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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**  
14

15 PAUL LOZANO, on behalf of  
16 himself and all others similarly  
situated,

17  
18 Plaintiff,

19 vs.

20 AT&T WIRELESS SERVICES, INC.,  
21 a Delaware corporation; AT&T  
WIRELESS SERVICES OF  
22 CALIFORNIA, LLC, a Delaware  
limited liability corporation; and  
23 SANTA BARBARA CELLULAR  
SYSTEMS, LTD., a Georgia limited  
24 partnership,

25 Defendants.  
26  
27  
28

) Case No. CV 02-00090-WJR (AJWx)

) Honorable William J. Rea

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT**  
) **FOR:**

) **(1) VIOLATION OF THE FEDERAL**  
) **COMMUNICATIONS ACT;**  
) **(2) UNJUST ENRICHMENT;**  
) **(3) DECLARATORY RELIEF UNDER**  
) **THE DECLARATORY JUDGMENT**  
) **ACT;**  
) **(4) BREACH OF CONTRACT;**  
) **(5) BREACH OF COVENANT OF**  
) **GOOD FAITH AND FAIR DEALING;**  
) **(6) VIOLATION OF THE**  
) **CONSUMERS LEGAL REMEDIES**  
) **ACT; and**  
) **(7) VIOLATION OF CALIFORNIA**  
) **BUSINESS AND PROFESSIONS**  
) **CODE §17200**

) **DEMAND FOR JURY TRIAL**

1 All allegations made in this First Amended Complaint are based upon informa-  
2 tion and belief except those allegations which pertain to Plaintiff, which are based on  
3 personal knowledge. Plaintiff's information and belief are based upon, *inter alia*,  
4 Plaintiff's own investigation, the investigation conducted by Plaintiff's attorneys, and  
5 the information obtained by Plaintiff's attorneys by means of the discovery conducted  
6 to date in this action. Each allegation in this First Amended Complaint either has  
7 evidentiary support or, alternatively, pursuant to Rules 8(e)(2) and 11(b)(3) of the  
8 *Federal Rules of Civil Procedure*, is likely to have evidentiary support after a  
9 reasonable opportunity for further investigation or discovery.

#### 10 NATURE OF THE ACTION

11 1. This is a consumer class action for, *inter alia*, violations of federal law,  
12 California state law and common law arising out of the unfair, deceptive and  
13 misleading practices engaged in by defendants in: (a) billing consumers for cellular  
14 telephone calls during a billing period other than the billing period in which the calls  
15 were made (commonly known as "out-of-cycle billing") and, in so doing, assessing  
16 charges for cellular telephone calls that would not have been assessed if the cellular  
17 telephone calls had been billed during the billing period in which the calls were  
18 made; and (b) failing to fully and adequately disclose to consumers the likelihood that  
19 out-of-cycle billing will occur, the impact which out-of-cycle billing can expect to  
20 have on the their monthly bills, and the absence of any means of avoiding excessive  
21 per minute charges due to out-of-cycle billing if they agree to contract with  
22 defendants for the provision of cellular telephone service. Plaintiff brings this action  
23 in his own right, on behalf of a nationwide class of all others similarly situated, and  
24 on behalf of a California state subclass.

#### 25 JURISDICTION AND VENUE

26 2. This Court has jurisdiction over this action by virtue of its removal to  
27 this Court by defendant AT&T Wireless Services of California, LLC on January 7,  
28 2002 pursuant to 28 U.S.C. §1441(b). As the basis for removal, AT&T Wireless

1 Services of California, LLC asserted that this Court has original jurisdiction over this  
2 action pursuant to 28 U.S.C. §1331 and that this action properly was removed to this  
3 Court pursuant to 28 U.S.C. §1446(b).

4 3. Venue is proper in this judicial district pursuant to 28 U.S.C.  
5 §1391(b)(2) and 1446(a) because one or more of the defendants transacts substantial  
6 business within, and is subject to personal jurisdiction in, this judicial district,  
7 because a substantial part of the events giving rise to the claims asserted herein took  
8 place in this judicial district, and because the Central District of California is the  
9 judicial district within which the original state court action was filed.

