

1 Peter J. Bezek, State Bar No. 102310  
Jacquelyn K. Phlegar, State Bar No. 166510  
2 FOLEY & BEZEK, LLP  
15 West Carrillo Street  
3 Santa Barbara, California 93101  
Telephone: (805) 962-9495  
4 Facsimile: (805) 962-0722

5 Attorneys for Plaintiffs

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
7 **FOR THE COUNTY OF SANTA BARBARA**

8 LINDA ROARK, DARLA ANDERSON and ON  
9 GUARD PEST CONTROL, a California  
Corporation, on behalf of themselves and all  
10 others similarly situated,

11 Plaintiffs,

12 vs.

13 GTE California Incorporated, a California  
14 corporation and, DOES 1 through 100, inclusive,

15 Defendants.  
16

) Case No. 01035862  
)  
)

) **CLASS ACTION**  
)

) **THIRD AMENDED COMPLAINT**  
) **FOR VIOLATIONS OF UNFAIR**  
) **BUSINESS PRACTICES ACT,**  
) **CONVERSION, FRAUD, AND**  
) **NEGLIGENT**  
) **MISREPRESENTATION**  
)

) **DEMAND FOR JURY TRIAL**  
)  
)

17  
18 **PLAINTIFFS ALLEGE AS FOLLOWS:**

19 1. Plaintiff Linda Roark is and was a resident of Orange County at all times relevant  
20 hereto.

21 2. Plaintiff Darla Anderson is a resident of and maintains her business in Santa  
22 Barbara County, and has been and done so at all times relevant hereto.

23 3. Plaintiff On Guard Pest Control is a California corporation with its principal place  
24 of business in Santa Barbara County, and has been and done so at all times relevant hereto.

25 4. Defendant GTE California Incorporated (GTEC) is, and at all times relevant  
26 hereto was, a California corporation and is now a wholly owned subsidiary of Verizon  
27 Communications, Inc., a Delaware corporation. GTEC's principal place of business is Ventura  
28 County, California.

1           5.       This is a consumer class action and private attorney general action on behalf of  
2 consumers, both residential and business,

3           Class A:       who were charged on bills processed by GTEC for long-distance  
4 telephone calls in amounts which were higher than the amounts that the long distance carrier  
5 transmitted to GTEC as the charges to be billed (see below),

6                   Subclass A:   and who are senior citizens or disabled persons within the meaning  
7 of Civil Code Section 1761 subdivisions (f) and (g).

8           Class B:       who were charged for long-distance telephone calls on bills processed by  
9 GTEC as a result of their long-distance telephone calls being sent through a long-distance carrier  
10 other than the long-distance carrier chosen by the consumer (see below),

11                   Subclass B:   and who are senior citizens or disabled persons within the meaning  
12 of Civil Code Section 1761 subdivisions (f) and (g), or

13           Class C:       who were given a credit on bills processed by GTEC for excessive charges  
14 for long-distance or other services instead of a cash refund of the excess monies paid,

15                   Subclass C:   and who are senior citizens or disabled persons within the meaning  
16 of Civil Code Section 1761 subdivisions (f) and (g).

17           6.       Plaintiffs bring this action on their own behalf, in their representative capacities  
18 and on behalf of all others similarly situated, as set forth more specifically below.

19           7.       The true names and capacities, whether individual, corporate, associate, or  
20 otherwise of the defendants named herein under the fictitious names of Does 1 through 100,  
21 inclusive, are unknown to plaintiffs, who therefore sue said defendants by such fictitious names.  
22 Plaintiffs will ask leave of court to amend this complaint and insert the true names and capacities  
23 of said defendants when the same have been ascertained. Plaintiffs are informed and believe,  
24 and on that basis allege, that each of the defendants designated herein as a "Doe" is legally  
25 responsible in some manner for the events and happenings herein alleged, and that plaintiffs'  
26 damages as alleged herein were proximately caused by such defendants.

27           8.       Plaintiffs are informed and believe that at all times relevant hereto, each  
28 defendant was the agent, servant, and employee of each of the remaining defendants, and acting

1 within the purpose, scope and course of said agency, service, and employment, with the express  
2 and/or implied knowledge, permission, and consent of the remaining defendants, and each of  
3 them, and each of said defendants ratified and approved the acts of the other defendants.

4 9. Plaintiffs are informed and believe that at all relevant times hereto, the agents and  
5 employees of defendants who took the actions alleged herein were authorized by defendants'  
6 officers, directors, and managing agents to act as alleged herein, and that defendants ratified the  
7 acts of their agents and employees by accepting the benefits of those acts with knowledge of  
8 them.

9 **Allegations Regarding Named Plaintiffs**

10 10. Plaintiff Linda Roark receives her residential local telephone service from GTEC.  
11 Mrs. Roark had selected MCI as her long-distance carrier. Mrs. Roark receives one telephone bill  
12 from GTEC that also includes her long-distance charges.

13 11. In May 2000, Mrs. Roark noticed that her May 10, 2000 telephone bill contained  
14 an extremely high charge for a telephone call of one minute in duration from her residence in  
15 Orange County to San Diego. For this one minute telephone call, the charge was \$3.57. Mrs.  
16 Roark also noticed that the call was billed through AT&T, even though she had selected MCI  
17 and believed she was a long-distance customer of MCI.

18 12. Mrs. Roark telephoned AT&T to inquire about these issues. In her conversation  
19 with AT&T, she learned that the rates that were listed on her telephone bill were greatly in  
20 excess of the rates that AT&T had actually charged for the listed telephone calls. In fact, AT&T  
21 stated that they had reported to GTEC charges due for the May 10, 2000 billing in an amount of  
22 \$6.47. However, GTEC had billed Mrs. Roark \$37.03 for these exact same services.

23 13. Mrs. Roark, now knowing what had been hidden from her before, examined  
24 some of her past telephone bills and discovered that this misconduct may have been occurring  
25 for an extended period of time.

