

no such change will be valid or enforceable unless confirmed in writing by an officer of GTE".

A copy of the contract between the Plaintiff and Defendant is attached hereto as exhibit 1.

26. By engaging in the practice of imposing "roaming" fees and charging for incoming calls when the "send" button is not used, GTE WIRELESS INCORPORATED has breached its contract with Plaintiff and class members.

27. Because of GTE WIRELESS INCORPORATED'S undisclosed billing practices and methods, GTE WIRELESS INCORPORATED consistently overcharges its subscribers.

WHEREFORE, Plaintiff prays that this action be certified as a class action, that the conduct of Defendants be adjudged a breach of contract and that Plaintiff and Class members be awarded actual and compensatory damages therefor, for an award of attorney's fees, costs of suit, pre- and post-judgment interest, and such other further relief as this Court deems necessary and proper.

COUNT II

(Violation of Florida's Unfair and Deceptive Trade Practices Act)

For her second cause of action against Defendant GTE WIRELESS INCORPORATED, Plaintiff states:

28. Plaintiff incorporates by reference the allegations of paragraphs 1-27 as if fully set forth herein.

29. Section 501.204(1), Florida Statutes, declares deceptive or unfair acts or practices in the conduct of any trade or commerce to be unlawful.

30. At all times material hereto, Defendant has engaged in "trade or commerce" as defined in Section 501.203, Florida Statutes.

31. As set forth in paragraphs 1-27, Defendant, acting unilaterally or in concert, has engaged in representations, acts, practices or omissions which are material, and which have the tendency or capacity, or which are likely, to mislead consumers acting reasonably under the circumstances. Thus, Defendant has engaged in deceptive acts or practices in the conduct of any trade or commerce in violation of Section 501.204(1), Florida Statutes.

32. As set forth in paragraphs 1-27, Defendant acting unilaterally or in concert, has committed acts or practices, in trade or commerce, which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers; or are acts, which have led to consumer injury which is substantial, not outweighed by the acts' countervailing benefits to consumers or competition and not an

injury which consumers could have reasonably avoided. Thus, Defendant has engaged in unfair acts or practices in the conduct of any trade or commerce in violation of Section 501.204(1), Florida Statutes.

33. These acts and practices of Defendant alleged herein above and similar acts and practices of Defendant have and continue to injure and prejudice consumers in Florida.

34. Defendant willfully engaged in and is presently engaging in the acts and practices complained of herein and similar acts and practices, in that it knew or should have known that said acts and practices were unfair or deceptive.

35. The conduct of GTE WIRELESS INCORPORATED was deceptive, fraudulent, unfair and misleading, and an improper concealment, suppression, or omission of a material fact in violation of Florida's Unfair and Deceptive Trade Practices Act in that Defendant failed to disclose to Plaintiff and class members:

- a. the "home coverage" area;
- b. the charge for "roaming";
- c. what increment "roaming" charges would be billed in; and
- d. the billing practice of charging for incoming calls when the "send" button is not used.

36. By its misrepresentations and non-disclosures of material facts as alleged herein, Defendant deceived Plaintiff and Class members. This conduct constitutes unlawful, unfair and fraudulent business practices within the meaning of state consumer protection statutes, including Section 501.

37. In addition, GTE WIRELESS INCORPORATED'S use of various media to advertise its cellular services, among other things, falsely and deceptively represents GTE WIRELESS INCORPORATED'S billing services, constitutes unfair competition and unfair, deceptive, untrue, or misleading advertising within the meaning of state consumer protection statutes.

38. Unless Defendant is temporarily and permanently enjoined from engaging further in the acts and practices herein complained of, the continued activities of Defendant will result in irreparable injury to consumers in Florida and the continued violation of Florida Law.

WHEREFORE, Plaintiff prays that this action be certified as a class action, that the practices and conduct of Defendant be adjudged a deceptive trade activity and violative of Florida's Unfair and Deceptive Trade Practices Act respectively, for an award of statutory damages, for a permanent injunction enjoining Defendant from continuing this practice, for an award of attorney's fees, costs of suit, pre- and post-judgement interest and such other relief that this Court deems just and proper.

