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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

PHILLIP M. ADAMS, an individual,
PHILLIP M. ADAMS & ASSOCIATES,
L.L.C., a Utah Limited Liability Company,
and LUKE H. ONG, an individual,

Plaintiffs,

vs.

JEFFREY L. SIMPTON, Deputy Attorney
General of the State of California, and JAN
ZABRISKIE, Deputy Attorney General of the
State of California,

Defendants.

**FIRST AMENDED
VERIFIED COMPLAINT**

Civil No. 2: 01 CV 0122 B

Honorable DEE V. BENSON

Pursuant to Rule 15(a) of the *Federal Rules of Civil Procedure*, Plaintiffs Phillip M. Adams, Phillip M. Adams & Associates, L.L.C., and Luke H. Ong (collectively "Adams") file this First Amended Verified Complaint and complain of defendants Jeffrey L. Simpton, Deputy Attorney General of the State of California, and Jan Zabriskie, Deputy Attorney General of the

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State of California, (collectively the “California Deputy Attorneys General”), and allege as follows:

SUBSTANCE OF THE ACTION

1. This matter involves the unconstitutional and unconscionable abuse of governmental power by the California Deputy Attorneys General. The California Deputy Attorneys General seek to prevent Adams from providing his much needed patented computer technology to consumers who need Adams’ technology to remedy a serious defect that corrupts data in their computers. Adams has licensed his patented computer technology to some of the world’s leading computer companies such as Hewlett Packard, and is in the process of licensing his patented computer technology to other leading computer companies. Adams’ patented computer technology was instrumental in exposing a serious data corruption defect in personal computers, and recently facilitated a \$2.1 billion class action settlement against Toshiba. Adams’ patented computer technology is worth hundreds of millions of dollars.

2. The California Deputy Attorneys General unconstitutionally seek to prevent Adams from licensing his patented computer technology to the world’s leading manufacturers of computers. The California Deputy Attorneys General have unilaterally, and without court order, placed an unconstitutional gag on Adams preventing Adams from having any communications with any computer manufacturers whatsoever by threatening Adams that he should not have any communications with any computer manufacturers. The California Deputy Attorneys General also seek to obtain from Adams the names of the various computer manufacturers with whom Adams is in discussions so that they can contact these computer manufacturers and threaten them that they should not have any communication with Adams whatsoever. Indeed, as set forth below, The California Deputy Attorneys General have contacted at least two computer manufacturers and have instructed them that they not have any communications whatsoever with Adams.

3. The California Deputy Attorneys General seek to muzzle Adams from having any

communication with any computer manufacturer because the California Deputy Attorneys General fear that if computer manufacturers license Adams' patented computer technology, the value of the California Deputy Attorneys General's California False Claims Act damage claims against these computer manufacturers will be diminished even though the potential for harm to the public continues unabated.¹ In other words, the California Deputy Attorneys General do not want the defective computers used by consumers to be fixed because the California Deputy Attorneys General will not be able to recover as much in monetary damages from the computer manufacturers in California False Claims Act litigation inasmuch as the computers will no longer be defective and the computer manufacturers may no longer be liable for monetary damages.

4. This lawsuit also involves the California Deputy Attorneys General's theft of Adams' valuable technology and trade secrets. The California Deputy Attorneys General have unlawfully obtained Adams' technology and trade secrets without Adams' authorization by subpoenaing the technology and trade secrets from Hewlett Packard, and are now using these trade secrets in conducting their investigation and in pursuing False Claims Act claims against various computer manufacturers.

5. Just as it would be unconstitutional for the California State Legislature to pass a statute making it unlawful for Adams to license his patented computer technology to various computer manufacturers to benefit consumer users, and just as it would be unlawful for the

¹ Even the United States Department of Justice, which is pursuing its own Federal False Claims Act claims and has also had meetings with Adams similar to the meetings that the California Deputy Attorneys General have had, has never taken the outrageous and unconstitutional position that Adams cannot license his patented computer technology to computer manufacturers or cannot have communications with the computer manufacturers just because Adams has met with representatives from the Department of Justice to discuss the Federal Qui Tam Litigation. Just because a witness or informant meets with a prosecutor, does not mean that the prosecutor can prevent the witness or informant from meeting with the defendant. Just because a plaintiff has a meeting with a co-plaintiff does not mean that the plaintiff cannot have any meetings with the defendant, or that the co-plaintiff can prevent the plaintiff from selling the plaintiff's technology to the defendant.

California Deputy Attorneys General to obtain DNA probes by subpoena and without compensation from the licensee of a DNA patent probe holder, and then use such DNA probes in an investigation for their own benefit, it is unlawful and unconstitutional for the California Deputy Attorneys General to engage in the conduct outlined in this Complaint.

