

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

BARRY ROAD ASSOCIATES, INC.,
d/b/a MINSKY'S PIZZA,

and

THE MAIN STREET ASSOCIATES, INC.
d/b/a MINSKY'S PIZZA,

and

HARRY MARK WOOLDRIDGE,

Individually and on behalf of all others
similarly situated,

Plaintiffs,

Case No.:

v.

SOUTHWESTERN BELL TELEPHONE COMPANY) Division No.:
d/b/a AT&T MISSOURI,

Serve: CT Corporation System
120 South Central Ave.
Clayton, MO 63105

and

AT&T, INC.,

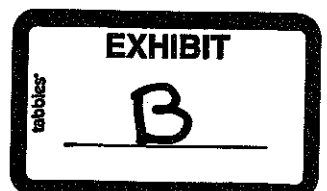
Serve: The Corporation Company, Inc.
120 South Central Ave.
Clayton, MO 63105

and

AT&T CORP.,

Serve: The Corporation Company, Inc.
120 South Central Ave.
Clayton, MO 63105

FILED-CIRCUIT COURT
JACKSON CO MO-KC
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Defendants.)
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CLASS ACTION PETITION FOR DAMAGES
(TI)

COME NOW Plaintiffs, individually and on behalf of all others similarly situated, and for their Class Action Petition state and allege as follows:

Nature of Case

1. Plaintiffs bring this Class Action Petition against Defendants seeking to stop Defendants' unlawful practice of billing customers to recover their losses from litigation settlements. Plaintiffs further seek reimbursement for monies paid to Defendants for such unauthorized billing.
2. Defendants are parties to a settlement agreement in a lawsuit wherein they were sued by a class of Missouri municipalities for failure to pay business license taxes for landline telephone operations. Pursuant to the agreement, Defendants are to pay up to \$65,000,000 to the municipalities for their wrongdoing. Without any legal authority, customer agreement, authorization, consent, or even prior notification, Defendants have boldly passed their liability on to their customers in the form of monthly charges disguised on telephone bills as "special municipal charges." This practice is wrongful, deceptive, and extremely lucrative for Defendants, who proceed as though they are immune from the consequences of their wrongdoing. Indeed, they need not worry about the costs of their illicit practices settled in other matters; their customers will simply pay the bill.
3. Plaintiffs seek to represent a class of Missouri consumers consisting of all persons, businesses, or entities that have received a bill/invoice from Defendants containing a "special municipal charge" or other charges stemming directly from the settlement agreement in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645, filed on June 26, 2009 in the Circuit

Court of St. Louis, Missouri (the "Settlement"). Plaintiffs seek also to represent a sub-class of (non-business) consumers who have been similarly injured by Defendants and are entitled to recovery under the Missouri Merchandising Practices Act. The liabilities stemming from the Settlement are Defendants' liabilities, not the Plaintiffs. Plaintiffs and the class are justifiably outraged at being stuck with the bill for Defendants' illegal conduct.

4. Plaintiffs, individually and on behalf of all others similarly situated, seek damages for the injuries caused by Defendants' tortious and deceptive actions. Plaintiffs also seek disgorgement of all monies Defendants gained through the unlawful practices described herein, including all interest accrued thereon. Plaintiffs and the class further seek an injunction preventing Defendants from further passing their liabilities on to Plaintiffs and the class.

Parties

5. Plaintiff Barry Road Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

6. Barry Road Associates, Inc. is a landline telephone customer of Defendants and has been billed by Defendants for charges attributable solely to Defendants' liability stemming from the Settlement.

7. Plaintiff The Main Street Associates, Inc. is a Missouri corporation in good standing, with its headquarters and principal place of business in the State of Missouri, doing business in Missouri as "Minsky's Pizza."

8. The Main Street Associates, Inc. is a landline telephone customer of Defendants and has been billed by Defendants for charges attributable solely to Defendants' liability stemming from the Settlement.

9. Plaintiff Harry Mark Wooldridge is a citizen of the State of Missouri, residing in Boonville, Missouri.

10. Harry Mark Wooldridge is a landline telephone customer of Defendants and has been billed by Defendants for charges attributable solely to Defendants' liability stemming from the Settlement.

11. Defendant Southwestern Bell Telephone Company ("SBTC") is a Missouri Corporation with its headquarters and principal place of business in the State of Texas, doing business in Missouri as "AT&T Missouri" and "AT&T."

12. SBTC provides local telephone services to Plaintiffs and the class as their local exchange carrier and is responsible for the bills Plaintiffs and the class receive. SBTC is a party to the Settlement.

