

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

MAY 29 PM 12:24

GORDON PARK-LI, CLERK

BY: PARAM MATT
DEPUTY CLERK

CASE MANAGEMENT CONFERENCE SET

PLAN I OCT 31 2003 900AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JEREMY ORGEL, M.D., a professional
corporation, individually and on behalf of a
class of similarly situated individuals and the
general public,

Plaintiff,

vs.

AT&T CORPORATION, a New York
corporation, and AT&T
COMMUNICATIONS OF CALIFORNIA, a
California corporation d/b/a AT&T
CORPORATION, and DOES 1 through 50,

Defendants.

Case No.:

CCC-03-420896

CLASS ACTION

**COMPLAINT FOR VIOLATIONS OF
BUSINESS AND PROFESSIONS CODE
§ 17200, ET SEQ.**

Amount Demanded Greater Than \$10,000

1 JEREMY ORGEL, M.D., a professional corporation, individually, on behalf of a
2 class of similarly situated persons, and on behalf of members of the general public,
3 complains against defendants AT&T CORPORATION, a New York corporation, AT&T
4 COMMUNICATIONS OF CALIFORNIA, a California corporation d/b/a AT&T
5 CORPORATION (collectively hereinafter "AT&T"), and DOES 1 through 50, inclusive,
6 and alleges on information and belief, as follows:

7 **INTRODUCTION**

8 1. This class and private attorney general action seeks to put an end to and
9 remedy AT&T's ongoing and wrongful practice of shifting onto the backs of innocent
10 telephone customers AT&T's own financial responsibility for a scam perpetrated by
11 sophisticated hackers. The hackers have figured out how to manipulate AT&T's automated
12 long distance telephone system to create the false impression that innocent telephone
13 customers have authorized thousands of dollars in collect calls from foreign countries.
14 AT&T has actual knowledge of the existence and nature of this scam. Nevertheless, it is
15 engaged in a continuing practice of assessing, collecting, and/or attempting to collect charges
16 for collect calls from customers who have never agreed to pay for and have never authorized
17 the collect calls.

18 2. AT&T's Fraud Detection Center has identified, investigated and documented
19 the scam. AT&T is fully aware that hackers have obtained access to the voice mailboxes of
20 numerous telephone customers in California and are using the voicemail boxes to perpetrate
21 the scam. It has resulted in millions of dollars in charges to innocent telephone customers for
22 unauthorized collect calls.

23 3. The hackers have exploited flaws in the method currently used by AT&T to
24 verify a customer's acceptance of charges for collect calls. One flaw results from
25 AT&T's use of an automated computer system to contact customers and determine
26 whether they are willing to accept charges for long distance telephone calls placed from a
27 telephone other than the customer's telephone. The AT&T computer system asks a series
28 of prerecorded questions to determine whether the customer is willing to accept the

1 charges for a collect call being placed from another telephone number. The AT&T
2 computer awaits "yes" responses to these inquiries to verify the customer's acceptance of
3 the charges.

4 4. Unfortunately, the hackers have realized that AT&T's automated computer
5 does not recognize when it is posing prerecorded inquiries to a voicemail box and
6 receiving prerecorded responses. AT&T's machine does not know when it is
7 communicating with another machine and not a human. After breaking in to the
8 voicemail boxes of customers the hackers record new outgoing voicemail messages
9 designed and timed to respond affirmatively to AT&T's automated prerecorded inquiries
10 regarding the acceptance of charges for collect calls. The hackers then place international
11 collect calls and request that AT&T forward the charges to the customer's telephone line.
12 AT&T's automated computer system then calls the customer's telephone line, reaches the
13 customer's voicemail box, poses its prerecorded questions, and receives the hacker's
14 prerecorded responses. Alternatively, the hackers reroute the calls to a customer's
15 voicemail box to another telephone line where the hacker has prerecorded an outgoing
16 message to respond to AT&T's prerecorded inquiries.

