

1 Alexander Kolodin (SBN 030826)  
2 Roger Strassburg (SBN 016314)  
3 Veronica Lucero (SBN 030292)  
4 Arno Naeckel (SBN 026158)  
5 **The Davillier Law Group, LLC**  
6 4105 North 20th Street  
7 Suite 110  
8 Phoenix, AZ 85016  
9 602-730-2985  
10 Email: akolodin@davillierlawgroup.com  
11 rstrassburg@davillierlawgroup.com  
12 vlucero@davillierlawgroup.com  
13 anaeckel@davillierlawgroup.com  
14 phxadmin@davillierlawgroup.com (file copies)

15 Laurin Mills (*pro hac vice* to be submitted)  
16 **Samek | Werther | Mills, LLC**  
17 2000 Duke Street  
18 Suite 300  
19 Alexandria, VA 22314  
20 703-547-4693  
21 Email: laurin@samek-law.com

22 *Attorneys for Plaintiffs*

23 IN THE UNITED STATES DISTRICT COURT

24 FOR THE DISTRICT OF ARIZONA, PRESCOTT DIVISION

25 Dr. Michael P. Ward, D.O. and Dr. Kelli  
26 Ward, D.O., husband and wife; and Mole  
27 Medical Services, P.C., an Arizona  
28 Professional Corporation;

Plaintiffs,

v.

Bennie G. Thompson, in his official capacity  
as Chairman of the House Select Committee  
to Investigate the January 6th Attack on the  
United States Capitol; Select Committee to  
Investigate the January 6th Attack on the

Case No.:

**Complaint**

**(Jury trial demanded)**

1 United States Capitol, a committee of the  
2 United States House of Representatives; T-  
3 Mobile USA, Inc., a Delaware Corporation;  
4 Defendants.

5 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

6 Plaintiffs Dr. Michael P. Ward, D.O., Dr. Kelli Ward, D.O., and Mole Medical  
7 Services, P.C., by and through their attorneys, the Davillier Law Group, LLC and Samek  
8 | Werther | Mills, LLC, bring this action against Defendants, Chairman Bennie G.  
9 Thompson, The Select Committee to Investigate the January 6th Attack on the United  
10 States Capitol, and T-Mobile USA, Inc., and allege as follows:

11 **INTRODUCTION**

12 1. On or around January 25, 2022, Mole Medical received a letter dated  
13 January 24, 2022, from the T-Mobile Legal and Emergency Response Team stating that  
14 T-Mobile had received a subpoena *duces tecum* from the United States House of  
15 Representatives Select Committee to Investigate the January 6th Attack on the United  
16 States Capitol. (Exhibit A, Letter from T-Mobile and attached subpoena).

17 2. The January 19, 2022 Subpoena *Duces Tecum* by the House of  
18 Representatives of the Congress of the United States of America to T-Mobile Before the  
19 Select Committee to Investigate the January 6th Attack on the United States Capitol (the  
20 “Subpoena”) (Exhibit A) called for the production of certain documents covering a date  
21 range from November 1, 2020 to January 31, 2021 by the deadline of February 4, 2022.  
22 This subpoena specifically requested certain information related to the lines associated  
23 with the T-Mobile account ending 4220 assigned to Mole Medical by T-Mobile (the  
24 “Phone Number”) including the records of incoming and outgoing calls, their durations  
25 and associated phone numbers, and information about the callers commonly called  
26 “metadata,” or call data records.  
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1           3.       Although the Phone Number is referred to in the singular, there are four  
2 separate numbers associated with the account. (Exhibit B, Declaration of Kelli Ward) ¶  
3 17.

