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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 CITY AND COUNTY OF SAN FRANCISCO

11 STEVEN MCARDLE, an individual, on behalf of himself,  
 12 the general public and those similarly situated

13 Plaintiff,

14 v.

15 AT&T MOBILITY LLC; NEW CINGULAR WIRELESS  
 16 PCS LLC; NEW CINGULAR WIRELESS SERVICES,  
 17 INC., AND DOES 1 THROUGH 50

18 Defendants

ENDORSED  
 FILED  
 FEB 10 2009  
 Superior Court of California  
 County of San Francisco  
 FEB 10 2009

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 BY: CRISTINA B. BUSTIA, Clerk  
 MANAGEMENT CONFERENCE SE

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DEPARTMENT 212

CSC-09-484884

CASE NO.

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT  
 FOR FALSE ADVERTISING;  
 VIOLATION OF THE CALI-  
 FORNIA CONSUMERS LE-  
 GAL REMEDIES ACT;  
 FRAUD, DECEIT AND/OR  
 MISREPRESENTATION; AND  
 UNFAIR BUSINESS PRAC-  
 TICES

JURY TRIAL DEMANDED

FAXED

1 Steven McArdle, by and through his counsel, brings this Class Action Complaint against  
 2 Defendants, on behalf of himself and those similarly situated, for violations of sections 17200 and  
 3 17500 *et seq.* of the California Business and Professions Code; violation of the California  
 4 Consumers Legal Remedies Act; and fraud, deceit and/or misrepresentation. The following  
 5 allegations are based upon information and belief, including the investigation of Plaintiff's  
 6 counsel, unless stated otherwise.

#### 7 INTRODUCTION

8 1. This case is about how Defendants unfairly, unlawfully and deceptively charge  
 9 customers exorbitant, international roaming fees for (1) calls that they do not answer,  
 10 (2) voicemail they do not check and (3) calls they do not place, while traveling abroad. Not only  
 11 do Defendants unfairly, unlawfully and deceptively impose such charges, unlike other mobile  
 12 phone companies, they affirmatively hide from their customers how they can avoid such charges.  
 13 Thereby, Defendants effectively force customers into incurring these unfair, unlawful and  
 14 deceptive fees and charges.

15 2. Defendants also unfairly, unlawfully and deceptively charge customers additional,  
 16 undisclosed "data transfer" fees for text, video and pictures messages they send while traveling  
 17 abroad.

#### 18 PARTIES

19 3. Steven McArdle ("Plaintiff") is, and at all times alleged in this Class Action  
 20 Complaint was, an individual and a resident of the City of San Francisco in San Francisco  
 21 County, California.

22 4. Defendant AT&T Mobility LLC is a limited liability company under the laws of  
 23 the state of Delaware, having its principal place of business in Atlanta, Georgia.

24 5. Defendant New Cingular Wireless PCS, LLC is a limited liability company under  
 25 the laws of the state of Delaware, having its principal place of business in Atlanta, Georgia.

26 6. Defendant New Cingular Wireless Services, Inc. is a corporation incorporated  
 27 under the laws of the state of Delaware, having its principal place of business in Atlanta, Georgia.

28 7. Defendants New Cingular Wireless PCS, LLC and New Cingular Wireless

1 Services, Inc. are referred to herein as "Cingular" or "Cingular Wireless." In 2006, AT&T  
 2 purchased Cingular. Shortly thereafter, Cingular was renamed and rebranded as AT&T Wireless.  
 3 As used herein, "AT&T" refers collectively to AT&T Mobility LLC, its predecessors including  
 4 Cingular, and the brands Cingular Wireless and AT&T Wireless.

5 8. The true names and capacities of Defendants sued as Does 1 through 50 inclusive  
 6 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to  
 7 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend  
 8 this Class Action Complaint when said true names and capacities have been ascertained.

9 9. The Parties identified in paragraphs 4 through 8 of this Class Action Complaint are  
 10 collectively referred to hereafter as "Defendants" or "AT&T."

11 10. At all times herein mentioned, each of the Defendants was the agent, servant,  
 12 representative, officer, director, partner or employee of the other Defendants and, in doing the  
 13 things herein alleged, was acting within the scope and course of his/her/its authority as such  
 14 agent, servant, representative, officer, director, partner or employee, and with the permission and  
 15 consent of each Defendant.

16 11. At all times herein mentioned, Defendants, and each of them, were members of,  
 17 and engaged in, a joint venture, partnership and common enterprise, and acting within the course  
 18 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

19 12. At all times herein mentioned, the acts and omissions of Defendants, and each of  
 20 them, concurred and contributed to the various acts and omissions of each and all of the other  
 21 Defendants in proximately causing the injuries and damages as herein alleged.

22 13. At all times herein mentioned, Defendants, and each of them, ratified each and  
 23 every act or omission complained of herein. At all times herein mentioned, the Defendants, and  
 24 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in  
 25 proximately causing the damages, and other injuries, as herein alleged.

#### 26 JURISDICTION AND VENUE

27 14. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business  
 28 and Professions Code, section 17200, *et. seq.* Plaintiff and Defendants are "persons" within the

1 meaning of the California Business and Professions Code, section 17201.

