

Matilda Sanders

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Sent: Wednesday, March 28, 2007 3:30 PM
To: Filings@psc.state.fl.us
Cc: Kira Scott; fself@lawfla.com; Vicki Gordon Kaufman; Doug Kreis; Jason Richards; Justin Witkin
Subject: Docket No. 060614-TC
Attachments: Petition to Inspect 2007-03-28.pdf

ORIGINAL

The person responsible for this filing is:

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Docket No. 060614-TC-Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and appropriate method of refunding overcharges for collect calls made from inmate pay telephones.

This is being filed on behalf of Kirsten Salb.

Total number of pages is 27.

Kirsten Salb's Petition and Memorandum to Inspect and Examine Confidential Material.

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FPSC-COMMISSION CLERK



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March 28, 2007

SENT VIA ELECTRONIC MAIL

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Re: Docket No. 060614-TC

Dear Ms. Bayó:

Please find attached for filing an electronic version of Kirsten Salb's Petition and Memorandum to Inspect and Examine Confidential Material.

Thank you for your assistance with this filing.

Sincerely,

Douglass A. Kreis

DAK/amb
Attachment

Cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of TCG Public)
Communications, Inc. for apparent violation of)
Section 364.183(1), F.S., Access to Company)
Records, and determination of amount and)
Appropriate method for refunding overcharges)
For collect calls made from inmate pay telephones.)

Docket No. 0606 14-TC
Filed: March 23, 2007

**PETITION AND MEMORANDUM TO INSPECT
AND EXAMINE CONFIDENTIAL MATERIAL**

In accordance with Section 25-22.006(5)(c)2 of the Florida Administrative Code,¹ Kirsten Salb (“Petitioner” and/or “Kirsten Salb”) requests that the Florida Public Service Commission (“Commission”) make available to her and/or her counsel all material, documents and information, claimed to be confidential or otherwise, filed with the Commission in this administrative matter for inspection, examination and copying. In support of this request, Petitioner states the following:

BACKGROUND

Salb v. Evercom Systems, Inc., Correctional Billing Services and T-Netix, Inc. (S.D. Fla. 2006) Case No.: 06-20290

On February 2, 2006, Petitioner, Kirsten Salb, on behalf of herself and others similarly situated filed a class action complaint against Evercom Systems, Inc. (“Evercom”) and Correctional Billing Services (“CBS”) seeking compensation for their unfair practices of wrongfully disconnecting calls made by Petitioner and other Florida residents. The relief sought by Petitioner includes damages, injunctive relief, pre-judgment interest, and reasonable attorney's fees and costs. On or about on September 25, 2006, that complaint was amended naming the

¹ Section 25-22.006(5)(c)2 provides: “Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to Section 364.183(1), Florida Statutes. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings.”

additional Defendant, T-Netix, Inc. (“T-Netix”). *See* Amended Class Action Compl. attached hereto as Exhibit “A.” T-Netix and Evercom are affiliate companies operating under the same corporate umbrella. T-Netix and Evercom are wholly owned subsidiaries of Securus Technologies, Inc. and share control of CBS. In the underlying civil action, the parties have participated in discovery and Defendants Evercom, CBS and T-Netix have produced documentation. Prior to filing this Petition to Inspect and Examine Confidential Material, the undersigned conferred with counsel for Evercom, CBS and T-Netix who indicated that they believed all information provided to the Florida Public Service Commission was likewise provided to Petitioner in the underlying civil matter and did not oppose our request. However, counsel indicated that such consent could not be provided as to Respondent TCG.

Florida Public Service Commission

During the pendency of Petitioner’s civil suit against Evercom, CBS and T-Netix, the Florida Public Service Commission (“FPSC”) began its own investigation into the billing practices of TCG Public Communication, Inc. (“TCG”) which gave rise to the underlying administrative case. At all relevant times, TCG had a contractual relationship with T-Netix and Evercom whereby T-Netix and Evercom are subcontractors to TCG for relevant the Miami-Dade contract (hereinafter Evercom, T-Netix, CBS and TCG are referred to herein collectively as “Respondents”).