4           4.       The production of these documents by T-Mobile concerning the Phone  
5 Number, and the Subpoena upon which this production would be based, violate the  
6 constitutional rights of the Plaintiffs, specifically implicating the protections of the First  
7 and Fourteenth Amendments to the United States Constitution; constitute an *ultra vires*  
8 action by the Committee in violation of its own Rules, the rules of the House of  
9 Representatives of the United States Congress, and the fundamental basis underlying the  
10 limited congressional power to investigate for legislative purposes; violate state and  
11 federal privileges of medical privacy and physician-client communications; and  
12 substantially infringe the right to privacy guaranteed under Arizona state law by invading  
13 the Plaintiffs’ seclusion.  
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15           5.       For these reasons, and as further articulated below, Plaintiffs respectfully  
16 ask that this Court declare that the Subpoena is a violation of the Plaintiffs’ constitutional  
17 rights, an overbroad overreach of congressional power for improper purposes, and that  
18 this Court quash it, while enjoining Defendants from enforcing the Subpoena or producing  
19 any documents in compliance with its demands.

### 20                                       **PARTIES**

21           6.       **Plaintiff Dr. Michael P. Ward, D.O.** (“Michael Ward”) is a practicing  
22 Doctor of Osteopathic Medicine who serves as medical director for an air ambulance  
23 company and actively practices emergency medicine in the State of Arizona, mostly in  
24 and around Lake Havasu City. Declaration of Michael Ward ¶¶ 5-7 (Exh. C). He is an  
25 active member of the Republican party and resides in Lake Havasu City, where he and his  
26 wife Dr. Kelli Ward own a home. *Id.* ¶ 2. Lake Havasu City is located in Mohave County,  
27 Arizona.  
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1 7. **Plaintiff Dr. Kelli Ward, D.O.** (“Kelli Ward”); collectively with Michael  
2 Ward “the Wards”) is a practicing Doctor of Osteopathic Medicine. Declaration of Kelli  
3 Ward ¶¶ 4-5, 9-16. She is also an active member of the Republican Party, having served  
4 as State Senator in the Arizona State Senate from 2012 to 2015, and currently sits as Chair  
5 of the Arizona Republican Party. *Id.* ¶ 8. She resides in Lake Havasu City, Arizona. *Id.* ¶  
6 2.

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8 8. **Plaintiff Mole Medical Services, PC** (“Mole Medical”) is an Arizona  
9 Professional Corporation doing business in Mohave County, Arizona. Declaration of  
10 Michael Ward ¶ 7.

11 9. **Defendant Bennie G. Thompson** (“Chairman Thompson”) is the U.S.  
12 Representative for Mississippi’s 2nd District and the Chairman of the House Select  
13 Committee to Investigate the January 6 Attack on the United States Capitol. He is a  
14 member of the Democratic Party. Chairman Thompson signed the subpoena in question  
15 and is sued in his official capacity.

16 10. **Defendant The Select Committee to Investigate the January 6th Attack**  
17 **on the United States Capitol** (the “Committee”) is a committee created by House  
18 Resolution 503 passed by the United States House of Representatives of the 117th  
19 Congress on June 30, 2021.

20 11. **Defendant T-Mobile USA, Inc.** (“T-Mobile”) is a Delaware corporation.  
21 Plaintiffs make no accusation of wrongdoing on the part of T-Mobile and they are named  
22 herein only insofar as is necessary to ensure that they will be bound by this Court’s  
23 judgment.

#### 24 **JURISDICTION AND VENUE**

25 12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because  
26 this case arises under the Constitution and laws of the United States, including U.S. Const.  
27 Amends. I, IV; 28 U.S.C. § 1367; and 28 U.S.C. §§ 2201-2202.  
28

1           13.    Venue is proper because the Wards and Mole Medical are domiciled in this  
2 District, no real property is involved in the action; and the Subpoena was served on T-  
3 Mobile to seek records of the Wards and Mole Medical, the majority of which were created  
4 in and inform concerns in this District. 28 U.S.C. § 1391.  
5

6                           **BACKGROUND AND GENERAL ALLEGATIONS**

7                                   *Michael Ward’s Usage of the Phone Number*

8           14.    As a Doctor of Osteopathic Medicine, Michael Ward treats patients in  
9 emergency departments in the State of Arizona, most in or around Lake Havasu City.  
10 Declaration of Michael Ward ¶ 7.

11           15.    In certain circumstances, Michael Ward gives the Phone Number to patients  
12 to follow up on their questions, the status of their condition, and the state of the  
13 improvement of their health. *Id.* ¶ 8.