26 14. The Account Summary appearing on the first page of each of Mrs. Roark's  
27 GTEC telephone bills lists three categories of current charges: 1) GTE's basic service charges;  
28 2) MCI WorldCom basic services; and 3) Other basic charges.

1           15.     Many of Mrs. Roark's long-distance telephone calls were billed through MCI and  
2 were reflected on her telephone bill as such. The charges from the long-distance provider were to  
3 be passed on to Mrs. Roark and other consumers similarly situated at the same rates and amounts  
4 as charged by the long-distance carrier. These rates and amounts were not to be increased by  
5 GTEC in the process of billing the customer for the long-distance calls made. The MCI  
6 subsection of the bills states "The following charges appear on your GTE bill as a service to  
7 MCI," thereby implying that GTEC is merely passing on the billings of MCI. This is the  
8 customary and common practice of GTEC on its bills when GTEC passes on long-distance  
9 charges.

10           16.     Upon examination of her telephone bills, Mrs. Roark discovered that the line item  
11 in the Account Summary of her bill for "Other basic charges" in fact reflected long-distance  
12 charges through AT&T that were listed on a sheet at the end of each bill. These were the charges  
13 that were secretly inflated by GTEC.

14           17.     The AT&T subsection of the GTEC bill states "[t]he following charges appear on  
15 your GTE bill as a service to AT&T," thereby indicating that GTEC is merely passing on the  
16 billings of AT&T.

17           18.     In addition to the excessive and improper charges for long-distance calls through  
18 AT&T, Mrs. Roark was also billed for taxes and surcharges on the AT&T services based upon  
19 the improper inflated rates in addition to the taxes and surcharges she was charged for her MCI  
20 and GTEC services.

21           19.     When asked by Mrs. Roark, GTEC provided no explanation for why the AT&T  
22 rates had been inflated or why some of Mrs. Roark's long-distance calls were billed through  
23 AT&T instead of through her chosen long-distance provider, MCI. GTEC has admitted during  
24 investigations that billings such as Mrs. Roark's are the result of a computer billing program that  
25 is uniformly applied to GTEC customers and that the "error" in billing did not come about as a  
26 result of an individual clerical error when computing data from long-distance carriers regarding  
27 billing amounts. As explained during the investigation, when a customer makes a long-distance  
28 call, a code is electronically attached to the billing which identifies which long-distance carrier is

1 providing the service. These electronic codes allow billing to occur so as to ensure that long-  
2 distance calls are charged through the proper long-distance carrier. At the end of the billing  
3 cycle, all calls associated with AT&T, for example, are then electronically accumulated at the  
4 rates and amounts determined by AT&T pursuant to its agreement with its customers. These  
5 electronic bills are to be billed through GTEC without inflation or increase over the amounts  
6 billed by the long-distance carrier. All of these functions, including the ultimate billing by  
7 GTEC to the customer, are performed electronically and are the result of computer programs  
8 designed for such purposes. GTEC customers are subject to the same computer billing programs  
9 and procedures depending on the long-distance carrier.

10 20. AT&T provided no explanation for why their rates had been inflated on GTEC's  
11 bill or why some of Mrs. Roark's long-distance telephone calls were being billed through AT&T  
12 when she was in fact a long-distance customer of MCI.

13 21. After several contacts with GTEC regarding this matter, Mrs. Roark was advised  
14 that GTEC would credit her approximately \$1,300 towards future GTEC services as a result of  
15 these unauthorized excess charges. A complete analysis was not provided by GTEC as to how  
16 this amount was determined or what information was reviewed. No offer was made to repay  
17 Mrs. Roark cash for the now admitted unauthorized charges and no cash refund was given. At no  
18 time did GTEC advise Mrs. Roark that her situation was unique or an individualized error.

19 22. The credit GTEC gave to Mrs. Roark allegedly reflected the amount that GTEC  
20 had charged for AT&T calls in excess of the AT&T charges. This credit did not include any  
21 funds to compensate Mrs. Roark for the use of her money, for any excess in the rates of AT&T  
22 over her selected carrier's rates, or for any excess taxes and surcharges paid as a result of  
23 receiving billings for a long-distance carrier at inflated rates.

24 23. Plaintiff Darla Anderson receives her local long-distance telephone services for  
25 her business from GTEC and had selected MCI as her long-distance carrier. Ms. Anderson  
26 receives one telephone bill from GTEC that also includes her long-distance charges.

27 24. In March 2000, Ms. Anderson noticed unusually high charges for long-distance  
28 calls on her office telephone bill dated February 25, 2000.

1           25.     Upon review of the telephone bills for the prior months, Ms. Anderson discovered  
2 that as of the bill dated May 25, 1999 all of the long-distance telephone calls were being billed  
3 through AT&T instead of MCI. The charges for the AT&T calls were extremely high. Ms.  
4 Anderson had not selected AT&T as her long-distance carrier.

5           26.     The Account Summary appearing on the first page of Ms. Anderson's GTEC  
6 telephone bill lists three categories of current charges: 1) GTEC's basic service charges; 2) MCI  
7 WorldCom basic services; and 3) Other basic charges.

8           27.     Even though all her long-distance was wrongfully being billed through AT&T,  
9 Ms. Anderson's telephone bill continued to reflect a charge in the Account Summary for MCI  
10 WorldCom basic services; however, this charge reflected only taxes and fees and no actual  
11 telephone call billings. All long-distance telephone call billings were reflected in the Account  
12 Summary merely under the heading "Other basic charges." All of these long-distance calls had in  
13 fact been billed through AT&T.

14           28.     Ms. Anderson had been charged on each bill for taxes and surcharges for the  
15 AT&T services as well as for her GTEC and MCI services.

