

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/06/99

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. TEMBLADOR

DEPUTY CLERK

A. ROMERO, CRT. AST.

HONORABLE
8

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

1:30 pm

BC143305

Plaintiff

Counsel

ERIKA LANDIN

NO APPEARANCES

VS

Defendant

LOS ANGELES CELLULAR TELEPHONE
COMPANY

Counsel

RECUSAL: David A. Horowitz

NATURE OF PROCEEDINGS:

EX PARTE PROCEEDING;

Pursuant to stipulation and order signed and filed this date, the Court orders the matter stayed.

The Court orders the FINAL STATUS CONFERENCE of August 2, 1999 and the TRIAL date of September 1, 1999 advanced and vacated.

The Court indicates that the pending motion for summary judgment under submission as of April 29, 1999 will no longer be deemed under submission as of this date.

The Court sets a NON-APPEARANCE CASE REVIEW: RE FCC DECISION for January 6, 2000 at 9:00 a.m. in this department.

Defendant's counsel is ordered to file a status report re: FCC decision directly in Department 54 three court days prior.

Defendant's counsel is ordered to inform the Court if plaintiff fails to file a petition with the FCC.

Defendant to notice.

A copy of this minute order is sent via United States mail addressed as follows:

<p align="center">MINUTES ENTERED 07/06/99 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/06/99

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. TEMBLADOR

DEPUTY CLERK

A. ROMERO, CRT. AST.

HONORABLE
8

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

1:30 pm

BC143305

Plaintiff

Counsel

ERIKA LANDIN

NO APPEARANCES

VS

Defendant

LOS ANGELES CELLULAR TELEPHONE
COMPANY

Counsel

RECUSAL: David A. Horowitz

NATURE OF PROCEEDINGS:

Steven E. Sletten
GIBSON, DUNN & CRUTCHER
333 South Grand Ave.
Los Angeles, CA 90071-3197

<p align="center">MINUTES ENTERED 07/06/99 COUNTY CLERK</p>

EXHIBIT 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIONEL Z. GLANCY #134180
PETER A. BINKOW #173848
LAW OFFICES OF LIONEL Z. GLANCY
1801 Avenue of the Stars, Suite 308
Los Angeles, California 90067
(310) 201-9150

MICHAEL B. HYMAN
MARY JANE EDELSTEIN FAIT
MUCH SHELIST FREED DENENBERG
AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle Street, Suite 2100
Chicago, IL 60601-1095
(312) 346-3100

Attorneys for Plaintiff
[Additional Counsel Listed On Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ERIKA LANDIN on behalf of herself and all
others similarly situated,

Plaintiff,

v.

LOS ANGELES CELLULAR TELEPHONE
COMPANY d/b/a L.A. CELLULAR OF
CALIFORNIA, a California corporation,

Defendant.

) Case No. BC 143305

) Hon. Ernest Hiroshige

) CLASS ACTION

) NOTICE OF MOTION AND
) MOTION OF PLAINTIFF FOR
) SUMMARY JUDGMENT, OR,
) IN THE ALTERNATIVE,
) SUMMARY ADJUDICATION

) [Separate Statement of
) Undisputed Facts, Declaration
) of Lionel Z. Glancy; Appendix
) of Non-California and
) Regulatory Authority Filed
) Herewith]

Date: May 26, 1999

Time: 8:30 a.m.

Dept. 54

Trial: July 14, 1999



1 TO: DEFENDANT LOS ANGELES CELLULAR TELEPHONE COMPANY
2 AND ITS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on May 26, 1999 at 8:30 a.m. or as soon
4 thereafter as counsel may be heard in Department 54 of the above-entitled Court
5 located at 111 North Hill Street, Los Angeles, California 90012, plaintiff Erika Landin,
6 on behalf of herself and all others similarly situated, will move this Court pursuant to
7 Section 437(c) of the California Code of Civil Procedure for Summary Judgment in
8 favor of plaintiff and against Los Angeles Cellular Telephone Company ("L.A.
9 Cellular") on the ground that there is no genuine issue as to any material fact and that
10 plaintiff is entitled to judgment as a matter of law. In the alternative, plaintiff moves
11 this Court, pursuant to Section 437(c) of the California Code of Civil Procedure, for
12 summary adjudication as follows:
13

14 Issue No. 1:

15 There is no genuine issue as to any material fact that L.A. Cellular has violated
16 Section 17200 of the California Business and Practices and Professions Code (unfair
17 business practices) and plaintiff is entitled to judgment as a matter of law.
18

