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and the Class*

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VALLEY PLAZA REALTY, }  
HIGHVIEW PROPERTIES III, }  
FRANK GREEK AND SON, INC., }  
HIGHVIEW PROPERTIES I, }  
and }  
TICES PROPERTIES, }  
*on behalf of themselves and* }  
*all others similarly situated,* }  
 }  
Plaintiffs, }  
 }  
vs. }  
 }  
VERIZON NEW JERSEY, INC., formerly }  
known as Bell Atlantic-New Jersey, Inc. }  
 }  
and }  
 }  
NYNEX LONG DISTANCE COMPANY, }  
d/b/a Verizon Enterprise Solutions, }  
 }  
Defendants }

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SUPERIOR COURT OF  
NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY  
  
Docket No.:  
  
Civil Action  
  
JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff Frank Greek and Son, Inc., Highview Properties I, Tices Properties, Valley Plaza Realty, and Highview Properties III, by and through their undersigned counsel, bring this action on their own behalf and on behalf of all others similarly situated, pursuant to New Jersey Civil Practice Rule 4:32-1 *et seq.*, against Defendants Verizon New Jersey, Inc., formerly known as Bell Atlantic- New Jersey, Inc., and NYNEX Long Distance Company, d/b/a Verizon Enterprise Solutions, and allege as follows, upon information and belief.

### **SUMMARY OF ACTION**

1. Plaintiffs bring this action on behalf of a statewide class consisting of all persons and entities in New Jersey who are Verizon customers who have been wrongfully placed on Custopak or long distance service which they have not used and for which they have no use, and have been charged inappropriate fees. This case is a class action against Verizon New Jersey, Inc., and NYNEX Long Distance Company, d/b/a Verizon Enterprise Solutions, for breach of contract, unjust enrichment, and violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2, *et. seq.*.

### **JURISDICTION AND VENUE**

2. This is an action for damages that exceed the jurisdictional minimum of this Court.

3. This Court has jurisdiction of this action and venue is proper in this Court under Rule 4:3-2 because the cause of action arose in Middlesex County, the named Plaintiffs are located in New Jersey, with their respective principal places of business in Middlesex County, and Defendant Verizon New Jersey is a resident of New Jersey, and both Defendants conduct business in Middlesex County.

## **PARTIES**

4. Plaintiff Valley Plaza Realty (“Valley Plaza”) is a New Jersey corporation with its principal place of business at 33 Cotters Lane, East Brunswick, N.J. 08816.

5. Valley Plaza maintains a Custopak account on telephone number 201 262 0891. One other telephone number – 201 262 0892 – is also maintained by Valley Plaza on this Custopak account.

6. Both the line terminating in 0891 and that terminating in 0892 are and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose.

7. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and cannot be of use for any of the lines. Internal Verizon documents, attached to this Complaint as Exhibit A, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms, because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems.

8. Plaintiff Highview Properties III (“Highview III”) is a New Jersey corporation with its principal place of business at 33 Cotters Lane, East Brunswick, N.J. 08816.

9. Highview I and Plaintiff Frank Greek & Son maintain a Custopak account on telephone number 732 432-9046. One other telephone number – 732 432-9067 – is also maintained on the same account.

10. Both the line terminating in 9046 and that terminating in 9067 is and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose.

11. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and

cannot be of use for any of the lines. Internal Verizon documents, attached to this Complaint as Exhibit B, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems.

12. Because the line terminating in 3914 and the line terminating in 3915 are both used exclusively by an alarm system, they have never made, will never make and were not put in place to make any long distance calls. However, as shown by Exhibit B hereto, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

13. Highview III and Frank Greek also maintain an account with telephone number 732 238 0296. One other telephone number – 732 238 0921 – is also maintained on the same account.

14. Both the line terminating in 0296 and that terminating in 0291 are and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose.

15. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and cannot be of use for any of the lines.

16. Because the line terminating in 0296 and the line terminating in 0291 are both used exclusively by an alarm system, they have never made, will never make and were not put in place to make any long distance calls. However, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

17. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and

cannot be of use for any of the lines. Internal Verizon documents, attached to this Complaint as Exhibit C, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms, because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems.