16           29.     Ms. Anderson directed her office assistant to investigate. Her assistant noticed  
17 that the long-distance charges were being billed under AT&T instead of Ms. Anderson's chosen  
18 carrier, MCI. When the office assistant called GTEC, GTEC agreed that the AT&T billing rates  
19 were very high. GTEC suggested that an appropriate reduction in these rates could be obtained if  
20 Ms. Anderson simply selected GTE as her long-distance carrier. As a result of these practices,  
21 GTEC had unilaterally and without permission from this customer, shifted the customer's long-  
22 distance calls to AT&T which GTEC knew would be billed at extremely high rates. When the  
23 customer complained about AT&T's high rates (thereby expressing dissatisfaction with AT&T),  
24 GTEC could then suggest that the customer leave AT&T and its high rates in favor of a more  
25 consumer-friendly carrier such as GTE. In this fashion, GTEC changed carriers without AT&T  
26 or the consumer's consent, charged a billing support payment from the collected funds, then  
27 acted as a consumer savior when the customer complained about AT&T's high rates. This  
28 provided GTEC an unfair competitive advantage and was a false and deceptive practice.

1           30.     As a result of Ms. Anderson's assistant's calls to GTEC, GTEC stated they would  
2 provide a credit in the amount of \$779.86, which they stated reflected the amount of long-  
3 distance charges actually billed in excess of the charges that would have been billed had the calls  
4 been billed through Ms. Anderson's chosen long-distance carrier, MCI, and a credit of \$56.65 for  
5 the MCI minimum usage charge of \$5.00 per month for eleven months.

6           31.     GTEC offered no explanation for these wrongful charges. GTEC agreed that MCI  
7 had been the chosen long-distance carrier throughout the relevant time period.

8           32.     Plaintiffs are informed and believe that GTEC received a billing support payment  
9 for the calls it improperly billed to AT&T, thereby receiving compensation for fees that GTEC  
10 was billing on behalf of AT&T.

11           33.     The credit given to Ms. Anderson did not reflect any amount for the use of her  
12 funds, or for the additional taxes and surcharges paid as a result of receiving billings for two  
13 long-distance carriers and at inflated rates. No offer was made to repay Ms. Anderson cash for  
14 the now admitted unauthorized charges and no cash refund was given.

15           34.     Plaintiff On Guard Pest Control (hereinafter "On Guard") receives its local long-  
16 distance telephone services from GTEC and had selected AT&T as its long-distance carrier. On  
17 Guard receives one telephone bill from GTEC that also includes its long-distance charges.

18           35.     In August of 2000, Valerie Zamarron of On Guard on noticed unusually high  
19 charges for long-distance calls on its office telephone bill dated August 10, 2000.

20           36.     Upon review of the telephone bills for the prior months, Ms. Zamarron discovered  
21 that a one-minute phone call to a number in Ventura, California at 6:11 p.m. on July 4, 2000 was  
22 billed at a rate of .14¢ on the July statement. Yet, a one minute call made to the very same  
23 number in Ventura, California only one day later on July 5, 2000 was billed at a rate of \$3.63 on  
24 the August statement. Indeed, every call placed through AT&T and listed on the August  
25 statement was billed at an unusually high rate.

26           37.     The .14¢ rate was the rate for which On Guard had negotiated with AT&T.

27           38.     Ms. Zamarron contacted GTEC, but GTEC offered no explanation for these  
28 wrongful charges and no credit for these charges has been given.

1           39.     Plaintiffs are informed and believe that GTEC received a billing support payment  
2 for the calls it improperly billed to AT&T, thereby receiving compensation for fees that GTEC  
3 was billing on behalf of AT&T. No cash or cash refund has been made to On Guard.

4           40.     The members of the class are so numerous that joinder of all class members in the  
5 litigation is impracticable.

6           41.     Common questions of law and fact exist as to all members of the class and  
7 predominate over the questions, if any, affecting only individual members of the class. The  
8 common questions include, but are not limited to, the following:

9                   **Class A:**

10                   **Common Questions of Fact That Predominate**

- 11                   1.     Whether GTEC processed the telephone bills sent to each class member;
- 12                   2.     Whether class members were charged for long-distance calls by a long-  
13 distance provider other than GTE or GTEC;
- 14                   3.     Whether bills processed by GTEC included the long-distance charges  
15 incurred by the customer with a long-distance carrier;
- 16                   4.     Whether the bills processed by GTEC represented that the long-  
17 distance charges were reflected as a service to the long-distance carrier;
- 18                   5.     Whether GTEC knew or had reason to know that the charges passed on by  
19 GTEC from the long-distance carriers were periodically increased as a result of GTEC's billing  
20 procedures that caused these charges from long-distance carriers to be translated incorrectly and  
21 caused those charges to be reflected at increased rates;
- 22                   6.     Whether when GTEC made the representations on the bills that the long-  
23 distance charges were those provided by the long-distance carrier, it had no reasonable grounds  
24 to believe them to be true because GTEC knew that its billing procedures periodically translated  
25 the charges from long-distance carriers incorrectly and caused those charges to be reflected at  
26 increased rates;
- 27                   7.     Whether the long-distance charges shown on the bills were higher than  
28 the amounts that the long-distance carrier transmitted as the charges to be billed;



1                   8.       Whether the customer was overcharged for the customer's long-distance  
2 services;

3                   9.       Whether GTEC intended for customers to rely on the amounts shown on  
4 their bills and to pay the amount shown in reliance on those bills; and

5                   10.      Whether the customer received any restitution or payment of any kind  
6 from GTEC related to increased rates for long-distance calls.

7                   **Subclass A:**

8                   1.       All questions of fact common to Class A;

9                   2.       Whether the customer is a senior citizen or a disabled person within the  
10 meaning of Civil Code Section 1761 subdivisions (f) and (g);

11                  3.       Whether this action is brought, in part, on behalf of senior citizens or  
12 disabled persons to redress unfair or deceptive acts or practices;

13                  4.       Whether the defendants knew or should have known that their conduct  
14 was directed toward one or more senior citizens or disabled persons; and

15                  5.       Whether one or more senior citizens or disabled persons are  
16 substantially more vulnerable than other members of the public to the defendants' conduct  
17 because of age, poor health or infirmity, impaired understanding, restricted mobility, or  
18 disability, and actually suffered substantial physical, emotional, or economic damage resulting  
19 from the defendants' conduct.