19 Issue No. 2:

20 There is no genuine issue as to any material fact that L.A. Cellular has violated
21 Section 17500 of the California Business and Professions Code (misleading
22 advertising) and plaintiff is entitled to judgment as a matter of law.
23

24 Issue No. 3:

25 There is no genuine issue as to any material fact that L.A. Cellular has been
26 unjustly enriched and that plaintiff is entitled to judgment as a matter of law.
27
28

1 In support of its motion, plaintiff requests that, pursuant to Section 452 of the
2 California Evidence Code, the Court take judicial notice of the following tariff
3 materials filed with the Public Utilities Commission:

4 (1) Rule 14 of L.A. Cellular's general rules applicable to cellular radio
5 telecommunication service;

6 (2) L.A. Cellular's advice letter No. 15, which became effective on
7 December 6, 1988; and

8 (3) L.A. Cellular's advice letter No. 555, which became effective on January
9 24, 1995.

10
11 Copies of the aforementioned materials are attached to the Declaration of
12 Robert Wright previously filed by L.A. Cellular in connection with its motion for
13 summary judgment or, in the alternative summary adjudication.
14

15 This motion is based on this notice, the attached memorandum of points and
16 authorities, the separate statement of undisputed facts submitted concurrently
17 herewith, the declaration of plaintiff Erika Landin submitted concurrently herewith,
18 the statement of non-California and regulatory authority submitted concurrently
19
20
21
22
23
24
25
26
27
28

1 herewith, the complete pleadings and records on file in this action, and such other
2 evidence and argument as may be presented to the Court at or prior to the hearing of
3 the motion.
4

5 Dated: April 16, 1999

LAW OFFICES OF LIONEL Z. GLANCY

6
7 By 

8 Lionel Z. Glancy, Esquire
9 Peter A. Binkow, Esquire
Attorneys for Plaintiff

10 1801 Avenue of the Stars
11 Suite 308
Los Angeles, California 90067
(310) 201-9150

12 MICHAEL B. HYMAN
13 MARY JANE EDELSTEIN FAIT
14 ELLYN M. LANSING
MUCH SHELIST FREED DENENBERG
15 AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle Street, Suite 2100
16 Chicago, IL 60601-1095
(312) 346-3100

17
18 KEITH S. SHINDLER
LAW OFFICES OF KEITH S. SHINDLER
19 839 West Van Buren
Chicago, IL 60607
20 (312) 421-1000
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIONEL Z. GLANCY #134180
PETER A. BINKOW #173848
LAW OFFICES OF LIONEL Z. GLANCY
1801 Avenue of the Stars, Suite 308
Los Angeles, California 90067
(310) 201-9150

MICHAEL B. HYMAN
MARY JANE EDELSTEIN FAIT
MUCH SHELIST FREED DENENBERG
AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle Street, Suite 2100
Chicago, IL 60601-1095
(312) 346-3100

Attorneys for Plaintiff
[Additional Counsel Listed On Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ERIKA LANDIN on behalf of herself and all
others similarly situated,

Plaintiff,

v.

LOS ANGELES CELLULAR TELEPHONE
COMPANY d/b/a L.A. CELLULAR OF
CALIFORNIA, a California corporation,

Defendant.

) Case No. BC 143305

) Hon. Ernest Hiroshige

) CLASS ACTION

) ERRATA TO: PLAINTIFF'S
) SEPARATE STATEMENT OF
) UNDISPUTED FACTS IN
) SUPPORT OF MOTION FOR
) SUMMARY JUDGMENT OR,
) IN THE ALTERNATIVE,
) SUMMARY ADJUDICATION

) Date: May 26, 1999
) Time: 8:30 a.m.
) Dept. 54
) Trial: July 14, 1999



1 PLEASE TAKE NOTICE THAT Plaintiff hereby submits the following
2 ERRATA to her Separate Statement of Undisputed Facts in Support of her Motion
3 For Summary Judgment or, in the Alternative, Summary Adjudication:
4

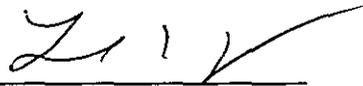
5 Page 8, Paragraph 38:

6 In second column, delete reference to Fowler Dep. Ex. 22, LLAC001000
7 (Glancy Dec. Ex. C), as follows:

8 <u>No.</u>	<u>Undisputed Facts</u>	<u>Evidentiary Support</u>
9 38.	L. A. Cellular is certainly capable of providing adequate disclosure of its dropped call credit policy to customers. Prior to 1996, L. A. Cellular only charged 50% of its regular service rate for incomplete calls and marked these calls on monthly bills with the letter "I" to the left of the number called. This policy was directly disclosed to customers on the face of their bills ("Incomplete call 50% of Reg. Serv. Rate") and on the back of their service contract.	10 Fowler Dep. Ex. 22, 11 LLAC001000 (Glancy Dec. Ex. 12 C) 13 Fowler Dep. Ex. 16. 14 (Binkow Dec. Ex. G)