COUNT III

(Civil Conspiracy Against All Defendants)

For her third cause of action against Defendant GTE WIRELESS INCORPORATED, Plaintiff states:

39. Plaintiff incorporates by reference the allegations of paragraphs 1-38 as if fully set forth herein.

40. As a principal, Defendant GTE WIRELESS INCORPORATED carries out and accomplishes the unlawful acts alleged hereinabove through numerous agents.

41. Through an agreement by and between Defendant GTE WIRELESS INCORPORATED and others, Defendant accomplishes unlawful acts and uses unlawful means to accomplish an act not in itself illegal. Defendant and its co-conspirators knowingly and purposely committed one or more affirmative acts to defraud Plaintiff and Class members. Specifically, Defendant knew that Plaintiff and class members would not be billed for cellular service usage as set forth in the "Customer Service Agreement", and that the practice of imposing "roaming" fees and charging Plaintiff and Class members for incoming calls when the "send" button is not used was concealed from the unwary consumer.

42. In furtherance of their conspiracy, Defendant and its co-conspirators knowingly and purposely committed one or more affirmative acts to defraud. These acts include Defendant's failure to follow the Agreement written by GTE WIRELESS INCORPORATED, which does not state how "roaming" charges are billed and does not allow Defendant to charge for incoming calls when the "send" button is not used. As described above, the act or means engaged in by Defendant resulted in damages to Plaintiff and Class members.

43. The acts, omissions and other conduct of Defendant alleged herein were deliberate, willful, wanton and malicious and/or were reckless and were made with complete disregard for the interests and welfare of Plaintiff and Class members. Thus, Defendant's conduct was unconscionable.

WHEREFORE, Plaintiff prays that this action be certified as a class action, that the conduct of Defendant be adjudged a civil conspiracy and that Plaintiff and class members be awarded actual and compensatory damages therefor, for an award of attorney's fees, cost of suit, pre- and post-judgement interest and such other further relief as this Court deems necessary and proper.

COUNT IV

(Equitable Relief/Reformation)

For her fourth cause of action, in the alternative, Plaintiff states:

44. Plaintiff incorporates by reference the allegations of paragraphs 1-43 as if fully set forth herein.

45. Plaintiff and Class members entered into contracts for cellular service with Defendant. The Customer Service Agreements are standardized contracts with terms dictated and drafted by Defendant and are vague, ambiguous and silent as to the true nature of GTE WIRELESS INCORPORATED'S billing for service use.

46. The vague and ambiguous material terms of the Agreements and Defendant's billing method of charging for incoming calls when the send button is not used and imposing "roaming" fees are oppressive, unfair and are contrary to public policy.

47. The standardized "boilerplate" language drafted by Defendant and located on the back of the Customer Service Agreements in small print is commercially unreasonable, oppressive, unfair and unconscionable.

48. Plaintiff and Class members have contracted for cellular service based upon specific rates and charges for actual time used and have been damaged by Defendant's unlawful conduct of overcharging Plaintiff and Class members by their undisclosed methods of billing.

WHEREFORE, Plaintiff prays that this action be certified as a class action, that the practices and conduct of Defendant be adjudged as oppressive, unfair, and/or unconscionable and that the Court by reformation declare that Plaintiff and Class members contracted for cellular service based upon actual airtime usage, thereby requiring Defendant to bill and charge Plaintiff and Class members accordingly, that the Court issue a permanent injunction enjoining Defendant from continuing the practice of charging for incoming calls when the "send" button is not used and imposing "roaming" fees, for an award of attorney's fees, cost of suit, pre- and post-judgement interest and such other relief as this Court deems just and proper.

By _____
BILL E. BERKE
FL Bar #558011
ATTORNEY BILL E. BERKE, P.A.
Attorneys for Plaintiff and The Class
4506 Del Prado Blvd. S
Cape Coral, FL 33904
(941) 549-6689

EXHIBIT
A

General Terms and Conditions

1. Purpose, This Carrier Service Agreement ("Agreement") is made between the Carrier and the Customer... 2. Service: Carrier shall provide the service... 3. Term of Agreement... 4. Assignment of Interest... 5. Limitation of Liability... 6. Disclaimer of Warranties... 7. Payment of Service... 8. Force Majeure... 9. Entire Agreement... 10. Notices... 11. Assignment of Rights... 12. Waiver of Rights... 13. Remedies... 14. Severability... 15. Waiver of Rights... 16. Assignment of Rights... 17. Waiver of Rights... 18. Remedies... 19. Severability... 20. Waiver of Rights...