20                  **Common Questions of Law That Predominate**

21                  1.       Whether any legal basis existed for increasing the long-distance charges  
22 over the amount the long-distance carrier transmitted to GTEC as the charges for the calls;

23                  2.       Whether the actions and conduct of defendants constitute violations of the  
24 Unfair Business Practices Act (Business and Professions Code sections 17200 et seq.);

25                  3.       Whether defendants should be enjoined from acting in violation of the  
26 Unfair Business Practices Act;

27                  4.       Whether defendants' conduct constituted conversion;

28                  5.       Whether defendants' conduct constituted fraud;

- 1                   6.       Whether defendants' conduct constituted negligent misrepresentation; and  
2                   7.       Whether defendants' conduct justifies an award of exemplary and punitive  
3 damages.

4                   **Subclass A:**

- 5                   1.       All questions of law common to Class A; and  
6                   2.       Whether, pursuant to Civil Code Section 3345, defendants' conduct  
7 justifies trebling of the punitive damages under Civil Code Section 3294.

8                   **Class B:**

9                   **Common Questions of Fact That Predominate**

- 10                  1.       Whether GTEC processed the telephone bills sent to each class member;  
11                  2.       Whether class members were charged for long-distance calls by a long-  
12 distance provider other than GTE or GTEC;  
13                  3.       Whether bills processed by GTEC included the long-distance charges  
14 incurred by the customer with a long-distance carrier.  
15                  4.       Whether some or all of the customers' long-distance calls were sent  
16 through a long-distance carrier that was not the carrier selected by the customer, and this was  
17 done without the customer's permission;  
18                  5.       Whether the long-distance charges shown on the bills were higher  
19 than the amounts that the long-distance carrier transmitted as the charges to be billed;  
20                  6.       Whether the bills processed by GTEC represented that the long-distance  
21 charges were reflected as a service to the long-distance carrier;  
22                  7.       Whether the bills processed by GTEC represented that the long-distance  
23 charges were reflected as a service to the long-distance carrier; Whether GTEC knew or had  
24 reason to know that the charges provided by the long-distance carriers were periodically  
25 increased as a result of problems with GTEC's billing procedures that caused charges from long-  
26 distance carriers to be translated incorrectly and caused those charges to be reflected at increased  
27 rates;  
28                  8.       Whether when GTEC made the representations on the bills that the long-

1 distance charges were those provided by the long-distance carrier, it had no reasonable grounds  
2 to believe them to be true because GTEC knew that its billing procedures periodically translated  
3 the charges from long-distance carriers incorrectly and caused those charges to be reflected at  
4 increased rates;

5 9. Whether the long-distance charges for calls charged by a long-distance  
6 carrier that was not selected by the customer were higher than the charges would have been had  
7 all of the customer's long-distance calls been routed through the carrier chosen by the customer;

8 10. Whether the customer was overcharged for the customer's long-distance  
9 services;

10 11. Whether GTEC intended for customers to rely on the amounts shown on  
11 their bills and to pay the amount shown in reliance on those bills; and

12 12. Whether the customer received any restitution or payment of any kind  
13 from GTEC related to increased rates for long-distance calls.

14 **Subclass B:**

15 1. All questions of fact common to Class B;

16 2. Whether the customer is a senior citizen or a disabled person within the  
17 meaning of Civil Code Section 1761 subdivisions (f) and (g);

18 3. Whether this action is brought, in part, on behalf of senior citizens or  
19 disabled persons to redress unfair or deceptive acts or practices;

20 4. Whether the defendants knew or should have known that their conduct  
21 was directed toward one or more senior citizens or disabled persons; and

22 5. Whether one or more senior citizens or disabled persons are  
23 substantially more vulnerable than other members of the public to the defendants' conduct  
24 because of age, poor health or infirmity, impaired understanding, restricted mobility, or  
25 disability, and actually suffered substantial physical, emotional, or economic damage resulting  
26 from the defendants' conduct.

27 **Common Questions of Law That Predominate**

28 1. Whether any legal basis existed to permit long-distance calls to be charged

1 through a long-distance carrier other than the carrier selected by the customer;

2           2.       Whether any legal basis existed for increasing the long-distance charges  
3 over the amount of the long-distance carrier transmitted as the charges for the calls;

4           3.       Whether the actions and conduct of defendants constitute violations of the  
5 Unfair Business Practices Act (Business and Professions Code sections 17200 et seq.);

6           4.       Whether defendants should be enjoined from acting in violation of the  
7 Unfair Business Practices Act;

8           5.       Whether defendants' conduct constituted conversion;

9           6.       Whether defendants' conduct constituted fraud;

10          7.       Whether defendants' conduct constituted negligent misrepresentation; and

11          8.       Whether defendants' conduct justifies an award of exemplary and punitive  
12 damages.

13                   **Subclass B:**

14           1.       All questions of law common to Class B; and

15           2.       Whether, pursuant to Civil Code Section 3345, defendants' conduct  
16 justifies trebling of the punitive damages under Civil Code Section 3294.

17                   **Class C:**

18                   **Common Questions or Fact That Predominate**

19           1.       Whether the customer received a credit from GTEC for excessive charges  
20 of any kind instead of a cash refund for these overcharges.

21                   **Subclass C:**

22           1.       All questions of fact common to Class C;

23           2.       Whether the customer is a senior citizen or a disabled person within the  
24 meaning of Civil Code Section 1761 subdivisions (f) and (g);

25           3.       Whether this action is brought, in part, on behalf of senior citizens or  
26 disabled persons to redress unfair or deceptive acts or practices;

27           4.       Whether the defendants knew or should have known that their conduct  
28 was directed toward one or more senior citizens or disabled persons; and

1           5.       Whether one or more senior citizens or disabled persons are  
2 substantially more vulnerable than other members of the public to the defendants' conduct  
3 because of age, poor health or infirmity, impaired understanding, restricted mobility, or  
4 disability, and actually suffered substantial physical, emotional, or economic damage resulting  
5 from the defendants' conduct.

