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ENDORSED
FILED
San Francisco County Superior Court
MAY 0 8 2009
GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **TOTAL CALL INTERNATIONAL, INC.,** Defendant.	CASE NO. **~~[PROPOSED]~~ FINAL JUDGMENT AND PERMANENT INJUNCTION** Date: Time: Dept: Judge Trial Date

Plaintiff the People of the State of California, appearing through its attorneys, Edmund G. Brown Jr., Attorney General, by Deputy Attorneys General Paul Stein and Alexandra Robert Gordon, and the California Public Utilities Commission, by Public Utilities Counsel Geraldine Kim; and Defendant Total Call International, Inc., appearing through its attorneys, Kelley Drye & Warren LLP, by Donna Wilson, having come before this Court, and it appearing to the Court that the parties, as reflected in the Stipulation for Entry of Final Judgment and Permanent Injunction (hereafter "Stipulation") filed herewith, having stipulated and consented to the entry of this Final Judgment and Permanent Injunction (hereafter "Judgment") without the taking of proof and without trial or adjudication of any fact or issue of law (i.e., this Judgment shall not constitute evidence or an admission by Total Call International, Inc., regarding any issue of law or fact alleged in the Complaint), the Court having considered the matter and good cause appearing,

Therefore, the Court ORDERS, ADJUDGES, AND DECREES:

1. This Court has jurisdiction of the subject matter of this action and of the parties. Venue as to all matters between the parties relating to this action is proper in this Court.

DEFINITIONS

2. The following definitions shall apply to this Judgment:

A. "Prepaid Calling Service(s)" or "Service(s)" shall be defined as those terms are defined in Business and Professions Code section 17538.9.

B. "Prepaid Calling Card(s)" or "Card(s)" shall be defined as those terms are defined in Business and Professions Code section 17538.9 and as the term "telephone prepaid debit card" is used in California Public Utilities Code section 885.

C. "Legible" or "Legibly" means easily readable.

D. "Ancillary Charges" means all surcharges, taxes, fees, connection charges, maintenance fees, monthly or other periodic fees, per-call access fees, or other assessments or charges of any kind, however denominated, that may be imposed during the life of the purchased Prepaid Calling Services, in connection with the use of a Card or Services, other than the per unit or per minute rate charged.

E. "Clearly and Conspicuously" means, for writings, disclosed Legibly and placed and printed so that it will attract the reader's attention and, for oral statements, orally disclosed so that it will attract the listener's attention. To be clear and conspicuous, disclosures must also be stated precisely, clearly, and understandably, in words that are part of the working vocabulary of the average consumer. Other content, such as text, graphics, or sound, that may distract a consumer's attention away from any disclosure required to be clear and conspicuous may not be used. If a disclosure qualifies other information, to be clear and conspicuous the disclosure must be displayed prominently and in close proximity to the representation being qualified.

F. "Effective Rate" means the total amount of (1) the per-unit (e.g. per-minute) charge applicable for Prepaid Calling Services and (2) the Ancillary Charges that will be incurred, if the value of the PIN (Personal Identifying Number) is exhausted in one continuous call, stated either as an amount for each unit (e.g. "$0.10 per minute") or in minutes of talk time available on a PIN to a stated or dialed destination. The Effective Rate need not account for Ancillary Charges that may or may not be incurred depending on a customer's usage pattern and which the Enjoined Parties cannot anticipate at the time the disclosure is made (e.g., a charge for calling from a payphone or to a cellphone would not have to be incorporated into the Effective Rate stated in an advertisement because a customer may or may not use a payphone or call a cell phone).

G. "Prompt" is the automated statement of the Effective Rate, which is made after the customer enters a PIN and a destination number.

H. "United States" means the United States of America, including all fifty states and any of its territories and possessions.

I. "CPUC" means the California Public Utilities Commission.

J. "Statement" means "statement" as that term is used in Business and Professions Code section 17500 (including any advertising or poster).

INJUNCTION

3. The injunctive provisions of this Judgment apply to (a) the Defendant; (b) any of Defendant's affiliates, subsidiaries, directors, officers, employees, agents, assigns, successors, and all persons acting in concert or participation with any of them that have actual or constructive

knowledge of the Judgment; (c) any company or other entity offering Prepaid Calling Services in which any of Defendant's directors, affiliates, subsidiaries, assigns, or successors own or control at least 10% of the equity or debt; and (d) any company or other entity offering Prepaid Calling Services in which any person who is a director of Defendant's board as of the date of the execution of the Stipulation comes to own or control at least 10% of the equity or debt. The individuals and entities referenced in this paragraph 3 are collectively the "Enjoined Parties."

