

The Honorable Timothy Bradshaw  
Noted for Consideration: June 30, 2017  
Without Oral Argument

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC; COMCAST  
CABLE COMMUNICATIONS, LLC; and  
COMCAST OF  
COLORADO/FLORIDA/MICHIGAN/  
NEW MEXICO/PENNSYLVANIA/  
WASHINGTON, LLC,

Defendants.

NO. 16-2-18224-1 SEA

STATE'S MOTION FOR  
SANCTIONS

**I. INTRODUCTION**

The State respectfully asks the Court to enter sanctions against Defendants for destroying thousands of relevant telephone recordings. The Court should further sanction Comcast because it tried to cover up its spoliation through false and misleading representations in its Opposition to the State's Motion to Compel Production of Telephone Recordings. After the State requested production of Comcast's Service Protection Plan (SPP) sales call recordings in this litigation, Comcast claimed that producing the State's proposed sample of call recordings was unduly burdensome and it retained 9 million call recordings from its Seattle and Portland regions for the June 2014 – February 2016 time period. At no point before

1 the State filed its Motion to Compel did Comcast disclose it destroyed the overwhelming  
2 majority of the requested telephone recordings.

3 Then, in opposing the State's Motion to Compel, Comcast repeatedly represented to the  
4 Court that the State's proposal of four days of call recordings per month required production of  
5 approximately 10,000 call recordings. See Dkt. 77 at 7:2-5, 8:13-18, 9:8-17. In truth, because  
6 Comcast engaged in spoliation, the State's proposal involved the production of only  
7 approximately 750 call recordings. Further, these 750 calls were not representative of the vast  
8 majority of SPP sales calls, because they were made by two departments comprising only 13  
9 percent of SPP telephone sales. Comcast knew it had destroyed its SPP call recordings when it  
10 filed its opposition brief, it knew the State's request would require production of only  
11 approximately 750 recordings, but it still falsely represented to the Court that the State's  
12 production would require production of approximately 10,000 recordings at a cost of \$445,000  
13 - \$637,000. In reliance on Comcast's misrepresentations, the State in its reply brief then  
14 lowered its request to call recordings of one day per month, which the Court then ordered. It is  
15 now apparent that a production of one day per month would lead to approximately 188 call  
16 recordings being produced.

17 In total, Comcast destroyed an estimated 36,720 audio recordings of telephone calls  
18 during which customers purchased Comcast's Service Protection Plan after receiving the  
19 State's Civil Investigative Demand:

- 20 • April 2015–September 31, 2015: Recordings from all departments other than  
21 Billing and Retention (approximately 87 percent of total SPP sales recordings  
22 destroyed).
- 23 • October 1, 2015–February 28, 2016: All call recordings destroyed.

24 Comcast destroyed direct evidence of what its employees told consumers about the SPP  
25 during a pending investigation on that very subject, and it should be sanctioned for its  
26 spoliation.

1 “Misconduct, once tolerated, will breed more misconduct[.]” *Washington State*  
2 *Physicians Ins. Exchange v. Fisons, Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993). While  
3 imposing sanctions is a “difficult and disagreeable task,” it is necessary “if our system is to  
4 remain accessible and responsible.” *Id.* at 355. The State respectfully asks the Court to sanction  
5 Comcast for its spoliation and attempt to hide the spoliation through false representations made  
6 to the State and the Court.

## 7 II. STATEMENT OF FACTS

### 8 A. The State Requested Audio Recordings of SPP Communications During the Pre-Suit 9 Investigation

10 On June 10, 2015, the State sent a CID requesting information concerning  
11 representations Comcast made to consumers regarding its SPP. *See* Declaration of Jeffrey G.  
12 Rupert, Ex. A. In the CID, the State asked Comcast to produce “all communications relating to  
13 the creation of the SPP, the SPP’s scope of services or protection, and advertising the SPP.” *Id.*  
14 Ex. A at RFP 19. The CID included “audio recordings and transcripts of audio recordings” in  
15 its definition of communications (*Id.* at 2:16-18), and it further stated: “**Do not destroy any**  
16 **documents relating to any of these interrogatories or requests for production.**” *Id.* at 7:17-  
17 18 (emphasis in original).