Specifically, on or about on September 12, 2006, in FPSC’s own investigation, FPSC’s Competitive Markets and Enforcement Staff sent a “Request to Establish Docket” to the Commission Clerk. In the space for the suggested Docket Title, FPSC Staff proposed “Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and

appropriate method of refunding overcharges for collect calls made from inmate pay telephones.”² The Commission Clerk subsequently assigned this Request Docket No. 060614-TC and titled the docket as proposed by the FPSC Staff.

On or about September 22, 2006, the Commission Staff issued a Subpoena Duces Tecum Without Deposition on TCG. Subsequently, on or about on October 25, 2006 and February 6, 2007, Commission Staff issued a Subpoena Duces Tecum Without Deposition to Evercom in furtherance of its investigation. However, rather than fully disclose information or produce requested documentation available for public view, Respondents responded on grounds that their responses were “confidential”. Moreover, Respondents redacted responses and prevented said documents from being available for public view. Petitioner now files this petition and memorandum to inspect, examine and copy all material, documents and information, claimed to be confidential or otherwise, filed with the Commission in this administrative matter for inspection, examination and copying.

Though counsel for Evercom, CBS and T-Netix with whom the undersigned conferred indicated that they believed all information provided to the Florida Public Service Commission was likewise provided to Petitioner in the underlying civil matter, Petitioner believes that information and documents were provided to the FPSC which may not have been produced to Petitioner. As to documentation and information relating to these parties or entities, Petitioner simply seeks to confirm the completeness of discovery from said entities and such parties representation as to production. However, additionally, because any and all documentation

² The subject matter of this proceeding is pay telephone service provided to inmates at the Miami-Dade County Correctional Department facilities pursuant to a contract between TCG and Miami-Dade County and customer complaints associated with such service for the time period of approximately September 2003 through September 2005.

Respondent TCG has produced to the FPSC would not have been produced in the underlying civil action, Petitioner seeks to inspect, examine and copy the same as well.

ARGUMENT

Florida recognizes a presumption that where documents are submitted to a governmental agency, such as the records submitted by the Respondents here to the FPSC, those records are public. *In Re: BellSouth Telecommunications, Inc.*, No. WL505685, slip op. at 1 (Fla. P.S.C. Jan. 26, 2007). The purpose of this presumption is “based on the concept that government should operate in the ‘sunshine’³.” *Id.* Thus, because Respondents have submitted documents to the FPSC, a governmental agency, those records are presumed public and, unless a statutory exception exists, the FPSC “shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” Fla. Stat. Ann. § 119.07(1)(a).

Respondents have uniformly responded to FPSC’s subpoena(s) by asserting that all of its responses were and are confidential in accordance with Fla. Stat. Ann. § 364.183(3), not subject to public disclosure under Fla. Stat. Ann. § 119.07, and redacted its responses. However,

³ Fla. Stat. Ann. § 286.011 (West 2007), commonly referred to as Florida’s Sunshine Law, provides, in pertinent part:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection.

The purpose behind Florida’s Sunshine Law is to “protect the public from ‘closed door’ politics and, as such, the law must be broadly construed to effect its remedial and protective purpose.” *Wood v. Marston*, 442 So.2d 934, 938 (Fla.,1983) (citing *Canney v. Board of Public Instruction*, 278 So.2d 260 (Fla.1973); *Board of Public Instruction v. Doran*, 224 So.2d 693 (Fla.1969)).

Respondents asserted the confidentiality exception where it is clear none existed.⁴ Fla. Stat.

Ann. provides factors the FPSC ought to consider in determining if such an exception exists:

(3) The term “proprietary confidential business information” means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

(a) Trade secrets.

(b) Internal auditing controls and reports of internal auditors.

(c) Security measures, systems, or procedures.

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Fla. Stat. Ann. § 364.183(3).

