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15 *the People of the State of California*

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SAN FRANCISCO
18

19
20 THE PEOPLE OF THE STATE OF
CALIFORNIA,

21 Plaintiff,

22 v.

23
24 TOTAL CALL INTERNATIONAL, INC.,

25 Defendant.
26
27
28

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 - 9⁰⁰ AM

DEPARTMENT 212

COC-09.488196
CASE NO.

COMPLAINT

Dept.:
Action Filed:

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

4 **DEFENDANT**

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

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

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

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

16 **DEFENDANT'S BUSINESS PRACTICES**

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

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

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

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

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

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

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

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

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

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

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

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

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

6 **SECOND CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17538.9**

8
9 (Brought by the California Public Utilities Commission and the Attorney General
10 on behalf of The People of the State of California)

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

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

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

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

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

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

25 c. providing fewer minutes than those stated, charging more than the rate stated,
26 or charging more for ancillary services than stated on the card or packaging, or in an
27 advertisement available to the public at the time the card or service was purchased;
28

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE**
20 **SECTION 17200**

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

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

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

26 a. Violating Business and Professions Code section 17500 as set forth in the First
27 Cause of Action;
28

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

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

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

9 WHEREFORE, plaintiff prays for judgment as follows:

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

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

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

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

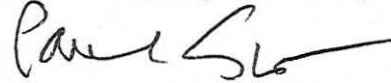
24 5. That Plaintiff recover its costs of suit.

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

1 Dated: May 4, 2009

Respectfully Submitted,

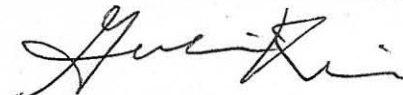
2 EDMUND G. BROWN JR.
3 Attorney General of California
4 KATHRIN SEARS
5 Supervising Deputy Attorney General



6 PAUL STEIN
7 Deputy Attorney General

8 Dated: May 4, 2009

CALIFORNIA PUBLIC UTILITIES COMMISSION



10 GERALDINE KIM
11 Public Utilities Counsel

12 *Attorneys for Plaintiff People of the State of*
13 *California*

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