17 5. AT&T then takes the untenable position that the customer is liable for the
18 collect call charges purportedly authorized through AT&T's defective verification
19 system. Notwithstanding its knowledge of the scam, AT&T regularly seeks to impose tens
20 of thousands of dollars in charges for the collect calls on customers who have never
21 authorized the calls or agreed to pay for them. AT&T improperly has attempted and
22 continues to attempt to minimize its own damages resulting from the scam by pursuing
23 innocent telephone customers for the charges. If a customer objects to paying for the
24 unauthorized calls, AT&T attempts to pressure the customer to pay a reduced amount,
25 despite AT&T's actual knowledge of the scam, by threatening to pursue collection of the
26 full amount.

27 6. In continuing to pursue telephone customers for unauthorized charges
28 resulting from this scam, AT&T has engaged in and is continuing to engage in acts of

1 unfair competition prohibited by California's Unfair Competition Law ("UCL"),
2 Business & Professions Code § 17200, et seq.

3 **PARTIES**

4 7. Plaintiff JEREMY ORGEL, M.D. ("DR. ORGEL") is a professional
5 corporation located in and doing business in San Francisco, California.

6 8. Defendant AT&T CORPORATION is a New York corporation doing
7 business throughout California, including San Francisco County.

8 9. Defendant AT&T COMMUNICATIONS OF CALIFORNIA d/b/a AT&T
9 CORPORATION is a California corporation doing business throughout California,
10 including San Francisco County.

11 10. Defendants DOES 1 through 50 are persons or entities whose true names and
12 capacities are presently unknown to plaintiff, and who therefore are sued by such fictitious
13 names. Plaintiff is informed and believes and on that basis alleges that each of the
14 fictitiously named defendants perpetrated some or all of the wrongful acts alleged herein, is
15 responsible in some manner for the matters alleged herein, and is jointly and severally liable.
16 Plaintiff will seek leave of court to amend this complaint to state the true names and
17 capacities of such fictitiously named defendants when ascertained.

18 11. At all times mentioned herein, each DOE defendant was the agent or employee
19 of the other defendants and was acting within the course and scope of such agency or
20 employment. The defendants are jointly and severally liable.

21 **CLASS ACTION AND PRIVATE ATTORNEY GENERAL ALLEGATIONS**

22 12. Pursuant to California Code of Civil Procedure §382, plaintiff brings this
23 action on behalf of all persons similarly situated against each of the defendants. Plaintiff also
24 files this action individually and as a private attorney general on behalf of the general public
25 under the UCL.

26 13. The UCL defines unfair competition to include any unlawful, unfair, or
27 fraudulent business act or practice. It authorizes a court to order injunctive and/or
28 declaratory relief, to order the restitution of any ill-gotten gains, and to order other equitable

1 relief to remedy any violations. Plaintiff brings this action in a representative capacity to
2 remedy the ongoing unlawful, unfair and fraudulent business practices alleged herein, and to
3 seek redress on behalf of all those persons who have been affected thereby.

4 14. The proposed class is comprised of all telephone customers who, on or after
5 the date four years preceding the filing of this complaint, were charged by AT&T for collect
6 calls as a result of the scam described herein.

7 15. Plaintiff is unable to state the precise number of potential members of the
8 proposed class because that information is in the possession of AT&T. However, the number
9 of class members is so numerous that joinder would be impracticable. The exact size of the
10 proposed class and the identity of its members will be readily ascertainable from the business
11 records of AT&T.

12 16. There is a community of interest among the members of the proposed class in
13 that there are questions of law and fact common to the proposed class that predominate over
14 questions affecting only individual members. Proof of a common set of facts will establish
15 the liability of AT&T and the right of each member of the class to recover.

16 17. Plaintiff's claims are typical of those of the class and he will fairly and
17 adequately represent the interests of the class. Plaintiff is represented by counsel competent
18 and experienced in both consumer protection and class action litigation.

19 18. A class action is superior to other methods for the fair and efficient
20 adjudication of this controversy. Because the damages suffered by the individual class
21 members may be relatively small compared to the expense and burden of litigation, it would
22 be impracticable and economically infeasible for class members to seek redress individually.
23 The prosecution of separate actions by the individual class members, even if possible, would
24 create a risk of inconsistent or varying adjudications with respect to individual class
25 members against AT&T, and would establish incompatible standards of conduct for AT&T.

