufficient because they are little more
21 | than legal conclusions and a barebones recital of the elements of his cause of action. *See*
22 | *Iqbal*, 556 U.S. at 663. For example, Dr. Chan alleges that “AT&T is liable by actively

1 inducing direct infringement” and “continues to infringe, either literally or by
2 equivalents.” (Am. Compl. ¶¶ 12-13.) These allegations are not sufficient to sustain Dr.
3 Chan’s claims under *Iqbal* and *Twombly* against a motion to dismiss. Accordingly, the
4 court must determine if Form 18 applies to direct equivalent claims and then evaluate
5 whether Dr. Chan meets the requirements of Form 18 for his direct infringement claims.

6 Form 18 provides a sample complaint for direct patent infringement. Fed. R. Civ.
7 P. Form 18; *see also* Fed. R. Civ. P. 84 (“The forms in the Appendix suffice under these
8 rules and illustrate the simplicity and brevity that these rules contemplate.”). Form 18
9 requires:

10 1) an allegation of jurisdiction; 2) a statement that the plaintiff owns the
11 patent; 3) a statement that defendant has been infringing the patent “by
12 making, selling, and using [the device] embodying the patent”; 4) a
statement that the plaintiff has given the defendant notice of its
infringement; and 5) a demand for an injunction and damages.

13 *McZeal*, 501 F.3d at 1357; *see also* Fed. R. Civ. P. Form 18. The form mandates
14 “essentially nothing more than conclusory statements,” *Elan Microelectronics*, 2009 WL
15 2972374, at *2, and does not require a party explain how a product infringes, *Wistron*
16 *Corp. v. Phillip M. Adams & Associates, LLC*, C-10-4458 EMC, 2011 WL 4079231, at
17 *3 (N.D. Cal. Sept. 12, 2011) (rejecting the “contention that [a] patent infringement claim
18 should be dismissed for failure to explain how the alleged products infringe”).

19 The court joins other district courts and the Federal Circuit in concluding that
20 Form 18 applies to direct equivalent infringement claims. *See, e.g., McZeal*, 501 F.3d at
21 1356-58; *Elan Microelecs.*, 2009 WL 2972374, at *2; *Conte v. Jakks Pac., Inc.*, 1:12-CV-
22 0006 LJO GSA, 2012 WL 2339117, at *4 n.5 (E.D. Cal. June 19, 2012) (noting that

1 compliance with Form 18 is sufficient to plead direct literal and direct equivalent);
2 *Sharafabadi v. Pac. Nw. Farmers Co-op.*, C09-1043JLR, 2010 WL 234769, at *2 (W.D.
3 Wash. Jan. 14, 2010); *Microsoft Corp. v. Phoenix Solutions, Inc.*, 741 F. Supp. 2d 1156,
4 1163 (C.D. Cal. 2010); *Advanced Analogic Tech., Inc. v. Kinetic Tech., Inc.*, C-09-1360
5 MMC, 2009 WL 1974602, at *1 (N.D. Cal. July 8, 2009); *Enlink Geoenergy Serv., Inc. v.*
6 *Jackson & Sons Drilling & Pump, Inc.*, C 09-03524 CW, 2010 WL 1221861, at *2 (N.D.
7 Cal. Mar. 24, 2010); *S.O.I.TEC Silicon on Insulator Techs., S.A. v. MEMC Elec.*
8 *Materials, Inc.*, CIV. 08-292-SLR, 2009 WL 423989, at *2 (D. Del. Feb. 20, 2009). The
9 court recognizes “that it is difficult to reconcile the guidelines set forth in *Twombly* and
10 *Iqbal* with Form 18,” *Bender v. LG Electronics U.S.A., Inc.*, C 09-02114 JF (PVT), 2010
11 WL 889541, at *3, *5 (N.D. Cal. Mar. 11, 2010), and that “a number of district courts in
12 the Ninth Circuit have addressed this very argument, and have concluded that Form 18
13 does not provide adequate notice under the heightened pleading standards articulated in
14 those cases,” *Avocet Sports Tech., Inc. v. Garmin Int’l, Inc.*, C 11-04049 JW, 2012 WL
15 1030031, at *3 (N.D. Cal. Mar. 22, 2012). Nevertheless, in the absence of either Federal
16 Circuit precedent or a fair preponderance of district court decisions, the court concludes
17 that a complaint, following Form 18, is sufficient to state a plausible claim for both direct
18 literal and direct equivalent infringement. *See Conte*, 2012 WL 2339117, at *4 n.5;
19 *Wright Mfg. Inc. v. Toro Co.*, CIV.A. MJG-11-1373, 2011 WL 6211172, at *2 (D. Md.
20 Dec. 13, 2011).