A quick analysis of Respondents’ responses is illustrative of their misplaced contention as to a classification of confidentiality relating to the documents and information sought by the FPSC:

Requests for Production and Interrogatories dated September 22, 2006

On September 22, 2006, the FPSC served Requests for Production and Interrogatories upon TCG seeking information including: telephone equipment sensitivity settings; changes to

⁴ As to Respondents’ contention that the documents they have produced in response to request for production issued by the FPSC are “confidential”, a review of the docket and documents filed within the underlying matter reveals only that said documents were unilaterally designated as “confidential” and that no formal determination has been made regarding their classification.

such settings; contracts between TCG and Evercom; and quantity of particular terminated calls. In response thereto, TCG filed a motion to quash or limit the discovery. Additionally, TCG sought a protective order relating to Respondent Evercom's disclosure of documents and information in response to a subpoena issued on Evercom by the FPSC on the same date. In its response and opposition, TCG attempted to invoke the confidentiality provisions provided by Florida Statute § 364.183 and refused to respond fully to the FPSC's requests. The type of information sought does not meet the statutory definition of "proprietary confidential business information" contemplated by statute.

Subpoena dated October 25, 2006 to Evercom⁵

On October 25, 2006, the FPSC served a subpoena on Evercom directing it to provide the following information for the time period January 1999 and ending August 31, 2006:

1. Any and all requests and correspondence regarding telephone equipment sensitivity setting for the correctional facilities served by TCG in the state of Florida.
2. Any records of modifications and changes to sensitivity levels for the telephone equipment for the correctional facilities served by TCG in the state Florida.
3. Complete copies of any and all contracts between TCG and Evercom d/b/a Correctional Billing Services governing work performed for TCG by Evercom d/b/a Correctional Billing Services.
4. Please provide the information below for calls that terminated and another call was completed to the same telephone number within 10 minutes for correctional facilities, identified by month and location, served by TCG in the state of Florida.
 - a. LOCAL – Number of calls
 - b. Intrastate – Number of calls and minutes

By submission dated December 4, 2006, Evercom responded to these requests by filing a redacted exhibit list. Presumably, Evercom in fact served responsive documents upon the FPSC, however, all that is reflected in the public record in a single page marked "confidential".

Without the benefit of reviewing Evercom's submissions, Petitioner is without knowledge as to

⁵ Evercom was initially served with the same requests on September 22, 2006, however, refused to provide any responses thereto, filing a "motion to quash" the FPSC's subpoena with objections.

the true nature of the documents produced by Evercom. However, in view of both the information gained by Petitioner in her civil action pending in the Southern District of Florida federal court and in light of the type of documents sought by the FPSC outlined in its requests, Petitioner believes Evercom's blanket assertion as to confidentiality is neither warranted nor supported by fact and law. Wherein, counsel for said Respondents is not opposed to the inspection, examination and copying of the same, however, Petitioner seeks the same.

Subpoena dated February 6, 2007 to Evercom but responded to by T-Netix

Request No. 1: For each of the Miami-Dade facilities, please identify if Three-Way Detection software was installed.

- A. Provide the date that the software was installed at each facility.
- B. Provide the date that the software was activated at each facility.

Response: **Response is confidential and has been redacted.**

Request No. 2: Please identify the technicians responsible for maintaining and monitoring the Three-Way Detection software at each facility.

- A. For each facility, provide the period for each technician that has been or presently assigned to monitor and maintain the Three-Way Detection software
- B. For each facility, provide the period for each supervisor that has been or presently assigned to monitor and maintain the Three-Way Detection software.

Response: **Response is confidential and has been redacted.**

Request No. 3: For each facility, where the Three-Way Detection software was installed, provide the following:

- A. The number of calls made from the inmate payphone system since the Three-Way detection software installation. (By month)
- B. The number of calls interrupted due to Three-Way calls attempts detected by the system since the date of the software installation. (By month)

C. The number of calls interrupted due to DTMF detection by the system since the date of the Three-Way Detection software installation. (By month)

Response: **Response is confidential and has been redacted.**

Request No. 4: What are the criteria for setting the sensitivity level on the Three-Way Detection software?

Response: Response is confidential and has been redacted.

Request No. 5: Please explain how the software differentiates between a Three-Way attempt and DTMF attempt?

Response: **Response is confidential and has been redacted.**

Request No. 6: Who is the primary person to have the ability to modify settings on the Three-Way Detection software?