2 15. The injuries, damages and/or harm upon which this action is based, occurred or  
3 arose out of activities engaged in by Defendants within, and affecting, the State of California.

4 16. Defendants have engaged, and continue to engage, in substantial and continuous  
5 business practices in the State of California, including in the City and County of San Francisco.

6 17. Accordingly, Plaintiff alleges that jurisdiction and venue are proper in this Court.

7 **SUBSTANTIVE ALLEGATIONS**

8 **Defendants Market, Advertise and Sell Nationwide Wireless Phones And Related Services**

9 18. AT&T is a leading provider of mobile telephone products and services.

10 19. AT&T represents that all of its rate plans include basic voicemail and visual  
11 voicemail at no extra charge. Customers are not charged for receiving voicemail, for calls they  
12 do not answer, or for receiving visual notifications that a call was missed or that a voicemail was  
13 left.

14 20. AT&T markets and advertises the international functionality of its mobile phones  
15 and service plans. For example, AT&T markets and advertises, without limitation, the following:

16 More wireless AT&T phones work in more places around the world than any other U.S.  
17 carrier — over 200 countries. Stay connected while traveling to over 200 countries, plus  
18 get discounted rates in over 85 of those countries when you sign up for AT&T World  
19 Traveler.

20 Going on a trip outside the U.S.? See if you have coverage based on your device and  
21 itinerary.

22 Next time you travel overseas, why not take your AT&T service with you?

23 21. For customers who wish to use their AT&T-enabled mobile telephones outside the  
24 United States, AT&T offers on its website a "Wireless Travel Guide." By using the Wireless  
25 Travel Guide, customers can determine, based on their mobile phone device and itinerary,  
26 whether they will have coverage in a certain country and what rates that they will pay (in each  
27 country) for telephone calls that they make or receive and for sending text, picture and/or video  
28 messages. For example, the Wireless Travel Guide informs AT&T customers traveling to Italy

1 that for calls placed and received in Italy they will be charged \$1.29 per minute,<sup>1</sup> \$.50 per sent  
2 text message, and \$1.30 per sent picture or video message. The Wireless Travel Guide further  
3 informs customers that receiving text messages is free.<sup>2</sup>

4 22. On its website, AT&T also informs customers that there are additional  
5 international roaming charges for data transfer, such as sending/receiving email or surfing the  
6 Internet. AT&T warns customers who have data-enabled mobile phones that, if they wish to  
7 avoid these charges, they should turn their data roaming feature to "off" so that the phones will  
8 not automatically check for emails or retrieve other data.

9 23. AT&T customers are provided with identical information when they telephone  
10 AT&T with questions concerning international use of their phone and/or to activate their phones  
11 for international use.

12 24. AT&T does not, however, adequately inform its customers that there will be, and  
13 its affirmative statements mislead customers into thinking there will not be, international roaming  
14 charges for incoming calls they do not accept, voicemails they do not retrieve and/or calls they do  
15 not place while they are abroad.

16 25. For example, AT&T trains its representatives that, if customers inquire about  
17 international usage, the representatives should inform them that they will incur charges for  
18 sending international text messages and for making and receiving calls. AT&T does not train its  
19 representatives to state, and the representatives do not state, that customers will incur charges for  
20 (1) calls that they do not answer, (2) voicemail they do not check and/or (3) calls they do not  
21 place while they are traveling abroad.

22 26. Similarly, when a customer arrives in a foreign country and turns on their phone,  
23 they typically receive from AT&T a text message welcoming them to that country and informing  
24 them that will incur charges for international text messages and phone usage. The text messages  
25 also typically inform customers to turn off international data roaming. AT&T, however,  
26 intentionally omits from the text message the fact that customers will incur charges for (1) calls

27 <sup>1</sup> The \$1.29 per minute is the standard international rate in Italy. For customers that purchase the  
28 "AT&T World Traveler" plan, the rate for telephone calls is reduced to \$.99 per minute.

<sup>2</sup> The international roaming fees and charges vary by country and mobile phone device.

1 that they do not answer, (2) voicemail they do not check and/or (3) calls they do not place while  
 2 they are traveling abroad. AT&T's intentional omissions deceive reasonable customers into  
 3 believing that they will not incur additional charges for (1) calls that they do not answer, (2)  
 4 voicemail they do not check and/or (3) calls they do not place while they are traveling abroad.

5 27. Nor does AT&T adequately inform customers, either on its website, in a text  
 6 message, or verbally when they call a customer service representative, how they can avoid  
 7 incurring charges for (1) calls that they do not answer, (2) voicemail they do not check and/or (3)  
 8 calls they do not place while traveling abroad. With respect to AT&T's website, the information  
 9 does not appear in the Wireless Travel Guide nor on numerous other pages dealing with  
 10 international services and international roaming charges and other fees. AT&T's intentional  
 11 failure to provide such information only compounds the deception because other mobile phone  
 12 carriers provide such information to its customers.

13 28. The only source of information about these additional charges that will be imposed  
 14 on international travelers is on a single "Frequently Asked Question" page buried deep in  
 15 AT&T's website. To navigate to this page, a customer would have to specifically click on  
 16 "Frequently Asked Questions" even though he or she has already seen detailed information about  
 17 international roaming charges and other fees that provides no indication of the additional  
 18 voicemail and unanswered call related charges. The Frequently Asked Question states as follows:

19 Q. How am I charged for Voicemail calls while roaming internationally?

20 A. Voicemail calls are charged as follows:

21 When your device is on:

22 \* Calls that you do not answer that are routed to the AT&T voicemail system will be  
 23 charged as an international roaming incoming call to your device.