15 Dated: May 4, 1999

LAW OFFICES OF LIONEL Z. GLANCY

16
17
18
19
20 By 
21 Lionel Z. Glancy, Esquire
22 Peter A. Binkow, Esquire
23 Attorneys for Plaintiff
24 1801 Avenue of the Stars
25 Suite 308
26 Los Angeles, California 90067
27 (310) 201-9150
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MICHAEL B. HYMAN
MARY JANE EDELSTEIN FAIT
ELLYN M. LANSING
MUCH SHELIST FREED DENENBERG
AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle Street, Suite 2100
Chicago, IL 60601-1095
(312) 346-3100

KEITH S. SHINDLER
LAW OFFICES OF KEITH S. SHINDLER
839 West Van Buren
Chicago, IL 60607
(312) 421-1000

PROOF OF SERVICE BY MAIL

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1801 Avenue of the Stars, Suite 308, Los Angeles, California 90067.

On May 4, 1999 I served the following:

1) **ERRATA TO PLAINTIFF'S SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION;**

on the parties shown below by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

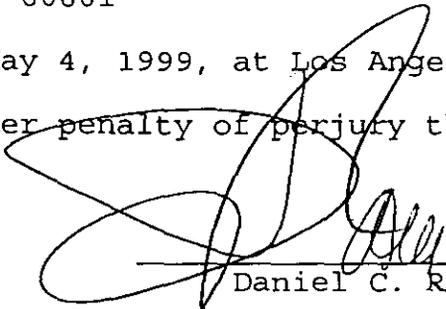
Steven E. Sletten
Gibson, Dunn & Crutcher
333 South Grand Avenue
Los Angeles, California
90071-3197

Keith S. Shindler
Law Offices of Keith
S. Shindler
839 West Van Buren
Chicago, Illinois 60607

Michael B. Hyman
Mary Jane Fait
Much Shelist Freed
Denenberg, et al
200 North LaSalle Street
Suite 2100
Chicago, Illinois 60601

Executed on May 4, 1999, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.



Daniel C. Rann CELLULAR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIONEL Z. GLANCY #134180
PETER A. BINKOW #173848
LAW OFFICES OF LIONEL Z. GLANCY
1801 Avenue of the Stars, Suite 308
Los Angeles, California 90067
(310) 201-9150

MICHAEL B. HYMAN
MARY JANE EDELSTEIN FAIT
MUCH SHELIST FREED DENENBERG
AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle Street, Suite 2100
Chicago, IL 60601-1095
(312) 346-3100

Attorneys for Plaintiff
[Additional Counsel Listed On Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ERIKA LANDIN on behalf of herself and all
others similarly situated,

Plaintiff,

v.

LOS ANGELES CELLULAR TELEPHONE
COMPANY d/b/a L.A. CELLULAR OF
CALIFORNIA, a California corporation,

Defendant.

) Case No. BC 143305

) Hon. Ernest Hiroshige

) CLASS ACTION

) **ERRATA TO: PLAINTIFF'S**
) **SEPARATE STATEMENT OF**
) **UNDISPUTED FACTS IN**
) **SUPPORT OF MOTION FOR**
) **SUMMARY JUDGMENT OR,**
) **IN THE ALTERNATIVE,**
) **SUMMARY ADJUDICATION**

) Date: May 26, 1999
) Time: 8:30 a.m.
) Dept. 54
) Trial: July 14, 1999



1 PLEASE TAKE NOTICE THAT Plaintiff hereby submits the following
2 ERRATA to her Separate Statement of Undisputed Facts in Support of her Motion
3 For Summary Judgment or, in the Alternative, Summary Adjudication:
4

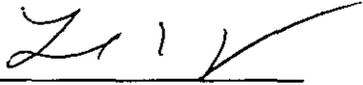
5 Page 8, Paragraph 38:

