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EXHIBIT A

January 13, 2017

VIA FIRST CLASS US MAIL AND ELECTRONIC MAIL

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Public Utilities Commission
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**RE: VERITAS'S RESPONSES TO DATA REQUESTS NOS. 3-6 OF DR-TEL-00562-2
AND RESPONSES SUPPLEMENTAL DATA REQUESTS NOS. 1-8 OF DR-TEL-
00562-3**

Dear Mr. Naylor:

Veritas Prepaid Phone Co., LLC ("Veritas"), through counsel, provides its responses to Data Requests Nos. 3-6 contained in DR-TEL-00562-2 and Supplemental Data Requests Nos. 1-8 contained in DR-TEL-0056-3, issued by the California Public Utilities Commission's ("Commission") Consumer Protection and Enforcement Division ("CPED") on December 2, 2016 and December 5, 2016 to Mr. Amanul Syed of Veritas.¹

RESPONSES TO DATA REQUESTS NOS. 3-6 OF DR-TEL-00562-2

3. **Provide the number and denomination of prepaid cards sold by Veritas in California, on an annual basis, from 2011 to date.**

Response: As explained on www.amigosinpin.com and as previously submitted to the Commission in response to earlier Data Requests, Veritas provides one-way, IP-based, international communications services (the "Services") that consumers access through a web-based portal. Veritas does not sell prepaid cards in California, and therefore Veritas does not

¹ Through email correspondence dated December 12, 2016 and December 16, 2016, you agreed that Veritas could respond to the above-referenced Data Requests Nos. 1 and 2 on or before January 13, 2017.

have any information responsive to this Data Request on this basis alone.²

4. **Provide the number of card recharge transactions and the revenue associated with the recharge transactions, on an annual basis, from 2011 to date.**

Response: Veritas incorporates its response to Data Request No. 3 as if fully stated here. Veritas further states that because its international calling services are provided via a web-based portal, Veritas does not have any information responsive to “card recharge transactions” because end users do not engage in such transactions when using Veritas’s web-based international calling services.³

5. **Provide the dollar amount of prepaid cards sold in California, on an annual basis, from 2011 to date.**

Response: Veritas incorporates its response to Data Request No. 3 as if fully stated here.

² As Veritas also previously explained, the Services are ultimately distributed to end users through multiple layers of intermediaries, and Veritas is not privy to the retailers that could potentially have information on the location of end users’ purchase and use of the Services through the Internet. Specifically, Veritas has relationships with various wholesalers, who in turn market the Services to other distributors or to the retailers that directly interface with end users of the Services. Veritas’s relationships with wholesalers are not based on geography; that is, wholesalers do not have defined distribution territories. Therefore, their further distribution of the Services cannot reasonably be apportioned to a specific area or state with any degree of certainty, and even then, the wholesalers with which Veritas is in privity do not have information regarding the end users’ location. Thus, Veritas cannot jurisdictionalize or otherwise apportion with any degree of accuracy its revenues from international calling services to a particular state such as California.

³ Indeed, as indicated on the AmigoSinPin website under the tab “What Our Distributors Like,” one of the features listed is “No Inventory.” See <http://www.amigosinpin.com/what-distributors-like.html>. This is in contrast to the inventory associated with providers of physical prepaid debit cards that are subject to Section 885’s registration requirement. See Cal. Pub. Util. Code § 885 (“**Any entity offering the services of telephone prepaid debit cards** is subject to the registration requirements of Section 1013) (emphasis added). Veritas does not offer telephone prepaid debit cards in California.

6. **Has Veritas remitted to the California Public Utilities Commission (CPUC) any public purpose program surcharges and/or CPUC User Fees since it began service in California?**

Response: Like other one-way, web-based international communications service providers, Veritas does not directly contribute to CPUC administered funds.⁴

RESPONSES TO SUPPLEMENTAL DATA REQUESTS NOS. 1-8 OF DR-TEL-00562-3

1. **Please confirm whether the two statements quoted above from the Amigo SinPin website refer to separate, distinct products offered by Veritas which are available for purchase by California consumers.**

Response: As related to Veritas's Services, both of the statements refer to the same one-way, IP-based, international communications services that consumers access through a web-based portal, as further clarified through the following representative example. An end-user customer accesses and pays for Veritas's international calling services through a web-based portal, but the customer could also be using a prepaid T-Mobile cellular phone service to call the local access number that is provided to the end user via text message. There are thus two service providers relevant here, Veritas and T-Mobile. What is referred to as the "Top Up card" on the AmigoSinPin website refers to a mechanism for the end user to easily add more money to his *T-Mobile* account through the web-based portal provided by Veritas. Stated differently, Veritas makes it easy for customers to add more money to their prepaid mobile phone accounts, or "top up" these separate accounts, but they are paying for *T-Mobile's* (in this example) CMRS service, and not Veritas's separate one-way, IP-based, international communications service. Further, there is actually no physical card that is used as a "Top Up card," as Veritas simply acts as a conduit for end user/CMRS provider transactions through the web-based portal that connects the end user to his or her particular CMRS provider.

