

AUG 26 2005

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CASE MANAGEMENT CONFERENCE SET

JAN 27 2006 - 9 00 AM

DEPARTMENT 212

11 Attorneys for Representative Plaintiffs
and the Plaintiff Class

12
13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15
16 PATRICK ONYEIGE, EFANYE
CHIBUKO, individually, and on behalf
17 of all others similarly situated,

18 Plaintiffs,

19 vs.

20 UNION TELECARD ALLIANCE, LLC
and DOES 1 through 25, inclusive,

21 Defendants.

Case No.: **CGC 05444424**

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

22
23 Representative Plaintiffs allege as follows:

24
25 **PRELIMINARY STATEMENT**

26 1. This is a class action, under Code of Civil Procedure § 382, seeking damages, interest
27 thereon, injunctive and other equitable relief and reasonable attorneys' fees and costs on behalf of
28 Representative Plaintiff and all other persons who have purchased pre-paid telephone calling cards

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1 (hereinafter referred to as the "Class Members," the "Plaintiff Class") from defendant UNION
2 TELECARD ALLIANCE, LLC (hereinafter referred to as "UTA" and/or "Defendant") either
3 directly therefrom or indirectly from a distributor or retailer thereof within the State of California
4 at any time since August 25, 2001. The Representative Plaintiff, on behalf of himself and the Class
5 Members, also seeks injunctive relief and restitution of all benefits UTA has enjoyed from its
6 unlawful and/or deceptive business practices, as detailed herein.

7 8 INTRODUCTION

9 The Pre-Paid Calling Card Industry

10 2. Pre-paid telephone calling cards (i.e., cards of pre-stated value that represent
11 telephone time purchased in advance at specified rates per minute of usage) advertise service rates
12 far below that achievable through ordinary telephone service subscriptions and often represent the
13 only access to long distance telecommunications for individuals who cannot afford and/or qualify
14 for traditional telephone service. Pre-paid telephone calling cards ("Pre-paid calling cards") are a
15 form of currency for purchases of telecommunications services in which users pay in advance for
16 the right to make toll or local telephone calls and have the payment recorded in an account which
17 is debited as usage occurs.

18 3. Use of Pre-paid calling cards is simple: ordinarily, the user dials the toll-free number
19 on the back of the card at which time the user is then prompted to enter the Personal Identification
20 Number ("PIN"), also appearing on the back of the card. At this point, the user is ordinarily
21 provided a system-generated statement of the remaining card value. Finally, the user is prompted
22 to enter the desired telephone number to be called and, after doing so, is informed of the number of
23 minutes remaining on the card.

24 4. After entry of the PIN and desired telephone number, the call is placed or the user is
25 informed that the card has no value remaining and/or has expired. Expiration of cards, after which
26 cards are rendered invalid, can occur either before or after the date appearing on the back of the card,
27 where applicable. Representative Plaintiffs are informed and believe and, on that basis, allege that
28 cards issued by Defendant routinely expire, if not already completely devalued, under circumstances

1 which violate California law and, in some instances, expire even before the date printed on the back
2 of the card.

3 5. Representative Plaintiffs are informed and believe and, on that basis, allege that, in
4 instances where sufficient card value remains to complete the intended call, the number of minutes
5 available for that call is consistently less than the advertised number of minutes for the location
6 being called. In other instances, users simply learn that the card value has diminished below the
7 level necessary to make the intended call, even though the user enjoyed fewer minutes of connection
8 time in prior calls than was promised in Defendant's advertisements.

9 6. Pre-paid calling cards are available in various dollar-value increments. Pre-paid
10 calling cards are available in dollar values of \$2 to \$100 per card as well as various increments of
11 value in between. Pre-paid calling cards are available in various dollar-value increments and may
12 be purchased over the Internet as well as at convenience stores, copy centers, gas stations, drug
13 stores, delicatessens, check cashing facilities, truck stops and newsstands throughout this judicial
14 district, across the State of California and around the world.

15 7. Where retailers sell Pre-paid calling cards, they also display advertisements/marketing
16 materials, also provided by the issuer of the particular cards. These advertisements are generally
17 glossy, one- to two-square foot posters which guarantee the consumer a specific number of minutes
18 of call-time available upon purchase of one of various card values.