Response: **Response is confidential and has been redacted.**

Request No.7: What is the self adjustment component to the Three-Way detection software? Please answer the following:

A. How often is the software set to self adjust?

B. Are records kept of each self adjustment?

C. Is there a max percentage set for the sensitivity level?

Response: **Response is confidential and has been redacted.**

Request No. 8: For each facility, please provide the names of the personnel responsible for providing reports on the status and performance of the sensitivity levels during the time the software has been activated.

Response: **Response is confidential and has been redacted.**

Request No. 9: Are there records used to record the sensitivity settings for each facility?

Response: **Response is confidential and has been redacted.**

Request No. 10: If the response to Interrogatory No. 9 is affirmative, please provide copies of the log books that were used to record the sensitivity settings at each facility.

Response: ~~Response is confidential and has been redacted.~~

Request No. 11: Please identify all other facilities where your company has installed the Three-Way Detection software within the state of Florida.

Response: ~~Response is confidential and has been redacted.~~

Request No. 12: If other facilities within the state of Florida are identified, then please provide answers to questions 1 through 10 above.

Response: ~~Response is confidential and has been redacted.~~

Request No. 13: Is there a refund policy in place for customers when it has been determined that a call was incorrectly dropped by the Three-Way detection software? If so, what does the customer need to provide to be to be eligible?

Response: ~~Response is confidential and has been redacted.~~

Request No. 14: In June 2006, Evercom provided to the Commission a report detailing that the number of calls repeated within 10 minutes of drop was over 519,000 for the Miami-Dade Pretrial detention center. However, the number reported to the Commission in December of 2006, for all Miami-Dade facilities was significantly lower. Please explain the discrepancy.

Response: ~~Response is confidential and has been redacted.~~

It is clear from a simple review of the above fourteen (14) requests, that most, if not all, do not seek any documents which are confidential as defined under Florida law.

On March 7, 2007, T-Netix responded to FPSC's subpoena(s) by asserting that all of its responses were confidential. T-Netix asserts the confidentiality exception where it is clear none existed. Rather, T-Netix's uniform response and unilateral designation of documents as "confidential" is unfounded.

In the past, FPSC has denied similar efforts to seek classification of documents as confidential and should similarly deny Petitioner's request here. *See, e.g., Southern Bell Tel. And Tel. Co. v. Beard*, 597 So.2d 873 (1st DCA 1992) (FPSC "refused to grant confidential classification to telephone company's documents despite company's argument that documents were 'critical self analysis' [as] there was no exemption to Public Records Act for 'critical self analysis' documents...Public Service Commission acted appropriately in concluding that confidential classification was not required for documents telephone company produced during discovery after officer of public council petitioned Commission to investigate and review the company's costs; documents were prepared by review committees and not by internal auditors...Public Service Commission did not abuse its discretion in declining to afford proprietary confidential business status to documents prepared by employees at telephone company despite company's contention that disclosure might result in embarrassment to company's managers, absent showing that documents fell within exceptions to Public Records Act disclosure requirements").

The request for confidential classification made by both Evercom and T-Netix should be denied as the public disclosure of the documents sought by the FPSC would not subject "the ratepayers or the person's or company's business operations" to harm by competitors. Fla. Stat. Ann. § 364.183(3). Moreover, Respondents' blanket assertions of confidentiality are confounding to say the least because the subpoenas and discovery requests do not seek any "proprietary confidential business information" as defined by Fla. Stat. Ann. § 364.183(3). Therefore, Respondents' concealment through redaction was unwarranted.

Rather, pursuant to rule, Petitioner has the right to inspect, examine and copy all of the documents produced by Respondents. Pursuant to rule 25-22.006(5)(c)(2), Florida

Administrative Code, which provides:

(5)(c)(2). Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to 364.183(1), F.S. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings.

Petitioner asserts her right to inspect, examine and copy all submissions and documents produced by Respondents in the underlying administrative action.