⁴ As the Commission stated in a directly analogous context, "[b]ecause Voice over the Internet services are nomadic in nature and can be used anywhere in the world where there is a broadband connection, **any state regulation of Voice over the Internet would result in a host of conflicting state requirements putting up barriers to entry**, which in turn would have and a detrimental chilling effect on the competitive forces that have driven deployment and adoption of these new technologies to date." Amicus Curiae California Public Utilities Commission in Support of Respondent Federal Communications Commission, *The Minnesota Public Utilities Commission v. FCC*, 2005 WL 5628010 (8th Cir. 2005) (emphasis added).

2. **Please provide a detailed description of the “Top Up card” product provided by Veritas.**

Response: Veritas incorporates its response to Supplemental Data Request No. 1 as if fully stated here.

3. **Please confirm whether Kwik Dollar LLC operates as a distributor or retailer of any products and/or services offered by Veritas. Please confirm if California consumers are able to purchase any products and/or services offered by Veritas through Kwik Dollar LLC. Please identify the products and/or services offered by Veritas which can be purchased by California consumers through Kwik Dollar LLC.**

Response: Although Kwik Dollar, LLC (“Kwik Dollar”) does provide retail distribution of Veritas’s one-way, IP-based, international communications services, Kwik Dollar does not have any retail stores located in California.

4. **Please provide the contact information, including name, telephone number, e-mail address, and current mailing address, of all Kwik Dollar LLC registered agents operating in California.**

Response: Kwik Dollar’s registered agent in California is Incorp Services, Inc., 5716 Corsa Ave., Suite 110, Westlake Village, CA 91362-7354.

5. **Please identify all companies involved in enabling Veritas to provide telecommunications services and products related to prepaid phone cards in California. This includes but is not limited to: wholesalers, resellers, distributors, telecommunications services providers and/or billing aggregators. Please also describe in detail the function of each company in offering and providing the services and products of Veritas.**

Response: Veritas incorporates its response to Data Request No. 3 as if fully stated here. Veritas does not provide telecommunications services and products related to prepaid phone cards in California.

6. **Please identify the underlying carriers that Veritas contracts with and/or purchases minutes from to enable the provision of your prepaid phone card services in California.**

Response: Veritas incorporates its response to Data Request No. 3 as if fully stated here. Veritas does not provide telecommunications services and products related to prepaid phone cards in California.

7. **Please provide Veritas' local access number(s) related to the offerings of prepaid phone card services in California and identify the underlying carriers that you purchase and/or lease the access numbers from.**

Response: Veritas incorporates its response to Data Request No. 3 as if fully stated here. Veritas does not provide telecommunications services and products related to prepaid phone cards in California.

8. **Please provide a copy of any and all executed business contracts and/or agreements between Veritas and the companies listed in the responses to Questions 5 through 7 above.**

Response: Veritas incorporates its response to Data Request No. 3 as if fully stated here. Veritas does not provide telecommunications services and products related to prepaid phone cards in California, and did not identify any companies in response to Supplemental Questions 5 through 7 above as a result.

Please contact me if you have any questions regarding the responses above.

Sincerely,



Adam D. Bowser

cc: Rashid A. Rashid, CPUC, rhda@cpuc.ca.gov

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 311 HON. JOHN SHEPARD WILEY, JR., JUDGE

CECILIA IBANEZ, ET AL,)
Plaintiff,)
vs.) SUPERIOR COURT
TOUCH-TEL USA LLC,) CASE NO. BC488697
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
THURSDAY, JANUARY 26, 2017
APPEARANCES OF COUNSEL:
FOR PLAINTIFFS: THE RUDD LAW FIRM
BY: CHRISTOPHER RUDD, ESQ.
15233 Ventura Blvd., Suite 320
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310.457.4072
Melkonian & Co

(BY TELEPHONIC COURT CALL)
MELKONIAN & CO.
BY: HARRY MELKONIAN, ESQ.
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(APPEARANCES CONTINUED ON NEXT PAGE)

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Maria Beesley, CSR #9132
CSR, RMR, FCRR, RSA
JOB NO. 134363

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APPEARANCES OF COUNSEL:

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INDEX FOR THURSDAY, JANUARY 26, 2017
CHRONOLOGICAL/ALPHABETICAL INDEX OF WITNESSES
(NONE)

EXHIBITS
(NONE)

1 CASE NUMBER: BC488697
2 CASE NAME: CECILIA IBANEZ V. TOUCH-TEL
3 USA LLC
4 LOS ANGELES, CALIFORNIA THURSDAY, JANUARY 26, 2017
5 DEPARTMENT 311 HON. JOHN SHEPARD WILEY,
6 JR.
7 REPORTER: MARIA BEESLEY, CSR 9132
8 TIME: 2:11 P.M.