19 8. Representative Plaintiff is informed and believes and, on that basis, alleges that
20 Defendant similarly uses such glossy poster advertisements to entice consumers to purchase its Pre-
21 paid calling cards.

22 9. Despite the specific number of minutes of call-time printed on these advertisements,
23 Representative Plaintiffs are informed and believe and, on that basis, allege that, given various
24 hidden charges/fees applied to calls made with Defendant's Pre-paid calling cards, it is difficult, if
25 not impossible, for any consumer to enjoy the full advertised value of Defendant's Pre-paid calling
26 cards.

27 10. Since the mid-1990's, Pre-paid calling cards have gone from a niche market for
28 promotional and collectible cards to a multi-billion-dollar industry. Billions of minutes worth of

1 Pre-paid calling card time are sold each year in the United States alone and the numbers are believed
2 to be on the rise. Defendant UTA, like other issuers, currently well over one hundred pre-paid
3 calling card products, which are primarily distributed to inner city immigrant populations in the
4 United States who make international calls. Not coincidentally, these immigrant groups represents
5 one of the population segments with the lowest home telephone service penetration rates.
6

7 **Defendant UTA's Marketing Activity And Products**

8 11. Defendant UTA, a subsidiary of IDT Corporation, is a major provider and marketer
9 of Pre-paid calling cards in the State of California. In marketing Pre-paid calling cards, defendant
10 UTA has disseminated or caused to be disseminated to consumers and distributors through its World
11 Wide Web sites on the Internet and point-of-sale materials (including but not necessarily limited to
12 illuminated signs, posters, and "take one" cards) advertisements that tout the low cost of use of
13 Defendant's Pre-paid calling cards in making international or domestic long distance telephone calls.
14 These advertisements typically list all the locations within the service area of the particular card and
15 the number of minutes of talk-time available with the purchase of various card values. As discussed
16 above, the Representative Plaintiffs are informed and believe and, on that basis, allege that the
17 advertised number of minutes of talk-time is never achievable, in light of various undisclosed,
18 confusing and/or deceptive fees, charges and other conditions on use of the cards.

19 12. Since at least the beginning of the class period, Defendant imposed myriad fees,
20 charges and other conditions that are either *per se* unlawful and/or are/were not properly disclosed,
21 or were confusing and/or deceptive to the reasonable consumer of these products. These fees,
22 charges and other conditions had/have the effect of reducing the value of the Pre-paid calling cards
23 and include such things as (1) "Surcharges," (2) "service fees," (3) "semi-monthly fees," (4) "call time
24 deductions" (in multiple minute increments), (5) expiration dates, (6) "connection fees," (7)
25 "rounding-up" of minutes, and (8) "hang up" fees. Moreover, Defendant admits through these
26 marketing materials that, despite the promise of a specific number of minutes of service per pre-paid
27 calling card, those service rates are "subject to change without prior notice."
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1 13. Defendant's non-disclosure of the hidden fees, charges and conditions in its Pre-paid
2 calling cards are of material fact and constitute misrepresentation and unfair, unlawful, fraudulent
3 and/or deceptive business practices in violation of California law. Specifically, Defendant's false
4 and/or misleading representations, expressly or by implication, that the value of its Pre-paid calling
5 cards are reduced only at the advertised per-minute rate constitutes a deceptive act or practice in
6 violation of California's consumer protection laws, including, but not limited to Business and
7 Profession Code §§ 17200, et sequitur.

8 14. Indeed, Defendant is obligated by law to disclose all applicable fees, charges and
9 conditions at the point of sale and time of purchase.

10 15. As a result of Defendant's concealment and non-disclosure, customers are misled to
11 purchase the purchase of UTA's Pre-paid calling cards, unjustly enriching Defendant at the expense
12 of these consumers. Defendant, at all times, knew that Representative Plaintiffs and the Class
13 members relied (or should be presumed to have relied) upon the labeling and/or lack of labeling
14 provided by Defendant. Defendant's concealment, misbranding and non-disclosure were intended
15 to influence consumers' purchasing decisions and were done with reckless disregard for the rights
16 of consumers. Representative Plaintiffs' and Class members' reliance and resultant substantial
17 monetary loss was reasonably foreseeable by Defendant.