14           16.    Michael Ward gives the Phone Number to patients on average several times  
15 in the course of a normal week. During the COVID pandemic, Michael Ward has typically  
16 given out the Phone Number more frequently so that he can answer additional questions  
17 about treatment, follow-up, and prescriptions. *Id.* ¶ 9.

18           17.    Although he sees all his patients in Arizona, many of Dr. Michael Ward’s  
19 patients have telephone numbers with out-of-state area codes. *Id.* ¶ 16.

20           18.    Michael Ward also uses this line to consult with other physicians about  
21 patients and patient care. *Id.* ¶ 10.

22           19.    Additionally, Michael Ward serves as medical director for an air ambulance  
23 company, and while “on call” with the company, the Phone Number serves as a point of  
24 contact for questions from emergency medical technicians and paramedics for medical  
25 advice about patients. *Id.* ¶ 11.  
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1           20. Michael Ward also uses the Phone Number for calls with his daughter, sons,  
2 the girlfriend of one of his sons, and other family and friends, as well as individuals with  
3 whom he is in contact for political purposes. *Id.* ¶ 15.

4                               ***Kelli Ward's Usage of the Phone Number***

5           21. Since December 2019, Dr. Kelli Ward has practiced medicine exclusively  
6 in the field of medical weight loss. Declaration of Kelli Ward ¶ 5. The position of  
7 Chairwoman is unpaid, so treating medical weight loss patients allows her to maintain an  
8 income stream. She also derives meaning and satisfaction from her work outside of politics  
9 as a doctor. *Id.* ¶ 8.

10           22. Since the COVID-19 pandemic began, Kelli Ward has seen patients almost  
11 exclusively via telemedicine. *Id.* ¶ 9.

12           23. Kelli Ward uses a HIPAA-complaint videoconferencing system during  
13 patient telemedicine visits. However, sometimes Kelli Ward or her patients will have  
14 trouble with the system, in which case she will use the Phone Number to conduct the  
15 telemedicine visits. *Id.* ¶ 12.

16           24. Kelli Ward uses the Phone Number to converse with her patients, as well as  
17 with family and friends, and for calls of a political nature. *Id.* ¶ 18.

18           25. Upon information and belief, Kelli Ward's patients are all located in Arizona,  
19 although many have moved to the state and still maintain phone numbers with area codes  
20 associated with different states. *Id.* ¶ 15.

21           26. For many of Kelli Ward's patients, the mere fact that they are seeing a doctor  
22 for medical weight loss is a sensitive issue, and some bring up other issues, including  
23 psychological problems, anxiety, depression, insomnia, diabetes, and eating disorders  
24 during their calls with Dr. Ward, all of which are intensely personal and private medical  
25 concerns. *Id.* ¶ 11.

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### *The Nature of the Subpoena*

27. The Subpoena requires that T-Mobile produce certain documents associated with the Phone Number.

28. Among these documents, the Subpoena requires that T-Mobile provide “subscriber information,” including all authorized users on the associated account, all phone numbers, SIM, IMSI, and other identifiers associated with the account, and the names and identifies of individuals associated with the account, including IP addresses. Exh. A, Section A, ¶ 1.

29. The Subpoena also requires T-Mobile produce “Connection Records, and Records of Session Times and Durations,” specifically seeking

All call, message (SMS & MMS), Internet Protocol (“IP”), and data-connection detail records associated with the Phone Numbers, including all phone numbers, IP addresses, or devices that communicated with the Phone Number via delivered and undelivered inbound, outbound, and routed calls, messages, voicemail, and data connections.

Exh. A, Section A, ¶ 2.

30. In particular, the Subpoena also requires that the electronic document productions preserve “metadata,” which is data about data, identifying such features as the date of creation, modification, file sizes and extensions, authors, subjects, titles, message identifiers and headers, and internal file paths for all documents provided. Exh. A, Document Production Definitions and Instructions, ¶ 5, at b. This type of metadata is also known as “call data records.”