9 -oOo-

10 THE COURT: We're on the record. Let's have
11 appearances, please.

12 MR. RUDD: Thank you, Your Honor. Christopher Rudd
13 on behalf of the plaintiffs, the plaintiff class. Present
14 with me telephonically is Mr. Harry Melkonian who is also
15 class counsel who is actually making his appearance from
16 Sydney, Australia.

17 THE COURT: Counsel, on the telephone could you make
18 your appearance, please.

19 MR. MELKONIAN: Yes. This Harry Melkonian.

20 THE COURT: Thank you.

21 And for the defense.

22 MR. CUNNIFF: Martin Cunniff for defendants,
23 Innovista Law.

24 MR. BOWSER: Joseph Bowser for defendant Touch-Tel
25 USA LLC, Innovista Law.

26 MR. MAKIN: Jeffrey Makin for defendant Touch-Tel
27 USA from Arent Fox.

28 THE COURT: Counsel, thank you for appearing here

1 today. I'm sorry you were delayed by that earlier matter
2 which has been resolved. I'm glad you could be as flexible as
3 you have been. Thank you.

4 MR. RUDD: Your Honor, I apologize for being a few
5 minutes late.

6 THE COURT: It was me who was late. The fault was
7 entirely mine.

8 I'm giving the court reporter a copy of the opinion.
9 It's two pages long. If you could just pass the others to
10 counsel.

11 MR. RUDD: With the court's kind indulgence, may I?

12 Mr. Melkonian, I'm going to send you a two-page
13 ruling on the interim fee issue. I'll send it by photograph
14 so you'll have it in your in box in a moment.

15 THE COURT: Counsel, I don't believe you need to
16 read this document with great care. I don't expect you to
17 address it today.

18 MR. RUDD: Okay.

19 THE COURT: I'm up in the air about this interim fee
20 award. I never did sign the requested contempt O.S.C. papers.

21 MR. RUDD: I understand.

22 THE COURT: I note in Ibanez's January 19 filing she
23 omits to address the claim that there should be a contempt for
24 violating the injunction. That's after the argument by
25 Touch-Tel that the injunction's terms, which I do think
26 probably in a contempt setting must be construed carefully and
27 not expansively, did not forbid the conduct that Ibanez has
28 alleged that Touch-Tel was engaging in before the PUC. That

1 doesn't mean Ibanez is pleased with the conduct that Touch-Tel
2 has been allegedly pursuing before the PUC, an action that's
3 now allegedly a petition that's been withdrawn.

4 MR. RUDD: Your Honor, may I interrupt? I'm sorry.

5 THE COURT: Why don't you let me state the target
6 here before you take any -- so I don't think today's hearing
7 properly should be a contempt trial because as Ibanez has said
8 in her most recent filing, the right course would be to issue,
9 at some point any way, a charging document and then proceed
10 with this new development that I have just given you, this
11 possibility of reconsidering the interim fee award, partly
12 because I think the case is just about over because we're in
13 trial.

14 Why don't we figure out how to wind this thing up
15 and then we'll just have a submission of a final fee. I
16 believe Ibanez is right, that she is entitled to judgment once
17 the injunction becomes permanent and these other issues are
18 settled. But before we get there, there is the demand, the
19 rightful demand by Ibanez that she be allowed to cross-examine
20 the declarant Mr. Syed. I think that's the pronunciation of
21 his name. Amanuel?

22 MR. RUDD: I believe it's Amanul Syed, Your Honor.

23 THE COURT: I defer to others' pronunciation. For
24 the court reporter's benefit the name is A-M-A-N-U-L, last
25 name S-Y-E-D. I take it he is not here today.

26 MR. BOWSER: That's correct, Your Honor.

27 THE COURT: He is not here?

28 MR. BOWSER: That's right.

1 THE COURT: Okay. So he will have to come here, and
2 we should arrange a convenient time for everybody for that to
3 occur. And then we'll have some cross-examination, possibly
4 redirect, and I'll be able to have a precise fix on a lot of
5 these issues that remain, including this disclosure issue
6 about international ancillary charge.