18 On October 16, 2015, the State told Comcast it was “concerned that Comcast (or its  
19 representatives or agents) makes deceptive representations to Washington consumers  
20 concerning the scope of the SPP’s coverage. These representations may occur via Comcast’s  
21 website, online chat sessions, *phone calls*, or in person.” Rupert Decl., Ex. B (emphasis  
22 added).

23 At no point during the State’s investigation did Comcast ask the State whether it could  
24 destroy the SPP call recordings or inform the State it was destroying the recordings.

1 **B. Comcast Claims the State's Request for Call Recordings is Unduly Burdensome**  
2 **Rather than Admit to Spoliation**

3 On September 27, 2016, the State again asked Comcast to produce telephone  
4 recordings of SPP sales calls. Rupert Decl., ¶ 4. Comcast objected on November 21, 2016,  
5 claiming production of the recordings was unduly burdensome. *Id.*, Ex. C (Resp. to RFP Nos. 4  
6 & 14). Comcast did not inform the State it destroyed any of the requested recordings in its  
7 objections.

8 On January 19, 2017, the State proposed that Comcast collect SPP sales calls from four  
9 random days per month for the months of June 2014 - May 2016. Rupert Decl., Ex. D.  
10 Comcast did not respond, so the State emailed Comcast's counsel again on February 8, 2017,  
11 asking whether Comcast believed the proposal was reasonable. *Id.* Comcast responded on  
12 February 9, claiming the request would "yield an inordinate number of call recordings,"  
13 because "Comcast receives nearly 150 million calls a year (which works out to about 20  
14 million calls a year looking at 4 days each month)." *Id.*

15 The State responded the same day and asked whether Comcast could simply identify  
16 dates on which Washington consumers signed up for the SPP and link calls to those customers  
17 on the days they were signed up. *Id.* Comcast told the State it would check on whether such an  
18 approach was feasible. *Id.*

19 After hearing nothing from Comcast, the State emailed Comcast again on February 28.  
20 Comcast responded that its "efforts to assess the feasibility and burden of linking calls to the  
21 dates SPP customers signed up for services is still ongoing." *Id.*

22 On March 8, 2017, Comcast still had yet to make a call-recording production proposal,  
23 so the State informed Comcast it would file a motion to compel if the parties did not reach an  
24 agreement by March 17. The State again offered to confer regarding the call recordings on  
25 March 16. *Id.*

1 On March 16, 2017, Comcast informed the State it was unwilling to produce any call  
2 recordings. It told the State: “we think that a production of call recordings is simply too  
3 burdensome, especially in light of the clear irrelevance of individual call recordings under your  
4 theory of the case.” *Id.* Comcast told the State it receives 140 million calls a year, but failed to  
5 disclose that it destroyed the overwhelming majority of the requested SPP sales call recordings.  
6 It told the State: “To be sure, Comcast could produce, by the close of discovery, a small,  
7 statistically insignificant number of call recordings. But you have already assembled a  
8 statistically insignificant number of calls about the SPP through your pretext caller program.”  
9 *Id.*

10 The State responded on March 17, 2017, specifically asking Comcast to identify how  
11 many Washington call recordings it retained for the June 2014 - February 2016 time period and  
12 approximately how many of them were SPP sales call recordings. *Id.* In response, Comcast  
13 told the State it was “disappointed” in the State’s last email, accused the State of engaging in  
14 “scorched earth” discovery tactics, and told the State that “for customers in its Seattle and  
15 Portland regions (which together includes the States of Washington and Oregon), Comcast has  
16 over nine *million* call recordings from the time period you’re asking about.” *Id.* (emphasis in  
17 original). Comcast again did not disclose it had destroyed the overwhelming majority of its  
18 SPP sales calls despite the State’s reference to an assumed litigation hold in its prior  
19 communication.