[https://en.wikipedia.org/wiki/Call\\_detail\\_record#:~:text=A%20call%20detail%20record%20\(CDR,through%20that%20facility%20or%20device](https://en.wikipedia.org/wiki/Call_detail_record#:~:text=A%20call%20detail%20record%20(CDR,through%20that%20facility%20or%20device) (last accessed February 1, 2022).

An analysis of call data records can reveal a large amount of personal information and social network contact information. Blondel, V.D., Decuyper, A. & Krings G., *A survey*

1 of results on mobile phone datasets analysis, 4 EPJ Data Science,  
2 <https://epjdatascience.springeropen.com/articles/10.1140/epjds/s13688-015-0046-0>  
3 (2015) (“even the simple knowledge of communication patterns between individuals or  
4 their mobility traces contains highly personal information that one typically does not want  
5 to be disclosed”).

6  
7 31. When Congress “seeks information directly from a party,” that party “can  
8 resist and thereby test the subpoena.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491,  
9 501 n.14 (1975). But when Congress “seeks that same information from a third person,”  
10 that option is not available to the party; the third party might not have an interest in  
11 protecting the information or resisting the subpoena, and its “compliance with the  
12 subpoena “could frustrate any judicial inquiry.” *Id.* For that reason, the law allows the  
13 person whose information will be exposed to sue in federal court for an “injunction or  
14 declaratory judgment” to block the subpoena’s “issuance, service on, or enforcement  
15 against” the third party. *U.S. Servicemen’s Fund v. Eastland*, 488 F.2d 1252, 1259 (D.C.  
16 Cir. 1973), *subsequent merits decision rev’d on other grounds*, 421 U.S. 491; *see also*  
17 *Trump v. Deutsche Bank AG*, 943 F.3d 627, 635 (2d Cir. 2019) (“No dispute that Plaintiffs  
18 had standing in the District Court to challenge the lawfulness of the Committees’  
19 subpoenas by seeking injunctive relief against the Banks as custodians of the documents.”).

### 20 ***The Nature of the Congressional Power of Inquiry***

21 32. While the Congressional power of inquiry is “an essential and appropriate  
22 auxiliary to the legislative function,” it is limited solely to that “only legitimate object”—  
23 legislating. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). “[N]either house is invested  
24 with ‘general’ power to inquire into private affairs and compel disclosures.” *McGrain*,  
25 273 U.S. at 173.

26 33. There is a constitutional burden is on the Committee to justify the need for  
27 the information sought.  
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1 Unless the subject matter has been made to appear with undisputable clarity,  
2 it is the duty of the investigative body, upon objection of the witness on  
3 grounds of pertinency, to state for the record the subject under inquiry at that  
4 time and the manner in which the propounded questions are pertinent thereto.  
5 To be meaningful, the explanation must describe what the topic under inquiry  
6 is and the connective reasoning whereby the precise questions asked relate  
7 to it.  
8

9 *Watkins v. United States*, 354 U.S. 178, 214-15 (1957).

10 34. “Investigations conducted solely for the personal aggrandizement of the  
11 investigators or to ‘punish’ those investigated are indefensible[,]” and Congress has no  
12 power to “try” someone before a subcommittee for any crime or wrongdoing, because law  
13 enforcement is assigned “under our Constitution to the Executive and the Judiciary.”  
14 *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031-2032 (2020) (internal citations  
15 omitted).

16 35. Deputy Attorney General Lisa Monaco recently gave an exclusive interview  
17 to CNN where she made clear that Republican appointees for electors who, like the Wards  
18 are alleged to have signed certifications that they were casting their electoral votes for  
19 Donald Trump, are the subjects of a federal criminal investigation.<sup>1</sup>

20 36. “Recipients of legislative subpoenas retain their constitutional rights  
21 throughout the course of an investigation. And recipients have long been understood to  
22 retain common law and constitutional privileges with respect to certain materials, such as  
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26 <sup>1</sup> Evan Perez, *Exclusive: Federal prosecutors looking at 2020 fake elector certifications,*  
27 *deputy attorney general tells CNN*, CNN (Jan. 26, 2022)  
28 [https://www.cnn.com/2022/01/25/politics/fake-trump-electoral-certificates-justice-](https://www.cnn.com/2022/01/25/politics/fake-trump-electoral-certificates-justice-department/index.html)  
[department/index.html](https://www.cnn.com/2022/01/25/politics/fake-trump-electoral-certificates-justice-department/index.html) (last accessed Feb. 1, 2022) (“We’ve received those referrals. Our  
prosecutors are looking at those and I can’t say anything more on ongoing investigations,”  
Monaco said in an exclusive interview).