6                   **Common Questions of Law That Predominate**

- 7           1.       Whether the attempt to provide restitution by offering credits toward  
8 future bills is legally sufficient;
- 9           2.       Whether the failure to provide cash restitution is legally proper;
- 10          3.       Whether the actions and conduct of defendants constitute violations of the  
11 Unfair Business Practices Act (Business and Professions Code sections 17200 et seq.);
- 12          4.       Whether defendants should be enjoined from acting in violation of Unfair  
13 Business Practices Act;
- 14          5.       Whether defendants' wrongful conduct constituted conversion of  
15 plaintiffs' funds; and
- 16          6.       Whether defendants' conduct justifies an award of exemplary and punitive  
17 damages.

18                   **Subclass C:**

- 19          1.       All questions of law common to Class C; and
- 20          2.       Whether, pursuant to Civil Code Section 3345, defendants' conduct  
21 justifies trebling of the punitive damages under Civil Code Section 3294.
- 22          42.      The claims of the named plaintiffs are typical of the claims of the class.
- 23          43.      In representing the class, the named plaintiffs and their counsel will fairly and  
24 adequately represent and protect the interest of all of the class members.
- 25          44.      A class action is superior to other available methods for the fair and efficient  
26 adjudication of the claims asserted in this action. Because the damages sustained by individual  
27 class members may be relatively small, although by no means inconsequential, the expense and  
28 burden of individual litigation make it economically unfeasible for the members of the class to

1 seek redress other than through a class action. Were separate actions to be brought individually  
2 by members of the class, the resulting duplication of lawsuits would cause undue hardship and  
3 expense to the Court and the litigants. The prosecution of separate individual actions would also  
4 create a risk of inconsistent rulings. Absent a class action, defendants would likely retain the  
5 benefits of their wrongdoing and there would be a failure of justice.

6 45. Plaintiffs know of no difficulty which will be encountered in the management of  
7 this litigation which would preclude its maintenance as a class action.

8 46. Plaintiffs have incurred and, during the pendency of this action, will incur  
9 attorneys' fees and expenses. Such attorneys' fees and expenses are necessary for the  
10 prosecution of this action and will result in a benefit to the class.

11 47. Upon information and belief, GTEC was aware of the facts herein alleged at the  
12 time they failed to perform the duties alleged herein.

13 48. The names and addresses of the persons who are members of the class are  
14 available from defendants' records and are therefore known to defendants. Notice can be  
15 provided to the members of the class by writing a notice of class action in the monthly phone bill  
16 sent to GTEC customers, or by using techniques and a form of notice similar to those  
17 customarily used in class actions under California law, with the costs of any notice to be borne  
18 by the defendant.

19  
20 **FIRST CAUSE OF ACTION**

21 **(Violations of Unfair Business Practices Act -  
22 Business & Professions Code §§ 17200 et seq.)**

23 49. Plaintiffs reallege and incorporate herein by reference each and every allegation  
24 in paragraphs 1 through 48, as though fully set forth herein.

25 50. Defendants' acts, as alleged herein, violated and continue to violate this statute,  
26 which prohibits unlawful, unfair, or fraudulent business practices by virtue of the following  
27 facts:  
28

1 (a) Defendants wrongfully billed long-distance telephone calls through a  
2 long-distance carrier other than a long-distance carrier that plaintiffs had selected for their long-  
3 distance services;

4 (b) Defendants caused plaintiffs to be charged amounts for their long-distance  
5 calls which were substantially higher than plaintiffs should have been charged, and defendants  
6 reaped a benefit from this;

7 (c) Defendants wrongfully and fraudulently inflated the charges for the long-  
8 distance telephone calls greatly in excess of the charges that were actually billed by the long-  
9 distance carrier that were then to be passed through GTEC to the customer. Said amounts billed  
10 by GTEC were greater than anything GTEC was entitled to charge, if any;

11 (d) Defendants fraudulently represented that the charges being assessed for the  
12 long-distance calls were only the charges sent to GTEC by the long-distance carrier and nothing  
13 more;

14 (e) Defendants concealed their wrongful acts by listing the wrongful  
15 long-distance charges on the account summary portion of the bill as "Other basic charges;"

16 (f) When and if a customer complained sufficiently, GTEC would not  
17 provide a cash refund of the overcharges, rather, it provided a credit to plaintiffs instead of  
18 refunding plaintiffs' money;

19 (g) Defendants provide, as a business practice, credits whenever a refund is  
20 due for any reason, instead of providing a cash refund;

21 (h) The credit issued by defendants does not make plaintiffs whole.

22 (i) Additionally, substantial numbers of consumers exist who received no  
23 creditor refund of any kind and are entitled to full restitution.

24 51. Unless defendants are enjoined from continuing to engage in these unfair and  
25 deceptive business practices, plaintiffs and all others similarly situated will continue to be injured  
26 and damaged by the wrongful actions and conduct of defendants.





1           57.     Between the time of defendants' conversion of the above-described property to its  
2 own use and the filing of this action plaintiffs undertook the investigation and efforts described  
3 above in pursuit of the converted property, all to plaintiffs' further damage in an amount to be  
4 determined at trial.

5           58.     The conduct of defendants as described above constituted unfair or deceptive acts  
6 or practices.

7           59.     Defendants knew or should have known that their conduct was directed to one or  
8 more senior citizens or disabled persons because defendants know that they have such persons  
9 among their customers and because such persons have no option other than defendant GTEC for  
10 their local telephone service.

11           60.     Senior citizens or disabled persons are substantially more vulnerable to  
12 defendants' conduct than other members of the public because their age, health, and other  
13 restrictions as described in Civil Code Section 3345(b)(3) make it substantially more difficult, if  
14 not impossible, to read and understand the telephone bill; to have the ability or stamina to reach  
15 an employee of defendants to seek correction of a problem or clarification of their bill; to  
16 negotiate the multiple persons and procedures designed by defendants to deter customers from  
17 understanding their bills, making complaints, or seeking redress; and to personally visit  
18 defendants premises for these same purposes.