6. By this Verified Complaint, Adams alleges claims for violations of his constitutional rights, including his right of free speech, right of association, and right to contract, in violation of 42 USC § 1983, and claims for theft of trade secrets and for declaratory relief. Adams seeks a temporary restraining order, and a preliminary and permanent injunction against the California Deputy Attorneys General enjoining the California Deputy Attorneys General from violating Adams' constitutional rights, including the right of free speech and association, so that Adams may provide his patented computer technology to as many computer users as possible by licensing his patented computer technology to various computer companies. Adams also seeks a temporary restraining order, and preliminary and permanent injunction enjoining the California Deputy Attorneys General from misappropriating Adams' trade secrets. Adams further seeks a declaratory judgment that he is entitled to license his valuable patent rights to various computer manufacturers, a declaratory judgment that he is entitled to license his patented computer technology without any interference from the California Deputy Attorneys General, and a declaratory judgment that he is not required to disclose to the California Deputy Attorneys General the names of the computer companies with whom he is licensing his patented computer technology unless there are adequate protections preventing the California Deputy Attorneys General from interfering with Adams' rights to license his patented computer technology.

PARTIES AND JURISDICTION

7. Plaintiff Phillip M. Adams (referred to herein as "Dr. Adams") is a principal of Phillips M. Adams & Associates, L.L.C. Dr. Adams has various ownership interests in the patented computer technology that is the subject of this lawsuit.

8. Plaintiff Phillip M. Adams & Associates, L.L.C. is a Utah Limited Liability Company, and has various ownership interests in the patented computer technology that is the subject of this lawsuit.

9. Plaintiff Luke H. Ong is an individual and resident of the State of Utah, and is also a principal of Phillip M. Adams & Associates, L.L.C.

10. Defendants Jeffrey L. Simpton and Jan Zabriskie are Deputy Attorneys General of the State of California. Each of these defendants is being sued in his or her individual and personal capacity, and each of these defendants has personal involvement in this matter. Each of the defendants was the agent, employee, partner, and/or supervisor of each other, and, in committing the acts alleged herein, was acting within the course and scope of that relationship and with the permission and consent of the other defendant. Each of these defendants represents the State of California in a California *qui tam* lawsuit captioned [Under Seal] v. [Under Seal], Case No. 99-9978, Superior Court of the State of California, City and County of San Francisco (hereinafter the "California Qui Tam Litigation").

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, in that all of Adams' claims arise under federal law or are properly before this Court pursuant to 28 U.S.C. § 1367(a).

12. This Court has personal jurisdiction over each of the defendants in that they have participated in at least one meeting with Dr. Adams in the State of Utah, they have communicated with Dr. Adams in the State of Utah, they have directed correspondence to Dr. Adams and his counsel in the State of Utah, and they seek to prevent residents and citizens of the State of Utah from exercising constitutionally protected rights in Utah and from carrying out in Utah the acts necessary to license patented computer technology. For example, the California Deputy Attorneys General and their agents met with Dr. Adams in a computer lab in Murray Utah in early 1999 where Dr. Adams provided a demonstration of defective computers to the

California Deputy Attorneys General and others. It is this meeting in Murray, Utah that the California Deputy Attorneys General assert prevents Dr. Adams from having any communications with any computer manufacturer. Adams' claims arise directly from and relate directly to the defendants' actions taken in and intentionally and purposefully directed at the State of Utah. The impact of the harm caused by the California Deputy Attorneys General's unlawful conduct is felt in this judicial district. Because a substantial part of the events giving rise to these claims occurred in this judicial district and because the California Deputy Attorneys General are subject to personal jurisdiction in this district, venue is proper under 28 U.S.C. §1391(b)(2).

GENERAL ALLEGATIONS

Dr. Adams' Patented Computer Technology

13. Dr. Adams has a Ph.D. in applied computer science and a D.Sc. in engineering. He has 27 years of experience in the computer industry, has served on the faculty of major universities, and holds numerous patents.

14. In the late 1980's, Dr. Adams discovered a defect in floppy disk controllers ("FDC's") of computers. The defect discovered by Dr. Adams (the "Defect") causes the random destruction or corruption of data without any way for the user to determine that data has been destroyed or corrupted.

15. The random destruction or corruption of data in computers is a most serious problem, and is potentially cataclysmic. Computers are used throughout society, and the data integrity of computers is the lifeblood of the information age. Society relies upon the integrity of data stored by and exchanged between computers to support virtually all aspects of society including financial transactions; accurate and effective medical diagnoses and treatment; the proper design and construction of automobiles, aircraft, bridges, dams, office buildings and other

devices and structures vital to public safety, etc. Society also depends on the integrity of data stored in and used by government computers. For example, if data in Department of Defense computers pinpointing enemy targets is corrupted, and the weapons aimed at those targets badly miss the targets, the targets will not be hit and innocent civilians will be killed. If data in our civil air system computers is destroyed or corrupted, then the civil air system may fail. Indeed, Dr. Adams understands that the recent shut down in the air traffic system that occurred in the Western United States in October 2000 was most likely the result of the Defect in FAA computers. A copy of a newspaper article describing the shut down is attached hereto as Exhibit A.

16. The scope and seriousness of the Defect were recently illustrated by the \$2.1 billion *Toshiba* class-action settlement. In addition to the *Toshiba* class-action settlement, the United States Government recently settled False Claims Acts claims against *Toshiba* for \$33.5 million. A copy of a *Wall Street Journal* article discussing these settlements is attached hereto as Exhibit B.

