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the People of the State of California

ENDORSED
FILED
Superior Court of California
County of San Francisco
MAY 8 - 2009
GORDON PARK-LI, Clerk
BY: CRISTINA BAUTISTA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET
OCT 9 - 2009 - 9:00 AM
DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **TOTAL CALL INTERNATIONAL, INC.,** Defendant.	CASE NO. CGC-09-488196 **COMPLAINT** Dept.: Action Filed:

The People of the State of California, by Edmund G. Brown Jr., Attorney General for the State of California, and by the California Public Utilities Commission, are informed and believe, and on such information and belief, allege as follows:

DEFENDANT

1. Defendant Total Call International, Inc. is a corporation with its principal place of business in California.

2. Defendant is engaged in the business of advertising and selling prepaid calling cards and prepaid calling services directly and indirectly to the public in California and elsewhere.

3. At all relevant times, Defendant has transacted business in the City and County of San Francisco and elsewhere in California. The violations of law herein alleged have been carried out in the City and County of San Francisco and elsewhere in the State of California.

4. Whenever reference in this complaint is made to any act or transaction of Defendant, that allegation shall be deemed to mean that the corporation did or authorized the acts alleged in this complaint through its principals, officers, directors, employees, members, agents and representatives while they were acting within the actual or ostensible scope of their authority.

DEFENDANT'S BUSINESS PRACTICES

5. Defendant is in the business of selling prepaid calling cards and prepaid calling services to the public. Defendant's prepaid calling cards allow consumers to place telephone calls locally, domestically, or internationally by dialing an access number and a personal identification number or "PIN." Defendant's prepaid calling cards allow consumers to make calls until the value of the card – typically $5 to $20 – is used up, or the consumer "recharges" the card by paying an additional amount to Defendant.

6. Prepaid calling cards are frequently used by consumers who do not subscribe to basic telephone service or cellular service, and therefore lack regular access to telephone service. Prepaid calling cards are also heavily used by immigrants and non-English-language speakers who frequently make international calls.

7. Defendant targets its marketing primarily to Latino, Asian, and other ethnic communities. Defendant sells prepaid calling cards under numerous different labels, including

but not limited to "AAA Asia," "Ay Caramba Mexico," "Best Vietnam," "Best Philippines," and "El Salvador Del Mundo."

8. Defendant sells its prepaid calling cards through various distributors and retailers, including convenience stores, liquor stores, and grocery stores.

9. Defendant owns no telecommunications network facilities of its own. Defendant purchases calling time, either in bulk or on a usage-basis, from third-party carriers, and resells that time to wholesalers and/or to consumers in the form of prepaid calling cards and prepaid calling services. Defendant establishes: (a) the per-minute rates charged consumers for calls to various destinations; (2) all surcharges, fees, and other levies imposed on consumers; and (3) all other terms and conditions of service.

FIRST CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500

(Brought by the Attorney General on behalf of the People of the State of California)

10. Plaintiff People of the State of California restates and incorporates paragraphs 1 through 9 as though fully set forth in this cause of action.

11. Defendant, acting directly or indirectly with intent to induce members of the public to purchase Defendant's prepaid calling cards and prepaid calling services, in violation of Business and Professions Code section 17500, has made or disseminated or caused to be made or disseminated, untrue or misleading statements as follows:

a. Defendant has overstated the amount of calling time to various destinations that can be obtained by purchasing Defendant's prepaid calling cards or prepaid calling services;

b. Defendant has failed to disclose in its advertising and other marketing materials various surcharges and fees that rapidly consume the value of Defendant's prepaid calling cards or prepaid calling services;

c. Defendant has advertised rates and charges for prepaid calling cards or prepaid calling services that are not available; and

d. Defendant has disclosed certain limitations on its advertised rates and charges for prepaid calling cards or prepaid calling services in tiny "mouse type" that is designed to be

overlooked by consumers, and that fails to put consumers on notice of the actual cost of using Defendant's prepaid calling cards or prepaid calling services.

12. Defendant knew, or by the exercise of reasonable care should have known, at the time of making or disseminating these statements, or causing these statements to be made or disseminated, that the statements set forth in paragraph 11 were untrue or misleading.

SECOND CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17538.9

(Brought by the California Public Utilities Commission and the Attorney General on behalf of The People of the State of California)

13. Plaintiff People of the State of California restate and incorporate paragraphs 1 through 9 and 11 through 12 as though fully set forth in this cause of action.

14. Business and Professions Code section 17538.9 governs disclosures, customer service, and other standards and requirements applicable to prepaid calling cards and prepaid calling services.