18 16. Absent injunctive relief by this Court, Defendant is likely to continue injure
19 consumers and harm the public interest. This action is brought to redress and end this long-time
20 pattern of unlawful conduct.

21
22 **JURISDICTION AND VENUE**

23 17. This Court has jurisdiction over Representative Plaintiffs and Class Members' claims
24 for unpaid overtime wages under Code of Civil Procedure § 382; the Unfair Competition Law
25 ("UCL"), Business & Professions Code § 17200 *et seq.*, the False Advertising Law, Business &
26 Professions Code § 17500 *et seq.* ("Section 17500"); and the Consumers Legal Remedies Act
27 ("CLRA"), Civil Code § 1750 *et seq.*

28 //

1 18. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims
2 for injunctive relief and restitution of ill-gotten benefits arising from defendant UTA's unlawful
3 business practices under Business & Professions Code §§ 17203 and 17204.

4 19. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
5 Procedure § 395(a). Defendant UTA transacts business, has agents, and is otherwise within this
6 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a
7 direct effect on Representative Plaintiff and those similarly situated within the State of California
8 and within San Francisco County. Defendant UTA distributes and markets the sale of Pre-paid
9 calling cards to class members in San Francisco County.

10 20. Venue is also proper in this Court pursuant to Code of Civil Procedure §§ 395 and
11 395.5, Business and Professions Code §§ 16750(a), 17203, 17204 and 17535, and Civil Code §
12 1780(c) Civil Code §1781(a) because Defendant either transacts business, has an agent, or is found
13 do business in the County of San Francisco and the Defendant is within the jurisdiction of this Court
14 for purposes of service of process. The acts hereinafter described were carried on, in part, within the
15 State of California and, more particularly, within San Francisco County.

16 21. Federal court subject matter jurisdiction over this class action and representative
17 action does not exist. The amount in controversy alleged in this Complaint as to the Representative
18 Plaintiffs and each member of the Class does not exceed \$75,000, including interest and any award
19 of attorneys' fees and costs. Representative Plaintiffs and each member of the Class disclaim any
20 recovery greater than \$75,000 (including compensatory damages, statutory damages, punitive or
21 exemplary damages, and awardable attorneys' fees and costs on a per-plaintiff basis), and
22 specifically limit their total claims to \$75,000 or less for any particular plaintiff/class member.
23 Damages (whether compensatory, statutory, punitive, or exemplary), attorneys' fees and costs may
24 not be aggregated to meet the minimum jurisdictional amount of the federal district courts.

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PLAINTIFFS

22. The Representative Plaintiffs identified herein were and are natural persons and, during the relevant time period identified herein, purchased and used (or attempted to use) defendant UTA's Pre-paid calling cards, yet did not receive the full value of the service promised by UTA.

23. As used throughout this Complaint, the terms "Plaintiffs" and/or "Class" refer to the named plaintiffs herein as well as each and every person eligible for membership in the Plaintiff Class, as further described and defined below.

24. The Plaintiff Class consists, generally, of all persons who purchased (directly or indirectly), within the State of California, Pre-paid calling cards from UTA at any time during the class period, as identified later in this Complaint.

25. At all times herein relevant, the Representative Plaintiffs were and now are persons within the Class of persons further described and defined herein.

26. The Representative Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to California Code of Civil Procedure §382, on behalf of all persons similarly situated and proximately damaged by the unlawful conduct described herein.

DEFENDANT

27. At all times herein relevant, defendants UNION TELECARD ALLIANCE, LLC and Does 1 through 25, inclusive (collectively referred to as "UTA" and/or "Defendant") were corporations, duly licensed and located and doing business in, but not limited to, the County of San Francisco, in the State of California.

28. Defendant UTA is not a telecommunications provider.

29. Those defendants identified as Does 1 through 25, inclusive, are and were, at all relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the remaining defendants.

30. Representative Plaintiffs are unaware of the true names and capacities of those defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such fictitious names. Representative Plaintiffs will seek leave of court to amend this Complaint when

1 same are ascertained. Representative Plaintiffs are informed and believe and, on that basis, allege
2 that each of the fictitiously-named defendants is responsible in some manner for, gave consent to,
3 ratified and/or authorized the conduct herein alleged and that Representative Plaintiffs' and Class
4 Members' damages, as herein alleged, were proximately caused thereby.

