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13 BROOKE RANDOLPH,
14 JOHN GIRARD,
and all others similarly situated

15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF ALAMEDA**

18 BROOKE RANDOLPH and JOHN
19 GIRARD, on behalf of themselves and all
20 others similarly situated and as a private
attorney general on behalf of the members
of the general public residing within the
State of California,

21 Plaintiffs,

22 v.

23
24 AT&T WIRELESS SERVICES, INC., a
foreign corporation, and its successor in
interest, CINGULAR WIRELESS LLC, a
25 foreign corporation, and AT&T
WIRELESS SERVICES OF
26 CALIFORNIA, INC., a California
corporation,

27 Defendants.
28

RECEIVED

FEB 28 2005

SHORT CRESSMAN & BURGESS PLLC **ENDORSED**
FILED
ALAMEDA COUNTY

FEB 22 2005

CLERK OF THE SUPERIOR COURT
By R.C. Hughes,

CASE NO. RG05193855

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE RELIEF**

VIOLATION OF CALIFORNIA CONSUMERS
LEGAL REMEDIES ACT (Civil Code § 1750 *et*
seq.); UNFAIR BUSINESS PRACTICE (Business
& Professions Code §17200 *et seq.*); CALIFORNIA
FALSE ADVERTISING STATUTE (Business &
Professions Code §17500 *et seq.*); BREACH OF
CONTRACT

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiffs bring this action on behalf of themselves and all similarly situated persons
3 who, while residing in California, (a) contracted with defendants AT&T Wireless Services, Inc.
4 ("AWS") and/or AT&T Wireless of California LLC ("AWSC") for cellular telephone services
5 between March 1, 1998 and January 15, 2003, and were charged a "universal connectivity charge" in
6 addition to the posted and advertised price of the service (the "UCC Class"); and/or (b) were
7 customers of AWS and/or AWSC at any time and were charged for telephone calls during a billing
8 period other than the billing period in which the calls were made (the "Call Billing Class").

9
10 Plaintiffs bring this action under the California Consumers Legal Remedies Act, California Business
11 & Professions Code Sections 17200 and 17500, *et seq.*, and California common law.

12 2. Defendants offer and provide mobile telephone services to California customers at
13 posted and advertised prices.

14
15 3. Between March 1, 1998, and January 15, 2003 (the "UCC Class Period"), defendants
16 imposed a "universal connectivity charge" on its California customers, which was not included in the
17 posted and advertised prices of its services and not disclosed to customers.

18 4. During the UCC Class Period, defendants' customers contracted for services for a
19 specified period of time at advertised calling plan rates, which periods included one year, two years
20 and three years (the "contract period").

21
22 5. During the UCC Class Period, defendants increased the amount, cost or percentage
23 rate of the "universal connectivity charge" imposed on existing California customers during the
24 contract period without notifying the customer of the increase.

25 6. During the UCC Class Period, defendants increased the amount, cost or percentage
26 rate of the "universal connectivity charge" imposed on existing California customers during the
27

1 contract period without providing the customer with any additional services beyond the services
2 already being provided under the contract.

3 7. During the UCC Class Period, defendants were not required by law to impose the
4 "universal connectivity charge" on their customers and the "universal connectivity charge" was not a
5 tax.
6

7 8. The "universal connectivity charge" was created by defendants, and imposed by
8 defendants on their customers, to cover a cost of doing business.

9 9. During the UCC Class Period, defendants did not disclose the true nature of the
10 "universal connectivity charge" to its customers in advertising, contracts, or bills.

11 10. During the UCC Class Period, the words "universal connectivity charge" did not
12 appear in any form contract actually provided to customers in the State of California.

13 11. During the UCC Class Period, the words "universal connectivity charge" did not
14 appear in any AWS "Welcome Guide" actually provided to customers in the State of California.