18. In addition, when Highview III and Frank Greek became aware that Verizon was charging a fee for minimum long distance usage on these lines, even though the lines had never been used and could never be used to make long distance calls, they requested that Verizon remove the long distance component of the contract for these lines. Verizon charged a fee of \$5 – called a PIC fee – for making this change.

19. Plaintiff Highview Properties I (“Highview I”) is a New Jersey corporation with its principal place of business at 33 Cotters Lane, East Brunswick, N.J. 08816.

20. Highview I and Frank Greek maintain an account with telephone number 732 423 9829. One other telephone number – 732 423 9859– is also maintained on the same account.

21. Both the line terminating in 9829 and that terminating in 9859 is and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose.

22. Because the line terminating in 9829 and the line terminating in 9859 are both used exclusively by an alarm system, they have never made, will never make and were not put in place to make any long distance calls. However, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

23. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and cannot be of use for any of the lines. Internal Verizon documents, attached to this Complaint as

Exhibit D show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms, because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems.

24. In addition, when Highview I and Frank Greek became aware that Verizon was charging a fee for minimum long distance usage on these lines, even though the lines had never been used and could never be used to make long distance calls, they requested that Verizon remove the long distance component of the contract for these lines. Verizon charged a fee of \$5 – called a PIC fee – for making this change.

25. Plaintiff Highview I and Frank Greek maintain a Custopak account on telephone number 732 432 0714. One other telephone number – 732 432 0715 – is also maintained on the same account.

26. Both the line terminating in 0714 and that terminating in 0715 is and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose.

27. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and cannot be of use for any of the lines.

28. Because the line terminating in 0714 and the line terminating in 0715 are both used exclusively by an alarm system, they have never made, will never make and were not put in place to make any long distance calls. However, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

29. Because those two lines are and have always been used exclusively to facilitate communication by an alarm system, the unique Custopak features are not, have never been, and

cannot be of use for any of the lines. Internal Verizon documents, attached to this Complaint as Exhibit E, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms.

30. At a certain time after its service was initiated, the line terminating in 0715 was shut off. After that date, the line terminating in 0714 was a single line Custopak account. Verizon nonetheless never converted this line away from Custopak service and continued to impose Custopak charges for service on this line after shut-off of the line terminating in 0715.

31. When Plaintiffs discovered that they were being charged a monthly fee for long distance service which they never had used and could not use, and requested that the long distance service be disconnected on both accounts, they were wrongfully charged a \$5 change fee on each account.

32. Plaintiffs Frank Greek and Highview I maintain an account on telephone number 732 432 6632. One other telephone number – 732 432 6683 – is also maintained by Frank Greek and Highview I on this Custopak account.

33. Both the line terminating in 6632 and that terminating in 6683 are and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose. Internal Verizon documents, attached to this Complaint as Exhibit F, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms, because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems. Moreover, a line terminating with an RJ31X jack is incapable of being used to place a long distance call.

34. Because the line terminating in 6632 and the line terminating in 6683 are both used exclusively by an alarm system, they have never made, will never make and were not put in

place to make any long distance calls. However, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

35. Plaintiffs Frank Greek and Highview I maintain an account on telephone number 732 390 0892. One other telephone number – 732 390 1095– is also maintained by Frank Greek and Highview I on this account.

36. Both the line terminating in 0892 and that terminating in 1095 are and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose. Internal Verizon documents, attached to this Complaint as Exhibit G, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms, because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems. Moreover, a line terminating with an RJ31X jack is incapable of being used to place a long distance call.

37. Because the line terminating in 0892 and the line terminating in 1095 are both used exclusively by an alarm system, they have never made, will never make and were not put in place to make any long distance calls. However, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

38. Plaintiffs Frank Greek and Tices maintain an account on telephone number 732 254 3987. One other telephone number – 732 254 2549 – is also maintained by Frank Greek and Tices on this account.

39. Both the line terminating in 3987 and that terminating in 2549 are and have since their inception, been utilized solely for alarms, and they were obtained to be used for that purpose.



Internal Verizon documents, attached to this Complaint as Exhibit H, show that Verizon had actual knowledge when service was initiated on these lines that they would be used for alarms, because Verizon installed an RJ31X jack on each of these lines, and such a jack can only be used for alarm systems. Moreover, a line terminating with an RJ31X jack is incapable of being used to place a long distance call.