24 \* In addition, the foreign carrier's routing of that call to the AT&T voicemail system  
 25 may generate an outgoing call charge from your device's location to the U.S.

26 \* These charges apply even if the caller disconnects from the voice mail system without  
 27 leaving a message.

28 If your device is turned off or in flight mode and the wireless network is off:

\* When someone tries to call you, the call will go directly to your personal voicemail  
 greeting.

1       \* Since the network does not try to deliver the call to you in a foreign country, there are  
2       no international roaming charges.

3       When receiving Visual Voicemail messages on your iPhone:

4       \* Visual Voicemail messages received when roaming outside of the U.S. will be  
5       charged at International roaming data rates, either at the International pay-per-use data  
6       rate or against your iPhone International data package.

7       29. AT&T does not require customers to view the Frequently Asked Questions page  
8       before using their phones internationally, nor does it make it likely that users will view this page,  
9       as it is buried deep on AT&T's website, and customer service representatives are not trained to  
10      tell customers who call AT&T to look at this page. Nor are customer service representatives  
11      trained to provide this information. To the contrary, they are trained not to provide this  
12      information unless a customer specifically requests it—i.e., asks if they will be charged for  
13      unanswered calls or voicemail that they receive but do not check.

14      30. Defendants effectively force customers to incur these additional charges if they  
15      wish to use their telephones while traveling abroad. For example, if a customer wishes to be able  
16      to send and receive text messages, there is (often) no way to configure the phone so as to avoid  
17      the charges for incoming calls and voicemail notifications, even if the calls are not answered and  
18      the voicemails are not checked. Otherwise put, in order to use other functions that AT&T  
19      advertises, and for which they are told how much they will be charged, customers are forced to  
20      incur additional inadequately or undisclosed charges and fees.

21      31. Finally, even though, as set forth above, Defendants disclose to customers that,  
22      while traveling abroad, they will be charged additional amounts for text, video or pictures  
23      messages, Defendants, in fact, charge approximately double the disclosed amount. Specifically,  
24      as disclosed, Defendants charge customers for sending text, video and/or picture messages.  
25      However, Defendants charge an additional data transfer fee, presumably for the "data" transfer  
26      that was associated with sending the text, video or picture message. No where, however, did  
27      Defendants disclose to their customers the existence or amount of any additional "data transfer"  
28      fees associated with sending text, video or picture messages while abroad.

**Plaintiff Was Charged International Roaming Rates for Calls He Did Not Answer,  
Voicemail He Did Not Check And Calls He Did Not Place. Plaintiff Was Also Charged**



1       \* Since the network does not try to deliver the call to you in a foreign country, there are  
2       no international roaming charges.

3       When receiving Visual Voicemail messages on your iPhone:

4       \* Visual Voicemail messages received when roaming outside of the U.S. will be  
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6       rate or against your iPhone International data package.

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18      the voicemails are not checked. Otherwise put, in order to use other functions that AT&T  
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27      Defendants disclose to their customers the existence or amount of any additional "data transfer"  
28      fees associated with sending text, video or picture messages while abroad.

**Plaintiff Was Charged International Roaming Rates for Calls He Did Not Answer,  
Voicemail He Did Not Check And Calls He Did Not Place. Plaintiff Was Also Charged**



**Undisclosed Data Transfer Fees For the Text Messages That He Sent.**

32. Plaintiff has been a mobile telephone customer of AT&T since the summer of 2004. Plaintiff had an LG mobile (flip) phone until recently when he purchased a BlackBerry Pearl mobile phone.

33. Between March 20 and March 30, 2008, Plaintiff traveled to Italy. Prior to departing, Plaintiff looked at Defendants' website to gather information concerning international use of his wireless phone. Plaintiff noticed on Defendants' website that he would be charged additional amounts to place and receive calls and send text messages. Plaintiff was not, however, informed that he would be charged for voicemail that he did not check, calls that he did not answer and/or calls that he did not make while traveling abroad.

34. On or about March 20, 2008, Plaintiff telephoned Defendants' customer service department in order to discuss his need for international text messaging. At that time, Plaintiff purchased the 100INT'LTEXTMSGSGS Plan for an additional \$9.99 per month.<sup>3</sup> It was Plaintiff's understanding that without this plan, he could not send text messages while traveling abroad.<sup>4</sup> Defendants' customer service agent informed Plaintiff that while traveling internationally, he would be charged additional amounts to place and receive calls and send text messages. The agent did not state, however, that Plaintiff would be charged for voicemail that he did not check, calls that he did not answer and/or calls that he did not make while traveling abroad.

35. When he arrived in Germany (on a layover), Plaintiff received from AT&T a welcome text message. That text message informed Plaintiff that he would be charged additional amounts to place and receive calls and send text messages. Plaintiff was not, however, informed in the text message that he would be charged for voicemail that he did not check, calls that he did not answer and/or calls that he did not make while traveling abroad. Plaintiff received a similar text message when he arrived in Italy.