15 12. During the UCC Class Period, the words "universal connectivity charge" did not
16 appear in any section of any document containing the title in whole or in part, "AT&T Wireless
17 Services Service Agreement", or the title, in whole or in part, "Service Agreement," which was
18 provided to customers in the State of California.
19

20 13. During the UCC Class Period, the words "universal connectivity charge" did not
21 appear in any section of any document containing the title in whole or in part, "General Terms And
22 Conditions for Wireless Service," which was provided to customers in the State of California.
23

24 14. During the UCC Class Period, the words "universal connectivity charge" did not
25 appear in any section of any document relating to the customer's AWS service which was signed by
26 any AWS customer in the State of California.
27
28

1 15. During the UCC Class Period, defendants identified the "universal connectivity
2 charge" to customers as a tax or government-mandated charge rather than a charge voluntarily
3 imposed and added to customer bills by defendants.

4 16. During the UCC class period and continuing to the present, defendants have failed to
5 disclose in their advertising, contracts, or promotional materials provided to customers either the
6 amount of the "universal connectivity charge" or the percentage of the bill added for the "universal
7 connectivity charge" or any reasonable estimate thereof.

8 17. In addition, during the entire time that defendants provided services to California
9 residents, they have charged customers a per-minute charge for calls which exceed the total minutes
10 allotted to the customer as part of the advertised price of the service.

11 18. Plaintiffs are informed and believe that defendants charge customers this per-minute
12 charge in a different billing period than the billing period in which the call was made.

13 19. Accordingly, defendants charge customers for calls that exceed their monthly
14 allotment of minutes during billing periods other than the billing periods in which the allotment was
15 actually exceeded.

16 20. In charging customers a per-minute charge for calls in a different billing period than
17 the billing period the call was made, and in adding the "universal connectivity charge" to the posted
18 and advertised prices of its service, and in failing to inform customers that the universal connectivity
19 charge is not a government-mandated fee, and/or failing to disclose the amount, percentage, or
20 estimate of the universal connectivity charge, defendants have "advertis[ed] goods or services with
21 intent not to sell them as advertised" in violation of California Civil Code section 1770(a)(9) and
22 "represent[ed] that a transaction confers or involves rights, remedies, or obligations which it does not
23 have or involve" in violation of California Civil Code section 1770(a)(14).

1 21. Defendants' actions and practices described above, including charging, facilitating the
2 charging, and/or allowing the charging of an "universal connectivity charge" in addition to the
3 posted and advertised cost of its services without adequate disclosures, and in charging, facilitating,
4 and/or allowing the charging of per-minute charges for calls in a billing period other than the period
5 in which the call was made without adequate disclosures, is an unfair, unlawful and deceptive
6 business practice in violation of California Business & Professions Code section 17200, *et seq.*

7
8 22. Defendants' actions and practices described above including charging the "universal
9 connectivity charge," in increasing this charge, and/or in charging or allowing the charging of per-
10 minute charges for calls in a billing period other than the period in which the call was made,
11 breached the customer's contract.

12 23. As a result of defendants' wrongful conduct, Plaintiffs and the Class Members have
13 been injured and suffered damages.
14

15 **JURISDICTION AND VENUE**

16 24. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
17 section 410.10. Plaintiffs are California residents who seek damages on behalf of themselves and all
18 others similarly situated under the law of the State of California. Plaintiffs are informed and believe
19 that Defendants derive substantial revenue through the sale of mobile telephone services in the state
20 of California, and thus have sufficient minimum contacts with the State that jurisdiction does not
21 offend traditional notions of fair play and substantial justice. The value of each individual Plaintiff's
22 claim does not exceed \$75,000, exclusive of interests and costs.

23
24 25. Venue is proper in this Court pursuant to Code of Civil Procedure section 395.5 and
25 Civil Code section 1780(c) because some of the acts and transactions complained of herein occurred
26 in Alameda County. Additionally, the obligation and liability of Defendants for their actions arises
27 in Alameda County. Finally, Defendants have, during the relevant time period, conducted extensive
28

1 business in this county and throughout California by charging universal connectivity charges and
2 per-minute call charges on customers in this county.