20 Comcast never told the State it destroyed any of the State’s proposed sample during  
21 pre-Motion to Compel discussions.

### 22 **C. Comcast’s Representations to the Court**

23 On March 27, 2017, the State moved to compel production of Comcast’s call  
24 recordings. In its Motion, the State sought four days’ of call recordings per month from June  
25 2014 - February 2016. *See* Dkt. 77 at 1:25-2:1.

26 Comcast opposed the State’s Motion asserting the following Issue Statement:

1  
2 Whether, considering the substantial burden and expense associated  
3 with the collection, redaction, and production of approximately  
4 10,000 call recordings, and their minimal relevance, Comcast  
5 should be ordered to collect, redact, and produce “Washington SPP  
6 sales recordings” for four days every month from June 2014 to  
7 March 2016?

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13 Opp. (Dkt. 80), 7:2-5.

14 Comcast further made the following representations:

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16 Over the period in question, approximately 90,000 Comcast  
17 customers in Washington signed up for the SPP service, mostly via  
18 telephone. Assuming a relatively even distribution of SPP sign-ups,  
19 there would be a pool of approximately 12,000 SPP sign ups on the  
20 days the Attorney General has proposed. If 80 percent of those  
21 customers subscribed to the SPP by phone—a reasonable  
22 assumption—that would leave a pool of about 10,000 call recordings  
23 for production.

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At approximately 17 minutes per call, for nearly 10,000 calls, the time and expense of production adds up quickly. Estimates from these vendors suggest that the Attorney General’s proposed sample would require approximately 8,500 reviewer hours at a cost of \$445,000-\$637,000.

Opp. 9:8-17.

Comcast also told the Court it “has in its direct possession approximately 10 million call recordings from the two regions that make up its Washington subscriber base,” Opp. 7:24-25, and “[a]ccording to an estimate from a third party vendor, complying with the Attorney General’s demand would require over 8,000 hours of listening time and cost more than \$600,000.” Opp. 2:22-23. Based on these representations, the State lowered its request from four days of call recordings per month to one day of call recordings per month. *See* Dkt. 83.

1 **D. The True Number of SPP Call Recordings in Comcast's Possession**

2 Notwithstanding Comcast's objections, on May 17, 2017, the Court ordered Comcast to  
3 produce at least one days' worth of call recordings per month for the months of June 2014-  
4 February 2016; totaling 1,500 calls. *See* Dkt. 89. The Court further ordered Comcast to identify  
5 any months during the relevant period in which Comcast destroyed its call recordings.

6 The parties entered into discussions regarding the Court's order on May 19. Rupert  
7 Decl., ¶ 17. During these discussions, the State learned that Comcast failed to preserve over 90  
8 percent of its calls from June 2014 - February 2016. *Id.* at Ex. E. Comcast detailed how  
9 complying with the Court's order (for one day per month) would result in the production of  
10 approximately 188 calls rather than 1,500 calls. *Id.* at Ex. E & F. If the Court had granted the  
11 State's original request for four days of calls per month, the yield would be approximately 752  
12 calls or 7.5% of the amount complained of in Comcast's briefing.

13 For the requested time period of June 2014 - February 2016, Comcast has preserved the  
14 following SPP calls:

- 15 • June 2014: No calls
- 16 • July 2014 - Sept. 31, 2015: Calls from Billing and Retention departments  
17 (approx. 13% of total telephone sales)
- 18 • October 2015 - Feb. 28, 2016: No calls

19 Rupert Decl., Ex. E & F. Throughout the ordered time period Comcast did not retain a single  
20 call from Comcast's repair or sales departments, which generated 76 percent of SPP telephone  
21 sales.