19           61.     Defendants' conduct was at all times oppressive, fraudulent, and malicious and  
20 justifies an award of exemplary and punitive damages. Defendants' conduct was intended to  
21 cause injury.

22           62.     Defendants, without claim of right and without legal justification, took the above-  
23 mentioned property from plaintiffs' possession and converted it to their own use. Therefore,  
24 plaintiffs have not made a demand for return of the property. Although not required to make a  
25 demand, plaintiffs do hereby demand return of all funds wrongfully paid on behalf of themselves  
26 and the potential class.

27           63.     Defendants' conduct justifies the trebling of punitive damages as authorized by  
28 Civil Code § 3345.

1 **THIRD CAUSE OF ACTION**

2 **(Fraud)**

3 64. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1  
4 through 48 above as if the same were fully set forth herein.

5 65. Defendant GTEC made the following or similar representation to each customers  
6 to whom a GTEC bill was sent that also included charges for long-distance services: “The  
7 following charges appear on your bill as a service to [a particular long-distance carrier],” thereby  
8 indicating that the charges reflected were the charges actually billed by the long-distance carrier.

9 66. The representations described above and made by defendant GTEC were at times  
10 false. The true facts were that on some occasions the charges reflected on the customer’s bill  
11 were not the charges billed by the long-distance carrier, and the charges billed to the GTEC  
12 customer were higher than the charges actually billed by the long-distance carrier.

13 67. When defendant GTEC made these representations, it knew them to be  
14 periodically false because GTEC knew that its billing procedures periodically translated the  
15 charges from long-distance carriers incorrectly and caused those charges to be reflected at  
16 increased rates.

17 68. When defendant GTEC made these false representations, it made them with the  
18 intention to induce its customers to act in reliance on the representations made and to pay the  
19 amount of the charges reflected on the customers’ bills, or with the expectation that plaintiffs  
20 would so act

21 69. Plaintiffs, at the times these representations were made and at the times they paid  
22 their bills, were ignorant of the falsity of defendant GTEC’s representations and believed them to  
23 be true. In reliance on these representations, plaintiffs were induced to and did pay the charges  
24 for long-distance calls at increased rates reflected on their bills. Had plaintiffs known the actual  
25 facts, they would not have taken such action. Plaintiffs’ reliance on GTEC’s representations was  
26 justified because GTEC is a public utility, with a local monopoly on telephone service and  
27 because the representations on plaintiffs’ bills indicated that the charges did reflect those  
28 provided by the long-distance carriers.

1           70.     As a proximate result of GTEC's fraudulent conduct, plaintiffs were damaged by  
2 paying higher amounts for their long-distance charges than was proper and by paying taxes and  
3 other charges at higher rates when those taxes and charges were determined based on the amount  
4 of long-distance charges.

5           71.     The conduct of defendants as described above constituted unfair or deceptive acts  
6 or practices.

7           72.     Defendants knew or should have known that their conduct was directed to one or  
8 more senior citizens or disabled persons because defendants know that they have such persons  
9 among their customers and because such persons have no option other than defendant GTEC for  
10 their local telephone service.

11          73.     Senior citizens or disabled persons are substantially more vulnerable to  
12 defendants' conduct than other members of the public because their age, health, and other  
13 restrictions as described in Civil Code Section 3345(b)(3) make it substantially more difficult, if  
14 not impossible, to read and understand the telephone bill; to have the ability or stamina to reach  
15 an employee of defendants to seek correction of a problem or clarification of their bill; to  
16 negotiate the multiple persons and procedures designed by defendants to deter customers from  
17 understanding their bills, making complaints, or seeking redress; and to personally visit  
18 defendants premises for these same purposes.

19          74.     The conduct of GTEC was an intentional misrepresentation and deceit of a  
20 material fact known to GTEC with the intention on the part of GTEC of depriving plaintiffs of  
21 property and otherwise causing injury, and was willful, wanton, malicious, and oppressive, so as  
22 to justify an award of exemplary and punitive damages.

23          75.     Defendants' conduct justifies the trebling of punitive damages as authorized by  
24 Civil Code § 3345.

25  
26                                   **FOURTH CAUSE OF ACTION**

27                                   **(Negligent Misrepresentation)**

1           76.     Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through  
2 48 as though fully set forth herein.

3           77.     The bills sent by defendant GTEC to each customer contained the following or a  
4 similar representation to each customer:

5 “Billing for AT&T (or other long distance carrier)

6 The following charges appear on your GTE bill as a service to AT&T (or other long distance  
7 carrier). Direct your billing questions to the phone number in the yellow border of this pager.

8 AT&T (or other long distance carrier) BASIC SERVICE

9 Direct Dialed Calls

10     Date Dialed Calls

11     Date	Time	Place called	Number called	Period	Min.	
12     (date)	(time)	(place)	(phone number)	(i.e. Eve)	(minutes)	(charge)
						Total \$ (charge)”

14 (See copy of page 15 of 16 of the August 10, 1999 GTE bill to GTEC customer Linda Roark for  
15 telephone number 949-499-9974 attached hereto as Exhibit A.)

16           78.     The bills sent by defendant GTEC to each customer contained the following or a  
17 similar representation to each customer: “Total amount due \$ (amount)” (See copy of page 1 of  
18 16 of the August 10, 1999 GTE bill to GTEC customer Linda Roark for telephone number 949-  
19 499-9974 attached hereto as Exhibit B.)

20           79.     The representations described above and made by defendant GTEC were at times  
21 false. The true facts were that on certain occasions the charges reflected on the customer’s bill,  
22 including the charge for a particular call, the total for the AT&T charges and the total amount  
23 due, were not the charges billed by the long-distance carrier or the correct total charge due to the  
24 customer, but were in fact higher charges than the charges actually billed by the long-distance  
25 carrier.