26 19. The amount in controversy does not exceed \$74,999 for the individual
27 plaintiff, any member of the class, or any member of the general public.

28 20. Plaintiff is also suing on behalf of the general public as defined in Business

1 and Professions Code § 17204 in order to enjoin and remedy the ongoing unlawful, unfair
2 and fraudulent business practices alleged herein and to obtain declaratory, injunctive and
3 other appropriate relief on behalf of all those members of the general public who have been
4 victimized by AT&T's actions.

5 21. Plaintiff brings this action to secure redress for the unlawful, unfair, or
6 fraudulent business practices of AT&T. Venue is proper in San Francisco County under
7 Code of Civil Procedure § 395.5 because AT&T is a corporation and liability arose in San
8 Francisco County. AT&T committed the acts alleged herein in San Francisco County,
9 violated the rights of consumers in San Francisco County, and caused injury to consumers in
10 San Francisco County.

11 **FACTUAL ALLEGATIONS**

12 22. DR. ORGEL subscribes to a telephone line that includes voice mailbox
13 services in San Francisco, California. DR. ORGEL used a password to personally identify
14 him for the purpose of accessing such features of his voice mailbox as message retrieval.

15 23. In January 2003, based on information and belief, individuals unknown to DR.
16 ORGEL called his telephone line and entered DR. ORGEL's password, thus obtaining access
17 to DR. ORGEL's voice mailbox. After obtaining such access, the hackers then changed the
18 message in his voice mailbox. The changes were designed to exploit flaws in the method
19 used by AT&T to verify a telephone customer's acceptance of charges for collect calls.

20 24. On or about January 7, 2003, DR. ORGEL received a message from AT&T's
21 Fraud Detection Center, stating that AT&T suspected fraudulent activity involving DR.
22 ORGEL's phone line after monitoring extensive collect calls from Saudi Arabia. AT&T
23 advised DR. ORGEL that over 6,500 minutes had been charged to his phone line.

24 25. DR. ORGEL called back AT&T's Fraud Detection Center and notified AT&T
25 that he had not authorized any collect calls to be charged to his telephone line. AT&T
26 assigned DR. ORGEL a case number.

27 26. In or about February 2003, DR. ORGEL received a telephone bill for
28 telecommunications services in January 2003. The bill included \$21,123.11 in collect call

1 charges from Saudi Arabia billed from AT&T and \$2,217.92 in federal and local taxes based
2 on the collect call charges.

3 27. DR. ORGEL contacted AT&T to contest these charges, including placing a
4 telephone call to AT&T and faxing a letter and the February 2003 telephone bill, indicating
5 that he contested the charges therein. AT&T told DR. ORGEL that he could expect a
6 response in 10 to 14 business days.

7 28. In addition to the unauthorized AT&T charges, other similar charges from
8 another long distance provider, MCI, appeared on the same February 2003 bill. After DR.
9 ORGEL advised MCI that the charges were unauthorized, MCI promptly dropped the
10 charges.

11 29. In contrast to MCI, AT&T never acted on DR. ORGEL's objection to the
12 unauthorized charges. Instead, the charges and ever-increasing late fees continued to appear
13 on his March, April, and May telephone bills.

14 30. In late April 2003, DR. ORGEL contacted AT&T once again regarding these
15 unauthorized charges. AT&T gave DR. ORGEL a new case number, and eventually
16 assigned the case to an AT&T employee, Daniela Carswell. DR. ORGEL submitted the
17 documentation that AT&T requested on or about April 25, 2003. AT&T told DR. ORGEL
18 that he could expect to hear back from AT&T in several days.

19 31. On May 21, 2003, AT&T contacted DR. ORGEL and stated that it was
20 offering to waive 35% of the charges billed to his account for the unauthorized long distance
21 collect calls. AT&T told DR. ORGEL that if he did not accept this offer, that AT&T would
22 pursue him for the full amount of the unauthorized charges, over \$23,000. AT&T
23 subsequently acknowledged that DR. ORGEL did not authorize the collect calls but
24 nevertheless claimed he was responsible for them.