22 **E. Comcast is on Notice of its Misconduct**

23 When it filed its Opposition, Comcast knew, or should have known, the State's  
24 proposed sampling method would yield only approximately 750 calls rather than the 10,000  
25 calls represented to the Court. Comcast's Business Intelligence Manager, Arthur Abend, III,  
26 declared that Comcast (via a third party) retained billing and retention telephone calls from

1 July 2014 - September 2015 but did not clarify that those lines of business accounted for only  
2 13 percent of SPP telephone sales, and he was silent as to whether Comcast retained telephone  
3 calls from any of its other lines of sale or any telephone calls from October 1, 2015 - February  
4 28, 2016. Dkt. 82.

5 Citing Mr. Abend's Declaration, the State noted that Comcast may have overstated its  
6 call recording claims in its Reply brief. Dkt. 83 at 3:14-23. Comcast did not file a surreply or  
7 praecipe admitting any error. The State raised the misrepresentation issue again on May 25,  
8 2017, and Comcast did not respond. Rupert Decl., Ex. G. The State further asked Comcast to  
9 provide an explanation for its apparent CR 11 violation on June 14, 2017. *Id.*, Ex. H. Comcast  
10 responded claiming that it provided the Court only with "an *estimate* of the burden" (emphasis  
11 in original) and stating: "Comcast did not represent—and thus could not misrepresent—to the  
12 Court that providing phone calls on four random days per month from July 2014-February  
13 2016, 'would require' the production of 10,000 phone calls." *Id.* Ex. I. This response conflicts  
14 with Comcast's Issue Statement in its Opposition brief and similar representations made  
15 throughout its brief. *See e.g.*, Dkt. 80 at 7:2-5, 8:13-18, and 9:8-17.

#### 16 F. STATEMENT OF ISSUES

17 **G. Should the Court sanction Defendants for destroying direct evidence of what its**  
18 **employees said to consumers regarding the SPP during a pending investigation on that**  
19 **very subject?**

20 **H. Should the Court sanction Defendants for misrepresenting to the Court and the State**  
21 **the number of telephone calls and associated cost involved in responding to the State's**  
22 **Motion to Compel Production of Telephone Recordings?**

#### 23 III. EVIDENCE RELIED UPON

24 The State relies upon the legal authority cited below, the Declaration of Jeffrey Rupert,  
25 and the pleadings and documents on file with the Court.  
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#### IV. ARGUMENT

##### A. Comcast Engaged in Spoliation

On June 10, 2015, the State issued a CID requesting “all communications relating to the creation of the SPP, the SPP’s scope of services or protection, and advertising the SPP,” including all audio recordings. Rupert Decl., Ex. A at 2:16-18 (defining “communications”) and RFP 19. Rather than preserve this requested information, Comcast destroyed approximately 36,700 recordings of SPP sales after the State began its investigation.<sup>1</sup> See Rupert Decl., ¶ 22. In doing so, Comcast engaged in spoliation for which it should be sanctioned.

“[W]here relevant evidence which would properly be a part of a case is within the control of a party whose interests it would naturally be to produce it and he fails to do so, without satisfactory explanation, the only inference which the finder of fact may draw is that such evidence would be unfavorable to him.” *Pier 67, Inc. v. King Cnty.*, 89 Wn.2d 379, 385, 573 P.2d 2 (1977). Modern courts apply a range of remedies for the improper destruction of documents. “[T]he common remedy is an inference “that the adversary’s conduct may be considered generally as tending to corroborate the proponent’s case and to discredit that of the adversary.” *Henderson v. Tyrrell*, 80 Wn. App. 592, 605, 910 P.2d 522 (1996). Alternatively, courts can apply a rebuttable presumption against the party who destroyed the materials or treat spoliation as a civil discovery violation subject to Rule 37 sanctions or the court’s inherent power to control litigation. *Id.*

To determine when spoliation requires a remedy, Washington courts apply a two prong test that weighs: (1) the potential importance or relevance of the missing evidence and (2) the culpability or fault of the adverse party. *Henderson*, 80 Wn. App. at 607-08. In determining the culpability of the adverse party, courts “can consider the party’s bad faith, whether that party had a duty to preserve the evidence, and whether the party knew that the evidence was

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<sup>1</sup> Comcast also likely destroyed numerous additional calls in which the SPP was advertised but not sold.