36. Despite the fact that Plaintiff did not place or answer any telephone calls while in

<sup>3</sup> The first month was pro-rated—i.e., Plaintiff paid \$2.00 for 3/20/08 – 3/25/08.

<sup>4</sup> Defendants' customer service agent may have misinformed Plaintiff about the utility of the 100INT'LTEXTMSGSGS Plan. In fact, it may have been \$9.99 for Plaintiff to send 100 text messages from the US to an international phone number, a service that Plaintiff did not want or need.

1 Italy, he was still charged a total of \$3.87 for telephone calls that he did not answer, voicemail he  
 2 did not receive and/or calls he did not place. Had he known he would be charged for the call  
 3 irrespective of whether or not he answered, he would have kept his phone off or informed friends,  
 4 family and business associates not to call but rather to text or email.

5 37. Though Plaintiff was informed that sending text messages from abroad would cost  
 6 \$.50 per text message, Plaintiff was never informed that there would be an additional "data  
 7 transfer" fee associated with sending text messages. Nonetheless, Defendants charged Plaintiff  
 8 \$.50 for each text message that he sent while traveling abroad and an additional \$10.04 in  
 9 (undisclosed) "data transfer" fees for sending those text messages. Plaintiff's mobile phone was  
 10 not, however, data enabled—i.e., he could not send or receive email on his phone. Nor could he  
 11 access the Internet.

12 38. Plaintiff's experience was not an isolated incident. Rather, many other customers  
 13 have been charged for voicemail that they did not check, calls that they did not answer and/or  
 14 calls they did not place while traveling abroad.

15 39. For example, one customer posted this statement on an Internet complaint forum:

16 AT&T Roaming Charges.. on VOICEMAIL??

17 AAGH!

18 I need your help/input guys. I went to the caribbean for a week in June and I get a  
 19 bill for \$150 of roaming fees. The problem is, I only made \*2\* calls. Before I  
 20 went, I specifically asked an AT&T retail employee if I can carry my phone in the  
 21 caribbean without penalty. I was told specifically that if I turn off my data roaming  
 22 then I will only get charged for the calls that I make. That will be the only over-  
 23 ages.

24 They are charging me \$2.99/minute for every single voicemail call I receive while  
 25 there. I racked up about \$150 in overages!!  
 26 HUH??? :befuddled

27 Has anyone else experienced this? I am especially upset because I did my due dili-  
 28 gence and still got screwed. They offered to refund 1/2 the roaming charges as a  
 one time "courtesy"..

Uhm... No, they need to remove the whole thing. I am currently awaiting a call  
 back from a higher power that for some reason, takes 24-72 hours.

1 They must be busy with complaints.

2 <http://www.howardforums.com/printthread.php?t=1401697>, last visited January 30, 2009.

3 40. Another customer wrote:

4 Can an ATT employee PLEASE comment on the problems with voicemail while  
5 roaming internationally? I just received a statement containing \$20 in charges for  
6 unsuccessful attempts to leave me voicemail. For every attempt, there's \$1.29 for  
7 an incoming call, and on the next line \$1.29 for forwarding it to a number in the  
8 646 area code that turns out to be generic voicemail access.

9 Had callers known what to do, they could have re-entered my phone number and  
10 left me a message, but, unsurprisingly (sic), none of them guessed this. I didn't re-  
11 ceive any messages at all for the entire trip. Just charges.

12 In a tiny footnote, the ATTWS website does admit the double roaming charges for  
13 voicemail, but nowhere does it disclose the near impossibility that you will ever  
14 receive a message. Are there ANY plans to address, or even acknowledge (sic), this  
15 issue

16 <http://forums.wireless.att.com/cng/board/message?board.id=gsmgprs&thread.id=3395>, last visited  
17 January 30, 2009.

#### 18 CLASS ALLEGATIONS

19 41. Plaintiff brings this action against Defendants on behalf of himself and all others  
20 similarly situated, as a class action pursuant to section 382 of the California Code of Civil  
21 Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent a group of  
22 similarly situated persons. The group is defined as follows:

23 All California residents who, from February 10, 2005 through the present,  
24 paid Defendants for (1) voicemails they did not retrieve, calls they did not an-  
25 swer and/or calls they did not make while traveling abroad or (2) data transfer  
26 fees for text, picture or video messages they sent while traveling abroad.

27 42. This action has been brought and may properly be maintained as a class action  
28 against the Defendants pursuant to the provisions of California Code of Civil Procedure section  
382 because there is a well-defined community of interest in the litigation and the proposed class  
is easily ascertainable.

43. Numerosity: Plaintiff does not know the exact size of the class, but it is estimated  
that it is composed of more than 1,000 persons. The persons in the class are so numerous that the  
joinder of all such persons is impracticable and the disposition of their claims in a class action

1 rather than in individual actions will benefit the parties and the courts.