13. Defendant AT&T, Inc. is a Delaware corporation with its headquarters and principal place of business in the State of Texas, and doing business in the State of Missouri as "AT&T." AT&T, Inc. is responsible for the bills Plaintiffs and the class receive and is a party to the Settlement.

14. Defendant AT&T Corp. is a New York corporation with its headquarters and principle place of business in the State of Texas. AT&T Corp is authorized to do business in the State of Missouri, and is doing business in Missouri as "AT&T." AT&T Corp. is responsible for the bills Plaintiffs and the class receive and is a party to the Settlement.

Jurisdiction and Venue

15. Jurisdiction is proper in this Court because Defendants transacted business within the State of Missouri and committed tortious activity within the State of Missouri out of which the causes of action alleged herein arose. In addition, Defendant Southwestern Bell Telephone Company is a Missouri Corporation.

16. Venue is proper in this Court because Plaintiffs' causes of action accrued in Jackson County, Missouri, Defendants transacted business in Jackson County, Missouri, and such transactions gave rise to Plaintiffs' causes of action.

General Allegations

17. All allegations in this Class Action Petition are based on information and belief and/or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

18. Whenever reference in this Class Action Petition is made to any act or transaction of Defendants, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendants committed, knew of, performed, authorized, ratified and/or directed such act or transaction on behalf of Defendants while actively engaged in the scope of their duties.

Common Facts

19. Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from Defendants dated December 9, 2009 for telephone number 816-407-9000 containing a charge of \$5.32 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

20. Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from Defendants dated December 17, 2009 for telephone number 816-436-8818 containing a charge of \$17.50 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

21. Plaintiffs Barry Road Associates, Inc. and The Main Street Associates, Inc. received an invoice from Defendants dated December 17, 2009 for telephone number 816-741-2737 containing a charge of \$28.00 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

22. Plaintiff Harry Mark Wooldridge received an invoice from Defendants dated December 17, 2010 for telephone number 660-882-6589 containing a charge of \$1.99 attributed to "Special Municipal Charge to cover settlement paid to municipalities for past gross receipts taxes imposed." The invoice indicates that this is a "One-Time" charge.

23. Each of the invoices referenced herein contains a paragraph, under the heading "News You Can Use" stating as follows:

MUNICIPAL CHARGES

Beginning November 1, 2009, you may see increases in the amount of Special Municipal Charges billed on your account. These increases will help cover payments made to municipalities to settle claims related to past gross receipts taxes they imposed, and also includes such taxes on services covered by the settlement going forward. Should you have any questions please call the toll free number on your bill. Thank you for using AT&T Missouri.

24. The "increases" referred to are not increases at all, but rather constitute new charges

not previously appearing on customers' bills. The new charges are a result of Defendants passing on their liability under the Settlement to Plaintiffs and the class members.

25. Plaintiffs and class members did not authorize or agree for Defendants to charge them for such additional amounts alleged herein arising from losses or liabilities from any lawsuit or settlement agreement.

26. The charges at issue are not "one-time" charges. Rather, Defendants are continuing to bill customers for such unauthorized charges. Further, it appears as though Defendants intend on billing its customers for such unauthorized charges for years to come.

Class Action Allegations

27. Pursuant to Count II (Unjust Enrichment) and Count III (Action for Money Had And Received) of this Petition, Plaintiffs bring this class action lawsuit on behalf of themselves and the following class (the "Class"):

All individuals, businesses and entities in the state of Missouri who have received local exchange carrier telephone services through "Southwestern Bell Telephone Company," "AT&T Missouri" or "AT&T," have been billed for such services, and have received a charge on a bill attributable to the settlement agreement in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645. Excluded from the class are Defendants; officers, directors, and employees of Defendants; any entity in which any Defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendants; any federal, state, or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

28. Pursuant to Count I (Missouri Merchandising Practices Act) of this Petition, Plaintiffs bring this class action lawsuit on behalf of themselves and the following sub-class (the "Sub-Class"):

All individuals in the state of Missouri who have received local exchange carrier telephone services for personal, family, or household purposes through "Southwestern Bell Telephone Company," "AT&T Missouri" or "AT&T," have been billed for such services, and have received a charge on a bill attributable to the settlement agreement in *State of Missouri v. SBC Communications, Inc.*, Case No. 004-02645. Excluded from the Sub-Class are: Defendants; officers, directors, and employees of Defendants; any entity in which any Defendant has a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendants; any federal, state, or local government entity; and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

29. Plaintiffs bring this action as a class action pursuant to Missouri Rule of Civil Procedure 52.08.

30. The members of the Class and Sub-Class are so numerous that joinder of all members would be impracticable. Plaintiffs reasonably estimate that there are thousands of Defendants' Missouri customers who have been billed for the unauthorized charges described herein.