7 Now, I have been trying to get at this ultimate
8 statutory issue since 2012. I said at that time let's have
9 some discovery. It turned out that was easier said than done
10 to get this discovery. Now, I'm not faulting current counsel,
11 but this was not a straightforward matter to try to get the
12 discovery that seemed inevitable on this score.

13 We've now got a declaration. We've got a theory by
14 the plaintiff. We have a legal question teed up, but the key
15 declarant I think must be cross-examined so that I have a
16 factual record on which to base a request for a statutory
17 interpretation.

18 So really, I think what we're doing this afternoon
19 is basically a case management conference, is what it all
20 boils down to. I don't expect to hear any argument on
21 substantive legal points, unless I'm mistaken about my view of
22 what we're doing here today. Of course I want to hear from
23 you about whether I am on track or not.

24 But as far as an agenda for the afternoon, I think
25 we need a briefing schedule, or if counsel doesn't want
26 further briefing, that's fine too. But you deserve notice and
27 an opportunity to be heard. If you think you've got enough on
28 file, that's fine. The last thing I want to do is burden

1 counsel with an obligation that counsel says, "Look, I have
2 already discharged that obligation."

3 But in any event, you have a notice and an
4 opportunity to be heard and an opportunity for live witness
5 cross-examination. We need the witness, whenever that be.

6 Does that agenda sound right from the plaintiff's
7 point of view or not?

8 MR. RUDD: Only up to a point, Your Honor. If
9 Mr. Syed wasn't here, and I think everyone agrees that his
10 presence was rightly requested, then his declaration should be
11 stricken. I mean, we should be able to go forward now. We
12 have a complete record. It's been fully briefed. He has been
13 given notice and opportunity. He's not here. Let's get rid
14 of his declaration and move forward.

15 Having said that, I certainly understand the court's
16 perspective, both with respect to the O.S.C. and with respect
17 to an interim fee award. I wasn't asking the court today for
18 a finding of contempt. I was asking that an O.S.C. issue so
19 that we could have that discussion when Mr. Syed was present.

20 THE COURT: From my perspective, what you were
21 trying to do is move the case forward when it was dead in the
22 water. Previous counsel had withdrawn. There seemed to be no
23 response from Touch-Tel and you went to the tool box to look
24 for a bigger hammer.

25 And that's about all you can do in the plaintiff's
26 position. Courts will fault plaintiffs who do not try to
27 change the status quo. If you just let the case languish, the
28 five-year rule will eliminate the case. So the plaintiff was

1 doing what it had to do.

2 So we're moving forward. We have a raft of new
3 lawyers. Welcome to the case. You appeared last year in the
4 ex parte proceedings, either in person or on the papers.
5 You've heard from your colleague.

6 Do you want to add anything?

7 MR. RUDD: One thing -- actually, two. With respect
8 to the CPUC issue, in fact, the CPUC has set a hearing and
9 demanded that all counsel be personally present. They're not
10 going to automatically withdraw the Veritas application. So
11 that's happening on February 13.

12 THE COURT: I didn't know that.

13 MR. RUDD: And the court issued an order yesterday
14 saying, "No, be there in person." I would like to have
15 Mr. Syed's --

16 THE COURT: The PUC said that?

17 MR. RUDD: Yes. The administrative judge in the
18 PUC. I would like to have Mr. Syed's cross-examination
19 sufficiently in advance of that so that I can use it to the
20 extent I need to at that hearing.

21 THE COURT: So you would like to see something
22 happen before -- well, February 13 I think is a holiday.

23 We're off the record.

24 (Discussion held off the record.)

25 THE COURT: Anything further?

26 MR. RUDD: No, I'd just like to have him before
27 because --

28 THE COURT: I understand.

1 From the defense perspective?

2 MR. CUNNIFF: Well, if it would move things along,
3 we would be willing to withdraw Mr. Syed's verification. To
4 elaborate on it, we didn't consider it to be proffering him as
5 a witness. The plaintiffs put in an exhibit --

6 THE COURT: That's what a declaration is.

7 MR. CUNNIFF: They put in an exhibit and then they
8 left out the verification that explained it. We added that on
9 the, we viewed as a rule of completeness. But if it would
10 help expedite things, we would agree to strike it or withdraw
11 it.

12 THE COURT: Hold on just a moment, please. I think
13 to -- doesn't he offer the key testimony on the highest
14 ancillary charge?

