1 LAW OFFICES OF EDWARD C. CASEY, JR. EDWARD C. CASEY, JR. (State Bar #123702) 2 ENDORSED 2100 Lakeshore Avenue, Suite A PALED 3 Oakland, CA 94606 ALAMEDA COUNTY Telephone: (510) 208-4422 4 SEP 2 5 2002 Facsimile: (510) 272-9999 CLERK OF THE SUPERIOR COURT 5 LAW OFFICES OF JOHN W. ALLURED By CHARLOTTE MARIN JOHN W. ALLURED (State Bar #84770) 6 Deputy One Maritime Plaza, Suite 1040 San Francisco, California 94111 Telephone: (415) 675-2960 Facsimile: (415) 675-2961 9 FARROW, BRAMSON, BASKIN & PLUTZIK 10 ALAN R. PLUTZIK (State Bar #77785): 2125 Oak Grove Blvd., Suite 120 11 Walnut Creek, California 94598 Telephone: (925) 945-0200 12 Facsimile: (925) 945-8792 13 Attorneys for Plaintiffs, Individually and 14 On Behalf of All Others Similarly Situated 15 16 SUPERIOR COURT OF THE STATE OF CALIFORNIA 17 IN AND FOR THE COUNTY OF ALAMEDA - UNLIMITED 18 19 ELENA CONDES, BRIAN H. GETZ, and Case No. 2002054255 20 BICKA BARLOW, on behalf of themselves and all others similarly situated, 21 Plaintiffs, FIRST AMENDED CLASS ACTION 22 VS. **COMPLAINT FOR DAMAGES** 23 EVERCOM SYSTEMS, INC; SBC 24 COMMUNICATIONS, INC.; PACIFIC BELL TELEPHONE COMPANY; and **2**5 DOES 1 through 50, inclusive. 26 Defendants. 27 ാ28 1 First Amended Class Action Complaint for Domages:

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

# JURISDICTION AND VENUE

- 1. This action arises out of a pattern and practice whereby defendants

  Evercom Systems, Inc., Pacific Bell Telephone Company, and SBC Communications, Inc.

  wrongfully charged customers for telephone services which were not authorized or accepted. A

  hereinafter alleged, the defendants reside, have offices and/or conduct business in this County.
- 2. The amount in controversy exceeds the jurisdictional minimum of this Court.

## **PARTIES**

- 3. (A) Plaintiff Elena Condes ("Condes") is a resident of this County.
  - (B) Plaintiff Brian H. Getz ("Getz") is a resident of San Francisco,

California.

(C) Plaintiff Bicka Barlow ("Barlow") is a resident of Contra Costa

County.

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- (D) Plaintiffs bring this action individually and on behalf of a class of similarly situated persons, as hereinafter defined.
- 4. Defendant Evercom Systems, Inc. ("Evercom") is a Delaware corporation with its principal offices at 8201 Tristar Drive, Irving, Texas.
- 5. Defendant SBC Communications, Inc. ("SBC") is a Delaware corporation with its principal place of business at 175 E. Houston, San Antonio, Texas.

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6. Defendant Pacific Bell Telephone Company ("Pacific Bell") is a California corporation with its principal offices at 140 New Montgomery Street, San Francisco, California.
Pacific Bell is an operating subsidiary of SBC.

- 7. At all times relevant hereto, defendants have pursued a common course of conduct, and have conspired with, and have aided and abetted one another, including unnamed others, both known and unknown, to accomplish the wrongful acts alleged. Defendants herein acted as agents for their co-defendants and as the agents of each other in committing the acts alleged.
- 8. The true names and capacities of defendants sued herein under California Code of Civil Procedure Section 474 as Does I through 50, inclusive, are presently not known by plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by plaintiffs.

#### CLASS ACTION ALLEGATIONS

9. This action is brought as a class action pursuant to California Code of Civil Procedure Section 382. Plaintiffs bring this action on behalf of (1) all California residents who were charged by Evercom, Pacific Bell or SBC, directly or through any billing service used by them, for collect calls from correctional facilities which such persons did not authorize or accept and (2) all persons who were charged by Evercom, Pacific Bell or SBC, directly or through any billing service used by them, for collect calls from correctional facilities located in California which such persons did not authorize or accept.

common law;

- 10. Although the exact number of class members is unknown to plaintiffs at this time, Evercom serves numerous correctional facilities in California and elsewhere, including city, county, state and federal correctional facilities. Each of these facilities has at least several, and as many as hundreds, of inmates. Therefore, the class is so numerous that joinder is impracticable.
- 11. There is a well-defined community of interest in the questions of law and fact affecting the parties to be represented in this action. The questions of law and fact to the class predominate over questions which may affect individual class members. These questions of law and fact include:
- (a) whether defendants engaged in a pattern and practice of billing recipients of collect calls for such calls even though such recipients did not authorize or accept such calls;
  - (b) whether defendants' conduct violated California statutory or
- (d) what is the proper measure of damages for any misconduct on the part of defendants.
- 12. Plaintiffs' claims are typical of the claims of the other members of the plaintiff class. Plaintiffs and all members of the class were injured and have sustained damages as a result of the wrongful conduct herein alleged.
- Plaintiffs will fairly and adequately protect the interests of the members of the plaintiff class and have retained counsel competent and experienced in class and securities litigation.