15. LIMITATION OF LIABILITY: CARRIER SHALL NOT BE LIABLE TO CUSTOMER FOR INTERRUPTIONS OF SERVICE; LOSS OF DATA, INTERCEPTION OF ANY CELLULAR TRANSMISSION, OMISSIONS OR ERRORS OF THIRD PARTIES, EQUIPMENT FAILURES, ACTS OF GOD, STRIKES, GOVERNMENT ACTIONS, OR OTHER CAUSES BEYOND CARRIER'S REASONABLE CONTROL. CARRIER SHALL NOT BE LIABLE IF CHANGES IN OPERATIONS, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF CUSTOMER'S EQUIPMENT OR RENDER CUSTOMER'S EQUIPMENT OBSOLETE. THERE SHALL BE NO REDUCTIONS, SETOFFS, OR CREDITS AGAINST THE CHARGES FOR SERVICE FOR DOWNTIME OR INTERRUPTION OF SERVICE UNLESS SUCH PERIOD EXCEEDS TWENTY-FOUR (24) CONSECUTIVE HOURS FROM THE TIME OF NOTICE OF INTERRUPTION UNTIL SERVICE RESTORATION IS PROVIDED TO CUSTOMER. IF SERVICE INTERRUPTION EXCEEDS TWENTY-FOUR (24) CONSECUTIVE HOURS, CARRIER SHALL PROVIDE CUSTOMER WITH A CREDIT ALLOWANCE EQUAL TO THE AMOUNT PAYABLE BY CUSTOMER DURING THE SERVICE INTERRUPTION PERIOD, PROVIDED CUSTOMER PROMPTLY NOTIFIED CARRIER OF THE SERVICE INTERRUPTION. CARRIER SHALL GIVE NO CREDIT FOR CIRCUMSTANCES CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTS OR WILLFUL MISCONDUCT OF CUSTOMER. IN NO EVENT SHALL CARRIER BE LIABLE TO CUSTOMER FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY. CARRIER SHALL NOT BE LIABLE FOR INJURY TO CUSTOMER, OTHER PERSONS, OR PROPERTY DAMAGE THROUGH THE USE OF ANY EQUIPMENT OR SERVICE PROVIDED UNDER THIS AGREEMENT. IN THE STATE OF TEXAS, THE FOREGOING MAY BE LIMITED IN THE EVENT OF INJURY ARISING FROM RENTAL EQUIPMENT. IN NO EVENT SHALL CARRIER BE LIABLE FOR LOSSES, DAMAGES, OR CLAIMS ARISING OUT OF CUSTOMER'S USE OR ATTEMPTED USE OF 911 SERVICE, NOR SHALL CARRIER BE LIABLE FOR CUSTOMER'S INABILITY TO ACCESS 911 SERVICE. THIS LIMITATION OF LIABILITY APPLIES TO ALL CAUSES OF ACTION. 16. CUSTOMER INDEMNITY: CUSTOMER AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CARRIER AGAINST ANY CLAIMS RELATING TO CUSTOMER'S MISUSE OF SERVICE OR EQUIPMENT UNDER THIS AGREEMENT. CUSTOMER AGREES TO REIMBURSE CARRIER FOR ANY AND ALL COSTS AND REASONABLE ATTORNEYS' FEES INCURRED BY CARRIER IN DEFENDING ANY CLAIMS RELATING TO CUSTOMER'S MISUSE OF SERVICE OR EQUIPMENT. 17. DISCLAIMER OF WARRANTIES: CARRIER IS NOT THE MANUFACTURER OF ANY EQUIPMENT OR ANCILLARY PRODUCTS SOLD OR RENTED UNDER THE AGREEMENT. CARRIER MAKES NO WARRANTY REGARDING MANUFACTURER'S EQUIPMENT, AND NO PERSON IS AUTHORIZED TO MAKE ANY SUCH WARRANTIES ON CARRIER'S BEHALF. CARRIER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVICE OR PRODUCTS SOLD OR RENTED UNDER THIS AGREEMENT, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES AGAINST INTERFERENCE, AND ANY OTHER WARRANTY IMPLIED BY LAW. NO STATEMENT REGARDING EQUIPMENT, PRODUCTS OR SERVICE SHOULD BE INTERPRETED AS A WARRANTY. 18. Payment of Service: Carrier shall bill the Customer... 19. Force Majeure: Carrier shall not be liable for service interruptions... 20. Entire Agreement: This Agreement constitutes the entire agreement... 21. Notices: All notices shall be in writing... 22. Assignment of Rights: Customer shall not assign this Agreement... 23. Waiver of Rights: No waiver shall be effective unless in writing... 24. Remedies: Carrier shall not be liable for consequential damages... 25. Severability: If any provision is found to be unenforceable... 26. Waiver of Rights: Customer shall not be liable for consequential damages... 27. Assignment of Rights: Customer shall not assign this Agreement... 28. Waiver of Rights: No waiver shall be effective unless in writing... 29. Remedies: Carrier shall not be liable for consequential damages... 30. Severability: If any provision is found to be unenforceable...