1 attorney-client communications and governmental communications protected by  
2 executive privilege.” *Id.*, 140 S.Ct. at 2032.

3 **FIRST CAUSE OF ACTION**

4 **Declaratory Judgment and Injunctive Relief**

5 **The Subpoena is an *Ultra vires* Action by the Committee and Thus Invalid**  
6 **(Against All Defendants)**

7 37. Plaintiffs incorporate by reference all preceding and subsequent allegations.

8 38. The Subpoena seeks records relating to a Phone Number assigned to the  
9 Plaintiffs, who have not been accused of or charged with presence at the January 6th attack  
10 on the United States Capitol.

11 39. Plaintiffs are volunteer members of the Arizona Republican Party who were  
12 the Republican appointees for presidential elector during the last general election.

13 40. Because the Subpoena fails to comport to its enabling resolution by seeking  
14 records pertaining to a Phone Number assigned to Plaintiffs, the Subpoena fails to provide  
15 a valid legislative purpose. *See e.g.*, U.S. Const. Art II, Sec. 1, Cl. 2 (the ability to legislate  
16 regarding the appointment and mode of appointment of electors belongs exclusively to the  
17 States).

18 41. Furthermore, or in the alternative, because the Subpoena seeks an overbroad  
19 survey of the phone conversations and phone metadata of several private citizens unrelated  
20 to the enabling resolution of the issuing Committee, it fails to concern a subject on which  
21 legislation could be had.

22 42. Furthermore, or in the alternative, the subpoena fails to set forth with  
23 “undisputable clarity” the connection between the records being sought and a valid  
24 legislative purpose. That is a constitutional requirement the Committee has not met.

25 43. Furthermore, or in the alternative, the Subpoena appears to facially serve the  
26 purpose of law enforcement or as a prelude to a criminal investigation against individuals  
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1 nominated as electors. It is therefore invalid as an *ultra vires* expression of congressional  
2 power.

3 44. Furthermore, or in the alternative, the Phone Number is used for a wide  
4 range of personal and professional uses by Plaintiffs, from talking with their children to  
5 conversing about sensitive medical information with patients. As such, the subpoena is  
6 not narrowly tailored to its purported purpose and is being used as a general power of  
7 inquiry into private affairs, and as such must be declared invalid and enjoined.  
8

9 45. Furthermore, or in the alternative, it is public knowledge that Republicans  
10 sent a competing slate of electors from Arizona. Thus, it is highly likely here that the  
11 subpoena is being used for a purpose or purposes well outside of the legitimate  
12 Congressional subpoena power, whether for the personal aggrandizement of investigators,  
13 and/or to punish those investigated, and/or to expose for the sake of exposure, some or  
14 all of which are forbidden *ultra vires* actions and must therefore be declared as such and  
15 enjoined.

## 16 **SECOND CAUSE OF ACTION**

### 17 **Violation of the 1st Amendment to the United States Constitution**

#### 18 **(Against Defendants Chairman Thompson and the Committee)**

19 46. Plaintiffs incorporate by reference all preceding and subsequent allegations.

20 47. An individual's First Amendment freedoms require by nature a "correlative  
21 freedom to engage in group effort toward those ends." *Roberts v. United States Jaycees*,  
22 468 U.S. 609, 622 (1984).