2 44. Common Questions Predominate: This action involves common questions of law  
3 and fact to the potential class because each Class Member's claim derives from the deceptive,  
4 unlawful and/or unfair statements and omissions that led customers to believe that they would not  
5 be charged, and failure to inform customers that they would be charged, for (1) calls that they did  
6 not answer, (2) voicemail they did not check and/or (3) calls they did not place while traveling  
7 abroad. Class Member claims also derive from common questions of law and fact related to the  
8 undisclosed data transfer fees that Defendants assessed for text, video and picture messages that  
9 customers sent while traveling abroad. The common questions of law and fact predominate over  
10 individual questions, as proof of a common or single set of facts will establish the right of each  
11 member of the Class to recover. Among the questions of law and fact common to the class are:

12 a) Whether Defendants unfairly, unlawfully and/or deceptively charged Class  
13 Members for (1) calls that they did not answer, (2) voicemail they did not check and/or (3) calls  
14 they did not place while traveling abroad;

15 b) Whether Defendants adequately disclosed to Class Members that they  
16 would be charged for (1) calls that they did not answer, (2) voicemail they did not check and/or  
17 (3) calls they did not place while they were traveling abroad;

18 c) Whether Defendants unfairly, unlawfully and/or deceptively led Class  
19 Members to believe that they would not be charged for (1) calls that they did not answer, (2)  
20 voicemail they did not check and/or (3) calls they did not place while they were traveling abroad;

21 d) Whether Defendants unfairly, unlawfully and/or deceptively charged Class  
22 Members data transfer fees for text, picture and/or video messages that they sent while traveling  
23 abroad;

24 e) Whether Defendants' advertising and marketing regarding their  
25 international telephone service and mobile phones was likely to deceive Class Members or was  
26 unfair;

27 f) Whether Defendants engaged in the alleged conduct knowingly, recklessly,  
28 or negligently;

1 g) The amount of revenues and profits Defendants received and/or the amount  
2 of monies or other obligations lost by Class Members as a result of such wrongdoing;

3 h) Whether Class Members are entitled to injunctive and other equitable relief  
4 and, if so, what is the nature of such relief; and

5 i) Whether Class Members are entitled to payment of actual, incidental,  
6 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the  
7 nature of such relief.

8 45. Typicality: Plaintiff's claims are typical of the class because Plaintiff was charged  
9 for (1) calls that he did not answer, (2) voicemail he did not check and/or (3) calls he did not  
10 place while he was traveling abroad. Plaintiff was also charged undisclosed data transfer fees for  
11 text messages he sent while traveling abroad. Thus, Plaintiff and Class Members sustained the  
12 same injuries and damages arising out of Defendants' conduct in violation of the law. The  
13 injuries and damages of each Class Member were caused directly by Defendants' wrongful  
14 conduct in violation of law as alleged.

15 46. Adequacy: Plaintiff will fairly and adequately protect the interests of all Class  
16 Members because it is in his best interests to prosecute the claims alleged herein to obtain full  
17 compensation due to him for the unfair and illegal conduct of which he complains. Plaintiff also  
18 has no interests that are in conflict with or antagonistic to the interests of Class Members.  
19 Plaintiff has retained highly competent and experienced class action attorneys to represent his  
20 interests and that of the class. No conflict of interest exists between Plaintiff and Class Members  
21 hereby, because all questions of law and fact regarding liability of Defendants are common to  
22 Class Members and predominate over any individual issues that may exist, such that by prevailing  
23 on his own claim, Plaintiff necessarily will establish Defendants' liability to all Class Members.  
24 Plaintiff and his counsel have the necessary financial resources to adequately and vigorously  
25 litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to  
26 the Class Members and are determined to diligently discharge those duties by vigorously seeking  
27 the maximum possible recovery for Class Members.

28 47. Superiority: There is no plain, speedy, or adequate remedy other than by

1 maintenance of this class action. The prosecution of individual remedies by members of the class  
 2 will tend to establish inconsistent standards of conduct for the Defendants and result in the  
 3 impairment of Class Members' rights and the disposition of their interests through actions to  
 4 which they were not parties. Class action treatment will permit a large number of similarly  
 5 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,  
 6 and without the unnecessary duplication of effort and expense that numerous individual actions  
 7 would engender. Furthermore, as the damages suffered by each individual member of the class  
 8 may be relatively small, the expenses and burden of individual litigation would make it difficult  
 9 or impossible for individual members of the class to redress the wrongs done to them, while an  
 10 important public interest will be served by addressing the matter as a class action.

11 48. Nexus to California. The State of California has a special interest in regulating the  
 12 affairs of corporations that do business here and persons who live here. Defendants have more  
 13 mobile telephone customers in California than in any other state. Accordingly, there is a  
 14 substantial nexus between Defendants' unlawful behavior and California such that the California  
 15 courts should take cognizance of this action on behalf of a class of individuals who reside in  
 16 California.

17 49. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
 18 management of this action that would preclude its maintenance as a class action.

#### 19 CAUSES OF ACTION

#### 20 PLAINTIFF'S FIRST CAUSE OF ACTION 21 (False Advertising, Business and Professions Code § 17500, et seq.) 22 On Behalf Of Himself and the Class

23 50. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
 24 Action Complaint as if set forth herein.

25 51. Beginning at an exact date unknown to Plaintiff, but within three (3) years  
 26 preceding the filing of the Class Action Complaint, Defendants have made untrue, false,  
 27 deceptive and/or misleading statements in connection with the advertising and marketing of their  
 28 wireless services and mobile phones throughout the State of California, including in the City and  
 County of San Francisco.