Inspection under 25-22.006(5)(c)(2) of these alleged confidential documents is essential to Plaintiff and the members of the state-wide class of aggrieved consumers in the continuing prosecution of their case. At the core of Petitioner's claims against Defendants/Respondents, are the very documents produced to the FPSC. To the extent that Respondents would argue that they have produced documents or information containing individual consumers identity, the same, if not already redacted, would be redacted prior to any copying of documents by Petitioner to safe-guard such personal information.

WHEREFORE, Petitioner, respectfully requests that the Commission allow her to inspect, examine and copy all material and documents filed in this Docket.

Respectfully submitted this 28th day of March 2007.

s/ Douglass A. Kreis
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ATTORNEYS FOR KIRSTEN SALB

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following parties via electronic mail (*) and/or U.S. Mail this 28th day of March 2007:

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s/ Douglass A. Kreis
DOUGLASS A. KREIS

EXHIBIT “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 06-20290-CIV-UNGARO-BENAGES/O'SULLIVAN

KIRSTEN SALB, an individual,
on behalf of herself and all others similarly
situated,

Plaintiff,

v.

EVERCOM SYSTEMS, INC.,
a Delaware corporation,
CORRECTIONAL BILLING SERVICES,
a wholly owned division of
EVERCOM SYSTEMS, INC., and
T-NETIX, INC., a
Delaware corporation.

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff, Kirsten Salb ("Plaintiff"), hereby sues for herself and all others similarly situated, the Defendants Evercom Systems, Inc. ("Evercom"), a Delaware corporation, Evercom's wholly owned division Correctional Billing Services ("CBS"), and T-Netix, Inc. ("T-Netix"), a Delaware corporation (collectively hereinafter "Defendants"), and alleges as follows:

INTRODUCTION

1. This is a consumer class action lawsuit brought on behalf of Plaintiff, individually, and on behalf of persons within the state of Florida who accepted collect calls from correctional facilities in Florida through the Defendants' telephone systems. At all material times the Defendants knew or should have known that their telephone systems are faulty and

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improperly function in that they prematurely disconnect telephone calls, requiring additional collect calls to be made to complete conversations at approximately \$2.00 per collect call.

2. As a result of Defendants' actions, Plaintiff brings claims for common law negligence, breach of contract, and unjust enrichment.

3. Plaintiff seeks damages suffered as a result of Defendants' practices including but not limited to reimbursement for all collect telephone calls received by all Florida consumers from Florida correctional facilities which were prematurely disconnected due to Defendants' defective telephone systems.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff Salb, individually and in behalf of all others similarly situated class members, is a resident of Miami-Dade County and citizen of the State of Florida and is otherwise *sui juris*. Plaintiff Salb received multiple collect calls from the Metro West Detention Center, 13850 N.W. 41st Street, Miami, Florida 33178, which were prematurely disconnected. Plaintiff Salb then received multiple second and third calls in order to complete her conversations.

5. Defendant Evercom is a Delaware corporation with its principal place of business in Dallas, Texas. Evercom owns and operates CBS. CBS is the largest telephone billing company in America dedicated to the corrections industry. At all material times, CBS and Evercom have done, and continue to do, business in Florida and throughout the nation.

6. Defendant T-Netix is a Delaware Corporation with its principal place of business in Dallas, Texas. CBS, also a division of T-Netix, provides billing and customer care for T-Netix. At all material times, T-Netix has done, and continues to do, business in Florida and throughout the nation

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than the Defendants and the amount in controversy exceeds the sum or value of \$5,000,000. *See* 28 U.S.C. § 1332(d)(2).

8. This Court has jurisdiction over Defendants because a substantial portion of the wrongdoing alleged in this Complaint took place in Florida, Defendants are authorized to do business here, Defendants have sufficient minimum contacts with Florida and/or otherwise intentionally avail themselves of the markets in Florida. Defendants sell products or services within the state of Florida and in Miami-Dade County, rendering the exercise of jurisdiction by Florida courts permissible under traditional notions of fair play and substantial justice.

9. Venue is proper in this district because a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred in this district and/or Defendants are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

10. Defendants are the self-proclaimed largest independent providers of telephone calling services in America dedicated to the corrections industry. T-Netix and Evercom are affiliate companies operating under the same corporate umbrella. T-Netix and Evercom are wholly owned subsidiaries of Securus Technologies, Inc. and share control of CBS.