40. Because the line terminating in 3987 and the line terminating in 2549 are both used exclusively by an alarm system, they have never made, will never make and were not put in place to make any long distance calls. However, Verizon has billed the owner of these lines a fee each month (“the shortfall fee”) because the line is not utilized to make a specified minimum in long distance calls for that month.

41. In addition, when Tices and Frank Greek became aware that Verizon was charging a fee for minimum long distance usage on these lines, even though the lines had never been used and could never be used to make long distance calls, they requested that Verizon remove the long distance component of the contract for these lines. Verizon charged a fee of \$5 – called a PIC fee – for making this change.

42. Defendant Verizon New Jersey, Inc. (herein "Defendant Verizon NJ") is incorporated under the laws of the state of New Jersey, with its corporate headquarters located at 540 Broad Street, Newark, New Jersey, 07101, and is a wholly owned subsidiary of Verizon Communications, Inc. Defendant is one of the world's leading providers of communications services, serving residential and business customers in New Jersey, thirty-one other states, and the District of Columbia. Defendant Verizon New Jersey, Inc. is the successor company to Bell Atlantic New Jersey, Inc, which operated under that name from January 1994 until July 30, 2000.

43. Defendant NYNEX Long Distance Company, d/b/a Verizon Enterprise Solutions (herein "Defendant Verizon Enterprise Solutions") is a long distance company, incorporated in Delaware, with its headquarters located at 1320 North Court House Road, 6th Floor, Arlington, Virginia 22201, and having an authorized representative at 10 Allen Road, Suite 300, Liberty Comer, NJ 07938. Defendant Verizon Enterprise Solutions is a wholly owned subsidiary of Verizon Communications, Inc.

44. John and/or Jane Does (1) through (10) is a fictitious name designating one or more persons, male or female, employed by Verizon NJ.

45. ABC and/or XYZ Corporations (1) through (10) is a fictitious name designating one or more entity that is or may be a parent or affiliate company owning and/or doing business as or with Verizon NJ.

46. John and/or Jane Does (1) through (10) is a fictitious name designating one or more persons, male or female, employed by Defendant Verizon Enterprise Solutions.

47. ABC and/or XYZ Corporations (1) through (10) is a fictitious name designating one or more entity that is or may be a parent or affiliate company owning and/or doing business as or with Defendant Verizon Enterprise Solutions.

#### **FACTUAL ALLEGATIONS**

48. Defendant Verizon NJ provides local telephone service to business and residential customers including local, county, state government, public schools, political subdivisions and agencies throughout the state of New Jersey. Defendant Verizon NJ is the dominant local telephone exchange company providing local services throughout the state.

49. In addition to offering regular business dial tone lines to its business customers, Defendant Verizon NJ also offers special business lines and phone systems, including Custopak and Centrex III.

50. Custopak is designed for small business with 2 to 30 phone lines. Custopak is classified as a business service and includes exchange access, intercom, and other Custopak features, such as call hold and call transfer. But these various services are not offered separately – under the Custopak contract they can only be purchased as a complete, all-inclusive package. Custopak is intended as a substitute for a Private Branch Exchange ("PBX") or Centrex ID phone system, which includes these features but is more suitable for businesses with more than 30 phone lines.

51. While Custopak offers multiple phone lines with an enhanced intercom feature, it does not require a user to dial 9 to access an outside line. That is because Custopak is not a Private Branch Exchange ("PBX") or Centrex III phone system, which utilizes a switch to access available trunks or lines.

52. Rather, a Custopak line looks like and behaves identically to a regular business dial tone line except that it adds an "intercom" or intercom-like feature.

53. Therefore with Custopak, there is no "common equipment" charge or "trunking" charge, as there is with a Centrex III system.

54. However, Custopak lines are still more expensive than regular business dial tone lines. A primary Custopak line is about \$31 per month, compared to about \$24.80 per month for a regular business dial tone line. And each additional Custopak line costs about \$10.72 more per month than each additional regular business dial tone line. Regular business dial tone line customers also receive 75 free message units per month for making local calls (worth approximately \$6.38).

Custopak customers do not receive these 75 free message units. A five line Custopak account therefore can cost about \$55 a month more than a comparable five line regular business account.

55. Approximately 40% of small businesses in New Jersey have been placed on Custopak by Defendant Verizon NJ.

56. Plaintiff alleges upon information and belief, that about half of these Custopak customers have been placed on Custopak without the customer's consent.