23 48. "Implicit in the right to engage in activities protected by the First  
24 Amendment [is] a corresponding right to associate with others in pursuit of a wide variety  
25 of political, social, economic, educational, religious, and cultural ends." *Brock v. Local*  
26 *375, Plumbers Int'l Union*, 860 F.2d 346, 349 (9th Cir. 1988) (internal citations omitted).  
27  
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1           49. Kelli Ward is the Chair of the Republican Party of Arizona and served in the  
2 Arizona State Senate from 2012 to 2015. It is her job to contact and coordinate with  
3 members of her party about elections. Her job responsibilities are especially acute when  
4 there is public controversy concerning the outcome of an election. Such a controversy was  
5 raging in Arizona (and nationally) during the exact time period covered by the Subpoena.  
6

7           50. When political associational rights are at stake, the Supreme Court analyzes  
8 potential infringement under a framework that it has described as “exacting scrutiny.”  
9 Exacting scrutiny requires that there be “a substantial relation between the disclosure  
10 requirement and a sufficiently important governmental interest, and that the disclosure  
11 requirement be narrowly tailored to the interest it promotes.” *Ams. for Prosperity Found.*  
12 *v. Bonta*, 141 S. Ct. 2373, 2385 (2021) (internal citations omitted).

13           51. The Subpoena seeks all connection records and records of session times and  
14 durations of all calls made to and from the phone number for a three-month span,  
15 beginning just before one of the most contentious elections in modern history.

16           52. Providing that list to the Committee would give a committee of the House  
17 of Representatives, which was formed and chaired by political rivals, the personal  
18 telephone numbers, IP addresses, file names of attachments, and contact details of the  
19 party members most in communication with the state chair of the party at a time when the  
20 legitimacy of the last presidential election was in dispute. As such, the Subpoena provides  
21 the Committee with the means to chill the First Amendment associational rights not just  
22 of the Plaintiffs but of the entire Republican Party in Arizona.

23           53. Furthermore, the disclosure required by the Subpoena does not relate to a  
24 sufficiently important government interest because there has been no link, alleged or  
25 otherwise, between the events of the January 6th attack on the Capitol the Committee was  
26 formed to investigate, and the Plaintiffs.  
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1           54. Furthermore, or in the alternative, the violation of the First Amendment  
2 rights of the Plaintiffs would lead to substantial and serious injury and harassment.

3           55. Because of the controversy and her associational status, Kelli Ward has  
4 received death threats, harassing letters, and phone calls, deeply concerning both her and  
5 her family.

6           56. Michael Ward has received threatening and harassing messages on social  
7 media, including threatening messages and sexually explicit comments harassing him and  
8 his wife.

9           57. Therefore, the Subpoena must be declared to be violative of the Plaintiffs'  
10 First Amendment right to association and enjoined.

11           58. Further, the 9<sup>th</sup> Circuit recognizes a Bivens cause of action for damages for  
12 First Amendment retaliation claims. *Boule v. Egbert*, 998 F.3d 370, 390 (9th Cir. 2021)  
13 (review pending).

14           59. Plaintiffs have been injured by this retaliation against their First  
15 Amendment protected interests reputationally, professionally, emotionally and personally,  
16 in an amount to be determined at trial, and the Defendants' invasion was the cause of  
17 Plaintiffs' injuries. They are also entitled to presumed damages for their loss of liberty  
18 from the violation in an amount to be proven at trial. This claim is made for those damages  
19 suffered to date and those reasonably expected to be suffered in the future.  
20

### 21                                   **THIRD CAUSE OF ACTION**

#### 22                           **Violation of State and Federal Statutory Privilege Protections**

#### 23                   **(Against Defendants Chairman Thompson and the Committee)**

24           60. Plaintiffs incorporate by reference all preceding and subsequent allegations.

25           61. “Arizona has adopted physician-patient privilege statutes for both civil and  
26 criminal proceedings.” *Samaritan Health Servs. v. Glendale*, 148 Ariz. 394, 396, 714 P.2d  
27 887, 889 (1986).  
28

1           62.    In criminal matters:

2           A person shall not be examined as a witness in the following cases:...a  
3           physician or surgeon, without consent of the physician's or surgeon's patient,  
4           as to any information acquired in attending the patient which was necessary  
5           to enable the physician or surgeon to prescribe or act for the patient.  
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7  
8           Ariz. Rev. Stat. § 13-4062.