1 important to the pending litigation.” *Homeworks Constr., Inc. v. Wells*, 133 Wn. App. 892,  
2 899, 138 P.3d 654 (2006) (citing *Henderson*, 80 Wn. App. at 609-10).

3 There is no doubt the call recordings are relevant to this lawsuit. They contain the  
4 actual conversations in which the State alleges Comcast misrepresented the SPP’s scope.

5 Comcast also had a duty to preserve the call recordings because they were requested in  
6 a CID issued by the State under RCW 19.86.110. Comcast also attempted to hide its document  
7 destruction by making false and misleading representations to the Court and the State,  
8 indicating bad faith.

9 The Washington Supreme Court’s ruling in *Pier 67* suggests an adverse inference is the  
10 most appropriate remedy here. In *Pier 67*, the plaintiff challenged its property tax bill and the  
11 county argued the tax assessments were presumed valid. *Pier 67, Inc.*, 89 Wn.2d at 384-85.  
12 The plaintiff challenged the county’s valuation methods, but the county failed to preserve  
13 records of those methods. Because the county controlled its records and destroyed them after  
14 being on notice of the lawsuit, the court found an adverse inference. *Id.* at 385-86.

15 Here, as in *Pier 67*, Comcast was on notice of the State’s investigation and its request  
16 for relevant communications. The State served Comcast with its CID seeking SPP  
17 communications and instructing Comcast not to destroy any relevant information on June 10,  
18 2015. The State reiterated its concern that Comcast was misrepresenting the SPP’s scope “via  
19 Comcast’s website, online chat sessions, *phone calls*, or in person,” on October 16, 2015.  
20 Davies Decl., Ex. B. Yet Comcast destroyed approximately 36,700 phone calls in which it  
21 advertised and sold the SPP to Washington consumers from April 2015 - February 28, 2016.<sup>2</sup>  
22 See Rupert Decl., ¶ 22. These calls represent 36,700 potential CPA violations punishable by up  
23 to \$73.4 million in penalties.

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26 <sup>2</sup> The State issued its CID in June 2015, but Comcast would have possessed three months of prior call recordings under its 90 day retention policy. See Abend Decl. (Dkt. 82), ¶ 2.

1 The Court should enter a finding of spoliation and either apply an adverse inference to  
2 the destroyed call recordings or reserve on determining the appropriate sanction until further  
3 discovery is conducted.

4 **B. The Court Should Sanction Comcast for Attempting to Hide its Spoliation**  
5

6 Comcast did not tell the State it destroyed the majority of call recordings the State  
7 requested until after the Court granting the State's Motion to Compel in part. It attempted to  
8 hide its spoliation by repeatedly telling the Court the State's proposed sample would yield  
9 approximately 10,000 phone recordings and only alluded to any records destruction in a  
10 footnote. *See* Dkt. 80, 7:2-5, 8:13-18, 9:8-17, and fn. 2. When Comcast made these  
11 representations, it knew, or should have known, the State's proposed sample would yield only  
12 approximately 750 call recordings. Further, these 750 calls were not representative of the vast  
13 majority of SPP sale calls, because they were only from the Billing and Retention  
14 Departments, which accounted for 13 percent of the SPP telephone sales. Rupert Decl., Ex. E  
15 & F. Comcast told the State it was reviewing the State's proposal multiple times, and it  
16 submitted the Declaration of Mr. Abend, which alluded to the call recording destruction  
17 through omission. Comcast attempted to mislead the State in discovery, it made false  
18 statements in its pleadings, and it should be sanctioned under CR 11 and/or the Court's  
19 inherent authority.