11. Defendants service approximately 3,300 correctional facilities in 49 states, including locations operated by city, county, state and federal authorities and facilities such as juvenile detention centers and private jails.

12. Defendants design, install, operate and maintain their correctional calling systems.

13. In order for a correctional inmate to make a telephone call through the Defendants' system, they are required to make a collect call. Collect calls reverse the charges for the call to the receiver of the telephone call. The collect calls are far more expensive than regular toll or telephone card calls.

14. Defendants cite security concerns for the reasoning behind the collect call requirement.

15. Defendants have negligently designed, installed, and operated their calling systems in that calls made from these systems routinely disconnect through no fault of the caller or receiver of the call. This disconnect requires a second or third collect call to be made on its system. Defendants bill on each collect-call made, so they necessarily benefit financially from the additional collect calls.

16. Defendants are aware of the problem, but choose to blame the caller or receiver rather than their systems. On the website, www.correctionalbillingservices.com, CBS

enumerates the many reasons why the calls are disconnected. They include, but are not limited to using a cordless phone, stopping the conversation for any length of time, using a cellular phone, or putting the call on hold. These are nothing but excuses designed to shift the blame to unwitting consumers rather than the Defendants.

17. The truth is that the systems themselves are defective and faulty, and must be repaired or replaced.

18. Defendants have no incentive to repair the systems because the only people they are deceiving are correctional inmates and their families and friends, and Defendants make a profit on each collect call made.

19. Plaintiff and the class have been damaged by Defendants' conduct.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this case as a class action pursuant to common law negligence, breach of contract, and unjust enrichment. Plaintiff seeks certification of a class of Florida consumers who received collect telephone calls through the Defendants' telephone systems in Florida that were prematurely disconnected from January 2002 to the present. Excluded from this Class are employees, officers, and directors of Defendants. Plaintiff Salb is a member of the class in that she received multiple collect telephone calls through the Defendants' telephone systems which were prematurely disconnected within the class period. Plaintiff Salb was required to pay additional money to complete her conversations.

21. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. The proposed class is so numerous that individual joinder of all members is impracticable. While the exact number and identities of the class members are

unknown to Plaintiff at this time, Plaintiff is informed and believes that the class numbers in the thousands, and likely tens of thousands.

22. The class is readily definable via the Defendants' records as Defendants should have a record of each consumer's received calls.

23. Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members. The myriad questions of law and fact common to the Class include:

- (a) whether Defendants' correctional telephone systems are defective;
- (b) whether Defendants have a duty to maintain and operate correctional telephone systems which will not prematurely disconnect telephone calls and whether Defendants breached that duty;
- (c) whether Defendants knew or should have known that their correctional telephone systems were defective;
- (d) whether the Defendants fail to disclose the actual reason for the disconnection of a consumer's telephone call;
- (e) whether Plaintiff and the class have been damaged and the measure of those damages;
- (f) whether Defendants have been and continue to be unjustly enriched at the expense of Plaintiff and the class members by its ongoing misconduct; and
- (g) whether Defendants must disgorge any and all profits they have made as a result of their misconduct.

24. Plaintiff will fairly and adequately represent and pursue the interests of class members. Plaintiff's counsel has vast experience in consumer class action cases. Plaintiff understands the nature of her claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

COUNT I- UNJUST ENRICHMENT

25. Plaintiff incorporates by reference paragraphs 1 through 24 as if fully set forth herein and further alleges as follows:

26. Defendants received from Plaintiff and class members monetary compensation from their use of Defendants' defective telephone systems which are excessive and unreasonable, and are the result of overcharging and overreaching. Defendants' telephone systems routinely disconnect calls through no fault of the caller or receiver of the call. This disconnect requires a second or third collect call to be made on its system. Defendants bill on each collect-call made, so they necessarily benefit financially from the additional collect calls.

27. As a result, Plaintiff and the class have conferred a benefit on Defendants, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefit conferred on them.