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

SHANNON LEE, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

CONTEL CELLULAR OF THE SOUTH,
INC., formerly CONTEL CELLULAR
OF MOBILE, INC.;

Defendants.

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CIVIL ACTION NO.:
CV-95- 004367

CLASS ACTION COMPLAINT

COMPLAINT

Plaintiff, by her attorneys, brings this action in her individual capacity and on behalf of a class of persons defined below. She alleges upon personal knowledge and belief as to her own acts and upon information and belief as to all other matters, based upon investigation of counsel, as follows:

THE PARTIES

1. Plaintiff, Shannon Lee, is and was at all times material herein a resident of Mobile County, Alabama.

2. Defendant Contel Cellular of Mobile, Inc., now known as Contel Cellular of the South, Inc., is an Alabama cellular telecommunications company whose principal place of business is Mobile, Alabama. Said defendant was at all times material herein authorized to conduct business in Alabama.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action.

4. The claims asserted herein arise under Alabama common law.

5. Venue is proper in this Court because a substantial part of the acts complained of herein have occurred in this State and are occurring in this State; defendant, Contel, does substantial business in this State and is headquartered here; portions of Defendant Contel's operations are based in this State; and, the claims of the Plaintiff and each member of the class she seeks to represent do not exceed \$50,000.00 each.

NATURE OF ACTION

6. This is a class action brought on behalf of subscribers to Contel cellular services throughout the geographic region that Contel sells cellular services.

7. In order to induce cellular customers to use its cellular service, Contel, uses deceptive, fraudulent and/or misleading contracts, advertising and promotional practices designed to conceal its practice of charging for a full minute of air time even if a subscriber is connected for a few seconds. For example, if a Contel subscriber uses his phone for a total of one minute and ten seconds, he is billed for a full two minutes. This billing practice, called "rounding," results in millions of dollars of excess billing by Contel all at the expense of the unwary customer, and in violation of the written terms of the cellular customers' contracts which expressly provide that customers will be charged only from the time that they are connected to disconnected. Rounding means that cellular consumers do not get the "minutes" they have contracted for at a fixed rate under their plans, and are not billed on a per-minute basis for calls beyond the time allocated in their basic plan. In its contracts

and promotional brochures Contel conceals this practice.

8. Plaintiff seeks, on behalf of herself and the Class, injunctive and monetary relief, including (a) an order enjoining defendant from engaging in the deceptive practices complained of herein; and (b) compensatory damages in the form of a refund of the difference between the amounts charged by Contel and the amount, if any, that cellular users would have been charged if Contel did not engage in this practice.

9. The practices complained of herein are of a common nature and equally affect all members of the plaintiff class.

10. Plaintiff does not seek to change, diminish, or modify the rates being charged by Contel pursuant to filings, if any, with governmental regulatory agencies. Plaintiff does not seek any relief which would disturb the uniformity of rates charged by Contel.