15 MR. CUNNIFF: No. I mean, he is explaining that
16 plaintiffs requested, and he prepared a spreadsheet that
17 reflects --

18 THE COURT: I'm sorry, I was unclear. On the issue
19 of whether there is a proper disclosure, what is the record,
20 without his views, about the highest ancillary charge? What
21 is the highest ancillary charge? What is the evidence on
22 that?

23 MR. CUNNIFF: The evidence, as I understand it, is
24 there is a declaration that plaintiff cited from Mr. Stankos
25 who is an officer at Touch-Tel -- was. I'm sorry, was an
26 officer.

27 THE COURT: I'm sorry. So it's the Stankos
28 declaration.

1 MR. CUNNIFF: Yes. The disclosures on the card
2 represent the highest ancillary charge, whether domestic or
3 international. And we didn't dispute that. Plaintiffs had it
4 in their trial submission. We didn't object to it. We agreed
5 to it. So in our view it's purely an issue of law in that
6 there aren't any ancillary charges higher than what is
7 disclosed. It comes down to: Do you need the word
8 "international" or not.

9 THE COURT: Well, your colleague disagrees. He's
10 got a different statement of his position. But I am grateful
11 for your clarification that it's the Stankos explanation, not
12 the Syed.

13 So you are withdrawing -- hold on. Everybody will
14 have a chance to be heard, of course -- withdrawing that
15 declaration, or a verification, really. But if you are
16 withdrawing a verification --

17 MR. BOWSER: It accompanied the discovery response
18 that plaintiff's counsel had asked for after the deposition in
19 2015. So the verification just ties with the exhibit that he
20 is relying on. And so in the interest of completeness, the
21 verification explains, back in 2015, what this document
22 represents according to the author.

23 THE COURT: All right. It was notarized in Texas;
24 right?

25 MR. CUNNIFF: I believe so.

26 THE COURT: Yes. I recall seeing the notary's stamp
27 had the lone star on it.

28 MR. BOWSER: That would make sense.

1 THE COURT: That's the most elaborate verification I
2 have ever seen. So it's withdrawn. It's stricken.

3 MR. RUDD: Your Honor, may I?

4 THE COURT: Yes.

5 MR. RUDD: We wouldn't stipulate to have it
6 stricken. We want the guy here.

7 THE COURT: Just a moment ago you urged that it be
8 stricken.

9 MR. RUDD: Let me explain. If they're prepared to
10 stipulate that he perjured himself with respect to the issues
11 in his Veritas application, that's one thing. If he's simply
12 trying to withdraw evidence that they proffered and we
13 correctly asked to cross-examine him on, that's another.

14 The declaration that he provided does actually have
15 to do with ancillary charges, and it has to do with issues
16 relating to restitution.

17 So it seems to me, yes, we would agree to have it
18 stricken with the caveat that he agreed he lied. Otherwise, I
19 think I'd like to have him here. Having said that, it strikes
20 me that Mr. Melkonian, who's in Australia and woke up at 4:00
21 in the morning in order to be here for this call, might have
22 one to two things to say on this. If it's okay with everyone,
23 I'll cede the floor to him.

24 THE COURT: Well, let me review the bidding for a
25 moment here. Maybe it would be helpful for me to clarify
26 something else about the parties' positions. Now, plaintiff
27 Ibanez is asking for restitution.

28 MR. RUDD: Yes, Your Honor.

1 THE COURT: And I am unclear, I am uncertain whether
2 she believes she is entitled to restitution based on a failure
3 to disclose theory alone or whether restitution also should
4 follow from violation of the PUC registration requirement. Is
5 that clear?

6 MR. RUDD: It is clear, and I understand what the
7 court is saying having read the Tobacco II and the Vera case.
8 I get it. The question is, are we asking for restitution
9 based upon something other than purely unlawful conduct which
10 arguably still exists or not.

11 THE COURT: Let me pose the question this way: I
12 believe you've won on the injunction point. I have issued a
13 preliminary injunction and Touch-Tel has not objected. For
14 purposes of trial court proceedings, they're preserving
15 everything for appeal, appropriately. But for purposes of
16 trial court proceedings, Touch-Tel is not objecting to that
17 being made into a permanent injunction.

18 Now, there is an issue about the sale in California.
19 I'm inclined to go with the plaintiffs on that. I have rather
20 considerable doubts that the plaintiff's international
21 ancillary fee theory is the correct interpretation of the
22 statute. If I come down in line with my tentative, is it
23 Ibanez's -- in other words, if I say all the disclosures were
24 proper, however, it wasn't proper to sell the cards in
25 violation of the PUC registration process, does Ibanez still
26 get restitution?