6 In second column, delete reference to Fowler Dep. Ex. 22, LLAC001000
7 (Glancy Dec. Ex. C), as follows:

8 <u>No.</u>	<u>Undisputed Facts</u>	<u>Evidentiary Support</u>
9 38.	L. A. Cellular is certainly capable of 10 providing adequate disclosure of its 11 dropped call credit policy to customers. 12 Prior to 1996, L. A. Cellular only 13 charged 50% of its regular service rate 14 for incomplete calls and marked these 15 calls on monthly bills with the letter "I" 16 to the left of the number called. This 17 policy was directly disclosed to customers 18 on the face of their bills ("Incomplete 19 call 50% of Reg. Serv. Rate") and on the 20 back of their service contract.	Fowler Dep. Ex. 22, LLAC001000 (Glancy Dec. Ex. Ⓒ) Fowler Dep. Ex. 16. (Binkow Dec. Ex. G)

21 Dated: May 4, 1999

LAW OFFICES OF LIONEL Z. GLANCY

22 By 
23 Lionel Z. Glancy, Esquire
24 Peter A. Binkow, Esquire
25 Attorneys for Plaintiff
26 1801 Avenue of the Stars
27 Suite 308
28 Los Angeles, California 90067
(310) 201-9150

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MICHAEL B. HYMAN
MARY JANE EDELSTEIN FAIT
ELLYN M. LANSING
MUCH SHELIST FREED DENENBERG
AMENT BELL & RUBENSTEIN, P.C.
200 North LaSalle Street, Suite 2100
Chicago, IL 60601-1095
(312) 346-3100

KEITH S. SHINDLER
LAW OFFICES OF KEITH S. SHINDLER
839 West Van Buren
Chicago, IL 60607
(312) 421-1000

1 LIONEL Z. GLANCY #134180
2 PETER A. BINKOW #173848
3 LAW OFFICES OF LIONEL Z. GLANCY
4 1801 Avenue of the Stars, Suite 308
5 Los Angeles, California 90067
6 (310) 201-9150

7 MICHAEL B. HYMAN
8 MARY JANE EDELSTEIN FAIT
9 MUCH SHELIST FREED DENENBERG
10 AMENT BELL & RUBENSTEIN, P.C.
11 200 North LaSalle Street, Suite 2100
12 Chicago, IL 60601-1095
13 (312) 346-3100

14 Attorneys for Plaintiff
15 [Additional Counsel Listed On Signature Page]

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

18 ERIKA LANDIN on behalf of herself and all
19 others similarly situated,

20 Plaintiff,

21 v.

22 LOS ANGELES CELLULAR TELEPHONE
23 COMPANY d/b/a L.A. CELLULAR OF
24 CALIFORNIA, a California corporation,

25 Defendant.

) Case No. BC 143305

) Hon. Ernest Hiroshige

) CLASS ACTION

) MEMORANDUM OF POINTS
) AND AUTHORITIES IN
) SUPPORT OF PLAINTIFF'S
) MOTION FOR SUMMARY
) JUDGMENT, OR, IN THE
) ALTERNATIVE, SUMMARY
) ADJUDICATION

) [Separate Statement of
) Undisputed Facts, Declaration
) of Lionel Z. Glancy; Appendix
) of Non-California and Regu-
) latory Authority Filed Herewith]