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action pursuant to Alabama Rules of Civil Procedure 23 (b)(2) and 23 (b)(3) on behalf of a class consisting of all Contel subscribers throughout the State of Alabama who have been billed for cellular service by Contel and have been subject to having the air time they incur "rounded" up (as described below) to the next full minute. Excluded from the Class are all subscribers who are employees or officers of Contel or members of their immediate families.

12. Plaintiff seeks injunctive and compensatory relief on behalf of the Class.

13. There are many thousands of members of the Class. Contel has revenues in the hundreds of millions of dollars as a result of its cellular services. The exact number of members of the Class is presently unknown to plaintiff but may be determined from

records maintained by Contel as it sends monthly bills to members of the proposed class.

14. Plaintiff is a member of the Class. Plaintiff's claims are substantially identical to and typical of the claims of the Class.

15. Plaintiff and plaintiff's counsel (who are experienced in class action litigation) will fairly and adequately protect the interests of the Class.

16. Questions of fact and law common to the Class include, *inter alia*:

a. Whether defendant has engaged and is engaging in the unlawful, deceptive, fraudulent, and/or misleading conduct alleged herein;

b. whether such conduct violates Alabama common law;

c. whether injunctive relief is appropriate and, if so, what form of injunctive relief is most appropriate; and,

d. whether plaintiff and the members of the Class have suffered damages as a result of the conduct alleged herein, and if so, the measure of such damages.

17. Defendant has acted and is acting on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

18. The common questions of fact and law predominate over any individual questions.

19. The Plaintiff estimates the Class to be so large and numerous in size that joinder of each would be impractical. Therefore, a class action is superior to the available methods for the fair and efficient adjudication of this controversy.

20. There are no unusual difficulties likely to be encountered in the management of this litigation as a class action. A class action is the only feasible method by which this

controversy may be resolved.

21. Notice to the Class may be accomplished cheaply, efficiently and in a manner best designed to protect the due process rights of all Class members by means of written notice supplied as part of Contel's billing procedures.

BACKGROUND FACTS

22. Cellular phone service involves a new technology of mobile radio communication based on a computer coordinated series of cell sites situated throughout the coverage area. Each cell site contains a radio transmitter which services a portion of the total coverage area. When a call is placed, the system locates the telephone, establishes a connection through the appropriate cell site and transfers that connection to other cell sites as the telephone moves through the area served by the system.

23. The FCC allocated radio frequencies for cellular services in a manner that allowed for only two cellular systems per market.

24. The limitation of two cellular licenses per market has, unfortunately for consumers, created an immensely profitable oligopoly. Armed with oligopoly power the cellular companies charge steep prices for air time. Any cellular consumer can testify to the expense of cellular air time. Air time can cost as much as \$1.50 per minute.

25. Due to its immense profitability, cellular companies, like Contel, engage in extensive advertising designed to lure in cellular consumers and to induce use of cellular air time.

26. Contel offers consumers a wide range of billing plans. Some plans offer a fixed charge for a specified period of air time, e.g., thirty, seventy-five or two hundred

minutes. For any air time beyond the fixed-charge time allotted for each plan, the subscriber is charged at rate ranging from \$.035 to \$1.50 per "minute." Certain other plans offer a fixed charge plus a per "minute" charge for each and every minute of air time service.

27. Contel requires that each customer sign a service agreement.

28. In brochures and advertising materials, Contel routinely states that the consumer is allowed so many "minutes" at a fixed monthly charge under the appropriate subscriber agreements and is billed thereafter on a per minute basis.

29. Contel does not disclose in its subscriber agreements that it "rounds up" when it calculates air time. For example, if a caller placed a call that uses one minute and six seconds of actual air time, that caller is billed for two minutes. Contel always rounds up to the next full minute.