27 MR. RUDD: To the extent that the CPUC -- failure to
28 apply with the CPUC registration was an unlawful act per se

1 which allows you maybe to make it through the window left
2 after Tobacco II in Vera, then yes. But look, we're candid
3 about it our papers. We don't know if you can even get
4 restitution under the UCL anymore.

5 THE COURT: I didn't really understand that. I
6 think I'd like the answer to start with either a yes or no, if
7 that's possible.

8 MR. RUDD: I think the answer is yes, Your Honor, we
9 still believe in it. But we also recognize that restitution
10 is not the hill we want to die on, as it were, because it
11 looks as though that window which you have to crawl through to
12 get it has to deal with a case that only involves unlawful
13 conduct, per se. For example, failing to make disclosures
14 required or failing to register with the California Public
15 Utilities Commission.

16 So under those circumstances, yes. To the extent
17 restitution is still available, we believe it would be
18 available for that reason as well as for failing to make the
19 required disclosure under 17538.9 which is, of course, a
20 strict liability statute.

21 So the answer is yes, but we also -- I don't know.
22 I mean, post Vera we don't know what the state of -- and we
23 told you that in our reply, which by the way I would urge the
24 court, to the extent there is one document that the court
25 reads carefully, it would be our reply in connection with our
26 trial brief because it really does lay out the areas where we
27 agree and the areas where we disagree, and we tried to be very
28 candid about the areas we don't know.

1 THE COURT: Well, I have read all those documents
2 carefully.

3 MR. RUDD: So yeah, we still think we're entitled to
4 it. We think that the statute means what it says. And if it
5 requires you to either give the highest ancillary charge for
6 each jurisdiction in which the card may be used, or the
7 highest foreign ancillary charge, then that's what you have to
8 do. Just because you decided to blend them together doesn't
9 mean you can fly with the statute. That's sort of our
10 position.

11 Having said all that, moving from 30,000 feet to
12 zero feet, we're done. We would like to cross-examine
13 Mr. Syed, but this matter is fully briefed. It's been around,
14 I think, longer than the court or the plaintiffs might like.
15 If we get the injunction that says "not for sale in
16 California," then we're prepared to address that to the extent
17 there is any real pushback and we can't get restitution,
18 that's fine too.

19 MR. MELKONIAN: Excuse me, Your Honor.

20 THE COURT: Yes, I can hear you clearly.

21 MR. MELKONIAN: This is Harry Melkonian.

22 I don't mean to muddle things, but I want to make
23 sure we keep the statutes right. And I think there may be a
24 little bit of confusion entering the dialogue because there
25 are two separate statutory bodies in play here. The strict
26 liability statute that generates the restitutionary claim as
27 Mr. Rudd cited is the phone card statute which is part of the
28 Business and Professions Code. The failure to register is not

1 part of the Business and Professions Code. That's part of the
2 Public Utilities Code.

3 And so there is a distinction. The restitution
4 claim in terms of dollars is most clearly founded on the phone
5 card statute because it is a strict liability statute, and I
6 can address that.

7 With respect to the failure to license, there is not
8 that basis. You cannot tag the PUC Code violation into the
9 Business and Professions Code. They both tie in, of course,
10 to the unfair competition law, but that's extraneous.

11 The issue about being unlicensed and creating the
12 basis for restitution has, on occasion, come up in California.
13 But I have to be candid with the court, it's never been dealt
14 with, and we can't say that it has. Courts have alluded to
15 it, which is hardly useful.

16 But with respect to the failure to make phone card
17 disclosures, that's different because the phone card statute
18 makes a violation of that statute a strict liability matter
19 which brings us directly into the unlawful arm of the UCL.
20 And even there, as we again have tried to be very candid with
21 the court, restitution exists. The measure of it is somewhat
22 ambiguous in the following respect: We know as a result of a
23 couple of recent cases; namely, Tobacco II and the Vera Banana
24 Republic decision, that in cases involving fraud
25 misrepresentation, there has to be some definite reliances and
26 specific quotes of quantification.

27 We don't have that same level of legal clarity with
28 respect to violation of strict liability unlawfulness. And we

1 MR. MELKONIAN: Your Honor, this is Harry Melkonian.

2 THE COURT: Yes.

3 MR. MELKONIAN: I was reviewing this with Mr. Rudd
4 and I think I heard matters correctly, but I may not have, and
5 please forgive me if I confuse something. I think we may be
6 able to resolve a great deal now. A permanent injunction
7 based on the licensing issue allegedly requested by the
8 plaintiffs, is the court inclined to enter that?

