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 14 On Behalf of All Others Similarly Situated

15
 16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 17
 18 IN AND FOR THE COUNTY OF ALAMEDA - UNLIMITED

19 ELENA CONDES, BRIAN H. GETZ, and)
 20 BICKA BARLOW, on behalf of themselves)
 21 and all others similarly situated,)

Case No. 2002054255

22 Plaintiffs,)

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES**

23 vs.)

24 EVERCOM SYSTEMS, INC; SBC)
 25 COMMUNICATIONS, INC.; PACIFIC)
 26 BELL TELEPHONE COMPANY; and)
 27 DOES 1 through 50, inclusive.)

28 Defendants.)

1 For their complaint, plaintiffs, by their attorneys, allege on information and beli
2 as to all matters except those concerning the plaintiffs, which are alleged on personal knowledg
3 as follows:
4

5 **JURISDICTION AND VENUE**

6 1. This action arises out of a pattern and practice whereby defendants
7 Evercom Systems, Inc., Pacific Bell Telephone Company, and SBC Communications, Inc.
8 wrongfully charged customers for telephone services which were not authorized or accepted. A
9 hereinafter alleged, the defendants reside, have offices and/or conduct business in this County.
10

11 2. The amount in controversy exceeds the jurisdictional minimum of this
12 Court.
13

14 **PARTIES**

15 3. (A) Plaintiff Elena Condes ("Condes") is a resident of this County.

16 (B) Plaintiff Brian H. Getz ("Getz") is a resident of San Francisco,
17 California.

18 (C) Plaintiff Bicka Barlow ("Barlow") is a resident of Contra Costa
19 County.

20 (D) Plaintiffs bring this action individually and on behalf of a class of
21 similarly situated persons, as hereinafter defined.

22 4. Defendant Evercom Systems, Inc. ("Evercom") is a Delaware corporation
23 with its principal offices at 8201 Tristar Drive, Irving, Texas.

24 5. Defendant SBC Communications, Inc. ("SBC") is a Delaware corporation
25 with its principal place of business at 175 E. Houston, San Antonio, Texas.
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1 10. Although the exact number of class members is unknown to plaintiffs at
2 this time, Evercom serves numerous correctional facilities in California and elsewhere, including
3 city, county, state and federal correctional facilities. Each of these facilities has at least several,
4 and as many as hundreds, of inmates. Therefore, the class is so numerous that joinder is
5 impracticable.
6

7 11. There is a well-defined community of interest in the questions of law and
8 fact affecting the parties to be represented in this action. The questions of law and fact to the
9 class predominate over questions which may affect individual class members. These questions
10 of law and fact include:
11

12 (a) whether defendants engaged in a pattern and practice of billing
13 recipients of collect calls for such calls even though such recipients did not authorize or accept
14 such calls;

15 (b) whether defendants' conduct violated California statutory or
16 common law;

17 (d) what is the proper measure of damages for any misconduct on the
18 part of defendants.
19

20 12. Plaintiffs' claims are typical of the claims of the other members of the
21 plaintiff class. Plaintiffs and all members of the class were injured and have sustained damages
22 as a result of the wrongful conduct herein alleged.
23

24 13. Plaintiffs will fairly and adequately protect the interests of the members of
25 the plaintiff class and have retained counsel competent and experienced in class and securities
26 litigation.
27
28

1 18. In some cases, Evercom contracts directly with correctional facilities to
2 provide these services. In other cases, Evercom "partners" with other, including regional Bell
3 operating companies, to provide its services.

4 19. In California, Evercom "partners" with Pacific Bell to provide telephone
5 services at numerous correctional facilities, including, but not limited to, the Santa Rita County
6 Jail located in Dublin, California. In general, under the arrangements between Evercom and
7 Pacific Bell, Evercom provides certain telephone services and Pacific Bell provides others.

8 20. Commencing not later than 2001, defendants began charging for telephone
9 services which were not authorized or accepted. In particular, defendants charged the recipients
10 of collect calls from inmates at correctional facilities even though such neither the collect calls
11 nor any charges therefor were authorized or accepted by the recipients of the collect calls. In
12 particular, where a collect call was "received" by a recorded greeting, defendants charged for
13 such call in the amount of one minute even though such call was not authorized or accepted by
14 the recipient of the call.

15 21. (A) For example, plaintiff Condes was charged the following amounts
16 for collect calls from correctional facilities on the following dates, even though plaintiff Condes
17 did not authorize or accept the collect calls or any charges therefor:

| <u>Date</u> | <u>Charge</u> |
|-------------|---------------|
| 8/3/01 | \$2.83 |
| 8/28/01 | \$2.83 |
| 9/11/01 | \$2.83 |
| 10/25/01 | \$2.83 |
| 11/12/01 | \$2.83 |

1 12/7/01 \$2.83

2 (B) Likewise, plaintiff Getz was charged the following amounts for
3 collect calls from a correctional facility on the following dates, even though plaintiff Getz did not
4 authorize or accept the collect calls or any charges therefor:
5

| 6 | <u>Date</u> | <u>Charge</u> |
|----|-------------|---------------|
| 7 | 4/8/02 | \$4.84 |
| 8 | 4/8/02 | \$6.62 |
| 9 | 4/8/02 | \$4.84 |
| 10 | 4/8/02 | \$5.73 |