10 **PARTIES**

11 4. Plaintiff Paul Lozano ("Plaintiff") is a resident of Santa Barbara,  
12 California.

13 5. Defendant AT&T Wireless Services, Inc., erroneously named in the  
14 original complaint in this action as AT&T Wireless, is, and at all times relevant  
15 hereto was, a Delaware corporation doing business in the State of California with its  
16 principal place of business located in Basking Ridge, New Jersey.

17 6. Defendant AT&T Wireless Services of California, LLC is, and at all  
18 times relevant hereto was, a Delaware limited liability corporation doing business in  
19 the State of California with its principal place of business located in Redmond,  
20 Washington.

21 7. Defendant Santa Barbara Cellular Systems, Ltd. is, and at all times  
22 relevant hereto was, a Georgia limited partnership, more than 90% of which is owned  
23 by AT&T Wireless Services, Inc., doing business in the County of Santa Barbara,  
24 California with its principal place of business located in Redmond, Washington.

25 8. As used herein, the term "Defendants" shall refer to AT&T Wireless  
26 Services, Inc., AT&T Wireless Services of California, LLC and Santa Barbara  
27 Cellular Systems, Ltd., collectively.

28 ///



1 a judgment entered against either or both of them in this action.

2 13. At all material times herein, each of the Defendants was the agent,  
3 servant and/or employee of the other Defendants, acted within the purpose, scope and  
4 course of said agency, service and/or employment and with the express and/or  
5 implied knowledge, permission and consent of the other Defendants, and ratified and  
6 approved the acts of the other Defendants.

7 **FACTUAL BACKGROUND**

8 14. Plaintiff contracted to receive his cellular telephone service from AT&T  
9 Wireless. Plaintiff receives a monthly bill from AT&T Wireless detailing his cellular  
10 telephone charges. At all times relevant hereto, Plaintiff was enrolled under a cellular  
11 telephone service plan which provided him with a minimum of 400 free air time  
12 minutes and 1,000 night and weekend minutes per month. Plaintiff was also to  
13 receive an additional 200 free anytime minutes based on a promotion at the time.  
14 Accordingly, Plaintiff would not be charged for cellular telephone calls (air time  
15 minutes) made on his cellular telephone unless the total number of air time minutes  
16 used in a month exceeded 600 anytime minutes or 1000 night and weekend minutes.  
17 So long as his air time minutes did not exceed these levels, Plaintiff would only be  
18 charged a flat monthly service charge.

19 15. In or about September of 2001, after receipt of his September 18, 2001  
20 bill, Plaintiff discovered that his cellular telephone bills included charges for cellular  
21 telephone calls placed during the prior billing period. For example, the bill dated  
22 September 18, 2001 indicated on the first page that the billing cycle began on 8/17  
23 and ended on 9/16, but the bill included cellular telephone calls made during the  
24 billing period of August 12, 2001 through September 16, 2001. Plaintiff determined  
25 that when the monthly bill included cellular telephone calls made during the prior  
26 billing period, as with the September 18, 2001 bill, it caused his air time minutes to  
27 exceed the free air time minutes to which he was entitled, thereby resulting in  
28 additional charges on his bill.

1 16. Plaintiff contacted AT&T Wireless to inquire about these issues.  
2 Plaintiff was informed by AT&T Wireless that cellular telephone calls are billed to  
3 its customers based on the date on which the information regarding the call is  
4 received by AT&T Wireless – not based on the date on which the call is made.  
5 AT&T Wireless conceded that this billing process may affect the calculation of  
6 Plaintiff's monthly air time minutes and result in additional charges to his account.