4. Pursuant to Business and Professions Code sections 17203 and 17535 and Public Utilities Code section 2102, the Enjoined Parties are hereby permanently enjoined and restrained from directly or indirectly doing any of the following in connection with Prepaid Calling Services advertised, offered for sale, or sold in California:

A. Violating Business and Professions Code sections 17200, 17500, or 17538.9.

B. Failing to provide a Prompt immediately after a caller enters a personal identification number and destination number, which Clearly and Conspicuously discloses the Effective Rate applicable to that call, and, unless the same effective rate applies to all calls, a Statement to the effect the rate applies only if the Prepaid Calling Service/Card/PIN is used up in one continuous call (e.g. "You have 75 minutes if used up in this call").

C. In any print or oral Statement, other than in a Prompt, which purports to state either the minutes of talk time available or a per-unit cost,

(1) failing to use only the "Effective Rate" when stating the minutes of talk time or the per-unit cost;

(2) unless the same Effective Rate applies to all calls, failing to Clearly and Conspicuously disclose that the minutes of talk time or per-unit cost stated (i.e., the Effective Rate) is available only if the Prepaid Calling Service/Card/PIN is used up in one continuous call, provided however, that for Statements referring to three or more calling destinations, if the required disclosure is prominently displayed at or near the top (or the beginning) of the Statement so that it clearly refers to all the destinations, the required disclosure may be made once and need not be placed proximate to each calling destination; and

(3) if two or more Effective Rates apply to a specified destination depending on either the day of the week or the time of day of a call, failing to disclose either (a) Clearly and Conspicuously each Effective Rate for the specified destination along with the day and or time to which it applies in immediate proximity to the specified destination, or (b) only the highest possible Effective Rate to the specified destination.

D. Failing to prominently disclose, Clearly and Conspicuously, near the beginning of any Statement subject to Paragraph 4.C. above, and on either the Card or its packaging, all Ancillary Charges applicable to the Card or Service, along with the conditions under which such Ancillary Charges will be imposed (e.g., a $.05 fee that is imposed after the first week the Card is used and repeats at a stated interval thereafter). In a written Statement subject to Paragraph 4.C. above, this disclosure shall appear in table form in a box with the bold label: "Other Charges." The amount of each Ancillary Charge shall be identified in one column and the conditions under which each applies shall be stated on the same line in the column to the right of the charge.

E. At any time before a customer has recharged a Card or Service (including before a Card or Service expires without recharge), (1) providing fewer minutes of talk time or charging more than any Effective Rate contained in a Statement available to the public at the time the Card or Service was purchased or than specified in any Prompt, or (2) charging more for Ancillary Charges than any charge contained in any Statement available to the public at the time the Card or Service was purchased.

F. If the Effective Rate disclosure provisions of Paragraph 4.C. do not apply because Defendant's Statements, including Statements on either the Card or packaging of a Prepaid Calling Card or Service, do not include a claim about the minutes of talk time available to any given calling destination or a per-unit cost offered to any given calling destination, failing to disclose on the Card or packaging, the amount of each and every Ancillary Charge on calls to destinations within the United States, and the conditions under which such Ancillary Charges will be imposed (e.g., a $.05 fee that is imposed after the first week the Card is used and repeats at a stated interval thereafter).

G. If the Effective Rate disclosure provisions of Paragraph 4.C. do not apply because Defendant's Statements, including on either the Card or packaging of a Prepaid Calling Card or Service, do not include a claim about the minutes of talk time available or a per-unit cost, failing to disclose on the Card or packaging, either (1) the amount of each and every Ancillary Charge on calls to destinations outside the United States and the conditions under which such Ancillary Charges will be imposed (e.g., a $.05 fee that is imposed after the first week the Card is used and repeats at a stated interval thereafter) or, in the alternative, (2) the highest amounts of Ancillary Charges that may be incurred on calls to destinations outside the United States, and the conditions under which such Ancillary Charges will be imposed.

H. Failing to ensure that the disclosures required by Paragraphs 4.C., 4.D., 4.F., and 4.G. which are printed on a Prepaid Calling Card or its packaging are Legible without having to open any packaging.

I. Failing to comply with the customer service requirements set forth in Business and Professions Code section 17538.9, subdivision (b)(9). In the event that the requirements of section 17538.9, subdivision (b)(9), are amended or repealed, in whole or in part, the Enjoined Parties shall comply with section 17538.9, subdivision (b)(9), as modified.