21 Accordingly, the court will evaluate whether Dr. Chan’s claims for direct literal
22 and direct equivalent infringement meet the requirements of Form 18. Dr. Chan’s

1 amended complaint, however, does not meet Form 18's requirements because it lacks "a
2 statement that the plaintiff has given the defendant notice of its infringement," *McZeal*,
3 501 F.3d at 1357. The complaint simply alleges that AT&T has infringed the '207
4 Patent. (Am. Compl. ¶¶ 12-13.) Therefore, Dr. Chan has failed to fulfill the
5 requirements for Form 18. Accordingly, the court dismisses Dr. Chan's direct literal and
6 direct equivalent claims for failure to state a claim, but grants him leave to amend.

7 **D. Indirect Infringement**

8 Dr. Chan and AT&T do not agree on the standard governing AT&T's motion to
9 dismiss Dr. Chan's indirect infringement claims. AT&T asserts that *Twombly* and *Iqbal*
10 apply. (Mot. at 2.) Dr. Chan asserts that "the matter is not completely settled" and seeks
11 to have the court apply its "subjective 'experience' and 'common sense' to determine if
12 any information beyond the traditional approach realistically should be required to give a
13 defendant notice of the nature of [Dr. Chan's] claims." (Resp. at 3-5.)

14 Dr. Chan's position is not supported by the law. Courts overwhelmingly have
15 concluded that *Iqbal* and *Twombly*'s pleading standard applies to indirect infringement.
16 *See, e.g., Elan Microelec.*, 2009 WL 2972374, at *2 (noting that Form 18 does not
17 address indirect infringement and concluding that *Twombly* and *Iqbal* apply); *Conte*,
18 2012 WL 2339117, at *4 (noting that "this [c]ourt joins those courts that have concluded
19 that a plaintiff must meet the pleading standard set forth in *Twombly* and *Iqbal* to allege a
20 claim for indirect patent infringement" and collecting cases that have adopted this
21 standard). The court agrees with these courts. Accordingly, the court will apply *Iqbal*
22 and *Twombly* to Dr. Chan's indirect infringement claims.

1 Proving either type of alleged indirect infringement, induced or contributory,
2 requires a showing that the defendant had knowledge of the patent. *DSU Med. Corp. v.*
3 *JMS Co., Ltd.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006) (noting that proving an induced
4 infringement claim “includes the requirement that he or she knew of the patent”); *Fujitsu*
5 *Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010) (noting that “[t]o establish
6 contributory infringement, the patent owner must show . . . that the accused infringer had
7 knowledge of the patent”). Demonstrating that a party was willfully blind to a fact is
8 sufficient to meet the knowledge requirement for induced or contributory infringement.
9 *Global-Tech Appliances, Inc. v. SEB S.A.*, __ U.S. __, 131 S. Ct. 2060, 2068 (2011); *see*
10 *also Illinois Tool Works, Inc. v. MOC Products Co., Inc.*, No. 09CV1887 JLS MDD,
11 2012 WL 727828, at *7 (S.D. Cal. Mar. 6, 2012). Willful blindness requires more than
12 mere negligence; rather, a defendant must (1) “subjectively believe that there is a high
13 probability that a fact exists” and (2) “take deliberate actions to avoid learning of that
14 fact.” *Global-Tech Appliances, Inc.*, 131 S. Ct. at 2078.