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14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the plaintiff class is impracticable. Furthermore, as the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation makes it impossible for the class members to individually address the wrongs done to them. There will be no difficulty in the management of this action as a class action.

15. Plaintiffs contemplate providing notice to the members of the class by means of a first-class mailing to all class members who can be identified through reasonable effort. The names and addresses of the members of the class can be determined from defendants' books and records.

#### FACTUAL BACKGROUND

16. Defendant SBC is one of the largest providers of telecommunications services in the United States. Originally formed as a regional holding company which did business primarily in five southwestern states, SBC has expanded its operations through a series of merger and acquisitions, and its principal wireline subsidiaries provide services in thirteen states, including California.

17. Defendant Evercom advertises itself as "the largest independent supplier of immate telecommunications and information services in the United States." According to its own statements, it provides "inmate communications solutions" to more than 2,000 correctional facilities in 45 states – some 75% of all correctional facilities in the United States. Evercom provides "sophisticated inmate telephone systems, alternate calling options, dedicated direct billing services, automated information management services and comprehensive customer service."

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

- 19. In California, Evercom "partners" with Pacific Bell to provide telephone services at numerous correctional facilities, including, but not limited to, the Santa Rita County Jail located in Dublin, California. In general, under the arrangements between Evercom and Pacific Bell, Evercom provides certain telephone services and Pacific Bell provides others.
- 20. Commencing not later than 2001, defendants began charging for telephone services which were not authorized or accepted. In particular, defendants charged the recipients of collect calls from inmates at correctional facilities even though such neither the collect calls nor any charges therefor were authorized or accepted by the recipients of the collect calls. In particular, where a collect call was "received" by a recorded greeting, defendants charged for such call in the amount of one minute even though such call was not authorized or accepted by the recipient of the call.
- 21. (A) For example, plaintiff Condes was charged the following amounts for collect calls from correctional facilities on the following dates, even though plaintiff Condes 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
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\$3.10

\$3.02

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1	12/7	7/01	\$2.83			
2	(B)	Likewise	plaintiff Getz was charged the following amounts fo	nr		
3						
4	collect calls from a correctional facility on the following dates, even though plaintiff Getz did not					
5	authorize or accept the collect calls or any charges therefor:					
6	Date	<u>.</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/	:	\$5.73			
11			•	c		
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	Date	!	<u>Charge</u>			
16	2/28	/02	\$2.95			
17	3/7/02		\$2.95			
18	3/12/02		\$3.02			
19	:					
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 25	3/14/02		\$2.95	,		
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6/10/02

7/8/02

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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.

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

### SECOND CAUSE OF ACTION

## (Unjust Enrichment)

- 28. Plaintiffs reallege and incorporate herein by this reference each of the allegations of paragraphs 1 through 27.
- 29. By virtue of their inequitable conduct, defendants have been unjustly enriched at the expense, and to the detriment, of plaintiffs and each member of the plaintiff class. Plaintiffs and each member of the plaintiff class are therefore entitled to recover from defendants damages and restitution for unjust enrichment all monies charged and collected by Evercom, directly or indirectly through Pacific Bell's billing service, for collect calls which such persons did not authorize or accept.
- 30. By virtue of the foregoing, plaintiffs and the members of the plaintiff class pray for the relief hereinafter specified.

# THIRD CAUSE OF ACTION

#### (Accounting)

- 31. Plaintiffs reallege and incorporate herein by this reference each of the allegations of paragraphs 1 through 28.
- 32. The amounts owed to plaintiffs and the members of the plaintiff class by the defendants, and each of them, can only be ascertained by an accounting. Plaintiffs and the members of the plaintiff class do not have access to, and cannot gain access to, the records necessary to perform the accounting. Rather, such records are in the possession, custody and control of defendants. The amounts owed to plaintiffs and each member of the plaintiff class are

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

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

#### PRAYER FOR RELIEF

WHEREFORE, plaintiffs demands judgment against the defendants as follows:

- 1. Declaring this action to be a proper plaintiff class action.
- 2. Awarding plaintiffs and all members of the plaintiff class damages in an amount which may be proved at trial, together with pre-judgment interest thereon.
- 3. For restitution of all amounts wrongfully charged to members of the plaintiff class or members of the general public.
- 4. For classwide accounting of all wrongful charges for collect calls from correctional facilities.
  - 5. For injunctive relief requiring defendants to:
- (A) refrain from charging persons for collect calls from correctional facilities not accepted or authorized;
- (B) appropriately credit the accounts of all persons wrongfully charged 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 1 2002

LAW OFFICES OF EDWARD C. CASEY, JR. EDWARD C. CASEY, JR. (State Bar #123702]) 2100 Lakeshore Avenue, Suite A Oakland, CA 94606

Telephone: (510) 208-4422 Facsimile: (510) 272-9999

By: Edward C. Casey, Jr.

LAW OFFICES OF JOHN W. ALLURED John W. Allured (S.B. #84770) One Maritime Plaza, Suite 1040 San Francisco, California 94111 Telephone: (415) 675-2960

By: John W. Allured

FARROW, BRAMSON, BASKIN & PLUTZIK Alan R. Plutzik (S.B. #77785) Robert A. Bramson (S.B. #102006) 2125 Oak Grove Blvd., Suite 120 Walnut Creek, California 94598 Telephone: (510) 945-0200

Attorneys for Plaintiff, Individually and On Behalf of All Others Similarly Situated