15. The Legislature recently amended Business and Professions Code section 17538.9, effective January 1, 2009. (See Stats. 2008, ch. 739 (A.B. 2136).)

16. Defendant has violated Business and Professions Code section 17538.9, subdivision (b), by doing the following:

a. advertising the price, rate, or unit value of its prepaid calling cards or prepaid calling services without clearly and conspicuously disclosing, at or near the beginning of the advertisement, all ancillary charges and the conditions under which each applies;

b. failing to print legibly on the card or packaging, the value of the card and all ancillary charges;

c. providing fewer minutes than those stated, charging more than the rate stated, or charging more for ancillary services than stated on the card or packaging, or in an advertisement available to the public at the time the card or service was purchased;

d. failing to provide a voice prompt that states the number of minutes for that call if the entire remaining value of the card or service were consumed in one continuous call, in substantially the following form: "You have (insert number) minutes if used up in this call";

e. imposing ancillary charges that are not disclosed as required by section 17538.9 or that exceed the amount disclosed; and

f. offering or selling prepaid calling cards or prepaid calling services that do not contain the information required to be disclosed by section 17538.9, subdivision (b)(3).

17. Defendant has violated (former) Business and Professions Code section 17538.9, subdivision (b), by doing the following:

a. advertising the price, rate, or unit value of prepaid calling cards or services without also disclosing all additional surcharges and/or fees applicable to the advertised price, rate, or unit value;

b. failing to print legibly on the card or packaging of their prepaid calling cards the amount of all applicable surcharges, fees, or taxes; and

c. imposing fees, surcharges, and other levies on consumers that are not disclosed as required by Business and Professions Code section 17538.9 and/or imposing fees, surcharges, and other levies on consumers that exceed the amounts disclosed.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200

(Brought by the Attorney General on behalf of The People of the State of California)

18. Plaintiff People of the State of California restate and incorporate paragraphs 1 through 9, 11 through 12, and 14 through 17, as though fully set forth in this cause of action.

19. Defendant has engaged in unfair competition, within the meaning of Business and Professions Code section 17200, by doing the following:

a. Violating Business and Professions Code section 17500 as set forth in the First Cause of Action;

b. Violating Business and Professions Code section 17538.9 as set forth in the Second Cause of Action;

c. Violating Civil Code section 1770, subdivision (a)(9), by advertising its telephone prepaid debit cards and prepaid calling services with the intent not to sell them as advertised in that they impose various undisclosed surcharges, fees, and other levies on consumers; and

d. Violating Civil Code section 1770, subdivision (a)(5), by overstating the quantity of calling time available on a prepaid calling card.

WHEREFORE, plaintiff prays for judgment as follows:

1. Pursuant to Business and Professions Codes sections 17535 and 17203 and Public Utilities Code section 2102, that Defendant, its owners, directors, officers, successors, agents, representatives, employees, and any and all other persons who act in concert or participation with Defendant, be permanently restrained and enjoined from doing any of the acts alleged in this complaint to be a violation of Business and Professions Code sections 17200, 17500, or 17538.9.

2. Pursuant to Business and Professions Code section 17206, that Defendant be assessed a civil penalty of $2,500 for each violation of Business and Professions Code section 17200 as proven at trial.

3. Pursuant to Business and Professions Code section 17536, that Defendant be assessed a civil penalty of $2,500 for each violation of Business and Professions Code section 17500 as proven at trial.

4. Pursuant to Public Utilities Code section 2107, that Defendant be assessed a civil penalty of not less than $500 and not more than $20,000 for each violation of Business and Professions Code section 17538.9 as proven at trial.

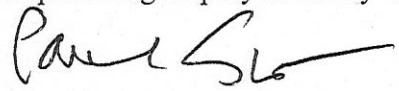
5. That Plaintiff recover its costs of suit.

6. That the Court order such other relief as the nature of the case may require and the court may deem appropriate and just.

Dated: May 4, 2009

Respectfully Submitted,

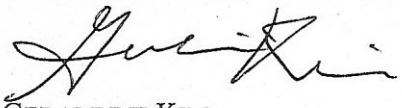
EDMUND G. BROWN JR.
Attorney General of California
KATHRIN SEARS
Supervising Deputy Attorney General



PAUL STEIN
Deputy Attorney General

Dated: May 4, 2009

CALIFORNIA PUBLIC UTILITIES COMMISSION



GERALDINE KIM
Public Utilities Counsel

Attorneys for Plaintiff People of the State of California

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