15 Furthermore, an induced infringement claim also requires “the patentee [to] show,
16 first that there has been direct infringement,” and “second, that the alleged infringer
17 knowingly induced infringement and possessed specific intent to encourage another’s
18 infringement.” *Minn. Min. & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1304 (Fed. Cir.
19 2002). Likewise, a contributory infringement claim requires, in addition to knowledge of
20 the patent, (1) “an act of direct infringement”; (2) that the alleged infringer “knew that the
21 combination for which its components were especially made was both patented and
22 infringing”; and (3) that the defendant’s components have “no substantial non-infringing

1 uses.” *Lucent Tech., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1320 (Fed. Cir. 2009)
2 (quoting *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1312
3 (Fed. Cir. 2005)).

4 Dr. Chan fails to state a claim for indirect infringement, either induced or
5 contributory, because he fails to allege that AT&T had knowledge of, or was willfully
6 blind to, the ’217 Patent. (*See generally*, Am. Compl.) Dr. Chan, in his response brief,
7 contends that the court should infer from the amended complaint that AT&T, because of
8 its size, knew about, or was willfully blind to, the ’217 Patent. (Resp. at 13.) Dr. Chan
9 asks the court to speculate about what AT&T and other large companies must know
10 because of their size. (Resp. at 13.) This sort of speculation is improper under federal
11 pleading standards. *See Doe v. United States*, 419 F.3d 1058, 1062 (9th Cir. 2005) (noting that
12 the court takes all reasonable inferences from the complaint when considering a motion to
13 dismiss).

14 Therefore, the court concludes Dr. Chan’s amended complaint lacks any allegation
15 of an essential element of an indirect infringement claim. The court has carefully
16 reviewed the amended complaint and concludes that Dr. Chan makes no allegation that
17 would support a reasonable inference that AT&T knew of the ’217 Patent. (*See generally*
18 Am. Compl.) Accordingly, the court dismisses Dr. Chan’s contributory and induced
19 infringement claims for failure to state a claim but grants leave to amend.