7 **CLASS ACTION ALLEGATIONS**

8 17. Plaintiff brings this action, on behalf of himself and all others similarly  
9 situated, as a class action pursuant to Rule 23 of the *Federal Rules of Civil*  
10 *Procedure*. The class which Plaintiff seeks to represent is defined as: all residents of  
11 the United States of America who, at any time between November 21, 1999 and the  
12 date of the filing of the First Amended Complaint in this action, have been billed for  
13 air time minutes by AT&T Wireless for cellular telephone calls during a billing  
14 period other than the billing period in which the calls were made and, as a result, have  
15 been assessed charges for cellular telephone calls that would not have been assessed  
16 if the cellular telephone calls had been billed during the billing period in which the  
17 calls were made ("the Class").

18 18. Plaintiff also has identified and defines the following subclass which  
19 Plaintiff seeks to represent: all residents of the State of California who, at any time  
20 between November 21, 1997 and the date of the filing of the First Amended  
21 Complaint in this action, have been billed for air time minutes by AT&T Wireless for  
22 cellular telephone calls during a billing period other than the billing period in which  
23 the calls were made and, as a result, have been assessed charges for cellular telephone  
24 calls that would not have been assessed if the cellular telephone calls had been billed  
25 during the billing period in which the calls were made ("the California Subclass").

26 19. This action is brought and properly may be maintained as a class action  
27 pursuant to the provisions of F.R.Civ.P. 23(a)(1)-(4) and 23(b)(1), (b)(2) or (b)(3) and  
28 satisfies the requirements thereof. As used herein, the term "class members" shall

1 mean and refer to the members of the Class and/or the California Subclass.

2       20. While the exact number of members of the Class and the California  
3 Subclass is unknown to Plaintiff at this time and can only be determined by  
4 appropriate discovery, membership in the Class and/or the California Subclass is  
5 ascertainable based upon the billing records maintained by Defendants. At this time,  
6 Plaintiff is informed and believes that the Class and the California Subclass each  
7 likely include thousands of members. Therefore, both the Class and the California  
8 Subclass are sufficiently numerous that joinder of all members of the Class and/or the  
9 California Subclass in a single action is impracticable under F.R.Civ.P. 23(a)(1), and  
10 the resolution of their claims through the procedure of a class action will be of benefit  
11 to the parties and the Court.

12       21. Common questions of law and fact exist as to the members of the Class  
13 and the members of the California Subclass, as required by F.R.Civ.P. 23(a)(2), and  
14 predominate over any questions which affect only individual members of the Class  
15 or the California Subclass within the meaning of F.R.Civ.P. 23(b)(3).

16       22. The common questions of fact include, but are not limited to, the  
17 following:

18           a. whether Defendants have engaged in a practice of out-of-cycle  
19 billing;

20           b. whether Defendants' practice of out-of-cycle billing has resulted  
21 in class members being assessed charges for cellular telephone calls which they  
22 would not have been assessed if the cellular telephone calls had been billed during  
23 the billing period in which the calls were made;

24           c. whether Defendants fully and adequately disclosed to consumers  
25 the likelihood that out-of-cycle billing will occur, the impact which out-of-cycle  
26 billing can expect to have on the their monthly bills, and the absence of any means  
27 of avoiding out-of-cycle billing if they agree to contract with AT&T Wireless for the  
28 provision of cellular telephone service; and

1           d.     whether the class members have sustained damages as a result of  
2 Defendants' practice of out-of-cycle billing and, if so, the proper measure and  
3 appropriate formula to be applied in determining such damages.

4           23.    The questions of law which are common to the members of the Class  
5 include, but are not limited to, the following:

6           a.     whether Defendants' practice of out-of-cycle billing and/or  
7 Defendants' failure to make full and adequate disclosures to their customers  
8 concerning their practice of out-of-cycle billing violates §210(b) of the Federal  
9 Communications Act;

10          b.     whether Defendants, by engaging in the practice of out-of-cycle  
11 billing and/or failing to make full and adequate disclosures to their customers  
12 concerning their practice of out-of-cycle billing, have been unjustly enriched at the  
13 expense of the members of the Class; and

14          c.     whether the class members are entitled to the declaratory relief  
15 sought herein.