17. In the 13 years since Dr. Adams discovered the problem, Dr. Adams has devoted thousands of hours to developing a solution to the Defect, alerting the Federal Government, State Governments, computer companies, and private purchasers to the Defect, and assisting computer manufacturers to acknowledge and remedy the Defect.

18. For example, Dr. Adams recently met with United States Senator Robert Bennett, who chaired the Government Y2K Committee, to discuss how the United States Government can remedy the Defect in Federal Government Computers. Dr. Adams has also been in communication with United States Senator Hatch's office to discuss the Department of Justice's handling and use of Dr. Adams' patented computer technology. Adams has thus been very

interested in assisting the United States Government and various State Governments in determining the scope of the Defect in government computers and in licensing both the Detector and Solution to the various Governments.

19. Adams has developed at least two patented computer technologies that address the Defect. First, Adams has developed a patented computer software program that will detect which computers are defective (the "Detector"). The Detector is the subject of several United States Patents, including U.S. Patents numbers 5,379, 414 and 5,983,002. The software Detector allows one to determine whether a computer is defective without taking the computer apart. Second, Adams has also developed a patented solution that fully resolves the Defect found in the computers (the "Solution") so that Data is not corrupted or lost. The Solution is the subject of U.S. Patent number 5,379,414. True and correct copies of Dr. Adams' Patents for the Detector and Solution are attached hereto as Exhibits C and D.

20. Hewlett Packard ("HP"), one of the world's leaders in personal computers, recently licensed both Dr. Adams' Detector and Solution, and has placed Dr. Adams' Solution on the Internet for all HP customers throughout the world. Dr. Adams' Solution can be found at WWW.HP.COM/GO/FDCPATCH. A copy of the printout of the homepage from this website, as well as the page for the hp-ux 10.01 workstations is attached hereto as Exhibit E. The page for the hp-ux workstations states that "This software patch was developed by HP under license from and in conjunction with Dr. Phillip M. Adams." *Id.* Thus, any HP customer can go to this Internet website, download the Solution, and fully repair the Defect in the customer's computer.

21. In addition to licensing his patented computer technology to HP, Dr. Adams has licensed his patented technology to, and/or is in discussions with other leading manufacturers of computers to license his patented technology. These various computer companies are

represented by some of the leading national and international law firms in such negotiations and discussions. A list of the companies with whom Dr. Adams has been in discussions, as well as copies of the various license agreements with these leading computer companies are being submitted in camera for the Court's review. The list is being submitted in camera because as set forth herein, the California Deputy Attorneys General are violating Adams' constitutional rights of free speech, freedom of association, and freedom of contract by attempting to prevent Adams from licensing his technology to these computer companies or having any communications whatsoever with these computer companies. As set forth below, Adams seeks a declaratory judgment that he not be required to disclose the names of the computer companies with whom Adams is in discussions without an appropriate order, and an order preventing the California Deputy Attorneys General from interfering with his constitutional right to license his patented computer technology to these computer manufacturers.

22. The various computer companies are in the best position to implement Dr. Adams' patented Solution to assist all consumers in remedying the Defect. The various computer companies can integrate Dr. Adams' patented Solution and make the Solution available on the Internet and otherwise, just as HP has done on its Internet website at WWW.HP.COM/GO/EDCPATCH. Exhibit E hereto.

23. Because the Solution must be keyed to each manufacturer's model and operating system, Dr. Adams cannot simply put his Solution on the Internet for computer users throughout the world. Dr. Adams must work separately with each computer manufacturer to key the Solution to the manufacturer's models and test the Solution on each model to make certain that the Solution remedies the Defect without otherwise affecting the operating system used by each computer model.

24. Because of the seriousness of the Defect and society's reliance on data integrity in computers described above, it is in the public interest that Dr. Adams' Solution be provided to as many computer users through the various computer manufacturers as soon as possible.

Consumers and computer users can implement the Solution only after Dr. Adams has licensed and worked with each computer manufacturer.

25. The public interest requires that Dr. Adams not be prevented or hindered from licensing his patented computer technology to the various computer manufacturers.

The California Qui Tam Litigation

26. In an effort to bring attention to the Defect, Dr. Adams' former counsel advised Dr. Adams to initiate the California Qui Tam Litigation in California.

27. During the course of the California Qui Tam Litigation, it became apparent to Dr. Adams, that the California Deputy Attorneys General were not interested in encouraging various computer companies to provide an efficacious solution to the Defect, but were only interested in obtaining a large monetary recovery for the State of California. For example, as set forth above, the Federal Government recently settled its Qui Tam Claims against Toshiba for \$33.5 million. That settlement was recently announced in a *Wall Street Journal* article attached hereto as Exhibit B. Adams is informed and believes that the State of California has also settled its Qui Tam Claims against Toshiba even though Toshiba has not provided an efficacious solution to the Defect, and even though Dr. Adams had demonstrated to both the California Deputy Attorneys General and Toshiba that the Toshiba solution did not and does not remedy the Defect in Toshiba computers. The California Deputy Attorneys General appear to be motivated by collecting as much in monetary damages as possible even if the computer manufacturers do not remedy the Defect.