1           52. Defendants have made representations and statements that lead reasonable  
2 customers to believe that they will not incur charges when using their phones abroad. Defendants  
3 inform customers that, when using their phones in the United States, they will not incur charges  
4 for (1) calls that they do not answer, (2) voicemail they do not check and/or (3) calls they do not  
5 place. Defendants also inform customers that, while using their phones in the United States, they  
6 will not incur data transfer charges for text, video and/or picture messages that they send.  
7 Defendants inform customers that, when using their phones abroad, they will incur additional  
8 charges for making or receiving calls, sending text messages and sending picture or video  
9 messages. Defendants, however, deceptively did (and do) not adequately inform customers that,  
10 when traveling abroad, they will incur charges for (1) calls that they do not answer, (2) voicemail  
11 they do not check and/or (3) calls they do not place. Defendants also deceptively do not inform  
12 customers that, when traveling abroad, they will incur data transfer fees for text, video and/or  
13 picture messages that they send.

14           53. Plaintiff and those similarly situated relied to their detriment on Defendants' false,  
15 misleading and deceptive advertising and marketing practices. Had Plaintiff and those similarly  
16 situated been adequately informed and not intentionally deceived by Defendants, they would have  
17 acted differently by, without limitation, (1) keeping their phones off, (2) forwarding all calls,  
18 and/or (3) informing friends, family and business associates not to call them while they were  
19 traveling. They would also have sent fewer or no text, video and/or picture messages.

20           54. Defendants engaged in these false, misleading and deceptive advertising and  
21 marketing practices to increase their profits. Accordingly, Defendants have engaged in false  
22 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and  
23 Professions Code.

24           55. The aforementioned practices, which Defendants have used, and continue to use,  
25 to their significant financial gain, also constitute unlawful competition and provide an unlawful  
26 advantage over Defendants' competitors as well as injury to the general public.

27           56. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
28 necessary and according to proof, to restore any and all monies acquired by Defendants from



1 Plaintiff, the general public, or those similarly situated by means of the false, misleading and  
 2 deceptive advertising and marketing practices complained of herein, plus interest thereon.

3 57. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit  
 4 Defendants from continuing to engage in the false, misleading and deceptive advertising and  
 5 marketing practices complained of herein. The acts complained of herein occurred, at least in  
 6 part, within three (3) years preceding the filing of this Class Action Complaint.

7 58. Plaintiff and those similarly situated are further entitled to and do seek both a  
 8 declaration that the above-described practices constitute false, misleading and deceptive  
 9 advertising, and injunctive relief restraining Defendants from engaging in any such advertising  
 10 and marketing practices in the future. Such misconduct by Defendants, unless and until enjoined  
 11 and restrained by order of this Court, will continue to cause injury in fact to the general public  
 12 and the loss of money and property in that the Defendants will continue to violate the laws of  
 13 California, unless specifically ordered to comply with the same. This expectation of future  
 14 violations will require current and future customers to repeatedly and continuously seek legal  
 15 redress in order to recover monies paid to Defendants to which Defendants are not entitled.  
 16 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate  
 17 remedy at law to ensure future compliance with the California Business and Professions Code  
 18 alleged to have been violated herein.

19 59. As a direct and proximate result of such actions, Plaintiff and the other members of  
 20 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property  
 21 as a result of such false, deceptive and misleading advertising in an amount which will be proven  
 22 at trial, but which is in excess of the jurisdictional minimum of this Court.

23 60. As a direct and proximate result of such actions, Defendants have enjoyed, and  
 24 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which  
 25 is in excess of the jurisdictional minimum of this Court.

26 **PLAINTIFF'S SECOND CAUSE OF ACTION**  
 27 (Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)  
 28 **On Behalf of Himself and the Class**

61. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint

1 as if set forth herein.

2 62. This cause of action is brought pursuant to the California Consumers Legal  
3 Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA").

4 63. Defendants' actions, representations and conduct have violated, and continue to  
5 violate the CLRA, because they extend to transactions that are intended to result, or which have  
6 resulted, in the sale or lease of goods or services to consumers.

7 64. Plaintiff and other Class Members are "consumers" as that term is defined by the  
8 CLRA in California Civil Code § 1761(d).

9 65. The provision of mobile telephone services that Plaintiff (and others similarly  
10 situated Class Members) purchased from Defendants were "services" within the meaning of  
11 California Civil Code § 1761.

12 66. By engaging in the actions, representations and conduct set forth in this Class  
13 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(5) and  
14 § 1770(a)(7) of the CLRA. In violation of California Civil Code § 1770(a)(5), Defendants' acts  
15 and practices constitute improper representations that the goods or services that they sell have  
16 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities, which they do not  
17 have. In violation of California Civil Code § 1770(a)(7), Defendants' acts and practices constitute  
18 improper representations that the goods or services that they sell are of a particular standard,  
19 quality, or grade, or that goods are of a particular style or model, when they were not.  
20 Specifically, Defendants acts and practices lead customers to believe that there is no charge,  
21 while traveling internationally, for (1) calls that they did not answer, (2) voicemail they did not  
22 check and/or (3) calls they did not place, when in fact there are such charges. Similarly,  
23 Defendants acts and practices lead customers to believe that they would only incur a single charge  
24 for text, video and/or picture messages that they sent while traveling abroad and that there would  
25 be no additional charges for data transfer.