16           24.    The questions of law which are common to the members of the  
17 California Subclass include, but are not limited to, the following:

18          a.     whether Defendants' practice of out-of-cycle billing and/or  
19 Defendants' failure to make full and adequate disclosures to their customers  
20 concerning their practice of out-of-cycle billing constitutes a breach of the terms and  
21 conditions of the class members' contractual agreements with Defendants;

22          b.     whether Defendants' practice of out-of-cycle billing and/or  
23 Defendants' failure to make full and adequate disclosures to their customers  
24 concerning their practice of out-of-cycle billing constitutes a breach of the covenant  
25 of good faith and fair dealing implied in the class members' contractual agreements  
26 with Defendants;

27          c.     whether Defendants' practice of out-of-cycle billing and/or  
28 Defendants' failure to make full and adequate disclosures to their customers



1 concerning their practice of out-of-cycle billing violates one or more provisions of  
2 the Consumers Legal Remedies Act; and

3 d. whether Defendants' practice of out-of-cycle billing and/or  
4 Defendants' failure to make full and adequate disclosures to their customers  
5 concerning their practice of out-of-cycle billing constitutes an unfair, unlawful and/or  
6 fraudulent business practice under *California Business and Professions Code* section  
7 17200, *et seq.*

8 25. Plaintiff's claims are typical of the claims of the other members of the  
9 Class and the California Subclass which he seeks to represent under F.R.Civ.P.  
10 23(a)(3) because Plaintiff, each member of the Class and each member of the  
11 California Subclass have been subjected to the same improper practice of out-of-cycle  
12 billing and have been damaged in the same manner thereby.

13 26. Plaintiff will fairly and adequately represent and protect the interests of  
14 the Class and the California Subclass as required by F.R.Civ.P. 23(a)(4). Plaintiff is  
15 an adequate representative of the Class and the California Subclass, as he has no  
16 interests which are adverse to the interests of the members of the Class or the  
17 California Subclass. Plaintiff is committed to the vigorous prosecution of this action  
18 and, to that end, Plaintiff has retained counsel who are competent and experienced in  
19 handling class action litigation on behalf of consumers.

20 27. A class action is superior to other available methods for the fair and  
21 efficient adjudication of the claims asserted in this action under F.R.Civ.P. 23(b)(3)  
22 since:

23 a. the expense and burden of individual litigation make it  
24 economically unfeasible for class members to seek redress other than through the  
25 procedure of a class action;

26 b. if separate actions were brought by individual class members, the  
27 resulting duplicity of lawsuits would cause undue hardship and expense to the Court  
28 and the litigants by necessitating multiple trials of similar factual issues; and

1           c.       absent a class action, Defendants likely would retain the benefits  
2 of their wrongdoing, and there would be a failure of justice.

3           28.     In the alternative, this action is certifiable under the provisions of  
4 F.R.Civ.P. 23(b)(1) and/or 23(b)(2) because:

5           a.       the prosecution of separate actions by individual class members  
6 would create a risk of inconsistent or varying adjudications with respect to individual  
7 class members which would establish incompatible standards of conduct for  
8 Defendants;

9           b.       the prosecution of separate actions by individual class members  
10 would create a risk of adjudications with respect to them which would, as a practical  
11 matter, be dispositive of the interests of the other class members not parties to the  
12 adjudications, or substantially impair or impede their ability to protect their interests;  
13 and

14           c.       Defendants have acted or refused to act on grounds generally  
15 applicable to the Class and/or the California Subclass, thereby making appropriate  
16 final injunctive relief or corresponding declaratory relief with respect to the Class  
17 and/or the California Subclass as a whole and necessitating that any such relief be  
18 extended to the class members on a mandatory, class wide basis.

19           29.     Plaintiff is aware of no difficulty which will be encountered in the  
20 management of this litigation which should preclude its maintenance as a class  
21 action.