28. From the outset of Dr. Adams' discussions with various governmental agencies, Dr. Adams has informed the California Deputy Attorneys General, and other governmental agencies that Dr. Adams intends to license his patented computer technology not only to the various Governments that he has been speaking with, but also to the various computer manufacturers. Dr. Adams recognizes that he has the only efficacious Solution to the Defect and wants the Solution installed on as many defective computers as possible.

29. In various discussions with the California Deputy Attorneys General, Dr. Adams and his counsel have made clear to the California Deputy Attorneys General that Dr. Adams was interested in licensing his technology to as many computer companies and government agencies as possible.

30. In late December 2000, when it became clear that the California Deputy Attorneys General were not interested in making certain that the various computer companies provided an efficacious solution to the Defect, but were only interested in obtaining a monetary recovery at the expense of the public and computer users, and when Dr. Adams discovered, as set forth below, that the California Deputy Attorneys General had unlawfully obtained Dr. Adams' patented Detector without a license, Dr. Adams determined that he could no longer trust the California Deputy Attorneys General and would withdraw as the relator in the California Qui Tam litigation.

31. Even though Dr. Adams has withdrawn as a relator in the California Qui Tam Litigation, the State of California can pursue its claims against the various computer manufacturers independently. The State of California has retained its own experts and consultants to assist the State of California in pursuing the claims of the State of California. Moreover, methods other than Dr. Adams' patented Detector exist by which the State of

California can determine the scope of the Defect in California government computers.

The California Deputy Attorneys General's Attempts to Punish Dr. Adams

32. After the California Deputy Attorneys General were notified of Dr. Adams' intent to withdraw as a relator in the California Qui Tam Litigation, the California Deputy Attorneys General attempted to punish Dr. Adams for withdrawing as a Qui Tam relator and also attempted to deflect attention away from the California Deputy Attorney General's infringement of Dr. Adams' patented computer technology and theft of his trade secrets. The California Deputy Attorneys General sought a temporary restraining order against Dr. Adams seeking to enjoin him from licensing his patented computer technology to HP, or assisting HP in implementing Dr. Adams' patented computer technology. In addition, the California Deputy Attorneys General asserted that because they had had meetings with Dr. Adams wherein Dr. Adams had discussed his patented computer technology with them, that Dr. Adams had somehow received privileged information from the California Deputy Attorneys General.

33. The California Deputy Attorney Generals filed the State of California's motion for a temporary restraining order on December 27, 2000, two days after Christmas, and required Dr. Adams and HP to appear in California Superior Court on less than 12 hours notice. In a hearing on December 28, 2000, the California Superior Court denied the State of California's motion for a temporary restraining order.

34. After further briefing, on February 9, 2001, the California Superior Court refused to enjoin Dr. Adams from meeting with or discussing implementation and licensing of his patented computer technology with HP or HP technical personal, but temporarily enjoined Dr. Adams from having discussions with HP litigation lawyers, litigation experts, and litigation consultants regarding the FDC Defect alleged in the Complaint in the California Qui Tam

Litigation. The Superior Court scheduled a hearing on a Motion for a Preliminary Injunction on April 18, 2001. A copy of the February 9, 2001 Order is filed under seal herewith as Sealed Exhibit 1.

Violations of Dr. Adams' Constitutional Rights to Free Speech, Association, and Right To Contract

35. Although the California Superior Court refused to enjoin Dr. Adams from licensing his patented computer technology to HP or from communicating with HP technical personnel, the California Deputy Attorneys General have taken the unconscionable and unconstitutional position, under color of law, that Dr. Adams may not have any discussions with any computer manufacturers whatsoever about the licensing of his patented computer technology. In a letter dated February 16, 2001, the California Deputy Attorneys General wrote as follows to Dr. Adams' California Qui Tam Counsel:

By now, your office should have received Judge Wick's February 9, 2001 order. If your office has not already done so, please inform Dr. Adams of the prohibitions contained in the order. Judge Wick necessarily recognized that, in light of Dr. Adam's [sic] role as a *qui tam* plaintiff and the confidential relationship he assumed with the Attorney General's Office² in our investigation, it would be inappropriate for Dr. Adams to communicate with any of the named defendants, or their counsel, not just Hewlett Packard, with respect to any matter related to the floppy disk controller defect alleged in this action. Please inform Dr. Adams that he may not engage in any such communications.

² Judge Wick made no such finding in the February 9, 2001 Order. Indeed, the law is well settled that a *qui tam* relator owes no fiduciary duty to the government. For example, in United States v. Texas Tech University, 171 F.3d 279, 290 (5th Cir. 1999), the Fifth Circuit made clear that the Federal Qui Tam Act "does expressly assign some authority to institute suits in the name of the government . . . , but the government **does not expect that the relator will act first and foremost with the government's interests in mind.**" (emphasis added). In distinguishing a *qui tam* relator from an attorney, the Fifth Circuit went on to rule that "an attorney owes important fiduciary duties to his client **that the qui tam plaintiff does not owe to the United States. No legal duty prevents the qui tam plaintiff from furthering his own interests to the detriment of the United States' interests.**" Id. at fn. 18 (emphasis added).