26 67. Plaintiff requests that this Court enjoin Defendants from continuing to employ the  
27 unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
28 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the

1 future, Plaintiff and the other members of the Class will continue to suffer harm.

2 68. CLRA § 1782 NOTICE. Irrespective of any representations to the contrary in  
 3 this Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for  
 4 damages under any provision of the CLRA. Plaintiff, however, hereby provides Defendants  
 5 with notice and demand that within thirty (30) days from that date, Defendants correct, repair,  
 6 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of  
 7 herein. Defendants' failure to do so will result in Plaintiff amending this Class Action Complaint  
 8 to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of himself and those similarly  
 9 situated Class Members, compensatory damages, punitive damages and restitution of any ill-  
 10 gotten gains due to Defendants' acts and practices.

11 69. Plaintiff also requests that this Court award him his costs and reasonable attorneys'  
 12 fees pursuant to California Civil Code § 1780(d).

13 **PLAINTIFF'S THIRD CAUSE OF ACTION**  
 14 **(Fraud, Deceit and/or Misrepresentation)**  
**On Behalf of Himself and The Class**

15 70. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
 16 Action Complaint as if set forth herein.

17 71. On or about March 20, 2008, Defendants fraudulently and deceptively failed to  
 18 inform Plaintiff that (1) calls that he did not answer, (2) voicemail he did not check and/or (3)  
 19 calls he did not place while he was abroad would be charged at \$1.29 per minute. Defendants  
 20 also fraudulently and deceptively failed to inform him that he would be charged additional data  
 21 transfer fees for text, video and/or picture messages that he sent while traveling abroad.

22 72. These omissions were material at the time they were made. They concerned  
 23 material facts that were essential to the analysis undertaken by Plaintiff as to whether and how to  
 24 use his mobile phone while traveling abroad.

25 73. At the time of his purchase of mobile phone services, activation of international  
 26 phone services and his arrival abroad, Defendants omitted to inform Plaintiff that (1) calls that he  
 27 did not answer, (2) voicemail he did not check and/or (3) calls he did not place while he was  
 28 abroad would be charged at \$1.29 per minute. Defendants also failed to inform Plaintiff that he

1 would be charged additional data transfer fees for text, video and/or picture messages that he sent  
2 while traveling abroad. Defendants had a fiduciary duty to provide this information.

3 74. In not so informing Plaintiff, Defendants breached their duty to him. Defendants  
4 also gained financially from, and as a result of, their breach.

5 75. Plaintiff and those similarly situated relied to their detriment on Defendants'  
6 fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and  
7 not intentionally deceived by Defendants, they would have acted differently by, without  
8 limitation, (1) keeping their phones off, (2) forwarding all calls, and/or (3) informing friends,  
9 family and business associates not to call them while they were traveling abroad. They would  
10 have also sent fewer (or no) text, video and/or picture messages while they were traveling abroad.

11 76. Defendants had a fiduciary duty to inform Class Members at the time of their  
12 purchase of mobile phone services, activation of international phone services and their arrival  
13 abroad, of the additional charges that would be imposed on (1) calls that they did not answer, (2)  
14 voicemail they did not check and/or (3) calls they did not place while they were abroad.  
15 Defendants omitted to provide this information to Class Members. Class Members relied to their  
16 detriment on Defendants' omissions. These omissions were material to the decisions of the Class  
17 Members to use their phones while traveling abroad. In making these omissions, Defendants  
18 breached their duty to Class Members. Defendants also gained financially from, and as a result  
19 of, their breach.

20 77. Defendants had a fiduciary duty to inform Class Members at the time of their  
21 purchase of mobile phone services, activation of international phone services and their arrival  
22 abroad, of the additional data transfer charges that would be imposed on text, video and/or picture  
23 messages they sent when they were abroad. Defendants omitted to provide this information to  
24 Class Members. Class Members relied to their detriment on Defendants' omissions. These  
25 omissions were material to the decisions of the Class Members to use their phones while traveling  
26 abroad. In making these omissions, Defendants breached their duty to Class Members.  
27 Defendants also gained financially from, and as a result of, their breach.

28 78. By and through such fraud, deceit, misrepresentations and/or omissions,

1 Defendants intended to induce Plaintiff and those similarly situated to alter their position to their  
 2 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those  
 3 similarly situated to, without limitation, to make use or (additional use) of their mobile phones  
 4 while traveling abroad.

5 79. Plaintiff and those similarly situated justifiably and reasonably relied on  
 6 Defendants' omissions, and, accordingly, were damaged by the Defendants.

7 80. As a direct and proximate result of Defendants' misrepresentations, Plaintiff and  
 8 those similarly situated have suffered damages in an amount equal to the amount that Defendants  
 9 billed them for calls that they did not answer, voicemail they did not check, calls they did not  
 10 place and data transfer fees for text, video and picture messages they sent while they were abroad.

11 81. Defendants' conduct as described herein was willful and malicious and was  
 12 designed to maximize Defendants' profits even though Defendants knew that it would cause loss  
 13 and harm to Plaintiff and those similarly situated.