31. There are questions of law and fact that are common to the members of the Class and Sub-Class that predominate over any questions affecting only individual members, including, but not limited to the following:

- a. Whether Defendants are liable to the Class and Sub-Class for violations of the Missouri Merchandising Practices Act, section 407.010, RSMo; et seq. for unlawful practices associated with passing on its settlement liabilities to customers,
- b. Whether the "Special Municipal charge(s)" billed to customers are unauthorized, unlawful, and/or illegal,
- c. Whether Defendants have been unjustly enriched through unlawful, unauthorized and/or inequitable billing practices,

d. Whether Defendants' actions have caused injury to the Class and Sub-Class,
and whether Defendants should be enjoined from further injurious practices;

and

e. Whether the Class and Sub-Class are entitled to damages.

32. Plaintiffs' claims are typical of the claims of the other members of the Class.

Plaintiffs have no interests antagonistic to those of the Class and Sub-Class and are not subject to any unique defenses.

33. Plaintiffs will fairly and adequately protect the interests of all members of the Class and Sub-Class and have retained attorneys experienced in class action and complex litigation.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, inter alia, the following reasons:

- a. It is economically impractical for members of the Class and Sub-Class to prosecute individual actions;
- b. The Class and Sub-Class is readily definable;
- c. Prosecution of this matter as a class action will eliminate the possibility of repetitious litigation; and
- d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

35. Plaintiffs do not anticipate any difficulty in the management of this litigation.

All jurisdictional prerequisites to suit have been satisfied.

COUNT I

(Violation of the Missouri Merchandising Practices Act, RSMo § 417.010 *et seq*)

36. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Petition.

37. Defendant participated in and/or aided and abetted in committing violations of the Missouri Merchandising Practices Act, RSMo. § 407.020; and/or did business in the State of Missouri, made contracts to be performed in whole or in part in Missouri, and/or directed their agents, employees, and persons under a contractual relationship with Defendants to perform acts or omissions falling under the Act; and/or offered for sale, advertised, supplied, marketed, promoted, made representations concerning, or placed in the stream of commerce merchandise, or, in the course of business, materially participated with others in the same. This conduct caused Plaintiffs and the Sub-Class to suffer an ascertainable loss of money and property by being landline telephone customers of Defendants and receiving and paying invoices for such services, and violates the Missouri Merchandising Practices Act, RSMo. Chapter 407.

38. Defendants intentionally omitted, concealed, and/or misrepresented material facts upon which the Plaintiffs and Sub-Class members' claims in this Petition are based, including, but not limited to:

- a. failing to inform the Plaintiffs and Sub-Class that Defendants would bill them to recoup their losses and liabilities stemming from the Settlement before sending such bills;
- b. representing on invoices to Plaintiffs and the Sub-Class that "Special Municipal" charges were the rightful responsibility of Plaintiffs and Sub-Class members, when, in fact, the amounts billed were not legally or rightfully chargeable to customers;

- c. representing on invoices to Plaintiffs and the Sub-Class that the "Special Municipal" charges were "one-time" charges, when, in fact, they were recurring;
- d. failing to inform Plaintiffs and members of the Sub-Class that the "Special Municipal" charges appearing on their bills were Defendants' own liabilities and not those of Plaintiffs or Sub-Class members;
- e. collecting and accepting amounts from Plaintiffs and Sub-Class members for liabilities for which Defendants alone were responsible.

39. Defendants promoted, marketed, advertised and disseminated information regarding their local, long distance, and other telecommunications services, to be utilized by Missouri consumers.

40. Defendants have published or caused to be published advertising and/or materials regarding the Defendants' Services in the State of Missouri.

41. Defendants used or employed misleading statements, fraud, false pretenses, false promises, misrepresentations, deception, unfair practices and/or the concealment, suppression and/or omission of material facts in connection with the sale, promotion, marketing and advertisement of its telecommunications services, in violation of RSMo. § 407.020. Such use or employment occurred before, during, and after the sale, advertisement, and solicitation of Defendants' services.

42. The Plaintiffs, Sub-Class representatives, and consumers of Defendants' services have suffered an ascertainable money loss as a result of Defendant's unlawful acts in violation of RSMo. Chapter 407.

43. Pursuant to RSMo. § 407.025, the Court may award actual damages to all ascertainable persons who received bills from Defendants containing the unlawful charges.

44. RSMo. § 407.025 further provides that the Court, in its discretion, may impose punitive damages and may award to the prevailing party attorneys fees based on the amount of time reasonably expended.