If Dr. Adams, his attorneys, representatives or any persons acting in concert or participation with Dr. Adams intend to communicate with any of the named defendants in this action, please let me know in advance so the Attorneys General's Office can take appropriate steps to preserve the confidentiality of our investigation³ and communications.

A copy of this letter with the "Re:" line redacted is attached hereto as Exhibit F. Of course, just as the California State Legislature could not pass a law preventing Dr. Adams from licensing his patented computer technology to various computer manufacturers or having discussions with such companies regarding his patented computer technology, the California Deputy Attorneys General cannot, under color of law, engage in a similar prior restraint or gag.

36. Dr. Adams is informed and believes, and on that basis alleges, that the California Attorneys General have written various computer manufacturers with whom Dr. Adams has licensed or is in the process of licensing his patented computer technology, and has demanded that these computer manufacturers not license Dr. Adams' patented computer technology and not have any communication or contact whatsoever with Dr. Adams.

37. The California Attorneys General have also threatened Dr. Adams and his counsel for attempting to license Dr. Adams' patented computer technology to various computer companies. The California Attorneys General have taken the unconscionable position that Dr. Adams' attempts to provide his patented Solution to as many consumers as possible by licensing his patented Solution to the various computer companies has somehow interfered with or obstructed their investigation of the various computer companies. Of course, the California

³ The confidentiality of the California Qui Tam investigation is belied by numerous press reports disclosing the investigation attached hereto as Exhibit G. Moreover, the California Deputy Attorneys General have disclosed the fact of the investigation by sending letters to various computer manufacturers that they should not engage in any communications with Dr. Adams.

Attorneys General are free to pursue any claims they wish against various computer companies in their own right, independent of Dr. Adams' status as a Qui Tam relator.

38. Dr. Adams has never been retained by the State of California as either an expert or litigation consulting expert.

39. Dr. Adams has met with the California Deputy Attorneys General to provide technical background and information relating to the Defect and Dr. Adams' patented computer technology.

40. In each of the meetings between Dr. Adams and the California Deputy Attorneys General, the flow of information was one-way. In other words, in each such meeting, Dr. Adams provided all information discussed at the meeting by making technical presentations explaining the Defect and various methods to resolve the Defect. At no time did Dr. Adams receive any privileged or confidential information from the California Deputy Attorneys General. Indeed, Dr. Adams would have been surprised had the California Deputy Attorneys General provided any such information to Dr. Adams.

Dr. Adams' Contacts with HP

41. At no time has Dr. Adams ever discussed the California Qui Tam Litigation in any way with either HP or its counsel, or any other computer manufacturer.

42. All Dr. Adams' discussions or communications with HP have been related solely to HP's efforts to implement Dr. Adams' patented computer technology in order to assist HP customers.

43. In December 1999, Dr. Adams and his former counsel met with HP to discuss HP's licensing of his patented computer technology. Those discussions were unproductive and unsuccessful.

44. In late February 2000, after Dr. Adams terminated his former counsel and initiated litigation against his former counsel, HP contacted Dr. Adams' new counsel to discuss HP's licensing of the patented computer technology. Dr. Adams and his counsel met with representatives of HP in early March 2000 in Washington D.C.

45. As a result of such discussions and further negotiations, HP and Dr. Adams entered into an agreement in May 2000 (the "Agreement").

46. As part of the Agreement, Dr. Adams has licensed both his Detector and Solution to HP. In conjunction with the implementation of Dr. Adams' patented technology with HP that fully resolves the Defect that may exist in HP's computers, Dr. Adams has agreed to assist HP in defending HP against the class-action lawsuits that have been filed against HP and in demonstrating that HP has fully resolved the Defect. A copy of the HP Agreement is submitted under seal as Sealed Exhibit 2.

47. The Agreement expressly provides that it does not apply to any "pending *Qui Tam* suits, if any." Agreement, Part F, paragraphs 6 and 7. Furthermore, the Agreement expressly provides that "in the event that Adams is served with a valid subpoena or otherwise ordered by a court of lawful jurisdiction to appear and/or testify, this provision shall not be construed to preclude such appearance or testimony even if adverse to HP." Agreement, Part F, paragraph 4.

48. In August and September 2000, HP posted Dr. Adams' Solution at its Internet website WWW.HP.COM/GO/FDCPATCH. Exhibit E hereto. HP also began advertising in newspapers such as the *Wall Street Journal* and *USA Today* that HP had made available the Solution at this website. Copies of the various advertisements are attached hereto as Exhibit H.

The California Deputy Attorneys Generals' Theft of Trade Secrets

49. From the outset, the California Deputy Attorneys General have demanded that Dr. Adams provide them with his patented computer technology, including his patented Detector. In addition to his patented Detector, Dr. Adams uses proprietary computer code to execute his patented computer technology. This proprietary computer code constitutes trade secrets. Dr. Adams offered to make his Detector available to the California Deputy Attorneys General but only in his or his counsel's presence. Dr. Adams also offered to create a California government website for the California Deputy Attorneys General where California government employees could download the Detector onto their computers and determine whether their computer suffered from the Defect. The California Deputy Attorneys General rejected both of these offers and insisted upon obtaining Dr. Adams' patented computer technology as well as source code. Dr. Adams made clear that Dr. Adams would simply not provide his patented computer technology and trade secrets to the California Deputy Attorneys General without a license agreement or other protection.