26 Date: May 26, 1999

27 Time: 8:30 a.m.

28 Dept. 54

Trial: July 14, 1999

TABLE OF CONTENTS

1

2 I. SUMMARY OF ARGUMENT 1

3

4 II. STATEMENT OF FACTS 2

5 A. L. A. CELLULAR'S TARIFF DOES NOT

6 ADEQUATELY DISCLOSE ITS DROPPED CALL

7 CREDIT POLICY 2

8 B. L. A. CELLULAR CONCEALED ITS DROPPED CALL

9 CREDIT POLICY FROM CONSUMERS 5

10 C. L. A. CELLULAR'S POLICY AND PRACTICES AS TO

11 DROPPED CALL CREDITS MAKE IT DIFFICULT TO

12 OBTAIN A CREDIT 9

13 III. LEGAL STANDARDS GOVERNING THIS MOTION 10

14 IV. DEFENDANT L.A. CELLULAR IS LIABLE UNDER BUSINESS

15 AND PROFESSIONS CODE SECTIONS 17200 and 17500 11

16 V. L.A. CELLULAR IS LIABLE FOR UNJUST ENRICHMENT 15

17 VI. CONCLUSION 15

18

19

20

21

22

23

24

25

26

27

28

1 TABLE OF AUTHORITIES

2 CASES

3 Bauer v. Jackson,
4 15 Cal. App. 3d 358
5 93 Cal. Rptr. 43
6 (4th Dist. 1971) 11

7 Committee on Children’s Television v.
8 General Foods Corp.,
9 35 Cal. 3d 197
10 (1983) 12, 13

11 Day v. AT&T Corp.,
12 63 Cal. App. 4th 325
13 (1998) 13

14 Exposition Press, Inc. v. FTC,
15 295 F.2d 869
16 (2d Cir. 1961) 14

17 First Nationwide Savings v. Perry,
18 11 Cal. App. 4th 1657
19 (1992) 15

20 FTC v. Colgate Palmolive Co.,
21 380 U.S. 374
22 (1965) 13

23 In The Matter of Chrysler Corp.,
24 96 F.T.C. 134
25 (1980) 12, 13

26 In The Matter of Ford Motor Co.,
27 96 F.T.C. 362 (1980) 13

28 Muelder v. Western Greyhound Lines,
8 Cal. App. 3d 319
(4th Dist. 1970) 12

People v. Dollar Rent A Car Systems, Inc.,
211 Cal. App. 3d 119
(1989) 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Unfair Business Practices Act
 § 17500 2, 10, 11
Unfair Competition Act 12

1 **I. SUMMARY OF ARGUMENT**

2 Plaintiff has brought claims against Los Angeles Cellular Telephone Company
3 ("L.A. Cellular") for false advertising, unfair business practices, and unjust enrichment
4 because it fails to disclose to subscribers that it offers a credit for dropped calls. L.A.
5 Cellular's filed tariff provides that, "upon appropriate proof", a credit will be issued for
6 dropped calls (calls that are interrupted and placed again to the same number within
7 five minutes). L.A. Cellular admits that it does not advertise this policy. (L.A.
8 Cellular Memo. in Support of Motion for Summary Adjudication at 3).

9
10 While L.A. Cellular admits that it does not advertise its dropped call policy, it
11 claims it has no duty to do so and that consumers have constructive notice of the
12 tariff. However, even if knowledge of the tariff is imputed to consumers, the tariff is
13 deceptive. It does not disclose what a dropped is and does not disclose how to obtain
14 a dropped call credit.

15
16 Not only does the tariff not adequately disclose L.A. Cellular's dropped call
17 credit policy, L.A. Cellular has a policy and practice of deliberately refusing to inform
18 customers as to the dropped call credit policy. L.A. Cellular's advertising and other
19 marketing and billing materials utterly fail to disclose L.A. Cellular's dropped call
20 policy. Moreover, L.A. Cellular's policy and practice if a customer asks about
21 dropped calls is to make it difficult to obtain a dropped call credit.

22
23 This Court has previously held that plaintiff's unfair business practice claims
24 against L.A. Cellular are not barred by the filed rate doctrine. The Court has also
25 upheld plaintiff's claim for unjust enrichment. (9/30/98 Ruling).

26
27 There is no triable issue of fact that L.A. Cellular's misleading advertising and
28

1 unfair business practices are likely to deceive a reasonable consumer and thus
2 constitute violations of Sections 17200 and 17500 of the Unfair Business Practices
3 Act.¹

4 **II. STATEMENT OF FACTS**

5 **A. L. A. CELLULAR'S TARIFF DOES NOT ADEQUATELY**
6 **DISCLOSE ITS DROPPED CALL CREDIT POLICY**

7 L. A. Cellular defines a "dropped call" as occurring when a cellular
8 customer's call is disconnected without the customer pressing the "END" key or
9 hanging up. Plaintiff's Statement of Undisputed Fact ("Pl. Statement") 8. Dropped
10 calls are common. Pl. Statement 10. L. A. Cellular's documents reveal approximately
11 five percent of all calls made on L.A. Cellular's system are dropped or at least 2.3
12 million calls per month. Pl. Statement 50.²

13
14 L.A. Cellular has filed with the PUC its Retail Tariff and Special Conditions
15 Applicable to the Cellular Radio Telecommunications Service and its General Rules
16 Applicable to Cellular Radio Telecommunications Service ("tariff") . Pl. Statement 1.³

17
18 Part 6 of Rule 14 of the tariff states that "[I]n the case of dropped or garbled
19 calls, and on receipt of appropriate proof, the Utility will extend credit to the
20 customer for part or all of the usage charges applicable to the calls in question." Pl.

21
22 ¹ For the same reasons, there are no triable issues of fact as to plaintiff's unjust enrichment claim.

23
24 ² Defendant may challenge these figures and claim they are incorrect, but the figures come from
25 defendant's own documents.