22           30.     The names and addresses of the members of the Class and the California  
23 Subclass are available from Defendants' records. Notice can be provided to the  
24 members of the Class and the California Subclass via first class mail or otherwise  
25 using techniques and a form of notice similar to those customarily used in consumer  
26 class actions arising under California state law and federal law. Specifically, notice  
27 can be provided to the members of the Class and the California Subclass who are  
28 current customers of Defendants by including a notice in the monthly cellular

1 telephone bill sent to Defendants' customers, with the minimal cost of such notice to  
2 be borne by Defendants.

3 **FIRST CLAIM FOR RELIEF**

4 **(Violation Of The Federal Communications Act,**  
5 **47 U.S.C. § 201)**

6 31. Plaintiff repeats and incorporates herein by reference each and every  
7 allegation in paragraphs 1 through 30, inclusive, as though fully set forth herein.

8 32. Plaintiff brings this claim for relief on behalf of himself and the  
9 members of the Class.

10 33. Defendants are common carriers engaged in interstate communication  
11 by wire for the purpose of furnishing communication services within the meaning of  
12 §201(a) of the Federal Communications Act ("FCA").

13 34. Defendants' practice of out-of-cycle billing, while making inadequate  
14 and incomplete disclosures to consumers concerning the likelihood, extent and  
15 unavailability of excessive per minute charges due to out-of-cycle billing, constitutes  
16 an unjust and unreasonable charge and practice in connection with communication  
17 services and, therefore, violates §201(b) of the FCA.

18 35. As a direct and proximate result of Defendants' violation of §201(b) of  
19 the FCA, Plaintiff and each member of the Class have been damaged in an amount  
20 according to proof at trial.

21 **SECOND CLAIM FOR RELIEF**

22 **(Unjust Enrichment)**

23 36. Plaintiff repeats and incorporates herein by reference each and every  
24 allegation in paragraphs 1 through 30, inclusive, as though fully set forth herein.

25 37. Plaintiff brings this claim for relief on behalf of himself and the  
26 members of the Class.

27 38. By their actions and conduct as alleged herein, Defendants have been  
28 and continue to be unjustly enriched at the expense of Plaintiff and the other members

1 of the Class through Defendants' imposition and collection of excessive per minute  
2 charges through their practice of out-of-cycle billing.

3 39. So as not to be unjustly enriched by their own wrongful actions and  
4 conduct, Defendants should be required to disgorge and restore to Plaintiff and the  
5 other members of the Class all monies wrongfully obtained and retained by  
6 Defendants through their practice of out-of-cycle billing.

7 **THIRD CLAIM FOR RELIEF**

8 **(Declaratory Relief Under The Declaratory Judgment Act,**

9 **28 U.S.C. § 2201, et seq.)**

10 40. Plaintiff repeats and incorporates herein by reference each and every  
11 allegation in paragraphs 1 through 30, inclusive, as though fully set forth herein.

12 41. Plaintiff brings this claim for relief on behalf of himself and the  
13 members of the Class.

14 42. An actual controversy has arisen and now exists between Plaintiff and  
15 the members of the Class, on one hand, and Defendants, on the other hand, concern-  
16 ing their respective rights and duties in that Plaintiff and the members of the Class  
17 contend that Defendants are engaging in and continue to engage in an improper  
18 billing practice of out-of-cycle billing while making inadequate and incomplete  
19 disclosures to consumers concerning the likelihood, extent and unavoidability of  
20 excessive per minute charges due to out-of-cycle billing, while Defendants contend  
21 that their actions and conduct are lawful and proper.

22 43. A judicial declaration is necessary and appropriate at this time, under the  
23 circumstances presented, in order that Plaintiff and the members of the Class may  
24 ascertain their rights and duties with respect to Defendants' practice of out-of-cycle  
25 billing.

26 ///

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28 ///





1 engaging in the practice of out-of-cycle billing while making inadequate and  
2 incomplete disclosures to consumers concerning the likelihood, extent and  
3 unavailability of excessive per minute charges due to out-of-cycle billing.