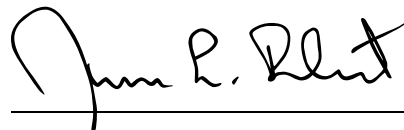
20 \\
21 \\
22 \\
23 \\
24 \\
25 \\
26 \\
27 \\
28 \\
29 \\
30 \\
31 \\
32 \\
33 \\
34 \\
35 \\
36 \\
37 \\
38 \\
39 \\
40 \\
41 \\
42 \\
43 \\
44 \\
45 \\
46 \\
47 \\
48 \\
49 \\
50 \\
51 \\
52 \\
53 \\
54 \\
55 \\
56 \\
57 \\
58 \\
59 \\
60 \\
61 \\
62 \\
63 \\
64 \\
65 \\
66 \\
67 \\
68 \\
69 \\
70 \\
71 \\
72 \\
73 \\
74 \\
75 \\
76 \\
77 \\
78 \\
79 \\
80 \\
81 \\
82 \\
83 \\
84 \\
85 \\
86 \\
87 \\
88 \\
89 \\
90 \\
91 \\
92 \\
93 \\
94 \\
95 \\
96 \\
97 \\
98 \\
99 \\
100 \\
101 \\
102 \\
103 \\
104 \\
105 \\
106 \\
107 \\
108 \\
109 \\
110 \\
111 \\
112 \\
113 \\
114 \\
115 \\
116 \\
117 \\
118 \\
119 \\
120 \\
121 \\
122 \\
123 \\
124 \\
125 \\
126 \\
127 \\
128 \\
129 \\
130 \\
131 \\
132 \\
133 \\
134 \\
135 \\
136 \\
137 \\
138 \\
139 \\
140 \\
141 \\
142 \\
143 \\
144 \\
145 \\
146 \\
147 \\
148 \\
149 \\
150 \\
151 \\
152 \\
153 \\
154 \\
155 \\
156 \\
157 \\
158 \\
159 \\
160 \\
161 \\
162 \\
163 \\
164 \\
165 \\
166 \\
167 \\
168 \\
169 \\
170 \\
171 \\
172 \\
173 \\
174 \\
175 \\
176 \\
177 \\
178 \\
179 \\
180 \\
181 \\
182 \\
183 \\
184 \\
185 \\
186 \\
187 \\
188 \\
189 \\
190 \\
191 \\
192 \\
193 \\
194 \\
195 \\
196 \\
197 \\
198 \\
199 \\
200 \\
201 \\
202 \\
203 \\
204 \\
205 \\
206 \\
207 \\
208 \\
209 \\
210 \\
211 \\
212 \\
213 \\
214 \\
215 \\
216 \\
217 \\
218 \\
219 \\
220 \\
221 \\
222 \\
223 \\
224 \\
225 \\
226 \\
227 \\
228 \\
229 \\
230 \\
231 \\
232 \\
233 \\
234 \\
235 \\
236 \\
237 \\
238 \\
239 \\
240 \\
241 \\
242 \\
243 \\
244 \\
245 \\
246 \\
247 \\
248 \\
249 \\
250 \\
251 \\
252 \\
253 \\
254 \\
255 \\
256 \\
257 \\
258 \\
259 \\
260 \\
261 \\
262 \\
263 \\
264 \\
265 \\
266 \\
267 \\
268 \\
269 \\
270 \\
271 \\
272 \\
273 \\
274 \\
275 \\
276 \\
277 \\
278 \\
279 \\
280 \\
281 \\
282 \\
283 \\
284 \\
285 \\
286 \\
287 \\
288 \\
289 \\
290 \\
291 \\
292 \\
293 \\
294 \\
295 \\
296 \\
297 \\
298 \\
299 \\
300 \\
301 \\
302 \\
303 \\
304 \\
305 \\
306 \\
307 \\
308 \\
309 \\
310 \\
311 \\
312 \\
313 \\
314 \\
315 \\
316 \\
317 \\
318 \\
319 \\
320 \\
321 \\
322 \\
323 \\
324 \\
325 \\
326 \\
327 \\
328 \\
329 \\
330 \\
331 \\
332 \\
333 \\
334 \\
335 \\
336 \\
337 \\
338 \\
339 \\
340 \\
341 \\
342 \\
343 \\
344 \\
345 \\
346 \\
347 \\
348 \\
349 \\
350 \\
351 \\
352 \\
353 \\
354 \\
355 \\
356 \\
357 \\
358 \\
359 \\
360 \\
361 \\
362 \\
363 \\
364 \\
365 \\
366 \\
367 \\
368 \\
369 \\
370 \\
371 \\
372 \\
373 \\
374 \\
375 \\
376 \\
377 \\
378 \\
379 \\
380 \\
381 \\
382 \\
383 \\
384 \\
385 \\
386 \\
387 \\
388 \\
389 \\
390 \\