26 ³ In December of 1996, the PUC ruled that a cellular service provider no longer need file tariffs
27 but must continue "to maintain a record of its rates, other terms and conditions and revisions thereto
28 at its general office." Re Mobile Telephone Service and Wireless Communications, 174 P.U.R. 4th 543,
552 (Cal. PUC, Dec. 20, 1996).

1 Statement 2. L.A. Cellular added Part 6 of Rule 14 to its tariff by Advice Letter No.
2 15, which became effective on December 6, 1988. Pl. Statement 3.

3 Part 8 of Rule 14 states that "[c]laims for credits by non-reseller customers on
4 account of service interruptions or for missed, dropped or garbled calls shall be made
5 within ninety days after the end of the relevant customer's billing cycle in which the
6 interruption or other malfunction is alleged to have occurred." Pl. Statement 5. L.A.
7 Cellular added Part 8 of Rule 14 to its tariff by Advice Letter No. 555, which became
8 effective on January 24, 1995. Pl. Statement 5.

9
10 L.A. Cellular provides a dropped-call credit upon the request of a customer
11 when a customer redials a call within five minutes after that call is dropped. Pl.
12 Statement 6. The amount of the dropped-call credit is the air time cost to the
13 customer of the first minute of the redialed call. Pl. Statement 7.

14
15 But the tariff does not adequately disclose L. A. Cellular's dropped call credit
16 policy. The tariff is almost 300 pages of fine print regarding many technical aspects of
17 L. A. Cellular's telecommunications service. Pl. Statement 9. Yet nowhere does the tariff
18 define "dropped call". Pl. Statement 11. Furthermore, there is no way for a customer to
19 know where to find all the provisions that apply to L. A. Cellular's dropped call policy
20 without reading every page of the tariff. Even if a customer did read all of the relevant
21 tariff provisions cited, they do not adequately disclose L. A. Cellular's dropped call credit
22 policy. Pl. Statement 11-14, 17-19.

23
24 L. A. Cellular claims that it disclosed its credit policy regarding dropped calls by
25 the following language in the tariff:

26
27 In the case of dropped or garbled calls, and on receipt of appropriate
28 proof, the utility will extend credit to the customer for part or all of the

1 usage charges applicable to the call in question. In the case of credits
2 sought by a certificated reseller. Utility may also require a showing that
3 any credit issued has been or will be passed through to the relevant end
4 user. (Tariff LLAC000054). (Emphasis supplied.)

5 Thus, since 1988, the tariff has indicated that L. A. Cellular, on "appropriate
6 proof", would issue a credit for "dropped calls". But under the tariff, neither "dropped
7 calls" nor "appropriate proof" are defined. Pl. Statement 11, 12. The tariff also does not
8 indicate that it is the customer's responsibility to seek the credit. Pl. Statement 13.
9 Indeed, L. A. Cellular does not need customers to identify their dropped calls. Two calls
10 to the same number within five minutes qualify customers to a credit. L. A. Cellular
11 always has this information from the customer's billing statement itself. Pl. Statement 12.

12 The tariff also does not explain the meaning of "part or all of the usage charges".
13 Pl. Statement 14. Even L. A. Cellular's Vice President of Customer Care Stephen Fowler
14 ("Fowler") did not know what this phrase means. Id. Thus, customers remain in the dark
15 as to the amount of credit to which they are due.

16 The tariff also sets forth a time limitation to obtain credits for dropped calls. In
17 1995, the tariff added this new requirement -- a credit would only be issued if a claim for
18 a credit was made within 90 days after the end of a customer's billing cycle.⁴

19
20 Claims for credits by non-reseller customers on account of service
21 interruptions or for missed, dropped or garbled calls shall be made within
22 ninety days after the end of the relevant customer's billing cycle in which
23 the interruption or other malfunction is alleged to have occurred. Reseller
24 customers shall make such claims within 120 days after the end of the
25 relevant billing cycle. (Tariff at LLAC000655). (Emphasis supplied.)

26 Again, "dropped calls" are not defined; neither is "billing cycle" or "reseller". Pl.
27 Statement 5, 11, 15. The inadequacy of the disclosure is obvious - even Fowler was

28 ⁴ The prior provision of the tariff also remained in force.

1 unaware of this time limitation. Pl. Statement 16.⁵

2 L. A. Cellular also has claimed that it follows other policies as to dropped calls:
3 (1) L.A. Cellular provides a dropped-call credit upon the request of a customer when a
4 customer redials a call within five minutes after that call is dropped and the customer has
5 not placed any intermediate calls prior to returning the dropped calls; (2) its credit is the
6 air time cost to the customer of the first minute of the redialed call and (3) L. A.
7 Cellular's Customer Service representatives do not have access to a customer's calling
8 records for any given month until after the end of the billing cycle for that month.
9 Defendant's Memorandum of Law in Support of Motion for Summary Judgment, p. 5).
10 None of these policies is disclosed in L. A. Cellular's tariff. Pl. Statement 17-19.