28. Defendants will be unjustly enriched if they are allowed to retain such funds, and each class member is entitled to an amount equal to the amount each class member enriched Defendants and for which Defendants have been unjustly enriched.

WHEREFORE, Plaintiff and class members demand an award against Defendants for the amounts equal to the amount each class member enriched Defendants and for which

Defendants have been unjustly enriched, and such other relief as this Court deems just and proper.

COUNT II- NEGLIGENCE

29. Plaintiff incorporates by reference paragraphs 1 through 24 as if fully set forth herein and further alleges as follows:

30. Defendants designed, installed, maintained, and operated their correctional telephone systems to and for the benefit of consumers receiving collect calls from correctional facilities, and knew or should have known that consumers would receive telephone calls from correctional facilities using Defendants' telephone systems.

31. Defendants owed Plaintiff and the class certain duties. These duties included the duty to exercise reasonable care in designing, creating, installing, operating, and managing their correctional telephone systems. Specifically, Defendants owed a duty to Plaintiff and the class to do the following:

- a. Exercise reasonable care in assuring that its correctional telephone systems would work properly;
- b. Exercise reasonable care in testing its correctional telephone systems;
- c. Exercise reasonable care once the disconnection problems surfaced;
- d. Properly warn Plaintiff (and consumers) of the fact that its telephone systems were defective;
- e. Properly refund to consumers those amounts paid as a result of Defendants' defective correctional telephone systems; and
- f. Properly repair the defective telephone systems.

32. Through the conduct described herein and above, Defendants breached their duties to Plaintiff and the class. The following sub-paragraphs summarize Defendants' breaches of duties to Plaintiff and the class and describe categories of acts or omissions constituting breaches of duty by Defendants; each and/or any of these acts or omissions establishes an independent basis for Defendants' liability in negligence:

- a. Failure to exercise reasonable care in assuring that its correctional telephone systems would work properly;
- b. Failure to exercise reasonable care in testing its correctional telephone systems;
- c. Failure to exercise reasonable care once the disconnection problems surfaced;
- d. Failure to properly warn consumers that its telephone systems were defective;
- e. Failure to properly refund to consumers those amounts paid as a result of Defendants' defective correctional telephone systems; and
- f. Failure to properly repair the defective telephone systems.

33. Defendants knew, or should have known, that, due to their failure to use reasonable care, Plaintiff and consumers would unnecessarily pay vast amounts of monies as a result of premature telephone call disconnections.

34. As the direct and legal cause and result of the Defendants' negligence, Plaintiff and the class have been injured and have incurred damages in that they paid monies to which they should not have had to pay as a result of multiple premature collect telephone call disconnections.

35. Plaintiff and the class are therefore entitled to damages in an amount to be proven at trial, together with interest thereon and costs.

WHEREFORE Plaintiff and the class respectfully request entry of a judgment against Defendants for compensatory damages and such other relief as may be deemed necessary and proper.

COUNT III—BREACH OF CONTRACT

36. Plaintiff incorporates by reference paragraphs 1 through 24 as if fully set forth herein and further alleges as follows.

37. The Defendants provide telephone services for the corrections industry. Plaintiff and class members, through their agreement to accept telephone calls via the Defendants' telephone systems, have entered into a valid contract with Defendants.

38. Defendants had a duty under the contract to provide functional telephone systems which would not prematurely disconnect calls. Defendants materially breached the parties' contract when they provided defective correctional telephone systems which disconnect telephone calls prematurely.

39. Defendants had identical contracts with all class members. Defendants uniformly breached their duties to all class members.

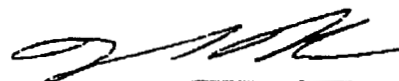
40. Plaintiff and the class have been damaged by Defendants' breach of contract in that the premature disconnect requires a second or third collect call to be made on the Defendants' system. Consumers are billed on each collect-call made and have incurred unnecessary charges as a result of the Defendants' conduct.

WHEREFORE Plaintiff and class members request that this Court enter judgment against the Defendants and in favor of Plaintiff and the class for damages, pre-judgment interest and such other relief as this Court deems just and appropriate.

DEMAND FOR TRIAL BY JURY

41. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Respectfully submitted,



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