30. On or about May 23, 1995, Plaintiff contracted with Contel to provide her with cellular service and has been a subscriber of Contel or its predecessor since May of 1995. This was a standard form contract executed by thousands of other class members. It provides as follows:

"SERVICE RATES AND CHARGES"

"(a) Customer agrees to pay Company for the use of Service for the service rate plan selected at the rates and charges then currently in effect. Rates and charges do not include roaming, long distance, taxes, etc. Company reserves the right to change its rates and charges from time to time by giving Customer 30 days' prior written notice. All changes in rates and charges will be prospective, but may affect Customer's Service rate plan. Unused airtime in any package plan is non-transferrable to the following month or to another account, and cannot be converted to cash. Company reserves the right to modify or discontinue any Service rate plan or Service-related option at any time."

31. Contel's contract does not notify the user of the service of their intention to round-up air time to the next full minute. The contract simply states that the "customer agrees to pay Company for the use of Service for the service rate plan selected at the rates and charges then currently in effect." Thus, the practice of rounding up is contrary to the terms of Contel's written contract with its customers. This language has been a part of Contel's form contract for a number of years.

32. Contel has the capacity to bill, as it's parent does for its land line service, to the nearest 1/10 of a minute or even to the nearest second of air time. In fact, Contel has engaged in the practice of billing some of its customer by the fraction of a minute; therefore, proving that it possesses the technology and capability to do so.

33. As a result of Contel's deception consumers are over billed, and they (1) do not receive the air time allocated under their plan and, (2) are not billed a provided for in their contract.

34. As a result of this deceptive practice, Contel takes millions of dollars in additional charges that consumers overpay and it is not entitled to.

FIRST CAUSE OF ACTION

Breach of Contract

35. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein.

36. As a proximate result of the engaging in the practice of rounding, Contel has breached its contract with Plaintiff and similar contracts with members of the class causing damage thereby.

WHEREFORE, the premises considered, Plaintiff hereby demands judgment against the Defendant for general compensatory damages, punitive damages and injunctive relief as set forth herein below.

SECOND CAUSE OF ACTION

Misrepresentation Under Alabama Common Law

37. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein.

38. Defendant has knowingly engaged in the deceptive practices, misrepresentations, suppression of material facts and material omissions complained of herein in order to induce plaintiff and the members of the class unknowingly to incur charges for air time they did not use.

39. Plaintiff and the members of the Class have been damaged as a proximate result of the conduct complained of herein, and the harm or risk of harm is ongoing.

40. Defendant's conduct complained of herein renders it liable as a matter of Alabama common law in damages for the consequences of such conduct as well as appropriate injunctive relief enjoining defendant's unlawful conduct and requiring full disclosure, as set forth in detail below.

WHEREFORE, the premises considered, Plaintiff hereby demands judgment against the Defendant for general compensatory damages, punitive damages and injunctive relief as set forth herein below.

THIRD CAUSE OF ACTION

41. Plaintiff realleges each of the preceding paragraphs as if fully set forth herein.

42. Defendant has knowingly engaged in the deceptive practices, misrepresentations, suppression of material facts and material omissions complained of herein in order to induce plaintiff and the members of the Class unknowingly to pay for air time they did not use.

43. Plaintiff and the members of the class have been damaged as a proximate result of the conduct complained of herein, and the harm or risk of harm is ongoing.

44. Defendant's conduct complained of herein renders it liable as a matter of Alabama common law in damages for the consequences of such conduct as well as appropriate injunctive relief enjoining defendant's unlawful conduct and requiring full disclosure, as set forth in detail below.

WHEREFORE, the premises considered, Plaintiff hereby demands judgment against the Defendant for general compensatory damages, punitive damages and injunctive relief as set forth herein below.

PRAYER FOR RELIEF

45. WHEREFORE, Plaintiff respectfully requests, on behalf of herself and all other similarly situated against Defendant Contel, for the damages sustained by reason of each of the causes set forth above, an order providing as follows:

- A. An accounting of all monies wrongfully received by defendant as a result of the conduct complained of herein;
- B. Compensatory damages in an amount to be determined at trial;
- C. Punitive damages in an amount to be determined at trial;
- D. Enjoining defendant from engaging in the conduct complained of herein;

- E. Any other injunctive relief the Court deems appropriate;
- F. Reasonable attorneys' fees, disbursements and costs of this action, including expert and accounting fees;
- G. Such other relief as this Court may deem just, equitable or proper.