11
12 **B. L. A. CELLULAR CONCEALED ITS DROPPED CALL**
13 **CREDIT POLICY FROM CONSUMERS**

14 As set forth above, the tariff did not adequately disclose L. A. Cellular's dropped
15 call credit policy. In addition, L. A. Cellular had a policy and practice of deliberately
16 refusing to inform customers as to its dropped call credit policy.⁶ Dropped calls are not
17 identified anywhere on the monthly bill. Pl. Statement 20. Nor was any L. A. Cellular
18 document defining "dropped calls" ever sent to a customer without the customer first
19 requesting such information. Pl. Statement 22.

20
21 While L. A. Cellular's training manual discusses dropped call credits, the training
22

23
24 ⁵ Fowler testified at his deposition that if there was such a time limitation, he would know about
25 it. Pl. Statement 16.

26 ⁶ In his deposition, Fowler testified about a form letter discussing dropped call credits. But by
27 the terms of the letter, it was sent only after the customer first requested such information. Pl.
28 Statement 36. In fact, Fowler did not know if such letters were actually ever sent to customers. Pl.
Statement 37.

1 manual is not given to customers. Pl. Statement 21. Nowhere in the L. A. Cellular
2 training manual are employees told to discuss what a dropped call is or how to get a
3 dropped call credit. Pl. Statement 23.

4 Customer care representatives are trained to discussed dropped call credits only
5 after a customer first requests that specific credit. Pl. Statement 24. When a customer
6 reports that he is experiencing what L. A. Cellular determines is a dropped call, the
7 representative does not necessarily inform the customer of L. A. Cellular's policy for
8 handling dropped call credits, but instead merely states that it could be a geographical or
9 mechanical problem. Pl. Statement 25. There is no evidence that L. A. Cellular provided
10 copies of the tariff to Customer Care representatives-trainees and copies of the tariff are
11 not even maintained in that department. Pl. Statement 26.

12 L. A. Cellular sent customers a document entitled "How To Read Your Bill", but
13 it did not define "dropped call" or explain how to get a dropped call credit. Pl. Statement
14 27. On the back of L. A. Cellular's billing statement, L. A. Cellular describes certain
15 "Terms and Conditions", but again, nowhere does it define "dropped call" or explain how
16 to get a dropped call credit. Pl. Statement 28. Customer contract forms produced by L.
17 A. Cellular do not define dropped calls or refer to the fact that customers can get credit
18 for dropped calls. Pl. Statement 29. The extensive information packets and "Welcome
19 Kits" provided to new customers do not define or mention dropped calls or dropped call
20 credits. Pl. Statement 30. Plaintiff Landin attests in her Declaration that she never
21 received notice from L. A. Cellular as to what the term "dropped call" meant or that she
22 could get credit for dropped calls. Pl. Statement 31.

23 L. A. Cellular claims that customer service tells customers all about dropped
24
25
26
27
28

1 call credits. (Fowler Decl. at 5-7.) However, Fowler did not have personal knowledge
2 as to a number of issues discussed in his declaration. Fowler does not train customer
3 care representatives and is not knowledgeable as to all of the training materials or
4 information provided to them. Pl. Statement 32.

5
6 Fowler did not know the actual number of dropped call credits given to
7 customers, only the number of "courtesy credits", which include all reductions of a
8 customer's bill as a result of a request that the bill was not right or the service did not
9 meet a customer's expectations in some way. Pl. Statement 33. Fowler did not hear
10 what customer service representatives say to customers. Pl. Statement 34. Fowler did
11 not know the length of L. A. Cellular's tariff, could not identify L. A. Cellular's
12 current tariff, and did not know the provisions regarding dropped calls in the current
13 tariff. Pl. Statement 35. Fowler was unaware that there is a 90-day time limitation for
14 requesting credit for dropped calls, and said if there was such a limitation, he would
15 know what it would be.⁷ Pl. Statement 16.

17 L. A. Cellular certainly is capable of providing adequate disclosure of its
18 dropped call credit policy to customers. Prior to 1996, L. A. Cellular charged 50% of
19 its regular service rate for incomplete calls⁸ and marked these calls on monthly bills
20 with the letter "I" to the left of the number called. This policy was directly disclosed
21
22

23
24 ⁷ Plaintiff has attached to this brief only a sample of the marketing documents, contracts and
25 information packets produced by defendant. Plaintiff has found no marketing documents, contracts
or information packets in the production that discuss or refer to the dropped-call credit.