#### 14 **PLAINTIFF'S FOURTH CAUSE OF ACTION**

15 (Unfair, Unlawful and Deceptive Trade Practices, Business and Professions Code § 17200,  
 16 et seq.)

17 On Behalf of Himself and the Class

18 82. Plaintiff realleges and incorporates by reference paragraphs of this Class Action  
 19 Complaint as if set forth herein.

20 83. Within four (4) years preceding the filing of this Class Action Complaint, and at  
 21 all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful  
 22 and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful  
 23 business practices outlined in this Class Action Complaint. In particular, Defendants have  
 24 engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by without  
 25 limitation

- 26 a. failing to properly inform their customers that they would be charged for (1) calls  
 27 that they did not answer, (2) voicemail they did not check and/or (3) calls they did  
 28 not place while traveling abroad;
- b. affirmatively deceiving their customers into believing that they would not be

1 charged for (1) calls that they did not answer, (2) voicemail they did not check  
2 and/or (3) calls they did not place while traveling abroad;

3 c. marketing, advertising and selling international wireless services and mobile  
4 phones without disclosing to customers the true costs associated with such  
5 international services and phone usage;

6 d. failing to properly inform their customers how they can use abroad their mobile  
7 phones without incurring charges for (1) calls that they did not answer, (2)  
8 voicemail they did not check and/or (3) calls they did not place; and

9 e. assessing undisclosed "data transfer" fees for sending text, picture and/or video  
10 messages while traveling abroad.

11 84. Plaintiff and those similarly situated relied to their detriment on Defendants'  
12 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been  
13 adequately informed and not intentionally deceived by Defendants, they would have acted  
14 differently by, without limitation, (1) keeping their phones off, (2) forwarding all calls, and/or (3)  
15 informing friends, family and business associates not to call them while they were traveling  
16 abroad. They would have also sent fewer (or not) text, video and picture message while they  
17 were traveling abroad.

18 85. Defendants engage in these unfair practices to increase their profits. Accordingly,  
19 Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200,  
20 et seq. of the California Business and Professions Code.

21 86. The aforementioned practices, which Defendants have used, and continue to use,  
22 to their significant financial gain, also constitute unlawful competition and provide an unlawful  
23 advantage over Defendants' competitors as well as injury to the general public.

24 87. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
25 necessary and according to proof, to restore any and all monies acquired by Defendants from  
26 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive  
27 trade practices complained of herein, plus interest thereon.

28 88. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit

1 Defendants from continuing to engage in the unfair trade practices complained of herein. The  
 2 acts complained of herein occurred, at least in part, within four (4) years preceding the filing of  
 3 this Class Action Complaint.

4 89. Plaintiff and those similarly situated are further entitled to and do seek both a  
 5 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent and  
 6 injunctive relief restraining Defendants from engaging in any of such deceptive, unfair and/or  
 7 unlawful trade practices in the future. Such misconduct by Defendants, unless and until enjoined  
 8 and restrained by order of this Court, will continue to cause injury in fact to the general public  
 9 and the loss of money and property in that the Defendants will continue to violate the laws of  
 10 California, unless specifically ordered to comply with the same. This expectation of future  
 11 violations will require current and future customers to repeatedly and continuously seek legal  
 12 redress in order to recover monies paid to Defendants to which Defendants are not entitled.  
 13 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate  
 14 remedy at law to ensure future compliance with the California Business and Professions Code  
 15 alleged to have been violated herein.

16 90. As a direct and proximate result of such actions, Plaintiff and the other members of  
 17 the Class have suffered and continue to suffer injury in fact and have lost money and/or property  
 18 as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an  
 19 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this  
 20 Court.

21 91. As a direct and proximate result of such actions, Defendants have enjoyed, and  
 22 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which  
 23 is in excess of the jurisdictional minimum of this Court.

#### 24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment as follows:

26 A. On Causes of Action Numbers 1 and 4 against Defendants and in favor of  
 27 Plaintiff and the other members of the Class:

28 1. For restitution pursuant to, without limitation, the California Busi-



ness & Professions Code §§ 17200, et seq. and 17500, et seq;

2. For injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq and 17500, et seq; and

B. On Cause of Action Number 2 against Defendants and in favor of Plaintiff and the other members of the Class:

1. For restitution and injunctive relief pursuant to California Civil Code section 1780;
- 2 [Reserved]; and
- 3 [Reserved]

C. On Cause of Action Number 3 against Defendants and in favor of Plaintiff and the other members of the Class:

1. An award of compensatory damages, the amount of which is to be determined at trial; and
2. An award of punitive damages, the amount of which is to be determined at trial; and

D. On all causes of action against Defendants and in favor of Plaintiff, class members and the general public:

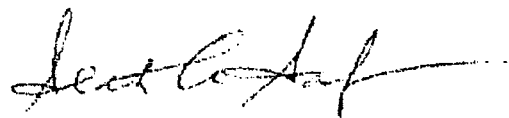
1. For reasonable attorneys' fees according to proof pursuant to, without limitation, the California Legal Remedies Act and California Code of Civil Procedure § 1021.5;
2. For costs of suit incurred; and
3. For such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: February 10, 2009

GUTRIDE SAFIER LLP



Class Acti-

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