50. Dr. Adams is not aware of any reason why the California Deputy Attorneys General should be entitled to his valuable patented computer technology without a license. Indeed, the California Deputy Attorneys General are required to honor and respect Dr. Adams' patent and other rights in both his Detector and Solution.

51. In late 2000, Dr. Adams discovered that the California Deputy Attorneys Generals, rather than licensing Adams' patented computer technology from Adams, rather than attempting to subpoena the patented computer technology directly from Dr. Adams, and rather than initiating litigation directly against Dr. Adams, have unlawfully, without notice to Adams, surreptitiously obtained the patented computer technology by subpoena from HP, a customer and

licensee of Adams, and had threatened HP that if HP failed to turn over the patented computer technology or informed Adams that HP was turning over the patented computer technology, HP would be guilty of obstruction of justice.

52. The California Deputy Attorneys General's motivation in obtaining Adams' patented computer technology from HP by subpoena, rather than directly from Adams, was to obtain the technology, particularly the Detector, without a license and without having to compensate Adams. The California Deputy Attorneys General are using Adams' patented Detector to determine the scope of the problem in the various California State computers in violation of Adams' patent rights.⁴ Upon learning of the California Deputy Attorneys General's obtaining of the patented computer technology, Dr. Adams has demanded that the California Deputy Attorneys General not infringe his patent rights and return the patented computer technology to him immediately. See Letter of January 3, 2001 attached hereto as Exhibit I. The letter provides:

As you know, this law firm represents Dr. Phillip M. Adams with respect to protecting his intellectual property in certain patented and other proprietary computer technology. As you know, Dr. Adams has developed both a patented Detector and a patented Solution.

We understand that rather than licensing Dr. Adams' patented technology or rather than subpoenaing Dr. Adams' patented technology directly from Dr. Adams, you, on behalf of the State of California, have obtained the patented computer technology from Hewlett Packard ("HP"), a licensee of Dr. Adams' patented computer technology. We understand that the State of California may be using Dr. Adams' patented computer technology in violation of Dr. Adams' patent rights. Please be advised that the State of California is not licensed to, and has no right to use, Dr.

⁴Just as the California Deputy Attorneys General could not subpoena DNA probes from a licensee of a DNA probe patent holder and use the DNA probes to conduct an investigation, the California Deputy Attorneys General cannot subpoena Dr. Adams' patented computer technology from HP, a licensee of Dr. Adams, and use the patented computer technology to conduct an investigation.

Adams' patented technology except to the extent that the State of California uses Dr. Adams' patented Solution from the hp.com website to install on HP computers used by the State of California pursuant to the terms set forth on the hp.com website.

We are surprised that the Department of Justice of the State of California, an agency that is created to enforce the law, would engage in such patent infringement.

Please be advised, and please advise all recipients to whom you have given Dr. Adams' patented technology, that any use of any kind of Dr. Adams' patented technology constitutes willful patent infringement. By this letter, Dr. Adams demands that you immediately return to Dr. Adams all copies of Dr. Adams' patented technology, that you collect all copies of the patented computer technology that you have made and/or distributed, and that you notify all recipients of the patented technology that any use of the patented technology will subject the user to claims for patent infringement and theft of trade secrets. Dr. Adams further demands that you provide him with a list of all recipients to whom you have given his patented computer technology. If Dr. Adams' patented technology is not returned immediately to Dr. Adams, Dr. Adams will have no choice but to pursue all available remedies to protect his patented computer technology. Dr. Adams will vigorously protect all rights in his patented technology. Damages for infringement of Dr. Adams' patented computer technology by the State of California could total in the hundreds of millions of dollars. Moreover, the State of California's actions in infringing Dr. Adams' patented technology has seriously devalued Dr. Adams' patented computer technology.

We understand that you are upset at Dr. Adams because Dr. Adams will simply not provide his patented Detector and Solution to the State of California without a license and without fair compensation. We also understand that you believe that because Dr. Adams was a relator in various False Claims Act cases that somehow Dr. Adams is required to permit the State of California to use his patented Detector and Solution without a license. We are aware of no legal basis for your assertion that Dr. Adams is required to permit the State of California to use his patented computer technology without a license. The State of California's use of any kind of Dr. Adams' patented Detector without a license to determine which computers are defective constitutes willful patent infringement.

We also understand that you are upset because you believe that Dr. Adams' actions in providing an efficacious Solution to this FDC Defect to as many computer companies as possible, including computer companies that provide computers to the State of California such as HP, is somehow

interfering with the False Claims Act cases that you are pursuing. Apparently, you seem to be more interested in obtaining a financial recovery, rather than obtaining a Solution that actually repairs the Defect in the computers used by the citizens of and the State of California. Of course, we believe that you should be more interested in making sure that the computers used by the citizens of and the State of California are actually repaired and data integrity is maintained, rather than simply obtaining a monetary recovery.