5 31. Representative Plaintiffs are informed and believe and, on that basis, allege that, at
6 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
7 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
8 scope of such agency and/or employment.

9
10 **CLASS ACTION ALLEGATIONS**

11 32. Representative Plaintiffs PATRICK ONYEIGE and EFANYE CHIBUKO bring this
12 action on behalf of themselves and as a class action on behalf of all persons or entities similarly
13 situated and proximately damaged by UTA's conduct as set forth herein, including, but not
14 necessarily limited to, the following Class:

15 All persons who purchased, within the State of California, Pre-paid
16 calling cards from Union Telecard Alliance, LLC and/or DOES 1
17 through 25, inclusive, at any time during the period of August 26,
2001 to the present (the "Class Period").

18 33. Excluded from the class are defendant UTA and the DOE defendants, their officers,
19 directors, parents, predecessors, successors, subsidiaries, units, divisions, and co-conspirators,
20 government entities, and any and all judges and justices assigned to hear any aspect of this case.

21 34. This action has been brought and may properly be maintained as a class action under
22 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
23 and the proposed Class are easily ascertainable.

24 a. **Numerosity:** A class action is the only available method for the fair and
25 efficient adjudication of this controversy. The members of the Class are so
26 numerous that joinder of all members is impractical, if not impossible, insofar
27 as Representative Plaintiffs are informed and believe and, on that basis,
allege that the total membership in each of the Class is in the tens of
thousands, if not much greater. Membership in the Class will be determined
upon analysis of sales, among other, records maintained by UTA.

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b. Commonality: The Representative Plaintiffs and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

1. whether UTA had a duty to Representative Plaintiffs and the Class to disclose the true value of its Pre-paid calling cards;
2. whether the facts concealed by Defendant from Representative Plaintiffs and the Class are material facts;
3. whether Defendant misled consumers by failing to disclose true value of the Pre-paid calling cards purchased by plaintiffs and the class;
4. whether Defendant engaged in unfair competition or unfair and/or deceptive acts or practices when it represented, through advertising, warranties and other express and implied representations that the Pre-paid calling cards had characteristics that they do not actually have;
5. whether UTA's Pre-paid calling cards fail to perform in accordance with the reasonable expectations of ordinary consumers;
6. whether Defendant violated California law, including Business & Professions Code § 17200, et seq., Business & Professions Code § 17500, et seq., the Consumers Legal Remedies Act, California Civil Code §§ 1750, et seq..
7. Whether UTA committed fraud in concealing from Representative Plaintiffs and the Class the true nature of the actual value of the Pre-paid calling cards being purchased thereby;

c. Typicality: The Representative Plaintiffs' claims are typical of the claims of the Plaintiff Class. The Representative Plaintiffs and all members of the Plaintiff Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of state law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiffs in this class action is an adequate representative of the Class, in that the Representative Plaintiffs' claims are typical of those of the Class and the Representative Plaintiffs have the same interests in the litigation of this case as the Class Members. The Representative Plaintiffs are committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Class as a whole. The Representative Plaintiffs anticipates no management difficulties in this litigation.

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e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

35. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

36. On numerous occasions during the class period, Representative Plaintiff and/or members of the Plaintiff Class purchased UTA's Pre-paid calling cards in reliance on UTA's promise to provide a specific number of minutes of call-time.

37. Defendant UTA disseminated or caused to be disseminated to Representative Plaintiffs and the Plaintiff Class through its World Wide Web sites on the Internet and point-of-sale materials (including but not necessarily limited to illuminated signs, posters, and "take one" cards) advertisements claiming the value of its Pre-paid calling cards.

38. By way of example, defendant UTA advertised that the value of its "Entrix California" was 112 minutes of call-time to Nigeria for a \$5.00 Pre-paid calling card.

39. Despite this representation, defendant UTA's \$5.00 "Entrix California" \$5.00 Pre-paid calling card does not provide 112 minutes of call-time to Nigeria for a \$5.00 Pre-paid calling card.

40. By failing to provide the promised number of minutes of call-time printed on defendant UTA's advertisements (for one or more of the reasons detailed in this Complaint), defendant UTA breached its agreements with the Representative Plaintiffs and the Plaintiff Class.