3 26. On or about January 13, 2005, Plaintiffs sent notice to each defendant by certified
4 mail of their claim alleged herein under the Consumer Legal Remedies Act and their intent to seek
5 damages on those claims, pursuant to California Civil Code section 1782(a). More than 30 days
6 have passed since each defendant's actual receipt of such notice.
7

8 PARTIES

9 27. Plaintiff Brooke Randolph is a California resident who contracted with AWS for
10 mobile telephone service in the fall of 2000. Since that time she has been charged a "universal
11 connectivity charge" on a monthly basis. Plaintiff is informed and believes that she has also been
12 charged for calls that allegedly exceeded her monthly minutes in billing periods other than the
13 billing periods in which she made those calls.
14

15 28. Plaintiff John Girard is a California resident who contracted with AWS for mobile
16 telephone service in October 1998. Since that time he has been charged a "universal connectivity
17 charge" on a monthly basis. Plaintiff is informed and believes that he has also been charged for calls
18 that allegedly exceeded his monthly minutes in billing periods other than the billing periods in which
19 he made those calls.

20 29. Defendant AWS is a corporation organized under the laws of the State of Delaware,
21 with its principal place of business in the State of Washington. Defendant Cingular Wireless LLC is
22 the successor corporation of AWS, with its principal place of business in the State of Georgia.
23 Defendant AWSC is a corporation organized under the laws of the State of California with its
24 principal place of business in the State of California. Defendants are qualified to business in the
25 State of California. During the relevant time periods, AWS and AWSC contracted with customers in
26 the State of California for mobile telephone services. AWS and AWSC imposed upon these
27
28

1 customers a "universal connectivity charge" which was not disclosed and/or was misrepresented
2 and/or was charged customers in a false, unfair and/or deceptive manner and/or in breach of the
3 customer's contract. AWS and AWSC billed these customers for calls in billing periods other than
4 the billing periods in which the calls were made in a false, unfair and/or deceptive manner and/or in
5 breach of the customer's contract.

6
7 **CLASS ACTION ALLEGATIONS**

8 30. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others
9 similarly situated in California, members of a proposed plaintiff class pursuant to Civil Code section
10 1781, Code of Civil Procedure section 382.

11 31. The classes include:

12 1. "The UCC Class"

13 All persons who, while residing in California, contracted with AT&T
14 Wireless Services between March 1, 1998 and January 15, 2003 (the
15 "UCC Class Period"), and were billed a "universal connectivity
16 charge" in addition to the posted and advertised price of the service.

17 2. "The Call Billing Class"

18 All persons who, while residing in California, contracted with AT&T
19 Wireless Services and were billed by AWS on a per-minute basis for
20 individual calls in a different billing period than the billing period in
21 which the calls were made.

22 Excluded from these Classes are: (1) Defendants, any entity in which
23 they have a controlling interest, and their legal representatives,
24 officers, directors, assigns and successors; (2) the judge to whom this
25 case is assigned and any member of the judge's immediate family.

26 32. The classes are comprised of millions of defendants' customers throughout the state
27 of California, making joinder impracticable.

28 33. There are numerous questions of law and fact common to Plaintiffs and the Classes.
These questions predominate over any questions that may affect individual Class Members, and
include, but are not limited to, the following:

1 a. Whether the "universal connectivity charge" is a government mandated fee or
2 merely a component of the Defendants' business costs.

3 b. Whether the Defendants' form contracts during the UCC Class Period allowed
4 the Defendants to charge the "universal connectivity charge."

5 c. Whether Defendants have a duty under California Civil Code section 1770(a)
6 to disclose to Plaintiffs and the Class Members the existence and true nature of the "universal
7 connectivity charge."

8 d. Whether Defendants failed to give notice that an "universal connectivity
9 charge" would be charged prior to billing Plaintiffs and Class Members.

10 e. Whether Defendants failed to disclose to Plaintiffs and Class Members the
11 true nature of the "universal connectivity charge."

12 f. Whether Defendants charged the "universal connectivity charge" in a manner
13 which was false, unfair and/or deceptive irrespective of whether the Defendants were
14 permitted to pass such cost onto customers.

15 g. Whether Defendants either charged or increased the charge of the "universal
16 connectivity charge" in breach of the customer's contract.

17 h. Whether Defendants had a practice of billing customers for calls in billing
18 periods other than the billing periods in which the calls were made.