45. RSMo. § 407.025 further provides that the Court may impose equitable relief if it deems it proper.

46. Defendants have intentionally engaged in behavior that harms Missouri consumers with respect to its unlawfully passing on of its own liabilities to consumers, by intentionally and willfully misleading and misinforming Missouri consumers of said liabilities, as stated herein. The actions of Defendants at all times herein were reckless or in conscious disregard of the interests of Missouri consumers and outrageous because of Defendants' evil motives or reckless indifference to the rights of others, and merit the imposition of punitive damages in an amount sufficient to punish the wrongful conduct and deter future wrongful conduct.

47. The members of the Sub-Class, all of whom enlisted for and were billed for Defendant's telecommunications services, are entitled to restitution of the money in which they were deprived, and which Defendants have accumulated.

48. Defendants are aware of the total number of transactions, the amount of money accumulated, and the total amount of their liability from the Settlement they have passed on and intend to pass on to customers.

49. Plaintiffs have engaged counsel and those counsel are entitled to their reasonable attorney fees in prosecuting this action.

50. Defendants' practices, alone or collectively, resulted in an ascertainable loss of money to any Missouri person who enlisted for and was billed for Defendants' services.

WHEREFORE Plaintiffs request that judgment be granted against Defendants in an amount that is fair and reasonable, together with prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including punitive damages, payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

COUNT II

(Unjust Enrichment)

51. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Petition.

52. Defendants offer local exchange carrier and other telephone-related services to customers in the State of Missouri.

53. Plaintiffs and the Class selected Defendants as their local exchange carrier and telecommunications service provider.

54. Defendants accepted money and agreed to serve as local exchange carrier and telecommunications provider for Plaintiffs and the Class, for which Defendants sent monthly bills.

55. Monthly bills sent to Plaintiffs and the Class contained charges, passed on to them from Defendants, attributable to Defendants' liabilities stemming from the Settlement, although Plaintiffs and Class members are not parties to the Settlement and Defendants had no legal basis for billing customers for these charges.

56. Defendants collected a significant sum of money from Plaintiffs and the Class through its "Special Municipal" charges.

57. The "Special Municipal" charges were unlawful, inequitable, and unauthorized by Plaintiffs and the Class.

58. As a direct result of the misconduct alleged herein, Defendants have been unjustly enriched and have obtained a substantial monetary benefit which, in fairness and equity, Defendants were not entitled to receive or retain.

59. It would be unfair and inequitable to allow Defendants to retain the benefits derived from the "Special Municipal" charges collected from Plaintiffs and the Class and, therefore, Plaintiffs and Class members are entitled to be paid and to receive those benefits.

WHEREFORE Plaintiffs request that judgment be granted against Defendants in an amount that is fair and reasonable, together with prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including punitive damages, payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

COUNT III

(Action For Money Had And Received)

60. Plaintiffs incorporate by reference the allegations in all preceding paragraphs of this Petition.

61. Defendants received and obtained possession of money belonging to Plaintiffs and the Class by billing such customers for unauthorized "Special Municipal" charges and collecting payment thereon.

62. Through collection of payment on its invoices containing "Special Municipal" charges, Defendants appreciated a substantial monetary benefit.

63. Defendants acceptance and retention of the money collected and attributed to its liability stemming from the Settlement was unjust and, in equity and good conscience, should be paid over to Plaintiffs and the Class members.

WHEREFORE Plaintiffs request that judgment be granted against Defendant in an amount that is fair and reasonable, together with prejudgment interest as provided by law, and that Plaintiffs receive such other relief as the Court deems proper and just under the circumstances, including punitive damages, payment of costs and expenses incurred in filing this suit, and reasonable attorney's fees.

Prayer for Relief

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for:

- A. An order certifying this matter as a class action and appointing Plaintiffs and their counsel to represent the Class and Sub-Class;
- B. Restitution and disgorgement to the extent permitted by applicable law, together with interest thereon, to victims of such violations;
- C. Actual damages for injuries suffered by Plaintiffs, and the Class and Sub-Class;
- D. Civil penalties to the extent permitted by applicable law;
- E. An appropriate award of punitive damages;
- F. Reasonable attorney's fees and costs of prosecuting this action;
- G. Statutory pre-judgment interest; and
- H. Such other relief as the Court may deem just and proper.

Jury Demand

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully Submitted,

EDGAR LAW FIRM LLC

By 

John F. Edgar

#47128

Anthony E. LaCroix

#60793

1032 Pennsylvania Ave.

Kansas City, MO 64105

Telephone: (816) 531-0033

Facsimile: (816) 531-3322

Email: jfe@edgarlawfirm.com

Email: tel@edgarlawfirm.com

ATTORNEYS FOR PLAINTIFFS