9           63.    In civil matters:

10           Unless otherwise provided by law, all medical records and payment records,  
11           and the information contained in medical records and payment records, are  
12           privileged and confidential.  
13

14           Ariz. Rev. Stat. § 12-2292.

15           64.    Telephone metadata permits even rudimentary algorithms to determine  
16           intimate personal details, especially and specifically medical information specifically  
17           protected by Arizona law because that people should feel free “to seek treatment  
18           undeterred by fear that a private physical condition will become a matter of public  
19           discussion.” *Carondelet Health Network v. Miller*, 221 Ariz. 614, 616, 212 P.3d 952, 954  
20           (2009).

21           65.    Therefore, the provision of telephone metadata from the Phone Number by  
22           virtue of this Subpoena to the Committee constitutes a violation of Arizona state law  
23           related to medical privilege and must be enjoined until and unless limitations are put in  
24           place to protect the physician-patient privilege.

25           66.    Furthermore, or in the alternative, The Health Insurance Portability and  
26           Accountability Act (“HIPAA”) establishes procedural safeguards to maintain the privacy  
27           of individuals in their protected health information (“PHI”).  
28

1           67. Mole Medical, Michael Ward, and Kelli Ward are “covered entities” for the  
2 purpose of HIPAA because they are health care providers who regularly transmit PHI to  
3 their patients, including by the use of the Phone Number. 45 C.F.R. § 160.103.

4           68. In general, “covered entities may not use or disclose protected health  
5 information,” subject to certain exceptions. 45 C.F.R. § 164.502.

6           69. HIPAA permits disclosure of protected health information during judicial  
7 or administrative proceedings in response to a “subpoena, discovery request, or other  
8 lawful process,” but only if two conditions are met. 45 C.F.R. § 164.512(e)(1)(ii).

9           70. First, if the individual who is the subject of the PHI has been given notice  
10 of the request, or second, if the covered entity receives satisfactory assurance that  
11 “reasonable efforts have been made by such party to secure a qualified protective order”  
12 that meets certain requirements. *Id.*, at (e)(1)(ii)(A)-(B).

13           71. The Committee has not provided any patients with notice of the Subpoena,  
14 and no one has even discussed a protective order that would limit the use that the  
15 Committee could make of this patient information.

16           72. Disclosing the phone records and metadata from the Phone Number would  
17 provide the PHI of an unknown but quantifiable number of individuals seeking medical  
18 treatment from the Plaintiffs to the Committee and potentially to the public at large.

19           73. Therefore, the enforcement of the Subpoena must be enjoined until and  
20 unless limitations are put in place to protect the PHI of the Plaintiffs’ patients.

21  
22                                   **FOURTH CAUSE OF ACTION**

23                                   **Violations of the Rules of the House of Representatives**

24                                   **(Against Defendants Chairman Thompson and the Committee)**

25                                   *Failure to Issue Subpoena in the Presence of a Majority of the Committee*

26           74. Plaintiffs incorporate by reference all preceding and subsequent allegations.  
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1           75. The Subpoena issued on January 19, 2022, with the signature of the  
2 Chairman, Bennie Thompson (D-MS).

3           76. At the time of issuance of the Subpoena, the Committee had only nine  
4 members, seven Democrats and two Republicans.

5           77. The Committee's enacting resolution, H. Res. 503, passed by the House on  
6 June 30, 2021, provided that the Committee was to have 13 members. H. Res. 503 Section  
7 2(a).

8           78. At the time the subpoena was issued, the Committee had only nine members  
9 of which, on information and belief, none were appointed in consultation with the Minority  
10 Leader.

11           79. Under the House rules, a "measure ... may not be reported by a committee  
12 unless a majority of the committee is actually present." (Rule XI, clause 2(h)(1)).

13           80. To the extent that, on information and belief, the Subpoena constituted a  
14 "measure" under the Rule, that required a meeting at which a majority of the Committee  
15 was actually present, the Subpoena was not properly issued.

16           81. To the extent that, on information and belief, no meeting took place at which  
17 a majority of the Committee (7 of the 13 required members) was present, the Subpoena  
18 was not issued in accordance with the Rules of the House.