391 \\
392 \\
393 \\
394 \\
395 \\
396 \\
397 \\
398 \\
399 \\
400 \\
401 \\
402 \\
403 \\
404 \\
405 \\
406 \\
407 \\
408 \\
409 \\
410 \\
411 \\
412 \\
413 \\
414 \\
415 \\
416 \\
417 \\
418 \\
419 \\
420 \\
421 \\
422 \\
423 \\
424 \\
425 \\
426 \\
427 \\
428 \\
429 \\
430 \\
431 \\
432 \\
433 \\
434 \\
435 \\
436 \\
437 \\
438 \\
439 \\
440 \\
441 \\
442 \\
443 \\
444 \\
445 \\
446 \\
447 \\
448 \\
449 \\
450 \\
451 \\
452 \\
453 \\
454 \\
455 \\
456 \\
457 \\
458 \\
459 \\
460 \\
461 \\
462 \\
463 \\
464 \\
465 \\
466 \\
467 \\
468 \\
469 \\
470 \\
471 \\
472 \\
473 \\
474 \\
475 \\
476 \\
477 \\
478 \\
479 \\
480 \\
481 \\
482 \\
483 \\
484 \\
485 \\
486 \\
487 \\
488 \\
489 \\
490 \\
491 \\
492 \\
493 \\
494 \\
495 \\
496 \\
497 \\
498 \\
499 \\
500 \\
501 \\
502 \\
503 \\
504 \\
505 \\
506 \\
507 \\
508 \\
509 \\
510 \\
511 \\
512 \\
513 \\
514 \\
515 \\
516 \\
517 \\
518 \\
519 \\
520 \\
521 \\
522 \\
523 \\
524 \\
525 \\
526 \\
527 \\
528 \\
529 \\
530 \\
531 \\
532 \\
533 \\
534 \\
535 \\
536 \\
537 \\
538 \\
539 \\
540 \\
541 \\
542 \\
543 \\
544 \\
545 \\
546 \\
547 \\
548 \\
549 \\
550 \\
551 \\
552 \\
553 \\
554 \\
555 \\
556 \\
557 \\
558 \\
559 \\
560 \\
561 \\
562 \\
563 \\
564 \\
565 \\
566 \\
567 \\
568 \\
569 \\
570 \\
571 \\
572 \\
573 \\
574 \\
575 \\
576 \\
577 \\
578 \\
579 \\
580 \\
581 \\
582 \\
583 \\
584 \\
585 \\
586 \\
587 \\
588 \\
589 \\
590 \\
591 \\
592 \\
593 \\
594 \\
595 \\
596 \\
597 \\
598 \\
599 \\
600 \\
601 \\
602 \\
603 \\
604 \\
605 \\
606 \\
607 \\
608 \\
609 \\
610 \\
611 \\
612 \\
613 \\
614 \\
615 \\
616 \\
617 \\
618 \\
619 \\
620 \\
621 \\
622 \\
623 \\
624 \\
625 \\
626 \\
627 \\
628 \\
629 \\
630 \\
631 \\
632 \\
633 \\
634 \\
635 \\
636 \\
637 \\
638 \\
639 \\
640 \\
641 \\
642 \\
643 \\
644 \\
645 \\
646 \\
647 \\
648 \\
649 \\
650 \\
651 \\
652 \\
653 \\
654 \\
655 \\
656 \\
657 \\
658 \\
659 \\
660 \\
661 \\
662 \\
663 \\
664 \\
665 \\
666 \\
667 \\
668 \\
669 \\
670 \\
671 \\
672 \\
673 \\
674 \\
675 \\
676 \\
677 \\
678 \\
679 \\
680 \\
681 \\
682 \\
683 \\
684 \\
685 \\
686 \\
687 \\
688 \\
689 \\
690 \\
691 \\
692 \\
693 \\
694 \\
695 \\
696 \\
697 \\
698 \\
699 \\
700 \\
701 \\
702 \\
703 \\
704 \\
705 \\
706 \\
707 \\
708 \\
709 \\
710 \\
711 \\
712 \\
713 \\
714 \\
715 \\
716 \\
717 \\
718 \\
719 \\
720 \\
721 \\
722 \\
723 \\
724 \\
725 \\
726 \\
727 \\
728 \\
729 \\
730 \\
731 \\
732 \\
733 \\
734 \\
735 \\
736 \\
737 \\
738 \\
739 \\
740 \\
741 \\
742 \\
743 \\
744 \\
745 \\
746 \\
747 \\
748 \\
749 \\
750 \\
751 \\
752 \\
753 \\
754 \\
755 \\
756 \\