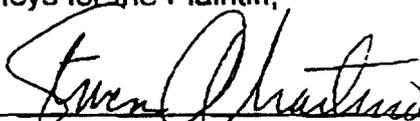
JURY TRIAL DEMAND

46. Plaintiff respectfully demands a trial by jury of all issues so triable.

Respectfully submitted,

JACKSON, TAYLOR & MARTINO, P.C.
Attorneys for the Plaintiff,

BY:



STEVEN A. MARTINO
Post Office Box 894
Mobile, Alabama 36601
PH: 334/433-3131

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J. Callen Sparrow, Esq.
SPARROW & LAVETTE
940 Brown-Marx Tower
Birmingham, Alabama 35203

DEFENDANT MAY BE SERVED BY CERTIFIED MAIL AS FOLLOWS:

CONTEL CELLULAR OF THE SOUTH, INC.
f/k/a CONTEL CELLULAR OF MOBILE, INC.
c/o Prentice Hall
57 Adams Avenue
Montgomery, Alabama 36104

Revised 1-1-94

-IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

Plaintiff(s)

vs.

Defendant(s)

*
*
* CIVIL ACTION NO. CV 95-4367
*
* DATE COMPLAINT FILED: DEC 5 1995
*

ASSIGNMENT TO EXPEDITED CASE MANAGEMENT SYSTEM AND GENERAL PRE-TRIAL ORDER

This case has been place in the Expedited Case Management System which is designed to dispose of a case within 12 months after filing.

OBJECTION TO INCLUSION IN SYSTEM

If a party to this cause believes that the cause is extremely complex or will involve unique problems and will be impossible to prepare for trial within the time fram of the system, he may, within 40 days after the date of this order, or if the party has not been served at the date of this order, within 40 days after service, file a motion requesting that the cause not be included in the system and that the parties be allowed additional time to prepare the cause for trial. A motion filed later than the aforesaid 40 days will not be considered by the Court. Oral argument may be requested on an exclusion motion. If a cause is excluded from the system by the Court, a discovery schedule will be set by the Court after conference with the parties. If a case is so excluded the general pre-trial portion of this order will remain in effect unless specifically altered by the Court.

DISCOVERY

Unless the Court sets a shorter time, all pre-trial discovery shall be completed within 270 days after filing of the complaint unless the party filing the Motion to Set and Certificate of Readiness reque-s an additional period of time, not to exceed 60 day and certifies that all discovery will be concluded within that time. Notwithstanding th foregoing, for good cause shown, the Court may permit, or the parties may agree, that additional discovery procedures be undertaken anytime prior to trial, so long as such discovery can be completed so as not to require a continuance of trial setting.

MOTION TO SET AND CERTIFICATE OF READINESS

Counsel for the plaintiff shall, and counsel for any other party may, file a Motion to Set and Certificate of Readiness, which shall be filed not later than 270 days after the filing of the complat. If such motion is not filed by the 280th day, the Court will place the case marker "To Be Dismissed" on a disposition docket as near as possible to the 300th day and send notice of such to all parties. If a Motion to Set and Certificate of Readiness is not received by the Court prior to the disposition date, the case will be dismissed.

The Motion to Set and Certificate of Readiness will be in a form similar to that available in the clerk's office and will contain the following information:

- (1) The date the complaint was filed;
- (2) That the issues in the case have been defined and joined;
- (3) That all discovery has been completed or will be completed within 60 days after the filing of the Certificate of Readiness;
- (4) That a jury trial has or has not been demanded;
- (5) The expected length of the trial expressed in hours and/or days;

- (6) A brief description of the plaintiff's claim;
- (7) The names, addresses and telephone numbers of the parties or their attorneys responsible for the litigation;
- (8) That the movant certifies that all expert witnesses expected to testify at trial have been disclosed to all parties, together with a summary of their opinions;
- (9) That the movant acknowledges his/her responsibility to make all documents, exhibits, and physical evidence, or copies thereof, expected to be used in the case in chief available to the other parties, not less than 21 days prior to trial, for inspection and copying;
- (10) That the movant certifies that he/she has read the pre-trial order, that he/she has complied with it to date and will comply with its requirements in the future.