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1 41. As a direct and proximate result of this defendant's breach of these agreements,
2 Representative Plaintiff and the Plaintiff Class are entitled to recover actual damages in an amount
3 to be established at trial.

4
5 **SECOND CAUSE OF ACTION**
6 **FRAUD**

7 42. Representative Plaintiffs incorporate in this cause of action each and every allegation
8 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

9 43. The conduct of Defendant constitutes a fraud against Representative Plaintiffs and
10 the Plaintiff Class. Defendant, directly or through its agents and employees, engaged in false
11 representations, concealment, and non-disclosures to Representative Plaintiffs and the members of
12 the Class that were likely to deceive Representative Plaintiffs and the Class. Representative
13 Plaintiffs and the members of the Class were misled by these false representations, concealment, and
14 non-disclosures by Defendant in purchasing goods and services from Defendant and entering into
15 agreements with Defendant.

16 44. Through a consistent marketing campaign, Defendant, directly and/or indirectly made
17 uniform and substantially-similar, if not identical, misrepresentations and material omissions to
18 Representative Plaintiffs and each member of the Class.

19 45. As a result of Defendant's wrongful conduct, Representative Plaintiffs and the
20 Plaintiff Class have suffered and continue to suffer economic losses and other general and specific
21 damages, including but not limited to the monies paid to Defendant.

22 46. Moreover, in that at all times herein mentioned, Defendant intended to cause or acted
23 with reckless disregard of the probability of causing damage to Representative Plaintiff and members
24 of the Plaintiff Class, and because Defendant was guilty of Oppressive, Fraudulent and/or Malicious
25 conduct, Representative Plaintiff and members of the Plaintiff Class are entitled to an award of
26 exemplary or punitive damages against Defendant in an amount adequate to deter such conduct in
27 the future.

28 //

**THIRD CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION**

1
2
3 47. Representative Plaintiffs incorporate in this cause of action each and every allegation
4 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

5 48. Defendant owed a duty to Representative Plaintiffs and members of the Class to
6 exercise reasonable care in making representations about the characteristics and value of the Pre-paid
7 calling cards it offered for sale to the Representative Plaintiffs and the Class.

8 49. Defendant advertises that its Pre-paid calling cards will allow an established number
9 of minutes of talk-time, dependent on the dollar value of the Pre-paid calling card which is
10 purchased. Due to hidden fees and charges, however, the Representative Plaintiffs are informed and
11 believe and, on that basis, allege that the advertised number of minutes of talk-time is never
12 achievable.

13 50. Defendant should have known of the existence, nature and amount of these fees
14 and/or charges and, thus, should have known that the full advertised value of their Pre-paid calling
15 cards was not achievable.

16 51. Defendant should also have known that its representations, as detailed in this
17 Complaint, were false or would become false prior to use of UTA's Pre-paid calling cards by
18 Representative Plaintiff and members of the Class.

19 52. Defendant's representations were negligently and recklessly made to potential
20 customers and the general public through uniform concealment and non-disclosure, through mass
21 media and point-of-sale advertising, and through other information prepared or disseminated by
22 Defendant. As a direct and proximate result of these misrepresentations, omissions and
23 concealment, Representative Plaintiffs and the Class members have been damaged in and amount
24 to be proven at trial.

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1 **FOURTH CAUSE OF ACTION**
2 **DECEPTIVE ADVERTISING PRACTICES**
3 **(California Business & Professions Code §§ 17500, et seq.)**

4 53. Representative Plaintiffs incorporate in this cause of action each and every allegation
5 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

6 54. California Business & Professions Code § 17500 prohibits "unfair, deceptive, untrue
7 or misleading advertising."

8 55. Defendant violated California Business & Professions Code § 17500 when it
9 represented, through its advertising, warranties, and other express representations that UTA's Pre-
10 paid calling cards possessed characteristics and value that they did not actually have.

11 56. Defendant's deceptive practices were specifically designed to induce Representative
12 Plaintiffs and members of the Class to purchase these Pre-paid calling cards. Defendant engaged
13 in broad-based marketing efforts in order to reach Class members and induce them to purchase
14 UTA's Pre-paid calling cards.