757 \\
758 \\
759 \\
760 \\
761 \\
762 \\
763 \\
764 \\
765 \\
766 \\
767 \\
768 \\
769 \\
770 \\
771 \\
772 \\
773 \\
774 \\
775 \\
776 \\
777 \\
778 \\
779 \\
780 \\
781 \\
782 \\
783 \\
784 \\
785 \\
786 \\
787 \\
788 \\
789 \\
790 \\
791 \\
792 \\
793 \\
794 \\
795 \\
796 \\
797 \\
798 \\
799 \\
800 \\
801 \\
802 \\
803 \\
804 \\
805 \\
806 \\
807 \\
808 \\
809 \\
810 \\
811 \\
812 \\
813 \\
814 \\
815 \\
816 \\
817 \\
818 \\
819 \\
820 \\
821 \\
822 \\
823 \\
824 \\
825 \\
826 \\
827 \\
828 \\
829 \\
830 \\
831 \\
832 \\
833 \\
834 \\
835 \\
836 \\
837 \\
838 \\
839 \\
840 \\
841 \\
842 \\
843 \\
844 \\
845 \\
846 \\
847 \\
848 \\
849 \\
850 \\
851 \\
852 \\
853 \\
854 \\
855 \\
856 \\
857 \\
858 \\
859 \\
860 \\
861 \\
862 \\
863 \\
864 \\
865 \\
866 \\
867 \\
868 \\
869 \\
870 \\
871 \\
872 \\
873 \\
874 \\
875 \\
876 \\
877 \\
878 \\
879 \\
880 \\
881 \\
882 \\
883 \\
884 \\
885 \\
886 \\
887 \\
888 \\
889 \\
890 \\
891 \\
892 \\
893 \\
894 \\
895 \\
896 \\
897 \\
898 \\
899 \\
900 \\
901 \\
902 \\
903 \\
904 \\
905 \\
906 \\
907 \\
908 \\
909 \\
910 \\
911 \\
912 \\
913 \\
914 \\
915 \\
916 \\
917 \\
918 \\
919 \\
920 \\
921 \\
922 \\
923 \\
924 \\
925 \\
926 \\
927 \\
928 \\
929 \\
930 \\
931 \\
932 \\
933 \\
934 \\
935 \\
936 \\
937 \\
938 \\
939 \\
940 \\
941 \\
942 \\
943 \\
944 \\
945 \\
946 \\
947 \\
948 \\
949 \\
950 \\
951 \\
952 \\
953 \\
954 \\
955 \\
956 \\
957 \\
958 \\
959 \\
960 \\
961 \\
962 \\
963 \\
964 \\
965 \\
966 \\
967 \\
968 \\
969 \\
970 \\
971 \\
972 \\
973 \\
974 \\
975 \\
976 \\
977 \\
978 \\
979 \\
980 \\
981 \\
982 \\
983 \\
984 \\
985 \\
986 \\
987 \\
988 \\
989 \\
990 \\
991 \\
992 \\
993 \\
994 \\
995 \\
996 \\
997 \\
998 \\
999 \\
1000 \\
1001 \\
1002 \\
1003 \\
1004 \\
1005 \\
1006 \\
1007 \\
1008 \\
1009 \\
1010 \\
1011 \\
1012 \\
1013 \\
1014 \\
1015 \\
1016 \\
1017 \\
1018 \\
1019 \\
1020 \\
1021 \\
1022 \\
1023 \\
1024 \\
1025 \\
1026 \\
1027 \\
1028 \\
1029 \\
1030 \\
1031 \\
1032 \\
1033 \\
1034 \\
1035 \\
1036 \\
1037 \\
1038 \\
1039 \\
1040 \\
1041 \\
1042 \\
1043 \\
1044 \\
1045 \\
1046 \\
1047 \\
1048 \\
1049 \\
1050 \\
1051 \\
1052 \\
1053 \\
1054 \\
1055 \\
1056 \\
1057 \\
1058 \\
1059 \\
1060 \\
1061 \\
1062 \\
1063 \\
1064 \\
1065 \\
1066 \\
1067 \\
1068 \\
1069 \\
1070 \\
1071 \\
1072 \\
1073 \\
1074 \\
1075 \\
1076 \\
1077 \\
1078 \\
1079 \\
1080 \\
1081 \\
1082 \\
1083 \\
1084 \\
1085 \\
1086 \\
1087 \\
1088 \\
1089 \\
1090 \\
1091 \\
1092 \\
1093 \\
1094 \\
1095 \\
1096 \\
1097 \\
1098 \\
1099 \\
1100 \\
1101 \\
1102 \\
1103 \\
1104 \\
1105 \\
1106 \\