57. For instance, under A9 Tariff 9.1.6 B. Regulation, Custopak requires at least 2 lines, and therefore a customer with just one business line cannot legally be on Custopak. A9 Tariff 9.1.6 B. Regulation states: "If the Centrex Custopak system falls below two lines, it is no longer considered a Centrex Custopak system and must be converted to business dial tone lines." Despite this requirement in the Tariff, it is alleged upon information and belief that Defendant Verizon NJ has placed some customers with only one business line on Custopak. In addition, Defendant Verizon NJ has breached the Tariff requirement by failing to convert Custopak customers to business dial tone when a Custopak accounts fall to one line.

58. Defendant Verizon NJ offers the Centrex III service for large multi-location business customers with a need for a great number of phone lines.

59. Defendant Verizon NJ routinely violates the Custopak Tariff by charging single line accounts as Custopak lines. Defendant also charges customers Custopak fees even when the customer did not order, do not need, and cannot use, Custopak service.

60. When a customer initiates service with Defendant Verizon NJ, the customer speaks with a Customer Service Representative who gathers information about the customer's needs and then recommends service options to the customer, and ultimately agrees on behalf of Verizon, with the customer, on the nature and terms of the service that Verizon will provide to the customer.

61. Throughout the relevant time period, Verizon has provided its Customer Service Representatives with a script that they are to follow as they have the conversation with new customers.

62. Pursuant to that script, the Verizon representative is to ask the customer how the telephone service will be used, and in particular whether it will be used to connect an alarm or other device rather than serving as a telephone to be used by natural persons to make telephone calls at the person's direction.

63. Such questions enable Verizon to gather information from which Verizon obtains actual knowledge that customers' telephone lines will, or will not, be dedicated to elevator emergency phones, alarms, or other non-human uses.

64. Verizon captures this information in a variety of documents, which it generates and then retains, including Customer Service Records. In addition, Verizon prepares and issues installation and service records so that when its service personnel go to a new customer's location to install service they know what, where and how to install it.

65. Any and all of these records evidence Verizon's actual knowledge that a customer is utilizing its telephone service for purposes, and/or with equipment, that that cannot make use of Custopak features including but not limited to intercom. For all such customers, Verizon has actual knowledge that Custopak is not appropriate and the fact that Verizon has such actual knowledge is demonstrable from Verizon's own documents.

66. Because alarms do not initiate telephone calls to any number other than an alarm monitoring company or a local police or fire station, telephone lines maintained to serve an alarm can never take advantage of the features provided by Custopak. In particular, Custopak's intercom feature is useless for a telephone line connected to an alarm.

67. Custopak is equally useless for lines maintained to be connected to a wide variety of other equipment, such as emergency telephones in elevators.

68. In addition, several different pieces of equipment are utilized when connecting alarms, or other devices to the Verizon telephone network. Such unique connectors include RJ31X jacks. These unique connectors make it impossible for the line on which they are installed to be used for long distance telephone calls of any kind. Any line with such equipment is therefore incompatible with Custopak and with any long distance service package.

69. Defendants charge a \$25 minimum fee on all Custopak lines for which Defendant Verizon NJ, or its long distance affiliate Defendant Verizon Enterprise Solutions, is listed as the long-distance carrier, regardless of whether or not the Custopak line is even capable of making long-distance calls. In the event that a customer requests that Defendants disconnect long distance service from its Custopak line, Defendants wrongfully imposes a \$5 change fee on such a customer.

70. For any line servicing an alarm or other Custopak-incompatible device, there can be no valid purpose to the imposition of a charge for providing long distance service – because the line cannot possibly be used for that purpose.

71. At all times referenced herein, Defendants John Doe, Jane Doe, ABC Corporation, and XYZ Corporation, (1) through (10), fictitious individuals and corporations, were responsible for the operation, control, supervision, maintenance of Defendants' record keeping and/or billing practices and procedures.

72. Defendants have been made aware of these wrongful charges to their customers, but have failed to change their policies, practices, procedures or internal controls to end the practice.