4 57. As a direct and proximate result of Defendants' breach of the covenant  
5 of good faith and fair dealing, Plaintiff and each member of the California Subclass  
6 have been damaged in an amount according to proof at trial.

7 **SIXTH CLAIM FOR RELIEF**

8 **(Violation Of The Consumers Legal Remedies Act,**  
9 **California Civil Code § 1750, et seq.)**

10 58. Plaintiff repeats and incorporates herein by reference each and every  
11 allegation in paragraphs 1 through 30, inclusive, as though fully set forth herein.

12 59. Plaintiff brings this claim for relief on behalf of the members of the  
13 California Subclass seeking injunctive relief pursuant to the Consumers Legal  
14 Remedies Act, *California Civil Code* §1750 et seq. ("the CLRA").

15 60. The CLRA applies to Defendants' actions and conduct described herein  
16 because it extends to transactions which are intended to result, or which have  
17 resulted, in the sale or lease of goods or services to consumers.

18 61. Plaintiff and each member of the California Subclass is a "consumer"  
19 within the meaning of *California Civil Code* §1761(d).

20 62. The cellular telephone service which Plaintiff and each member of the  
21 California Subclass obtained through Defendants comes within the definition of  
22 "services" set forth in *California Civil Code* §1761(b).

23 63. By engaging in the practice of out-of-cycle billing while making  
24 inadequate and incomplete disclosures to consumers concerning the likelihood, extent  
25 and unavailability of excessive per minute charges due to out-of-cycle billing,  
26 Defendants have violated, and continue to violate, the CLRA in at least the following  
27 respects:

28 ///

1 a. in violation of section 1770(a)(4) of the CLRA, Defendants have  
2 used deceptive representations in connection with services;

3 b. in violation of section 1770(a)(5) of the CLRA, Defendants have  
4 represented that services have characteristics or benefits which they do not have; and

5 c. in violation of section 1770(a)(14) of the CLRA, Defendants have  
6 represented that a transaction confers or involves rights which it does not have or  
7 involve.

8 64. Unless Defendants are enjoined from continuing to engage in violations  
9 of the CLRA, Plaintiff and the other members of the California Subclass will continue  
10 to be injured by Defendants' actions and conduct.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(Violation Of The Unfair Competition Law – California Business And  
13 Professions Code § 17200, et seq.)**

14 65. Plaintiff repeats and incorporates herein by reference each and every  
15 allegation in paragraphs 1 through 30, inclusive, as though fully set forth herein.

16 66. Plaintiff brings this claim for relief on behalf of himself and the  
17 members of the California Subclass.

18 67. Defendants have engaged in and continue to engage in an unfair,  
19 unlawful and deceptive business practice of out-of-cycle billing while making  
20 inadequate and incomplete disclosures to consumers concerning the likelihood, extent  
21 and unavailability of excessive per minute charges due to out-of-cycle billing.

22 68. By engaging in the above-described practice, Defendants have  
23 committed one or more acts of unfair competition within the meaning of *California*  
24 *Business and Professions Code* § 17200.

25 69. Defendants' practice has deceived and is likely to deceive members of  
26 the consuming public.

27 70. The practice of Defendants is unlawful because it violates, *inter alia*,  
28 §201(b) of the FCA and §1770 of the CLRA.





1                                   **On The Fourth And Fifth Claims For Relief**

2           For compensatory damages in an amount according to proof at trial; and  
3           For prejudgment interest commencing on the date of nonpayment of the  
4 amounts due.

5                                   **On The Sixth Claim For Relief**

6           For an order enjoining Defendants from engaging in the practice of out-of-  
7 cycle billing, while making inadequate and incomplete disclosures to consumers  
8 concerning the likelihood, extent and unavailability of excessive per minute charges  
9 due to out-of-cycle billing.