1107 \\
1108 \\
1109 \\
1110 \\
1111 \\
1112 \\
1113 \\
1114 \\
1115 \\
1116 \\
1117 \\
1118 \\
1119 \\
1120 \\
1121 \\
1122 \\
1123 \\
1124 \\
1125 \\
1126 \\
1127 \\
1128 \\
1129 \\
1130 \\
1131 \\
1132 \\
1133 \\
1134 \\
1135 \\
1136 \\
1137 \\
1138 \\
1139 \\
1140 \\
1141 \\
1142 \\
1143 \\
1144 \\
1145 \\
1146 \\
1147 \\
1148 \\
1149 \\
1150 \\
1151 \\
1152 \\
1153 \\
1154 \\
1155 \\
1156 \\
1157 \\
1158 \\
1159 \\
1160 \\
1161 \\
1162 \\
1163 \\
1164 \\
1165 \\
1166 \\
1167 \\
1168 \\
1169 \\
1170 \\
1171 \\
1172 \\
1173 \\
1174 \\
1175 \\
1176 \\
1177 \\
1178 \\
1179 \\
1180 \\
1181 \\
1182 \\
1183 \\
1184 \\
1185 \\
1186 \\
1187 \\
1188 \\
1189 \\
1190 \\
1191 \\
1192 \\
1193 \\
1194 \\
1195 \\
1196 \\
1197 \\
1198 \\
1199 \\
1200 \\
1201 \\
1202 \\
1203 \\
1204 \\
1205 \\
1206 \\
1207 \\
1208 \\
1209 \\
1210 \\
1211 \\
1212 \\
1213 \\
1214 \\
1215 \\
1216 \\
1217 \\
1218 \\
1219 \\
1220 \\
1221 \\
1222 \\
1223 \\
1224 \\
1225 \\
1226 \\
1227 \\
1228 \\
1229 \\
1230 \\
1231 \\
1232 \\
1233 \\
1234 \\
1235 \\
1236 \\
1237 \\
1238 \\
1239 \\
1240 \\
1241 \\
1242 \\
1243 \\
1244 \\
1245 \\
1246 \\
1247 \\
1248 \\
1249 \\
1250 \\
1251 \\
1252 \\
1253 \\
1254 \\
1255 \\
1256 \\
1257 \\
1258 \\
1259 \\
1260 \\
1261 \\
1262 \\
1263 \\
1264 \\
1265 \\
1266 \\
1267 \\
1268 \\
1269 \\
1270 \\
1271 \\
1272 \\
1273 \\
1274 \\
1275 \\
1276 \\
1277 \\
1278 \\
1279 \\
1280 \\
1281 \\
1282 \\
1283 \\
1284 \\
1285 \\
1286 \\
1287 \\
1288 \\
1289 \\
1290 \\
1291 \\
1292 \\
1293 \\
1294 \\
1295 \\
1296 \\
1297 \\
1298 \\
1299 \\
1300 \\
1301 \\
1302 \\
1303 \\
1304 \\
1305 \\
1306 \\
1307 \\
1308 \\
1309 \\
1310 \\
1311 \\
1312 \\
1313 \\
1314 \\
1315 \\
1316 \\
1317 \\
1318 \\
1319 \\
1320 \\
1321 \\
1322 \\
1323 \\
1324 \\
1325 \\
1326 \\
1327 \\
1328 \\
1329 \\
1330 \\
1331 \\
1332 \\
1333 \\
1334 \\
1335 \\
1336 \\
1337 \\
1338 \\
1339 \\
1340 \\
1341 \\
1342 \\
1343 \\
1344 \\
1345 \\
1346 \\
1347 \\
1348 \\
1349 \\
1350 \\
1351 \\
1352 \\
1353 \\
1354 \\
1355 \\
1356 \\
1357 \\
1358 \\
1359 \\
1360 \\
1361 \\
1362 \\
1363 \\
1364 \\
1365 \\
1366 \\
1367 \\
1368 \\
1369 \\
1370 \\
1371 \\
1372 \\
1373 \\
1374 \\
1375 \\
1376 \\
1377 \\
1378 \\
1379 \\
1380 \\
1381 \\
1382 \\
1383 \\
1384 \\
1385 \\
1386 \\
1387 \\
1388 \\
1389 \\
1390 \\
1391 \\
1392 \\
1393 \\
1394 \\
1395 \\
1396 \\
1397 \\
1398 \\
1399 \\
1400 \\
1401 \\
1402 \\
1403 \\
1404 \\
1405 \\
1406 \\
1407 \\
1408 \\
1409 \\
1410 \\
1411 \\
1412 \\
1413 \\
1414 \\
1415 \\
1416 \\
1417 \\
1418 \\
1419 \\
1420 \\
1421 \\
1422 \\
1423 \\
1424 \\
1425 \\
1426 \\