9 THE COURT: I am, but I'd want to hear from the
10 defense about the "not for sale in California." They
11 protested that there wasn't a sufficient evidentiary basis.
12 It seems like a rather small matter to me to put that on the
13 card. And it would be accurate. I'm not sure --

14 MR. MELKONIAN: Well, Your Honor, to the plaintiff
15 it's a critical issue because of the nature of the product.

16 THE COURT: All right. That's fine. You correctly
17 have understood that that's my tentative view subject to
18 hearing from the defense.

19 MR. MELKONIAN: Okay. If that is in fact -- and
20 I'll say this. If that is, in fact, what would be entered, I
21 think in the interest of clarity and avoiding legal confusion
22 on a seriously unsettled issue, the monetary restitution issue
23 would be withdrawn by the plaintiffs and the court would not
24 have to either quantify or even rule on that. It would be
25 withdrawn.

26 However, the plaintiffs would request that the court
27 rule on the legality issue of the disclosures, the
28 international ancillary charges under the phone card statute

1 which we believe can be done under the state of the current
2 record. There is nothing to be added.

3 And that there would be -- under those situations
4 there would be no need for any further witness examination.
5 And that if the judgment and orders were entered, plaintiffs
6 would submit a new comprehensive 1021.5 application within two
7 weeks which would again eliminate the need for any interim
8 application.

9 THE COURT: Right.

10 MR. MELKONIAN: Eliminate that issue. So as I said,
11 we could end up with a comprehensive decision today.

12 THE COURT: I understand. Let me ask the defense
13 whether you would stipulate to putting this "not for sale in
14 California" on the card in return for the plaintiff
15 withdrawing the restitution request.

16 MR. BOWSER: We want to talk with our client about
17 that horse trade, Your Honor.

18 But if I could present some issues for consideration
19 regarding the disclosure about the plaintiff's request for the
20 court to regulate Touch-Tel sales in 49 other states. There
21 isn't a single piece of evidence in the record of any card
22 that is marketed for other markets flowing into California.
23 And there is good reason for that.

24 The way Touch-Tel markets its particular cards is
25 particular to a given geographic market. Consumers expect to
26 find local calling numbers for the market in which they're
27 sold. So cards in Houston have Houston area code and phone
28 numbers on them so that the consumers in Houston look at it

1 and see, "Okay, I'm going to be able to make a local call to
2 access the gateway to be able to make my call to El Salvador
3 or Mexico or whatever."

4 THE COURT: We're off the record.

5 (Discussion held off the record.)

6 MR. BOWSER: So the reason that there is no evidence
7 of any out-of-state cards coming into California in this case
8 is because there is no incentive for distributors of
9 Touch-Tel's cards to do so.

10 If they want to sell in California, for them to be
11 able to get off the shelf at all they're going to need to have
12 California local calling numbers on them. So taking a card
13 that's sold in Georgia or Texas or some other non-California
14 state and putting some legend -- we haven't talked about font
15 size -- on an already compressed card with a lot of content,
16 we're taking up space that isn't likely to produce any
17 consumer benefit because there is no likelihood that a
18 distributor is going to try to take a card that's made for
19 Houston or Atlanta or whatever and bring it into the
20 California market.

21 Moreover, given the nature of the consumers of
22 Touch-Tel's cards, a legend that's printed in English "not for
23 sale in California" does create some likelihood of confusion
24 of those consumers about whether if they happen to be -- if
25 they buy it in Nevada and drive into California, can they use
26 it in California. Technically they could. They'd have to
27 call the Nevada dial-in number, but they would see a legend
28 "not for sale in California," and they may or may not know

1 whether they can actually use the card when they could.

2 So it's not obvious to us that there is any benefit
3 to the legend. There is no record of it that it's causing to
4 remediate any actual problem, and it may actually cause
5 consumer confusion, so.

6 THE COURT: I understand. Do you want to make a
7 phone call right now to your client to see if this -- if the
8 disclosure is the same font size as the other disclosures back
9 in 2012? I listed the eight disclosures, there could just be
10 a ninth "not for sale in California," or if you have some
11 counterproposal on the wording. It's a pretty substantial
12 settlement benefit to be rid of a restitution claim. You
13 could rightly trumpet that as a victory.

14 And you have to weigh, your client has to weigh
15 whether line 9 on the back of the phone card is going to
16 affect the client's business at all. In other words, is there
17 any real detriment that the -- in other words, aren't you
18 getting something for nearly nothing, from your point of view?
19 That's the basis for settlement of part of a case.

20 Let me urge you to make that call right now.

21 So we're in recess once again.

22 MR. RUDD: Thank you, Your Honor.

23 MR. BOWSER: Thank you.

24 (Recess.)