19 i. Whether Defendants' contract with customers allowed it to charge customers
20 for calls in billing periods other than the billing periods in which the calls were made.

21 j. Whether Defendants have a duty under California Civil Code section 1770(a)
22 to disclose to Plaintiffs and the Class Members its practice of billing customers for calls in
23 different billing periods than the billing periods in which the calls were made.

24 k. Whether Defendants failed to give notice of its practice of billing customers
25 for calls in billing periods other than the billing periods in which the calls were made prior to
26 billing Plaintiffs and Class Members.

27 l. Whether Defendants' false, deceptive, unfair or wrongful billing practices
28 caused Plaintiffs and the Class Members damages.

m. Whether Defendants should be ordered to make full restitution to Plaintiffs
and the Class Members for "universal connectivity charges" paid by customers or payments
made by customers for calls not properly billed in the proper billing period.

34. The claims of the representative Plaintiffs are typical of the claims of the Class, in
that the representative Plaintiffs, like all Class Members, have received telephone services from

1 defendants in California and were billed by defendants for a "universal connectivity charge" in
2 addition to the posted and advertised price of the service and were billed by defendants for calls in
3 billing periods other than the billing periods in which the calls were made. The representative
4 Plaintiffs, like all Class Members, have been damaged by Defendants' misconduct in that they have
5 paid costs not disclosed in the advertised price of the service and in violation of the customer's
6 contract for service. The factual bases of Defendants' misconduct are common to all Class Members
7 and represent a common thread of deceptive and deliberate misconduct resulting in injury to all
8 Class Members.
9

10 35. Plaintiffs will fairly and adequately represent and protect the interests of the Class.
11 Plaintiffs have retained counsel with substantial experience in prosecuting class actions on behalf of
12 consumers. Plaintiffs and their counsel are committed to prosecuting this action vigorously on
13 behalf of the Class, and have the financial resources to do so. Plaintiffs have no interests which are
14 adverse to those of the Class.
15

16 **FIRST CAUSE OF ACTION**
17 **(Violation of the Consumer Legal Remedies Act)**

18 36. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1
19 through 35 of this Complaint.

20 37. Defendant is a "person" as defined by Civil Code section 1761(c).

21 38. California has enacted the California Consumers Legal Remedies Act, Civ. Code §
22 1750 *et seq.*, to protect consumers against unfair business practices; unfair competition; and false
23 advertising. The Plaintiffs named in this Complaint purchased Defendant's services for personal,
24 family, or household purposes.
25

26 39. Defendants engaged in unfair competition or unfair or deceptive acts or practices in
27 violation of Civil Code sections 1770 (a)(9) and (14) when they charged Plaintiffs and the Class for
28

1 calls in billing periods other than the billing periods in which the calls were made, and when AWS
2 failed to disclose this practice to Plaintiffs and the Class.

3 40. Defendants engaged in unfair competition or unfair or deceptive acts or practices in
4 violation of Civil Code sections 1770 (a)(9) and (14) when they failed to disclose the amount,
5 percentage, or estimated amount or percentage that customers would be billed for the "universal
6 connectivity charge."
7

8 41. To this day, Defendants continue to engage in these unlawful practices in violation of
9 California's Consumers Legal Remedies Act. Plaintiff is informed and believes that Defendants
10 continue to charge customers for calls in billing periods other than the billing periods in which the
11 calls were made, and continues not to disclose the amount, percentage, or estimated amount or
12 percentage of the "universal connectivity charge."
13

14 42. As a result of their unfair competition or unfair or deceptive acts or practices,
15 Defendant has reaped and continues to reap unfair benefits and profits. Defendant should be
16 enjoined from their actions and practices, and made to disgorge its ill gotten gains and restore to
17 Plaintiffs, the Class, and members of the general public, all wrongfully collected monies.
18

19 **SECOND CAUSE OF ACTION**
(Violation of California Unfair Competition Law)

20 43. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1
21 through 42 of this Complaint.