20 "A spirit of cooperation and forthrightness during the discovery process is mandatory  
21 for the efficient functioning of modern trials." *Johnson v. Jones*, 91 Wn. App. 127, 132, 955  
22 P.2d 826 (1998). Reasoned resistance to discovery is not sanctionable; however, misleading  
23 discovery responses run "contrary to the purposes of discovery." *Washington State Physicians*  
24 *Ins. Exchange v. Fisons, Corp.*, 122 Wn.2d 299, 346, 858 P.2d 1054 (1993). "Without candor  
25 from counsel, this court cannot . . . make a fully informed and fair decision under the rules of  
26 civil procedure." *Deutscher v. Gabel*, 149 Wn. App. 119, 133, 202 P.3d 355 (2009) (ordering

1 payment of attorneys' fees and costs for misrepresenting to court that witness was "newly  
2 discovered"). Consequently, both CR 11 and the Court's "inherent equitable powers authorize  
3 the award of attorney fees in cases of bad faith." *Gabelein v. Diking Dist. No. 1 of Island Cnty.*,  
4 182 Wn. App. 217, 237, 328 P.3d 1008 (2014); *see also* CR 26(g) (requiring signing of  
5 discovery responses).

6 In *Fisons*, the Washington Supreme Court overturned the trial court's decision not to  
7 enter sanctions against the defendant or the defendant's attorneys for misleading statements  
8 made during discovery. 122 Wn.2d at 355-56. The defendant attempted to avoid producing  
9 "smoking gun" documents by claiming the plaintiff's discovery requests were overbroad,  
10 telling the plaintiff it would produce all relevant documents, then claiming the plaintiff did not  
11 specifically request the smoking gun documents because they concerned a study on only one  
12 ingredient in the product in question, even though it was the primary ingredient. *Id.* at 352-53.  
13 The Court found these responses misleading, because, although they included objections, they  
14 implied that all documents relevant to the plaintiff's claims were being produced. The Court  
15 further rejected the defendant's argument that "[d]iscovery is an adversarial process and good  
16 lawyering required the responses." *Id.* at 353-54. It noted our courts require a "spirit of  
17 cooperation and forthrightness" (*Id.* at 342) and that "[v]igorous advocacy is not contingent  
18 on lawyers being free to pursue litigation tactics that they cannot justify as legitimate." *Id.* at  
19 354. The Court further reasoned that "[m]isconduct, once tolerated, will breed more  
20 misconduct and those who might seek relief against abuse will instead resort to it in self-  
21 defense." *Id.* at 355. Thus, while imposing sanctions is a "difficult and disagreeable task" for a  
22 trial judge, it was necessary "if our system is to remain accessible and responsible." *Id.*

23 Similar to the attempt to hide smoking gun documents in *Fisons*, Comcast made false  
24 and misleading representations to the State and the Court in an attempt to hide its spoliation.  
25 During two months of communications regarding the State's production proposal, Comcast  
26 never told the State it destroyed over 90 percent of the requested calls and instead told the State

1 it had 9 million call recordings from its Seattle and Portland regions for the June 2014 -  
2 February 2016 time period. Had the State not filed its Motion to Compel, it would never have  
3 learned of Comcast's spoliation.

4 Even after the State filed its Motion to Compel, Comcast continued to try and hide its  
5 spoliation by repeatedly misrepresenting to the Court that the State's request sought  
6 approximately 10,000 call recordings at a cost of \$445,000 - \$637,000. *See* Dkt. 80 at 2:22-23,  
7 7:2-5, 8:13-18, and 9:8-17. Comcast and its attorneys knew, or should have known, its  
8 representations were false when it made them. Comcast received the State's First Discovery  
9 Requests in this litigation on September 27, 2016, and the State's sampling proposal on  
10 January 19, 2017. Comcast repeatedly told the State it was assessing the burden involved in  
11 agreeing with the State's proposal. In addition, Comcast's Business Intelligence Manager  
12 declared that Comcast retained billing and retention telephone calls from July 2014 -  
13 September 2015, but was silent as to whether Comcast retained telephone calls from any of its  
14 other lines of sale or any telephone calls from October 1, 2015 - February 28, 2016. This  
15 indicates Comcast knew what documents had been destroyed. Comcast, however, did not  
16 affirmatively tell the State or the Court it destroyed over 90 percent of the records the State  
17 requested until after the Court entered its Order compelling production. Had the Court denied  
18 the State's Motion to Compel, Comcast would have avoided revealing the full scope of its  
19 misconduct.