15 57. To this day, Defendant continues to engage in unlawful, unfair and deceptive
16 practices in violation of California Business & Professions Code § 17500. Defendant continues to
17 conceal the defective nature of the Pre-paid calling cards has refused to remedy the situation.

18 58. As a proximate result of its violations of California Business & Professions Code §
19 17500, Defendant should be required to provide all proper remedies to Representative Plaintiffs and
20 the Class.

21 **FOURTH CAUSE OF ACTION**
22 **CONSUMERS LEGAL REMEDIES ACT**
23 **(California Civil Code §1750, et seq.)**

24 59. Representative Plaintiffs incorporate in this cause of action each and every allegation
25 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

26 60. Representative Plaintiff and the members of the Class are consumers who purchased
27 Pre-paid calling cards from Defendant for personal and/or commercial use.

28 61. Representing that these Pre-paid calling cards (goods) had/have characteristics, uses
and/or benefits which they did/do not have constitute[d/s] an unfair or deceptive trade practice under

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1 the provisions of California Civil Code § 1770(a)(5) (Consumers Legal Remedies Act).

2 62. Representative Plaintiffs and the members of the Class have all been directly and
3 proximately injured by Defendant's conduct, and such injury includes the purchase of Pre-paid
4 calling cards that they would not have purchased were they truthfully and fully informed of material
5 facts concerning deductions in value of the Pre-paid calling cards due to inflated fees and charges
6 such as (1) "Surcharges," (2) "service fees," (3) "semi-monthly fees," (4) "call time deductions" (in
7 multiple minute increments), (5) expiration dates, (6) "connection fees," (7) "rounding-up" of
8 minutes, and (8) "hang up" fees.

9 63. Insofar as Defendant's conduct violated California Civil Code § 1770(a)(5),
10 Representative Plaintiff and members of the Class are entitled (pursuant to California Civil Code §
11 1780, et seq.) and do seek injunctive and equitable relief to end Defendant's violations of the
12 Consumers Legal Remedies Act. Representative Plaintiff, on their own behalf and on behalf of
13 members of the Class, further request that this Court enter such orders or judgments as may be
14 necessary to restore to any person in interest any money which may have been acquired by means
15 of such unfair business practices, and for such other relief as provided in Civil Code § 1780 and the
16 Prayer for Relief.

17
18 **SIXTH CAUSE OF ACTION**
19 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
20 **(California Business & Professions Code §§ 17200, et seq.)**

21 64. Representative Plaintiffs incorporate in this cause of action each and every allegation
22 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

23 65. Representative Plaintiffs further brings this cause of action on behalf of the general
24 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of
25 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business
26 practices described herein.

27 66. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
28 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
Specifically, Defendant conducted business activities while failing to comply with the legal

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1 mandates cited herein. In engaging in these unlawful business practices, UTA has enjoyed an
2 advantage over its competition and a resultant disadvantage to the public

3 67. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
4 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
5 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
6 set forth in California Business & Professions Code §§ 17200-17208.

7 68. Defendant has clearly established a policy of accepting a certain amount of collateral
8 damage, as represented by the damages to Representative Plaintiffs and the Plaintiff Class herein
9 alleged, as incidental to its business operations, rather than accept the alternative costs of full
10 compliance with fair, lawful and honest business practices ordinarily borne by responsible
11 competitors of Defendant and as set forth in legislation and the judicial record.

12
13 **RELIEF SOUGHT**

14 **WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the proposed**
15 **Class, pray for judgment and the following specific relief against Defendants, and each of them,**
16 **("UTA") jointly and separately, as follows:**

17 1. For an Order certifying the proposed and/or any other appropriate subclass under
18 Code of Civil Procedure § 382 and/or California Civil Code § 1781;

19 2. That defendant UTA is found to have breached its contracts with Representative
20 Plaintiff and Class members;

21 3. That defendant UTA is found to have made fraudulent and/or negligent
22 misrepresentations to Representative Plaintiff and Class members

23 4. That defendant UTA is found to have violated California Business & Professions
24 Code §§ 17200, et seq., §§ 17500, et seq. and California Civil Code §§1750, et seq. as to the
25 Representative Plaintiffs and the Class;

26 5. An award to Representative Plaintiff and Class members of damages in an amount
27 to be proven at trial;

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