J. For at least four years from entry of Judgment, failing to maintain all of the business records useful, necessary, and sufficient to determine Defendant's compliance with Paragraph 4 of this Judgment and Paragraphs L and M of the Stipulation, including but not limited to the records listed in Exhibit 1 hereto.

K. For two years from entry of Judgment, failing to provide to Plaintiff, within 10 days of the request, any documents required to be maintained under this Judgment, and thereafter, failing to provide Plaintiff with requested documents in accordance with the requirements of the law.

CIVIL PENALTIES AND COSTS

5. Pursuant to Business and Professions Code sections 17206 and 17536 and Public Utilities Code section 2107, and as specified in the Stipulation, the Defendant shall pay civil penalties and investigative costs totaling $450,000 and broken down as follows:

A. $150,000 in penalties to the CPUC.

B. $150,000 in civil penalties to the California Attorney General.

C. $150,000 in investigative costs jointly to the California Attorney General and the CPUC. Defendant shall be credited up to $150,000 against these investigative costs for any amounts paid by Defendant to the forensic accountant selected and approved by Plaintiff pursuant to Paragraph M of the Stipulation. In the event Defendant's payments to the forensic accountant total less than $150,000, the difference shall be paid half to the California Attorney General and half to the CPUC.

OTHER PROVISIONS

6. As stated in Paragraph L of the Stipulation, Defendant agreed to remove real-time rate surcharges from selected Prepaid Calling Cards sold to distributors prior to entry of Judgment, and not to increase any other Ancillary Charges on such cards above amounts disclosed at the time such sales were made. Defendant also agreed to incur $1.5 million in gross margin reductions as a result of such surcharge removal, and to have that amount certified and verified by a forensic accountant. As stated in Paragraph M of the Stipulation, the forensic accountant has provided Plaintiff a sworn declaration which contains Defendant's confidential business information, and which states that Defendant incurred $1.5 million in gross margin reductions prior to entry of Judgment. The forensic accountant's declaration shall remain confidential, except as needed for purposes of enforcing the Stipulation or the Judgment, or as otherwise ordered by a Court.

7. Consistent with the Stipulation, this Judgment resolves the above-captioned action filed by Plaintiff against the Defendant, and is meant to resolve and is conclusive with respect to those, and only those, matters set forth in the allegations of the Complaint filed in this action which occurred before entry of Judgment.

8. Nothing in this Judgment shall be construed as relieving Enjoined Parties of their obligation to comply with all applicable local, state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by any applicable law, regulation, or rule.

9. Defendant will provide a copy of this Judgment to all Enjoined Parties and retain for inspection proof of having done so.

RETENTION OF JURISDICTION

10. This Court shall retain jurisdiction over this matter for the purposes of enabling any party to this Judgment to apply to the Court at any time, after serving notice on the other parties, for such further orders and directions as might be necessary or appropriate for the construction or carrying out of this Judgment, for modification or termination of any injunctive provision of this Judgment, and for the People to apply at any time for enforcement of any provisions of this Judgment and for punishment for any violation of this Judgment.

11. This Judgment shall take effect immediately upon its entry.

12. The clerk is ordered to enter this Judgment forthwith.

IT IS SO ORDERED:

DATE: 5-8-09

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

A. All business records relating to the sales or other transfers of Prepaid Calling Cards to California-based wholesalers, distributors, retailers, California end-use consumers, or other California purchasers. As used herein, "California-based" refers to wholesalers, distributors, or retailers who sell to California consumers, or to others in any distribution chain where the phonecard product is likely to be sold in California.

B. Samples of every non-identical promotional, sales, and other advertising material, as well as samples of every prepaid calling card sold by Defendant and every type of packaging relating to such cards, which materials and/or cards were sold or used in California, or may have been sold or used in California.

D. Rate decks, including complete records of every change made to such rate decks (as used herein, "rate deck" means the schedule of all rates, ancillary charges, taxes, and any other fee however designated, applied to every prepaid calling card which was sold or may have been sold in California).

E. Other records useful, necessary and sufficient to identify the Effective Rate and Ancillary Charges for calls placed using any of the prepaid calling cards which Defendants sell, cause to be sold, or allow to be sold in California, or are otherwise likely to be sold in California.

F. All call detail records generated by each activated prepaid calling card, where the first call was made in California.

G. All invoices from carriers to Defendant, record of payment to those carriers, and Defendant's generated reconciliations of carrier invoices to Defendant's rates used in its cost data warehouse.

H. All historical records in the cost data warehouse, or any other such system used by Defendant in calculating its incurred carrier costs for providing services on California-based prepaid calling cards.