1427 \\
1428 \\
1429 \\
1430 \\
1431 \\
1432 \\
1433 \\
1434 \\
1435 \\
1436 \\
1437 \\
1438 \\
1439 \\
1440 \\
1441 \\
1442 \\
1443 \\
1444 \\
1445 \\
1446 \\
1447 \\
1448 \\
1449 \\
1450 \\
1451 \\
1452 \\
1453 \\
1454 \\
1455 \\
1456 \\
1457 \\
1458 \\
1459 \\
1460 \\
1461 \\
1462 \\
1463 \\
1464 \\
1465 \\
1466 \\
1467 \\
1468 \\
1469 \\
1470 \\
1471 \\
1472 \\
1473 \\
1474 \\
1475 \\
1476 \\
1477 \\
1478 \\
1479 \\
1480 \\
1481 \\
1482 \\
1483 \\
1484 \\
1485 \\
1486 \\
1487 \\
1488 \\
1489 \\
1490 \\
1491 \\
1492 \\
1493 \\
1494 \\
1495 \\
1496 \\
1497 \\
1498 \\
1499 \\
1500 \\
1501 \\
1502 \\
1503 \\
1504 \\
1505 \\
1506 \\
1507 \\
1508 \\
1509 \\
1510 \\
1511 \\
1512 \\
1513 \\
1514 \\
1515 \\
1516 \\
1517 \\
1518 \\
1519 \\
1520 \\
1521 \\
1522 \\
1523 \\
1524 \\
1525 \\
1526 \\
1527 \\
1528 \\
1529 \\
1530 \\
1531 \\
1532 \\
1533 \\
1534 \\
1535 \\
1536 \\
1537 \\
1538 \\
1539 \\
1540 \\
1541 \\
1542 \\
1543 \\
1544 \\
1545 \\
1546 \\
1547 \\
1548 \\
1549 \\
1550 \\
1551 \\
1552 \\
1553 \\
1554 \\
1555 \\
1556 \\
1557 \\
1558 \\
1559 \\
1560 \\
1561 \\
1562 \\
1563 \\
1564 \\
1565 \\
1566 \\
1567 \\
1568 \\
1569 \\
1570 \\
1571 \\
1572 \\
1573 \\
1574 \\
1575 \\
1576 \\
1577 \\
1578 \\
1579 \\
1580 \\
1581 \\
1582 \\
1583 \\
1584 \\
1585 \\
1586 \\
1587 \\
1588 \\
1589 \\
1590 \\
1591 \\
1592 \\
1593 \\
1594 \\
1595 \\
1596 \\
1597 \\
1598 \\
1599 \\
1600 \\
1601 \\
1602 \\
1603 \\
1604 \\
1605 \\
1606 \\
1607 \\
1608 \\
1609 \\
1610 \\
1611 \\
1612 \\
1613 \\
1614 \\

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court GRANTS AT&T's motion to dismiss (Dkt. #
3 32). The court, however, also GRANTS Dr. Chan leave to file, within 20 days of the date
4 of this order, a second amended complaint that cures the deficiencies identified in this
5 order. The court cautions Dr. Chan that failure to file a second amended complaint
6 within the prescribed time period will result in the dismissal of his action.

7 The court further DIRECTS the clerk to file this order in Case No. C11-1766JLR,
8 as well as in *Chan v. Sprint Spectrum L.P.*, Case No C11-1693JLR, which is the case
9 number with which this matter has been consolidated. The court is filing this order under
10 both case numbers because the motion to which this order corresponds was filed only in
11 Case No. C11-1766JLR. Dr. Chan, however, should file his second amended complaint
12 and all other documents in Case No. C11-1693JLR.

13 Dated this 18th day of July, 2012.

14 

15 _____
16 JAMES L. ROBART
17 United States District Judge
18
19
20
21
22