In this regard, Dr. Adams was very disappointed to learn of the terms of the State of California's recent settlement with Toshiba. As you know, Toshiba claims to have solved the Defect through its own Internet patch. As you also know, Dr. Adams has demonstrated conclusively both to the State of California and to Toshiba, that the Toshiba Internet patch does not work, and in fact denigrates performance of computers on which the patch is installed, as well as places data stored on the hard disk at risk. Indeed, users of Toshiba computers that have installed the Toshiba patch are in a worse position after having installed the patch. Not only do these users believe that their computers have been fixed (which they have not), but also the Toshiba customers have been compromised. Rather than make certain that the Toshiba patch actually works and fixes Toshiba computers, it appears that you were more interested in obtaining a monetary recovery that does not fix the Defect.

We seriously question your attempts to unlawfully obtain Dr. Adam's patented computer technology in light of the fact that the State of California does not need or require Dr. Adams' patented Detector to determine the scope of the Defect in computers owned by the State of California. As you know, methods other than using Dr. Adams' Detector exist for determining the scope of the Defect in computers. Dr. Adams has disclosed to you those other methods which you apparently are not interested in using.

Thank you for your prompt attention to this matter. We look forward to the immediate return of all copies of Dr. Adams' patented computer technology that is in the hands of the State of California or any agency of the State of California. Should you have any questions concerning Dr. Adams' position in this matter, please do not hesitate to contact me.

A copy of this letter is attached hereto as Exhibit I.

53. Defendant Jeffrey L. Simpton responded to this January 2, 2001 letter by letter dated January 5, 2001. Defendant Simpton refused to represent that the California Deputy

Attorneys General were not using Dr. Adams' Detector to determine which California government computers are defective, but instead wrote, in part:

Contrary to your allegations, the State is not using these programs for commercial purposes, they are not being used to fix the government's computers, and they are not being made available for any such use by others.

A copy of the January 5, 2001 letter is attached hereto as Exhibit J.

54. Dr. Adams, through his counsel responded as follows by letter dated January 5, 2001:

You write that "the State is not using these programs for commercial purposes, they are not being used to fix the government's computers, and they are not being made available for any such use by others."

Conspicuously absent from your letter is a representation that the State is not using Dr. Adams' Detector to determine which government computers are defective. Please let me know as soon as possible whether the State has used, or is using Dr. Adams' patented Detector to determine which government's computers are defective.

You also fail to state what use the State has made of Dr. Adams' patented Detector and Solution. Please let me know as soon as possible, what use the State has made of Dr. Adams' patented Detector and Solution.

We look forward to your prompt response.

A copy of this January 5, 2001 letter is attached hereto as Exhibit K.

55. The California Deputy Attorneys General have failed to respond to the inquiry set forth in this letter, i.e, what use the California Deputy Attorneys General have made of Dr. Adams' patented Detector and Solution.

COUNT I

(Violation of 42 USC Section 1983 and Dr. Adams' Constitutional Rights to Free Speech, Rights to Association, and Rights to Contract)

56. The Constitution guarantees Dr. Adams certain constitutional rights such as the right to free speech, the right to association, and the right to contract.

57. The California Deputy Attorney Generals, under color of law of the State of California and without court order, are violating Dr. Adams' constitutional rights by attempting to prevent Dr. Adams from licensing his patented computer technology to various computer companies who are interested in remedying the Defect for purchasers and users of their computers, thus violating 42 USC Section 1983.

58. The California Deputy Attorneys General letter of February 15, 2001 demanding that Adams not have any communications with computer manufacturers, as well as the correspondence described above to various computer manufacturers threatening the computer manufacturers not to have communications with Adams, constitutes an unlawful prior restraint or gag in violation of Adams' constitutional rights.

59. By violating Dr. Adams' constitutional rights, the California Deputy Attorneys General are irreparably harming Dr. Adams. In addition, by attempting to prevent Dr. Adams from licensing his patented computer technology to as many computer manufacturers as possible, the California Deputy Attorneys General are irreparably harming the citizens and consumers of the United States who are entitled to an efficacious solution to their defective computers.

60. Unless, the California Deputy Attorneys General are restrained and enjoined from their violations of Dr. Adams' constitutional rights, Dr. Adams and society at large will continue to be irreparably harmed for which there is no adequate remedy at law.

61. The California Deputy Attorneys General are personally and individually liable to Adams for damages and punitive damages in an amount to be demonstrated at trial.

COUNT II
(Theft of Trade Secrets)

62. As set forth above, the computer code misappropriated by the California Deputy Attorneys General in connection with the HP Detector and Solution is proprietary and constitutes a trade secret (hereinafter "Trade Secrets"). The Trade Secrets implementing the HP Detector and Solution constitutes information that derives independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from disclosure of the information, and the information is the subject of efforts by Adams, that are reasonable under the circumstances, to maintain its secrecy.

63. Based upon information and belief, the California Deputy Attorneys General intend to use and have used the Trade Secrets without the express or implied consent of Adams.

64. The California Deputy Attorneys General have used and are using the Trade Secrets with knowledge that they were wrongfully acquired.