11
12 (C) Likewise, plaintiff Barlow was charged the following amounts for
13 collect calls from a correctional facility on the following dates, even though plaintiff Barlow did
14 not authorize or accept the collect calls or any charges therefor:

| 15 | <u>Date</u> | <u>Charge</u> |
|----|-------------|---------------|
| 16 | 2/28/02 | \$2.95 |
| 17 | 3/7/02 | \$2.95 |
| 18 | 3/12/02 | \$3.02 |
| 19 | 3/12/02 | \$3.02 |
| 20 | 3/12/02 | \$3.02 |
| 21 | 3/12/02 | \$3.02 |
| 22 | 3/13/02 | \$2.95 |
| 23 | 3/14/02 | \$3.02 |
| 24 | 3/14/02 | \$2.95 |
| 25 | 6/10/02 | \$3.10 |
| 26 | 7/8/02 | \$3.02 |

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7/17/02

\$3.02

7/31/02

\$2.95

FIRST CAUSE OF ACTION

(Bus. & Prof. Code §17200)

22. Plaintiffs reallege and incorporate herein by this reference each of the allegations of paragraphs 1 through 21.

23. Defendants' conduct as alleged above constituted unfair and deceptive conduct within the meaning of California Business and Professions Code §17200 et seq.

24. As a proximate result of defendants' said wrongful conduct, defendants dishonestly and wrongfully acquired and retained substantial monies at the expense of the members of the plaintiff class and the members of the general public. It would be unjust and inequitable for defendants to be permitted to retain the benefits of their wrongful conduct. Therefore, defendants should be required to disgorge and make restitution of all monies wrongfully obtained from the members of the plaintiff class or the general public pursuant to the wrongful scheme set forth.

25. In addition, the wrongful conduct of defendants presents a continuing threat of injury to the members of the plaintiff class and the members of the general public in that defendants have charged and continue to charge plaintiff and the members of the plaintiff class for collect calls from correctional facilities which such persons did not authorize or accept and has made it likely that members of the public have been and will continue to be wrongfully charged for such calls.

26. The unlawful conduct alleged herein is continuing and, unless restrained, the defendants will continue to engage in such conduct.

1 27. By virtue of the foregoing, plaintiffs and the members of the plaintiff class
2 pray for the relief hereinafter specified.

3
4 **SECOND CAUSE OF ACTION**

5 **(Unjust Enrichment)**

6 28. Plaintiffs reallege and incorporate herein by this reference each of the
7 allegations of paragraphs 1 through 27.

8 29. By virtue of their inequitable conduct, defendants have been unjustly
9 enriched at the expense, and to the detriment, of plaintiffs and each member of the plaintiff class.
10 Plaintiffs and each member of the plaintiff class are therefore entitled to recover from defendants
11 damages and restitution for unjust enrichment all monies charged and collected by Evercom,
12 directly or indirectly through Pacific Bell's billing service, for collect calls which such persons
13 did not authorize or accept.

14
15 30. By virtue of the foregoing, plaintiffs and the members of the plaintiff
16 class pray for the relief hereinafter specified.

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18 **THIRD CAUSE OF ACTION**

19 **(Accounting)**

20 31. Plaintiffs reallege and incorporate herein by this reference each of the
21 allegations of paragraphs 1 through 28.

22 32. The amounts owed to plaintiffs and the members of the plaintiff class by
23 the defendants, and each of them, can only be ascertained by an accounting. Plaintiffs and the
24 members of the plaintiff class do not have access to, and cannot gain access to, the records
25 necessary to perform the accounting. Rather, such records are in the possession, custody and
26 control of defendants. The amounts owed to plaintiffs and each member of the plaintiff class are
27

1 owed as a result of defendants' wrongful conduct and/or duties arising from defendants' business
 2 transactions with plaintiffs and the members of the plaintiff class, which duties defendants have
 3 breached.
 4

5 33. By virtue of the foregoing, plaintiffs and the members of the plaintiff
 6 class pray for the relief hereinafter specified..

7 **PRAYER FOR RELIEF**

8 WHEREFORE, plaintiffs demands judgment against the defendants as follows:

- 9 1. Declaring this action to be a proper plaintiff class action.
 10 2. Awarding plaintiffs and all members of the plaintiff class damages in an
 11 amount which may be proved at trial, together with pre-judgment interest thereon.
 12 3. For restitution of all amounts wrongfully charged to members of the
 13 plaintiff class or members of the general public.
 14 4. For classwide accounting of all wrongful charges for collect calls from
 15 correctional facilities.
 16 5. For injunctive relief requiring defendants to:
 17 (A) refrain from charging persons for collect calls from correctional
 18 facilities not accepted or authorized;
 19 (B) appropriately credit the accounts of all persons wrongfully charged
 20 for collect calls from correctional facilities not accepted or authorized;
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5. Granting plaintiffs such other and further relief as this Court may deem just and proper, including an award of attorneys, experts and consultants' fees and costs incurred in prosecuting this action.

DATED: September 18, 2002

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