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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA – UNLIMITED

ELENA CONDES, BRIAN H. GETZ, and )  
BICKA BARLOW, on behalf of themselves )  
and all others similarly situated, )  
 )  
Plaintiffs, )  
vs. )  
 )  
EVERCOM SYSTEMS, INC; SBC )  
COMMUNICATIONS, INC.; PACIFIC )  
BELL TELEPHONE COMPANY; and )  
DOES 1 through 50, inclusive. )  
 )  
Defendants. )  
\_\_\_\_\_ )

RECORDED  
FILED  
ALAMEDA COUNTY  
SEP 25 2002  
CLERK OF THE SUPERIOR COURT  
By CHARLOTTE MARIN  
Deputy

Case No. 2002054255  
**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES**

1 For their complaint, plaintiffs, by their attorneys, allege on information and belief  
2 as to all matters except those concerning the plaintiffs, which are alleged on personal knowledge,  
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. As  
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 **PARTIES**

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

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

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

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

22 4. Defendant Evercom Systems, Inc. ("Evercom") is a Delaware corporation  
23 with its principal offices at 8201 Tristar Drive, Irving, Texas.  
24

25 5. Defendant SBC Communications, Inc. ("SBC") is a Delaware corporation  
26 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 1 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.

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.  
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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 inmate 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."

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

5 19. In California, Evercom "partners" with Pacific Bell to provide telephone  
6 services at numerous correctional facilities, including, but not limited to, the Santa Rita County  
7 Jail located in Dublin, California. In general, under the arrangements between Evercom and  
8 Pacific Bell, Evercom provides certain telephone services and Pacific Bell provides others.  
9

10 20. Commencing not later than 2001, defendants began charging for telephone  
11 services which were not authorized or accepted. In particular, defendants charged the recipients  
12 of collect calls from inmates at correctional facilities even though such neither the collect calls  
13 nor any charges therefor were authorized or accepted by the recipients of the collect calls. In  
14 particular, where a collect call was "received" by a recorded greeting, defendants charged for  
15 such call in the amount of one minute even though such call was not authorized or accepted by  
16 the recipient of the call.  
17

18 21. (A) For example, plaintiff Condes was charged the following amounts  
19 for collect calls from correctional facilities on the following dates, even though plaintiff Condes  
20 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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12/7/01 \$2.83

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

<u>Date</u>	<u>Charge</u>
4/8/02	\$4.84
4/8/02	\$6.62
4/8/02	\$4.84
4/8/02	\$5.73

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

<u>Date</u>	<u>Charge</u>
2/28/02	\$2.95
3/7/02	\$2.95
3/12/02	\$3.02
3/12/02	\$3.02
3/12/02	\$3.02
3/13/02	\$2.95
3/14/02	\$3.02
3/14/02	\$2.95
6/10/02	\$3.10
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.  
17

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  
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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 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
- 10 1. Declaring this action to be a proper plaintiff class action.
  - 11 2. Awarding plaintiffs and all members of the plaintiff class damages in an  
12 amount which may be proved at trial, together with pre-judgment interest thereon.
  - 13 3. For restitution of all amounts wrongfully charged to members of the  
14 plaintiff class or members of the general public.
  - 15 4. For classwide accounting of all wrongful charges for collect calls from  
16 correctional facilities.
  - 17 5. For injunctive relief requiring defendants to:
    - 18 (A) refrain from charging persons for collect calls from correctional  
19 facilities not accepted or authorized;
    - 20 (B) appropriately credit the accounts of all persons wrongfully charged  
21 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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Attorneys for Plaintiff,  
Individually and On Behalf of All  
Others Similarly Situated

1 **PROOF OF SERVICE BY MAIL**

2 I, Edward C. Casey Jr., declare that I am employed in the  
3 City of Oakland, California. My business address is 2100  
4 Lakeshore Avenue, Suite A, Oakland, California 94606. I am  
5 over the age of eighteen (18) years and am not a party to the  
6 within action. On September 27, 2002, I served the following  
7 document:

8 **[ENDORSED FILED] FIRST AMENDED CLASS ACTION**  
9 **COMPLAINT FOR DAMAGES**

10 **Alameda County Superior Court Case No. 2002054255**

11 on the parties listed below, by placing a true and correct copy  
12 thereof addressed as follows:

13 Zorah Braithwaite, Esq.  
14 BINGHAM McCUTCHEN LLP  
15 Three Embarcadero Center  
16 San Francisco, California 94111

17 Walid S. Abdul-Rahim, Esq.  
18 PACIFIC TELESIS GROUP LEGAL  
19 140 New Montgomery Street, Room 1019  
20 San Francisco, California 94105

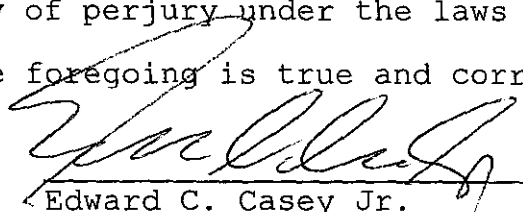
21 [ X ] BY MAIL - I placed each such sealed envelope, with  
22 postage thereon fully prepaid for first-class mail, for  
23 collection and mailing at Oakland, California, following  
24 ordinary business practices, being familiar with the practice  
25 of THE LAW OFFICES OF EDWARD C. CASEY JR. for processing  
26 correspondence.

27 [ ] BY FACSIMILE - I caused the said document to be  
transmitted by Facsimile machine to the number indicated after  
the address(es) noted above.

[ ] BY PERSONAL SERVICE - I caused each such envelope to be  
delivered by hand to the addressee(s) noted above.

I declare under penalty of perjury under the laws of the  
State of California that the foregoing is true and correct.

Dated: September 27, 2002

  
Edward C. Casey Jr.