20 A party is entitled to its fees and costs when it prevails on a motion to compel. CR  
21 37(a)(4). The State did not demand fees and costs when it originally filed its Motion to  
22 Compel, because Comcast potentially had a good faith basis for resisting the State's Request. It  
23 is now apparent that Comcast was not acting in good faith. Thus, the State respectfully requests  
24 its fees and cost for filing its prior Motion to Compel and related pre-motion communications,  
25 fees, and costs for this Motion. The State further asks the Court to enter such additional  
26 monetary sanctions as the Court deems necessary to deter future misconduct.

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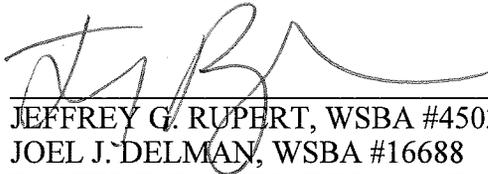
**II. CONCLUSION**

The State respectfully requests that the Court sanction Comcast for its spoliation and lack of candor with the State and Court regarding the spoliation. The State asks the Court to order Comcast to pay: (1) the State's fees and costs for filing its prior Motion to Compel and related pre-motion communications; (2) the State's fees and costs for filing this Motion; and (3) such additional monetary sanctions as the Court deems necessary to deter future misconduct. In addition, the State asks the Court to enter a finding of spoliation against Comcast for destroying the SPP telephone recordings and either apply an adverse inference or reserve on the spoliation remedy until further discovery is conducted.

I certify that this memorandum contains 4,027 words, in compliance with the Local Civil Rules.

DATED this 22<sup>nd</sup> day of June, 2017.

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1 **CERTIFICATE OF SERVICE**

2 I certify that I served a copy of the foregoing on the following parties via the following  
3 methods:

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9 10 11 12 13 14 15 David Gringer Ariel E. Hopkins Matthew T. Martens Howard M. Shapiro Matthew Thome Wilmer Cutler Pickering Hale and Dorr LLP 1875 Pennsylvania Ave. NW Washington, DC 20006 Email: <a href="mailto:david.gringer@wilmerhale.com">david.gringer@wilmerhale.com</a> <a href="mailto:ariel.hopkins@wilmerhale.com">ariel.hopkins@wilmerhale.com</a> <a href="mailto:matthew.martens@wilmerhale.com">matthew.martens@wilmerhale.com</a> <a href="mailto:howard.shapiro@wilmerhale.com">howard.shapiro@wilmerhale.com</a> <a href="mailto:matthew.thome@wilmerhale.com">matthew.thome@wilmerhale.com</a>	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk
16 17 18 19 20 Gregory Boden Wilmer Cutler Pickering Hale and Dorr LLP 350 South Grand Ave., Ste. 2100 Los Angeles, CA 90071 Email: <a href="mailto:gregory.boden@wilmerhale.com">gregory.boden@wilmerhale.com</a>	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> First-Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Receipt Requested <input type="checkbox"/> Facsimile <input type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> E-filed with Clerk

21 I certify, under penalty of perjury under the laws of the State of Washington, that the  
22 foregoing is true and correct.

23 DATED this 22<sup>nd</sup> day of June, 2017, at Seattle, Washington.

24   
25 MICHELLE BACZKOWSKI  
26 Legal Assistant