

**AFFIDAVIT OF ANTHONY ZABIT
IN SUPPORT OF COMPLAINT**

1. I am a resident of California and a user of telecommunications services provided within and outside of California, including services previously provided by NetFortris Acquisition Company, Inc. (“NetFortris”).
2. I previously used telecommunications services provided by NetFortris.
3. NetFortris operates as a provider of interstate telecommunications services under Federal Registration Number 0022976716.
4. I founded IXC Holdings, Inc. (“IXC Holdings”), but in January 2014, IXC Holdings was acquired by NetFortris.
5. I was an employee of Netfortris until October 1, 2014.
6. As a founder of IXC Holdings, I know that as part of IXC Holdings’ telecommunications offerings, it installed equipment capable of allowing customers to record conversations.
7. I know that after it acquired IXC Holdings, NetFortris continued to make use of this recording equipment and to offer the call recording capabilities to customers.
8. The call recording capability was a feature sold to NetFortris customers and utilized internally for quality assurance and training purposes.
9. I was aware that NetFortris had the capability to record conversations as part of its telecommunications offerings.
10. It was my understanding that the call recording feature was enabled for a discreet number of employees who were aware of the recording.
11. I inquired of NetFortris whether my calls were being recorded.
12. I was informed by NetFortris that call recording was not turned on for my extension.

13. I was further told that my extension had been included in a special group extensions that did not allow my calls to be recorded even if I called someone who had call recording enabled.
14. The equipment used by NetFortris to record conversations does not include an audible warning for calls made to or between direct dialed numbers not associated with the main call center number.
15. On October 1, 2014, my employment at NetFortris terminated. Thereafter I discovered that NetFortris was recording conversations made by me on my business land line and my company cell phone and my personal cell phone prior to my departure from the company.
16. Based on my preliminary knowledge of the recordings NetFortris made, I estimate that approximately 100 interstate calls were recorded.
17. NetFortris continued to record my telephone conversations made on my personal cell phone after October 1st, 2014, after my employment with NetFortris was terminated.
18. After it was discovered that NetFortris was recording my telephone conversations, my wife who still worked at NetFortris, resigned.
19. The call recordings made by NetFortris captured the content both of my conversations and of the person with whom I spoke.
20. NetFortris identified calls involving me by searching within its call recording system all calls, within a certain date range, from or to known phone numbers that I used, including my personal cell phone, my former work extension and my former work cell phone.
21. The call recordings made by NetFortris were digital.
22. NetFortris downloaded a number of my calls. A list of some of the calls that NetFortris

downloaded and emails demonstrating that NetFortris circulated, listened to, used and disclosed the recordings, is attached to this Complaint as Confidential Exhibit 1.¹

23. NetFortris released to its personnel some or all of the downloaded call recordings involving me.
24. On information and belief, certain officers and members of the NetFortris board of directors knew about and approved the surreptitious recordings and release of my proprietary customer calling information.
25. NetFortris personnel listened to some or all of the calls it made of me.
26. One of the recipients of my calls was Mr. Roberto Alvarez.
27. The majority of the calls to Mr. Roberto Alvarez that were recorded by NetFortris occurred after I no longer worked as an employee at NetFortris. Other recipients of my calls who were recorded were customers, family members, and fellow employees and end users of NetFortris' corporate customers and vendors.
28. Some of the recordings made by NetFortris captured sensitive conversations including at least one call with my business partner discussing settlement of disputes with NetFortris.
29. At least one call recorded by NetFortris was between me and a minor.
30. NetFortris identified calls between Mr. Alvarez and myself as being of interest.
31. At least some of the recorded calls between Mr. Alvarez and myself were released via email to some of the officers of NetFortris.
32. NetFortris prepared a summary of the content of the call for at least some of the calls between myself and Mr. Alvarez in emails.
33. On information and belief, the email summaries were derived from NetFortris listening to the calls.

¹ Confidential Exhibit 1 is filed separately under seal.

34. The recordings made by NetFortris were not for the purpose of rendering, billing or collecting for telecommunications services.
35. The recordings made by NetFortris were not for the purpose of compiling phone directories, responding to government orders or subpoenas, or for any other purpose allowed by federal law.
36. On information and belief, the conversations were recorded for purposes of gaining competitive advantage in an employment dispute between NetFortris and myself unrelated to the provision of telecommunications services.
37. Specifically, some of the calls involved discussions with my business partner in regard to discussions that were ongoing between me and NetFortris regarding my severance agreement and a settlement of post-closing issues arising from the 2014 sale of IXC Holdings to NetFortris.
38. On further information and belief, NetFortris recorded my conversations for the purpose of gaining an advantage over competitors because some of the calls involved my discussions with telecommunications users or vendors and NetFortris may have been attempting to learn information about product offerings and pricing or marketing strategies for other business opportunities I was exploring with potential customers or vendors after I was no longer employed by NetFortris.
39. NetFortris also compiled call records detailing the date and duration of calls and identified the calling and called number for some of the calls made or received by me.
40. In some instances, the call records prepared by NetFortris included an email address of the call recipient.
41. I have filed a lawsuit against NetFortris in California Superior Court in San Francisco

alleging violation of California Penal Code Section(s) 630-638, common law invasion of privacy and 18 U.S.C. 2511 and 2520.²

42. During discovery in the lawsuit in Superior Court, Grant Evans (NetFortris CEO), Bryan Koehler (NetFortris CFO) and Tom Swayze (NetFortris CTO) admitted under oath to listening to a number of recordings of my calls.

43. NetFortris did not disclose to me, Mr. Alvarez or the other individuals involved in calls with myself or Mr. Alvarez that their conversations were being recorded.

44. I did not consent to having my conversations monitored or recorded.

45. On information and belief, none of the parties whose conversations with me were recorded consented to having their conversations monitored or recorded.

DAMAGES

46. I have suffered damages as a result of NetFortris unlawfully monitoring and recording my phone calls and disclosing my customer proprietary network information.

47. I have suffered damages including injury to reputation, property, person and health.

48. The actions of NetFortris have damaged my reputation in the telecommunications industry, which has direct impact on my ability to make a living using my knowledge, skills and industry contacts.

49. I am further economically damaged by NetFortris because my spouse immediately quit her job at NetFortris when she discovered that NetFortris surreptitiously recorded my phone calls. The economic value of this loss is approximately \$150,000 per year and it would be expected that she would have stayed for at least an additional 3 years.

50. The actions of NetFortris have injured my health and person, including changes in sleep,

² *Zabit v. NetFortris Acquisition Co., Inc.*, CGC 15-543996, Superior Court for the City and County of San Francisco.

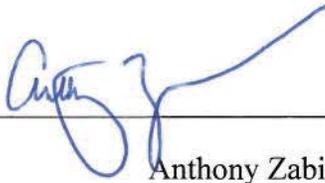
weight, loss of appetite, and exacerbating other health concerns.

51. The actions of NetFortris have caused me humiliation, mental anguish, severe stress, isolation from others, and feeling a lack of privacy and security in my daily life.

52. I request that FCC require NetFortris to compensate me for these damages in the amount of at least \$500,000, or a higher amount the FCC determines just for NetFortris' surreptitious recording of my conversations.

53. Further, I request that NetFortris and all of its officers and board members who were aware of NetFortris' recording of my conversations be required to disclose to all state regulatory commissions the existence and results of this complaint now and in any future applications for certificates to operate or to acquire an interest in a regulated entity.

Under penalty of perjury of the laws of the state of California, I declare the above Affidavit to be true and correct to the best of my belief.



Anthony Zabit