10                                  **On The Seventh Claim For Relief**

11           For an order enjoining Defendants from engaging in the practice of out-of-  
12 cycle billing, while making inadequate and incomplete disclosures to consumers  
13 concerning the likelihood, extent and unavailability of excessive per minute charges  
14 due to out-of-cycle billing;

15           For disgorgement and restitution to Plaintiff and the members of the California  
16 Subclass of all monies wrongfully obtained and retained by Defendants; and

17           For interest on the monies wrongfully obtained from the date of payment  
18 through the date of entry of judgment in this action.

19                                  **On All Claims For Relief**

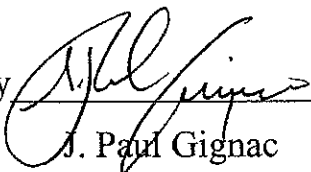
20           For all attorneys' fees, expenses and recoverable costs reasonably incurred in  
21 connection with the commencement and prosecution of this action; and

22           For such other and further relief as the Court deems just and proper.

23 Dated: April 15, 2004

ARIAS, OZZELLO & GIGNAC, LLP

FOLEY & BEZEK, LLP

25  
26 By  \_\_\_\_\_  
J. Paul Gignac

Attorneys for Plaintiff



1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

3 I am employed in the State of California, County of Santa Barbara. I am over the age of  
4 eighteen and am not a party to the within action; my business address is 1231 State Street, Suite  
5 206, Santa Barbara, CA 93101. I declare that I am employed in the office of a member of the bar  
6 of this court at whose direction the service was made.

7 On April 15, 2004, I served the foregoing document described as: **FIRST AMENDED**  
8 **COMPLAINT FOR: (1) VIOLATION OF THE FEDERAL COMMUNICATIONS ACT;**  
9 **(2) UNJUST ENRICHMENT; (3) DECLARATORY RELIEF UNDER THE**  
10 **DECLARATORY JUDGMENT ACT; (4) BREACH OF CONTRACT; (5) BREACH OF**  
11 **COVENT OF GOOD FAITH AND FAIR DEALING; (6) VIOLATION OF THE**  
12 **CONSUMERS LEGAL REMEDIES ACT; and (7) VIOLATION OF CALIFORNIA**  
13 **BUSINESS AND PROFESSIONS CODE §17200** on the interested parties in this action by  
14 transmitting [ ] the original [✓] a true copy thereof as follows:

15 [ ] (BY FAX) I hereby certify that this document was served by facsimile delivery on the  
16 parties listed herein at their most recent fax number of record in this action on \_\_\_\_\_  
17 from Santa Barbara, California.

18 [ ] (BY OVERNIGHT DELIVERY) I am "readily familiar" with this firm's practice of  
19 collection and processing correspondence for express mailing. Under that practice,  
20 overnight packages are enclosed in a sealed envelope with a packing slip attached thereto  
21 with postage thereon fully prepaid. The packages are deposited in the office of the  
22 building for overnight pickup in the ordinary course of business, addressed as follows:

23 [ ] (BY PERSONAL SERVICE) I delivered such envelope by hand to the parties named  
24 herein.

25 [✓] (BY MAIL), as follows: I deposited the envelopes for mailing in the ordinary course of  
26 business at Santa Barbara, California. I am "readily familiar" with this firm's practice of  
27 collection and processing correspondence for mailing. Under that practice, the sealed  
28 envelopes are deposited with the U.S. Postal Service that same day in the ordinary course  
of business, with postage thereon fully prepaid at Santa Barbara, California, addressed as  
follows:

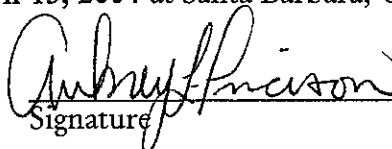
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Peter J. Bezek, Esq.  
Foley & Bezek, LLP  
15 W. Carrillo Street  
Santa Barbara, CA 93101

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed this April 15, 2004 at Santa Barbara, California.

27 Aubrey Primason  
28 Type or Print Name

  
Signature