65. Because of the California Deputy Attorneys General's conduct, Dr. Adams has been actually and irreparably harmed and suffered impairment of the value of his Trade Secrets. Moreover, unless the California Deputy Attorneys General are restrained from misappropriating Dr. Adams' Trade Secrets, Dr. Adams will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law.

COUNT III
(Declaratory Judgment)

66. Based on the letter dated February 15, 2001, attached hereto as Exhibit F, demanding that Adams not have any contact with any computer manufacturers, an actual controversy exists whether Adams has the right to license his patented computer technology to various computer manufacturers, and has the right to communicate with these computer manufacturers.

67. Pursuant to 28 U.S.C. Section 2201, Adams is entitled to a declaratory judgment determining a question of actual controversy between the parties.

68. Adams requests a declaratory judgment that Adams is entitled to license his patented computer technology to various computer manufacturers, and is entitled to communicate with these computer manufacturers. Adams also requests a declaratory judgment that he is entitled to license his patented computer technology to various computer manufacturers and communicate with these computer manufacturers without interference from the California Deputy Attorneys General. Adams further requests a declaratory judgment that Adams is not required to disclose to the California Deputy Attorneys General or the State of California the names of the various computer manufacturers with whom Adams is negotiating and discussing the licensing of Adams' patented computer technology unless there are adequate protections that will prevent the California Deputy Attorneys General from interfering with Adams' rights to license his patented computer technology.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Under Count I, for judgment against the California Deputy Attorneys General and

in favor of Plaintiffs for a temporary restraining order, preliminary injunctive relief, and a permanent injunction enjoining the California Deputy Attorneys General from violating Dr. Adams' constitutional rights and from attempting to prevent Dr. Adams, Plaintiffs, or any of them, from communicating with and licensing Dr. Adams' patented computer technology to various computer manufacturers, and for a judgment awarding compensatory and punitive damages in an amount to be proved at trial;

2. Under Count II, for judgment against the California Deputy Attorneys General and in favor of Plaintiffs for a temporary restraining order, preliminary injunctive relief, and a permanent injunction enjoining the misappropriation of Adams' Trade Secrets;

3. Under Count II, for a temporary, preliminary, and permanent injunction requiring the California Deputy Attorneys General to return Adams' technology and Trade Secrets, and requiring the California Deputy Attorneys General to provide a full and complete report of all uses they have made of Dr. Adams' technology and Trade Secrets, and to provide Dr. Adams with a complete accounting of each and every person, entity, or agency to whom the California Deputy Attorneys General have provided Dr. Adams' technology and Trade Secrets, as well as all information or data that the California Deputy Attorneys General or any one else who has used the technology or Trade Secrets has gathered or obtained by using the technology or Trade Secrets;

4. Under Count III, for a declaratory judgment that Dr. Adams is entitled to license his patented computer technology to various computer manufacturers and is entitled to communicate with these computer manufacturers, a declaratory judgment that Dr. Adams is entitled to license his patented computer technology to various computer manufacturers and communicate with these computer manufacturers without interference from the California

Deputy Attorneys General, and a declaratory judgment that Dr. Adams is not required to disclose to the California Deputy Attorneys General or the State of California the names of the various computer manufacturers with whom Dr. Adams, Plaintiffs, or any of them are negotiating and discussing the licensing of Dr. Adams' patented computer technology unless there are adequate protections that will prevent the California Deputy Attorneys General from interfering with Dr. Adams' rights to license his patented computer technology.

5. Under All Counts, for costs, expenses, and reasonable attorneys' fees in an amount which will be proven at trial; and

6. Under All Counts, for such other and further relief as is just and equitable.

DATED this 26th day of February 2001.

HOWARD, PHILLIPS & ANDERSEN

A handwritten signature in black ink, appearing to read 'Gregory D. Phillips', written over a horizontal line.

By: Gregory D. Phillips
Attorneys for Plaintiffs

VERIFICATION

I, Phillip M. Adams, affirm this ^{26TH}~~26~~ day of February 2001, under penalty of perjury of the laws of the United States that I have read and am familiar with the contents of the foregoing Verified Complaint; that I have personal knowledge and information concerning the facts and information set forth therein, and that to the best of my knowledge, information, and belief the allegations thereof are true and correct.

Executed this ^{26TH}~~26~~ day of February 2001 in Salt Lake City, Utah

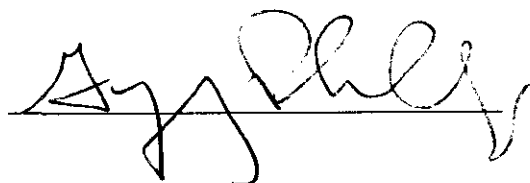
Phillip M. Adams
Phillip M. Adams

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via Facsimile and Via Overnight Mail, postage prepaid, this 26th day of February 2001 on the following:

George Prince, Esq.
California Attorneys General Office
455 Golden Gate Avenue
San Francisco, CA 94102

(Facsimile No. 415 703-5480)

A handwritten signature in cursive script, appearing to read "George Prince", written over a horizontal line.

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.