26           80.     Plaintiffs are informed and believe that long distance carriers, such as AT&T, did  
27 not authorize GTEC to forward inflated billings to GTEC customers and therefore the inflated  
28

1 billings were not sent as a service to long distance carriers, such as AT&T, as represented by the  
2 GTEC billing statement.

3 81. The true and correct charges that defendant GTEC should have represented to its  
4 customers were those actually charged by AT&T and provided to defendant GTEC. (See copy  
5 of AT&T Customer Account - Management Bill Print Request Report for telephone number 949-  
6 499-9974 attached hereto as Exhibit C.)

7 82. Plaintiffs are informed and believe and thereon allege that the statement “the  
8 following charges appear on your GTE bill as a service to AT&T (or other long distance carrier)”  
9 made by defendant GTEC to plaintiffs was at all times false. Prior to the time this statement was  
10 made, defendant GTEC had purchased the receivables from the long distance carrier, such as  
11 AT&T, and was collecting payment for the long distance calls directly from the GTEC customer.  
12 As a result, defendant GTEC was not including the charges for the long distance calls on the  
13 GTE bill as a service to the long distance carrier.

14 83. As a result of the facts alleged herein, GTEC has made the following  
15 representations which were not true: (1) that the total charges (i.e. total amount due) reflected on  
16 the monthly customer billing was accurate when they were not; (2) that the charges billed for  
17 individual long distance calls billed for long distance carriers, such as AT&T, were accurately  
18 billed when in fact they were not; (3) that the total amount billed for long distance charges billed  
19 through long distance carriers, such as AT&T, were accurate in the GTEC customer billings  
20 when they were not; (4) the charges contained in the GTEC customer billings for calls billed  
21 through long distance carriers, such as AT&T, were the actual charges billed by the long distance  
22 carriers and those exact charges were being billed to the GTEC customer as an authorized  
23 service to the long distance carrier when in fact plaintiffs are informed and believe and thereon  
24 allege that the long distance carrier did not authorize the inflated charges to be billed to the  
25 GTEC customers; and (5) that the long distance charges were being included in the bill as a  
26 service to the long distance carrier.

27 84. Plaintiffs have provided in Exhibits A, B and C attached hereto examples of the  
28 false representations defendant GTEC made to its customers. Plaintiffs have obtained

1 documentary evidence of false representations in additional GTEC billings. Plaintiffs are  
2 informed and believe and thereon allege that similar false representations were made to  
3 numerous other GTEC customers in the same manner in which they were made to the GTEC  
4 customer whose bills are attached hereto.

5 85. When defendant GTEC made these representations, it had no reasonable grounds  
6 for believing them to be true because GTEC knew that its billing procedures periodically  
7 translated the charges from long-distance carriers incorrectly and caused those charges to be  
8 reflected at increased rates, as can be seen in Exhibits A, B and C attached hereto.

9 86. When defendant GTEC made these false representations, it made them with the  
10 intention to induce its customers to act in reliance on the representations made and to pay the  
11 amount of the charges reflected on the customers' bills, or with the expectation that they would  
12 so act.

13 87. Plaintiffs, at the times these representations were made and at the times they paid  
14 their bills, were ignorant of the falsity of defendant GTEC's representations and believed them to  
15 be true. In reliance on these representations, plaintiffs were induced to and did pay the charges  
16 for long-distance calls at increased rates reflected on their bills. Had plaintiffs known the actual  
17 facts, they would not have taken such action. Plaintiffs' reliance on GTEC's representations as  
18 to the charge for particular long distance calls and the total amount due was justified because  
19 GTEC is a public utility, with a local monopoly on the telephone service and because the  
20 representations on plaintiffs' bills indicated that the charges did reflect those provided by the  
21 long-distance carriers.

22 88. As a proximate result of GTEC's misrepresentations, plaintiffs were damaged by  
23 paying higher amounts for their long-distance charges than was proper and by paying taxes and  
24 other charges at higher rates when those taxes and charges were determined based on the amount  
25 of increased long-distance charges.

26 89. The conduct of defendants as described above constituted unfair or deceptive acts  
27 or practices.  
28

1 90. Defendants knew or should have known that their conduct was directed to one or  
2 more senior citizens or disabled persons because defendants know that they have such persons  
3 among their customers and because such persons have no option other than defendant GTEC for  
4 their local telephone service.

5 91. Senior citizens or disabled persons are substantially more vulnerable to  
6 defendants' conduct than other members of the public because their age, health, and other  
7 restrictions as described in Civil Code Section 3345(b)(3) make it substantially more difficult, if  
8 not impossible, to read and understand the telephone bill; to have the ability or stamina to reach  
9 an employee of defendants to seek correction of a problem or clarification of their bill; to  
10 negotiate the multiple persons and procedures designed by defendants to deter customers from  
11 understanding their bills, making complaints, or seeking redress; and to personally visit  
12 defendants premises for these same purposes.

13 92. Defendants' conduct was despicable conduct carried on with willful and  
14 conscious disregard for the rights of the customers to pay only the correct charges for their long-  
15 distance calls. Defendants' conduct subjected customers to a cruel and unjust hardship by  
16 causing them to pay additional charges for their long-distance calls.

17 \\\

18 \\\

19 \\\

20 **FIFTH CAUSE OF ACTION**

21 **(Violations of Unfair Business Practices Act -**  
22 **Business & Professions Code §§ 17200 et seq.)**

23 93. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through  
24 39 as though fully set forth herein.

25 94. In addition to bringing this action as a class action, plaintiffs bring it as private  
26 attorneys general on behalf of the general public pursuant to Business and Professions Code  
27 sections 17204 et seq. to enjoin defendants from engaging in the practices alleged in this  
28 complaint and to require defendants to restore to those persons affected all monies wrongfully

1 obtained from them by defendants' unfair business practices to the extent that such persons  
2 timely appear to collect restitution.

3 95. A private attorney general action is necessary and appropriate because defendants  
4 have engaged in the practices described herein as a general business practice.