22 44. Plaintiffs bring this action on behalf of themselves and on behalf of the Class, and on
23 behalf of defendants' California customers in their capacity as private attorneys general.
24

25 45. Defendant's actions and practices alleged herein constitute unlawful, unfair and
26 deceptive business practices in violation of California Business & Professions Code section 17200 *et*
27 *seq.*
28

1 46. Defendants' actions and practices alleged herein are unlawful business practices
2 which violate the California Consumers Legal Remedies Act, Business & Professions Code section
3 1770 et seq., as alleged above. Plaintiff reserves the right to identify additional violations of the law
4 committed by Defendants as further investigation and discovery warrants.

5
6 47. On information and belief, the conduct alleged herein is based on a policy and
7 practice that is continuing in nature as to the Call Billing Class.

8 48. As a result of their unlawful, unfair and deceptive actions and practices, Defendants
9 have reaped and continue to reap unfair benefits and profits. Defendants should be enjoined from
10 their actions and practices, and made to disgorge their ill gotten gains and restore to Plaintiffs, the
11 Class, and members of the general public, all wrongfully collected monies.

12
13 **THIRD CAUSE OF ACTION**
(Violation of California False Advertising Statute)

14 49. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1
15 through 48 of this Complaint.

16 50. Plaintiffs bring this action on behalf of themselves and on behalf of the Class, and on
17 behalf of defendants' California customers in their capacity as private attorneys general.

18 51. Defendant's actions and practices alleged herein constitute untrue and misleading
19 practices in violation of California Business & Professions Code section 17500 et seq.

20 52. Defendants, with intent to solicit wireless services customers, publicly disseminated
21 advertising which contained false and/or misleading statements about the price and manner of
22 charging for such services, which the defendants knew or should have known were false or
23 misleading.
24

25
26 53. Defendants, with intent to solicit wireless services customers, publicly disseminated
27 advertising with the intent not to sell services advertised at the price stated and/or advertised.
28

1 54. On information and belief, the conduct alleged herein is based on a policy and
2 practice that is continuing in nature as to the Call Billing Class.

3 55. As a result of their false and misleading advertising practices, Defendants have
4 reaped and continue to reap unfair benefits and profits. Defendants should be enjoined from their
5 actions and practices, and made to disgorge their ill gotten gains and restore to Plaintiffs, the Class,
6 and members of the general public, all wrongfully collected monies.

8 **FOURTH CAUSE OF ACTION**
9 **(Breach of Contract)**

10 56. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1
11 through 55 of this Complaint.

12 57. Defendants breached the contract with their customers in the State of California
13 during the UCC Class Period, including Plaintiffs and the UCC Class members, by billing and
14 charging a "universal connectivity charge." The charge was not specified in the contract for services
15 as a charge of service.

16 58. Defendants breached the contract with their customers in the State of California
17 during the UCC Class Period, including Plaintiffs and Members of the Class, by increasing the
18 "universal connectivity charge" during the contract period. No additional consideration or services
19 were provided by defendants to justify this increased "universal connectivity charge."
20

21 59. Defendants breached the contract with their customers in the State of California,
22 including Plaintiffs and Members of the Class, by billing and charging for calls made in a period
23 other than the bill calling period. The contract did not provide for the billing for calls made in
24 periods other than the period in which the call was actually made.
25

26 60. Plaintiffs and the Members of the Class have been damaged by Defendant's breach of
27 contract as set forth above.
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray that
3 the Court enter judgment against Defendants and in favor of Plaintiffs, and to award the following
4 relief:

- 5
- 6 1. Certification of the proposed Classes;
 - 7 2. Actual damages on all claims according to proof;
 - 8 3. Restitution on all claims according to proof;
 - 9 4. Disgorgement of money improperly had and received by defendants under all claims;
 - 10 5. An order enjoining Defendants' methods, acts, or practices;
 - 11 6. An award of punitive damages as allowed by law;
 - 12 7. An award of costs and attorneys' fees as allowed by law;
 - 13 8. An award of pre-judgment interest on all damages;
 - 14 9. An award of post-judgment interest on all monetary awards; and
 - 15 10. Such other or further relief in law or equity as may be appropriate.
- 16

17 **JURY TRIAL DEMAND**

18 Plaintiffs hereby demand a jury trial for all individual and Class claims so triable.

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