19           82. The specific power of the Committee to issue subpoenas for records is  
20 governed by the Rules of the House. Rule XI, clause 2(m) provides that subpoenas may  
21 be issued by a committee in the conduct of an investigation "only when authorized by the  
22 committee or subcommittee, a majority being present." (*Id.* at subsection (3)(A)(i)).

23           83. H. Res. 503 did not change the requirement in Rule XI, clause 2(m) that a  
24 majority of the issuing committee be present to authorize issuance of any subpoena.

25           84. Therefore, to the extent that, on information and belief, the majority of the  
26 Committee, seven members, did not vote in favor of issuing the Subpoena at a meeting  
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28



1 with a “majority being present,” the Subpoena was issued contrary to the Rules of the  
2 House and should be declared invalid and enjoined.

3  
4 *Failure to Issue Subpoena in the Presence of a Quorum*

5 85. Further, or in the alternative, H. Res. 503 provides that two members would  
6 be a quorum for “taking testimony or receiving evidence.” However, the Subpoena was  
7 issued for records, not to take testimony or receive evidence.

8 86. H. Res. 503 additionally provides that one-third of the members is a quorum  
9 for taking “any action other than one for which the presence of a majority of the Select  
10 Committee is required.” (*Id.* at Sec. 5(c)(3)).

11 87. Issuing the Subpoena is a committee action that requires action at a meeting  
12 at which a majority of the committee was present and therefore the quorum requirement  
13 is a majority of the committee be present. (Rule XI, clause 2(m), at subsection (3)(A)(i)).

14 88. To the extent that, on information and belief, a quorum was not present for  
15 the issuance of the Subpoena, it was issued improperly and is a violation of House Rules  
16 and should be declared invalid and enjoined.

17 *Failure to Properly Delegate Authority for Subpoena Issuance to the Chairman*

18 89. Further, or in the alternative, the Rules of the House also provide that the  
19 Committee may delegate the power to issue subpoenas to the chair of the Committee.  
20 (House Rule XI, clause 2(m)(3)(A)(i)): “The power to authorized and issue subpoenas ...  
21 may be delegated to the chair of the committee under such rules and under such  
22 limitations as the committee may prescribe.”).

23 90. It is inferable from the House Rules that any committee action to delegate  
24 to the Chairman the authority to undertake actions that would require action by a majority  
25 of the committee at meeting where such a majority is present would likewise have the  
26 same quorum and vote requirements.  
27  
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1           91. To the extent that, on information and belief, the Committee did not take a  
2 proper action at a meeting at which a majority was present when any delegation of  
3 authority was made to the Chairman to alone issue Subpoenas, the Subpoena was not  
4 properly issued and should be declared invalid and enjoined.  
5

6                                   **PRAYER FOR RELIEF**

7           92. Plaintiffs request relief as follows:

- 8           a. That the Court assert jurisdiction over this action;
- 9           b. That the Court enter an order declaring that Defendants’ actions, as set  
10           forth in this Complaint, violate federal law and the laws of the State of  
11           Arizona as set forth above;
- 12           c. That the Court enjoin Defendants’ unlawful acts as set forth in this  
13           Complaint, quash the Subpoena, enjoin Chairman Thompson and the  
14           Committee from enforcing the Subpoena, and enjoin Defendant T-Mobile  
15           from producing any documents in response to the Subpoena;
- 16           d. For damages in an amount to be proven at trial;
- 17           e. That the Court awards Plaintiffs their reasonable attorneys’ fees and costs  
18           of suit; and
- 19           f. That the Court award any and all such other and further relief as the Court  
20           may deem just and proper under the circumstances.
- 21           g. That the Court set this matter for a jury trial on all issues so triable.  
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1 Respectfully submitted this 1st day of February, 2022.

2  
3 /s/ Alexander Kolodin  
4 DAVILLIER LAW GROUP, LLC  
5 4105 North 20th Street  
6 Suite 110  
7 Phoenix, AZ 85016

8 /s/ Laurin Mills  
9 Laurin Mills  
10 SAMEK | WERTHER | MILLS, LLC  
11 2000 Duke Street  
12 Suite 300  
13 Alexandria, VA 22314  
14 (*Pro hac vice* to be submitted)  
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