5 96. Plaintiffs allege this cause of action as private attorneys general on behalf of the  
6 general public pursuant to California Business and Professions Code sections 17200 et seq. of  
7 the Unfair Business Practices Act.

8 97. Defendants' acts, as alleged herein, violated and continue to violate this statute,  
9 which prohibits unlawful, unfair, or fraudulent business practices by virtue of the following  
10 facts:

11 (a) Defendants wrongfully billed long-distance telephone calls through a  
12 long-distance carrier other than a long-distance carrier that plaintiffs had selected for their long-  
13 distance services;

14 (b) Defendants caused plaintiffs to be charged amounts for their long-distance  
15 calls which were substantially higher than plaintiffs should have been charged, and defendants  
16 reaped the benefit from this;

17 (c) Defendants wrongfully and fraudulently inflated the charges for the long-  
18 distance telephone calls greatly in excess of the charges that were actually billed through GTEC  
19 and in amounts greater than anything GTEC was entitled to charge, if any;

20 (d) Defendants fraudulently represented that the charges being assessed for  
21 the long-distance calls were only the charges sent to GTEC by the long-distance carrier;

22 (e) Defendants concealed their wrongful acts by listing the wrongful  
23 long-distance charges on the account summary portion of the bill as "Other basic charges;"

24 (f) Defendants provided a credit to plaintiffs instead of refunding plaintiffs'  
25 money;

26 (g) Defendants provide, as a business practice, credits whenever a refund is  
27 due for any reason, instead of providing a cash refund;

28 (h) The credit issued by defendants does not make plaintiffs whole.



1 (i) Additionally, substantial numbers of consumers exist who received no  
2 credit or refund of any kind and are entitled to full restitution.

3 104. Unless defendants are enjoined from continuing to engage in these unfair and  
4 deceptive business practices, plaintiffs and the members of the general public will continue to be  
5 injured and damaged by the wrongful actions and conduct of defendants.

6 105. So as not to be unjustly enriched by their own wrongful actions and conduct,  
7 defendants should be required to restore to those persons affected all monies wrongfully obtained  
8 from them by defendants' unfair business practices to the extent that such persons timely appear  
9 to collect restitution.

10  
11 **PRAYER**

12 WHEREFORE, plaintiffs pray for judgment as follows:

13 **ON THE FIRST CAUSE OF ACTION:**

14 1. That the Court preliminarily and permanently enjoin defendants from charging  
15 inflated fees for long-distance calls, from charging fees in excess of those charged by plaintiffs'  
16 chosen long-distance carrier, and from charging long-distance calls to carriers other than carriers  
17 selected by customers;

18 2. For disgorgement and restitution to plaintiffs of all monies wrongfully obtained;

19 3. For interest on the monies wrongfully obtained from the date of the payment  
20 through the present;

21 **ON THE SECOND CAUSE OF ACTION:**

22 1. For the value of the property converted;

23 2. For interest at the legal rate on the foregoing sum pursuant to Section 3336 of the  
24 Civil Code from the date of the conversion through the present;

25 3. For damages for time and money properly expended by plaintiffs in pursuit of the  
26 converted property;

27 4. For punitive damages in an amount appropriate to punish defendants and to deter  
28 others from engaging in similar conduct;

1 5. For treble punitive damages pursuant to Civil Code § 3345;

2 **ON THE THIRD CAUSE OF ACTION:**

3 1. For general damages in an amount to be determined at trial;

4 2. For special damages in an amount to be determined at trial;

5 3. For punitive damages in an amount appropriate to punish defendants and to deter  
6 others from engaging in similar conduct;

7 4. For treble damages pursuant to Civil Code § 3345;

8 **ON THE FIFTH CAUSE OF ACTION:**

9 1. That the Court preliminarily and permanently enjoin defendants from charging  
10 inflated fees for long-distance calls, from charging fees in excess of those charged by plaintiffs'  
11 chosen long-distance carrier, and from charging long-distance calls to carriers other than carriers  
12 selected by customers;

13 2. For restitution to plaintiffs of all monies wrongfully obtained;

14 3. For interest on the monies wrongfully obtained from the date of the payment  
15 through the present;

16 **ON ALL CAUSES OF ACTION:**

17 1. For attorneys' fees;

18 2. For expenses and costs of suit; and

19 3. For such other and further relief as the Court may deem proper.  
20

21 DATED: May 4, 2001

FOLEY & BEZEK, LLP

22  
23  
24 By \_\_\_\_\_

25 Jacquelyn K. Phlegar

26 Attorneys for Plaintiffs  
27  
28

1 **PROOF OF SERVICE BY FACSIMILE AND MAIL**

2  
3 STATE OF CALIFORNIA )  
4 COUNTY OF SANTA BARBARA )

5 I, the undersigned, declare that I am, and was at the time of service of the papers herein  
6 referred to, over the age of 18 years and not a party to the within action or proceeding.

7  
8 My business address is 15 West Carrillo Street, Santa Barbara, California 93101, which is  
located in the county where the facsimile machine transmission described below took place.

9  
10 On May 21, 2001, I caused a facsimile machine transmission from the following  
facsimile machine telephone number: (805) 962-0722 of the following document(s):

11 **THIRD AMENDED COMPLAINT FOR VIOLATIONS OF UNFAIR BUSINESS**  
12 **PRACTICES ACT, CONVERSION, FRAUD, AND NEGLIGENT**  
13 **MISREPRESENTATION**

14 to:

15 Joseph Lee, Esq.  
16 Munger, Tolles & Olson  
17 355 S. Grand Avenue  
Suite 3500  
Los Angeles, CA 90071  
(213) 683-9157  
FAX (213) 687-3702

18 \_\_\_\_\_ Additionally, I am familiar with the practice at my place of business for collection and  
19 processing of correspondence for mailing with the United States Postal Service. The above-  
mentioned documents will be deposited with the United States Postal Service on the same day in  
20 the ordinary course of business, addressed as shown above.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed at  
Santa Barbara, California, on May 21, 2001.

22 \_\_\_\_\_  
23 Coleen De Leon