## CLASS ALLEGATIONS

73. Plaintiff brings this action individually and on behalf of a Class of Verizon New Jersey customers who have been wrongfully placed on the Custopak service or long distance service and as a result have been charged the inappropriate fees by Defendants, when Verizon documents show that, at the time service was initiated, Verizon had actual knowledge that the lines were not capable of making use of Custopak services and/or long distance services. Excluded from the Class are the Defendants, its parent and affiliates, their directors and officers, and the family members of the directors and officers.

74. The Class consists of thousands of overcharged customers in New Jersey, and is thus so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

75. There are questions of law and fact common to members of the Class which predominate over any questions affecting only individual members, including

- (a) whether Defendant Verizon NJ breaches the Consumer Fraud Act, is unjustly enriched, by placing customers who did not order, or who do not and cannot use, Custopak service into Custopak accounts when Verizon has actual knowledge that such customers cannot use the Custopak features on those accounts; and
- (b) whether Defendants breach the Consumer Fraud Act, or is unjustly enriched, by extracting the Improper Fees from customers who do not utilize long distance service, and those who have attempted to have such service disconnected.

76. The claims asserted by Plaintiffs are typical of the claims of the members of the Class.

77. Plaintiff will fairly and adequately protect the interests of the Class, and has retained attorneys experienced in class and complex litigation as its counsel.

78. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- (a) it is economically impractical for most member of the Class to prosecute an individual action; and
- (b) when the liability of Defendants have been adjudicated, claims of all members of the Class can be determined by the Court.

79. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class would confront the Defendants with incompatible standards of conduct.

80. This action will cause an orderly and expeditious administration of the claims of the Class; economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

## **COUNT I UNJUST ENRICHMENT**

81. Plaintiff repeats and realleges the previous allegations set forth in this complaint as though the same were set forth at length verbatim.

82. By placing plaintiff class members on Custopak and charging for such service, and for long distance services, for customers who cannot use such services, Defendants wrongfully and without consent collected Custopak fees, long distance minimum fees, and change fees from its unsuspecting customers and to the detriment of Plaintiff and the Class. Plaintiff and the members of the Class paid these fees to Defendants, which retained the benefits of these fees for themselves.



83. By virtue of the foregoing, Defendants have been unjustly enriched, and Plaintiff and the Class are entitled to a judgment requiring Defendants to disgorge and reimburse Plaintiff and the Class all sums unlawfully obtained.

**COUNT II**  
**NJ CONSUMER FRAUD ACT**

84. Plaintiff repeats and realleges the previous allegations set forth in this complaint as though the same were set forth at length verbatim.

85. Defendants' practice of imposing Custopak and long distance service charges and change fees on customers for lines that cannot make use of such services, when Verizon has actual knowledge that the lines cannot make use of such services, constitutes an unconscionable commercial practice, deception, fraud, false promise, false pretenses and/or misrepresentations in its interactions with Plaintiff, in violation of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, et. Seq.

86. Defendants' conduct was a proximate cause of injury to Plaintiff and the Class, and caused them an ascertainable loss.

87. Plaintiff and the members of the Class are therefore entitled to damages in an amount to be determined at trial.

88. Pursuant to N.J.S.A. 56:8-1 et seq., a copy of this complaint will be mailed to the Attorney General of the State of New Jersey within ten days after the filing of the complaint with the Court.

WHEREFORE, Plaintiff, for himself and others similarly situated, respectfully requests the following relief

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

- A. an order certifying this action as a class action pursuant to N.J.S.A. § 4:32-1 et. seq.;
- B. judgment awarding Plaintiff and the members of the Class the amount of their actual damages, together with prejudgment interest;
- C. an order granting Plaintiff and the members of the Class treble damages under the New Jersey Consumer Fraud Act;
- D. an order granting Plaintiff and the members of the Class their costs and expenses, including experts' and attorneys' fees, associated with bringing this action;
- E. disgorgement of all charges collected by Defendants in excess of the statutory rate;
- F. punitive damages; and
- G. such other and further legal and equitable relief as the Court deems proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues subject to trial.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Jerome M. Marcus, Esq. of Marcus & Auerbach, LLC is hereby designated as trial counsel for the Plaintiff in the above matter.

**CERTIFICATION PURSUANT TO R. 4:5-1**

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge, there exists no other action pending in any Court or in arbitration concerning this action and that no other action

is contemplated. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made b-y me are willfully false, I am subject to punishment.

Dated: November 26, 2014

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