26 ⁸ L. A. Cellular defines "incomplete calls" as calls that result in a busy signal or no answer or if
27 the customer does not completely dial the number before pressing "send". Pl. Statement 39. To date,
28 L. A. Cellular has not produced documents relating to incomplete calls, and this is a subject about
which plaintiff needs to conduct additional discovery. Pl. Statement 40.

1 to customers on the face of their bills. ("Incomplete call 50% of Reg. Serv. Rate").
2 Pl. Statement 38. As of September 1, 1996, after this lawsuit was filed, L. A. Cellular
3 decided to stop charging for incomplete calls altogether but considered and rejected
4 giving an automatic credit for dropped calls. Pl. Statement 42. L. A. Cellular's
5 change in policy regarding incomplete calls was announced directly on L. A. Cellular's
6 bills: "L. A. Cellular is no longer charging for incomplete calls made on and after
7 September 1, 1996. Such calls will no longer appear on your bill." Pl. Statement 43.
8 L. A. Cellular also advertised to its customers that it no longer charged for incomplete
9 calls. Pl. Statement 44. L. A. Cellular knew that customers are confused about the
10 difference between "dropped" and "incomplete" calls. Pl. Statement 45.
11

12
13 In 1993 and again in 1996, L. A. Cellular was considering whether to adopt an
14 automatic dropped call credit system. Pl. Statement 48. As a result of these
15 evaluations, L. A. Cellular knew that the vast majority of dropped calls never resulted
16 in credits. Pl. Statement 49. Defendant's policy for obtaining dropped-call credits
17 requires customers to call defendant's "customer care" department. Pl. Statement
18 51. Yet the documents reveal that customer care receives only 28,000 calls per month,
19 336,000 calls per year regarding dropped calls. Assuming each call was about a single
20 dropped call, this represents less than one-and-a-half percent of all dropped calls.⁹
21 Pl. Statement 53.
22

23 Defendant's documents show (and Fowler could not dispute) that
24 approximately 5% of all calls are dropped, or in excess of 2.3 million calls per month.
25

26 ⁹ Fowler testified that it was his "opinion" that 80-90% of L. A. Cellular's customers knew how
27 to get dropped call credits but he admitted his opinion was not based on personal knowledge or any
28 computer tracking done through L. A. Cellular. Pl. Statement 55.

1 Pl. Statement 50. Other cellular telephone companies, including L. A. Cellular's direct
2 competitor, Air Touch, give automatic dropped call credits, so there is no doubt that
3 the system is feasible from a technological standpoint.¹⁰ Pl. Statement 46. Recently,
4 L.A. Cellular has come under the management of AT&T Wireless Services, Inc. and
5 claims that it will change its policy so as to bring it "fully in line with other cellular
6 operations [of AT&T Wireless]", presumably by adapting an automatic dropped call
7 credit. (L.A. Cellular Memo re Motion to Continue Trial, at 3).
8

9 According to defendant's own analysis of an automatic system, defendant would
10 lose at least \$4 million per year in air time revenue by crediting dropped calls
11 automatically.¹¹ That means defendant's customers are losing at least \$3 to \$4 million
12 per year in dropped-call credits.¹² Pl. Statement 52.
13

14 **C. L. A. CELLULAR'S POLICY AND PRACTICES AS TO DROPPED**
15 **CALL CREDITS MAKE IT DIFFICULT TO OBTAIN A CREDIT**

16 Rather than being able to seek a credit for a dropped call at the time of the call,
17 after January 24, 1995, customers had to wait until they received their next billing
18 statement. Pl. Statement 57. The billing statement does not identify dropped calls for
19 customers. Pl. Statement 20. Customers had to remember which of the calls they had
20 made during the last billing period were dropped and then could call defendant to seek
21 a credit.
22

23
24 ¹⁰ In fact, Air Touch advertises this credit directly to customers. Pl. Statement 47.

25 ¹¹ In 1993 L. A. Cellular had calculated that the automatic dropped call credit would reduce air
26 time revenues by 1%. 1% of L.A. Cellular's revenue for February, 1997, for example, was 1% x
\$34,612,928 or \$346,129 per month or over \$4,000,000 for 1997. Pl. Statement 54.

27 ¹² Plaintiff believes the actual figure may be much higher, based on the number of dropped calls
28 which L.A. Cellular customers suffer each year.