25 **FIRST CAUSE OF ACTION**
26 **(For Violations of the Unfair Competition Law,**
27 **Business and Professions Code § 17200, et seq.)**

28 32. Plaintiff realleges and incorporates herein by reference the allegations of

1 paragraphs 1 through 31 above as though set forth in full herein.

2 33. The UCL, Business and Professions Code § 17200 et seq., defines unfair
3 competition to include any unlawful, unfair or fraudulent business act or practice. The UCL
4 authorizes any person acting for the interest of the general public to bring an action for a
5 relief under the statute. The UCL also provides that a court may enjoin acts of unfair
6 competition, issue declaratory and other equitable relief, and order restitution of all ill-gotten
7 gains. Plaintiff is bringing this action on behalf of the proposed class and/or on behalf of the
8 general public.

9 34. Beginning on an exact date unknown to plaintiff, but at least during the four
10 years preceding the filing of this action and continuing to the present day, AT&T has
11 committed acts of unfair competition proscribed by Business and Professions Code § 17200
12 et seq., including the acts and practices alleged herein.

13 35. Affected members of the general public have been and will continue to be
14 harmed by the conduct complained of herein, in that AT&T attempts to collect and collects
15 charges for collect calls that members of the general public never authorized and never
16 agreed to pay for. AT&T holds, retains and has derived benefits from money properly
17 belonging to members of the general public.

18 36. The activities and practices complained of herein have been designed,
19 implemented, and perpetrated by AT&T in California. Affected members of the general
20 public have been injured as a direct and proximate result of AT&T's conduct in California.

21 37. AT&T's business acts and practices constitute unlawful business practices in
22 that class members have not agreed to pay the charges AT&T seeks to collect.

23 38. AT&T's business acts and practices also constitute unfair business practices in
24 that said acts and practices offend public policy and are substantially injurious to consumers.
25 Said acts and practices have no utility that outweighs the substantial harm to consumers.

26 39. AT&T's business acts and practices also constitute fraudulent business
27 practices in that said acts and practices are likely to deceive members of the general public as
28 to their legal rights and obligations.

40. AT&T's unlawful, unfair and fraudulent business acts and practices described herein present a continuing threat to the class and members of the general public in that AT&T currently is engaging in such acts and practices, and will persist and continue to do so unless and until this Court issues appropriate injunctive and declaratory relief.

41. Plaintiff is entitled to an award of attorneys' fees and costs in prosecuting this action under Code of Civil Procedure § 1021.5 and other applicable law in part because:

a. a successful outcome in this action will result in the enforcement of important rights affecting the public interest by maintaining the integrity AT&T's billing practices;

b. this action will result in a significant benefit to the general public by bringing to a halt unlawful, unfair and deceptive activity and by causing the restitution of ill-gotten gains obtained by AT&T;

c. unless this action is prosecuted, many consumers will not be aware that they were victimized by AT&T's wrongful acts and practices; and

d. such fees should not be deducted from the restitutionary recovery as to do so would frustrate the purposes of the UCL.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays for relief as follows:

1. For an order preliminarily and permanently enjoining AT&T from violating Business and Professions Code § 17200 et seq., and engaging in the unlawful, unfair and fraudulent business acts and practices alleged herein;

2. For an order finding and declaring that the acts and practices challenged herein are unlawful, unfair and/or fraudulent;

3. For an order requiring restitution of all ill-gotten gains;

4. For other appropriate relief to ensure that AT&T does not continue to engage in or profit from its unlawful, unfair and/or fraudulent acts and practices;

5. For costs and expenses of suit incurred herein;

6. For reasonable attorneys' fees incurred by plaintiff in the investigation, filing


1 and prosecution of this action; and,

2 7. For such other and further relief as the Court may deem just and proper.

3
4 Dated: May 29, 2003

Respectfully submitted,

5 CHAVEZ & GERTLER LLP

6
7 By: 
8 MARK A. CHAVEZ

9 Attorneys for Plaintiff
JEREMY ORGEL, M.D.

10 Complaint.doc