The filing by plaintiff of a Motion to Set and Certificate of Readiness constitutes the voluntary dismissal of all fictitious parties whose true names have not been substituted.

CONTROVERTING CERTIFICATE

Within 14-days after a Motion to Set and Certificate of Readiness has been filed, counsel for any other party may file a Controverting Certificate specifying the particular statements contained in the Certificate of Readiness to which objection is made, and the reasons therefore. Oral argument may be requested. The Court shall thereupon enter an order placing the case on the Active Calendar either immediately or, where good cause is shown, at a specified later date.

ACTIVE CALENDAR

Fourteen days after a Motion to Set and Certificate of Readiness is filed, if a Controverting Certificate has not been filed, the case shall be placed on the Active Calendar, unless otherwise ordered by the Court.

SETTING FOR TRIAL

Unless specially set by the Court, cases on the Active Calendar shall be set for trial generally in the same order as they came on the Active Calendar and as soon as possible. Preference shall be given to cases which by statute, rule or order of the Court are entitled to priority. Counsel shall be given at least sixty days notice of the trial date.

DELAY

When a case has been set for trial, no postponement of the trial will be considered by the Court except on a written motion substantially in the form previously approved by the Court. (Obtain from the Court a Request for Delay form.)

CONFLICTS

Upon learning of a scheduling conflict between the case setting and a case setting in the U.S. District Court, the Circuit Court or any other court, affected counsel shall promptly notify the judges involved, who shall, if necessary, confer personally or by telephone and resolve the conflict.

NOTIFICATION OF SETTLEMENT

In order to provide other litigants with prompt trial settings all attorneys shall notify the Court of settlement, regardless of the status or stage of the case (discovery stage, active calendar, or trial calendar).

GENERAL PRE-TRIAL ORDER

To expedite pre-trial and trial procedures, it is ORDERED by the Court that the following will apply"

1. EXHIBITS, DOCUMENTS AND PHYSICAL EVIDENCE, GENERALLY

a. Each party shall identify in writing to all other parties and shall make all documents, exhibits, and physical evidence, or copies thereof, expected to be used in the case in chief available to the other parties, not less than 21 days prior to trial, for inspection and copying. The same shall then be authenticated and admitted into evidence without further proof, unless written objections to such documents or exhibits be made to the Court not less than 14 days prior to trial specifying the grounds of objection in opposition to the genuineness and relevancy of the proposed document, exhibit or physical evidence. The requirement does not apply to documents, exhibits and physical evidence used solely as impeachment evidence.

b. Documents, exhibits or physical evidence not timely exhibited to or made available to other parties prior to trial under this Order will not be admitted into evidence at trial unless solely for impeachment purposes or unless the ends of justice so require.

c. Documents, exhibits or physical evidence so admitted hereunder shall be presented to the court reporter for marking in evidence prior to trial.

2. DOCTOR, HOSPITAL AND MEDICAL EXPENSES

a. If applicable, all doctor, medical and hospital bills shall be sent to or made available to all parties not less than 21 days before trial and shall be admitted in evidence as reasonable without further proof, unless written objection to any such bills be made to the Court not less than 14 days before trial specifying the grounds for objection.

b. Any such bills not timely exhibited to the other parties will not be admitted in evidence at trial unless the ends of justice so require.

c. The bills so admitted shall be presented to the court reporter for marking in evidence prior to trial.

3. SPECIAL DAMAGES

a. All parties seeking special damages shall furnish the other parties with a list thereof not less than 21 days before trial. Written objections thereto may be made not less than 14 days before trial specifying grounds of objection.

b. Evidence of special damages claimed, but not timely exhibited to other parties, will not be admitted into evidence unless the end of justice so require.

4. AGENCY-TIME AND PLACE-DUTY

a. Agency and the time and place of the incident involved, if alleged in the complaint, and, if a negligence case, the existence of a duty, are admitted and the parties are deemed correctly named and designated unless specifically denied by answer or unless written objection is made not less than 14 days before trial. The objections shall include the correct name and entity and/or the grounds relied on.