25 THE COURT: We return to the record after the
26 recess.

27 MR. BOWSER: Your Honor, we had an opportunity to
28 speak with our client and they're willing to consent to the

1 entry of the permanent injunction with the legend requirement
2 at the font size of its other disclosures in exchange for
3 plaintiff's stipulation to withdraw its claim for restitution.

4 THE COURT: Well, that does a great deal to speed up
5 and simplify the case.

6 MR. RUDD: Mr. Melkonian, did you hear that?

7 MR. MELKONIAN: I'm sorry, no.

8 THE COURT: Counsel just said on the record that the
9 Touch-Tel defendant will accept the "not for sale in
10 California" line 9 disclosures, same font size as the other
11 disclosures in return for the plaintiff waiving the
12 restitution claim.

13 So we have a simplification of the issues that
14 speeds a long and hard-fought case, propels it quite speedily
15 towards resolution. In fact, I believe I could enter judgment
16 today and set the matter for a fee motion hearing.

17 Now, am I correct in understanding that even though
18 the plaintiff has withdrawn its restitution claim, Mr.
19 Melkonian still wants a ruling on the disclosure issue?

20 MR. MELKONIAN: Yes, Your Honor, because that is the
21 alternative grounds for the injunction. We sought the
22 permanent injunction on two grounds: The licensing grounds
23 and the phone card statute, the Business and Professions Code
24 violation.

25 THE COURT: I see. Well, respectfully, as I told
26 you before, I'm inclined to rule against you there. And if
27 pressed to make a ruling, I would respectfully interpret the
28 statute to say that it's a sufficient disclosure to give the

1 highest ancillary charge without the words "international" or
2 some further explanation that this ancillary charge that we're
3 describing applies only to international calls.

4 It seems to me if an ancillary charge is disclosed,
5 whether it's international or not, if it's the highest charge
6 that could be levied on the card, that's the crucial
7 information for the consumer to know: "How bad can I get hit
8 on this?"

9 Do you want to address the issue? You briefed it;
10 you could submit on the briefing you have given already, Mr.
11 Rudd.

12 MR. RUDD: I mean, I know this was Mr. Melkonian's
13 issue. So if he's happy, I am.

14 MR. MELKONIAN: I would simply add, Your Honor, that
15 the call for the highest international ancillary charge, the
16 defendant had stated, "No, we provide the highest ancillary
17 charge," which could very well exceed the highest
18 international ancillary charge, for example. We don't know
19 that. And they have never offered admissible evidence as to
20 that. As a result, the disclosure on its face is
21 nonconforming.

22 It is as if you were asked to disclose what is the
23 maximum population of Los Angeles, and you responded it does
24 not exceed 35 million, because that is the population of
25 California. Well, that may be, but that is not a proper
26 disclosure of the population of Los Angeles.

27 And where we have a back in saying what is the
28 highest international ancillary charge and you give a number

1 which may be higher or the same but is not specifically that
2 number in a statute which specifically references
3 international, it is not in substantial compliance. It's
4 simply not in compliance.

5 And the fact that the declarations from the
6 defendant played such word games where they say, "The statute
7 says we have our choice, either a country by country
8 disclosure or the maximum international disclosure, so we take
9 the second choice and we disclose maximum ancillary charges,"
10 not distinguishing between international and domestic when in
11 fact the statute doesn't give you that option, they have, in a
12 sense, written their own package.

13 THE COURT: Thank you very much.

14 MR. MELKONIAN: That's our argument in a nutshell,
15 Your Honor.

16 THE COURT: Mr. Melkonian, thank you very much. You
17 were eloquent in your briefing in describing that argument. I
18 did understand it. You've reiterated your position, and it's
19 a cogent position, but I don't think it's the proper or
20 logical interpretation of the statute.

21 Counsel is concerned with taxonomic exactitude and I
22 think the statute is worried about information to consumers.
23 And the information to consumers is how high could the fee be.
24 What is the worse scenario, worse case scenario. And the
25 defendant has complied with that on this record.

26 So that's the reason for, respectfully, me adopting
27 the defendants' proposed interpretation of the statute.

28 So that I believe -- I see Mr. Rudd packing up.

1 That's a good sign. He's satisfied with today's progress, and
2 rightly so. I am going to ask the plaintiff to give the
3 defendant a proposed form of judgment as well as a, as last
4 time, proposed permanent injunction wording. Before Touch-Tel
5 did agree to the wording of the preliminary injunction, I
6 expect counsel to work together to make sure there is
7 agreement as to form.

8 So Mr. Rudd, what deadline do you want to set for
9 yourself on getting a form of judgment to me?

10 MR. RUDD: Obviously it takes two to tango, but
11 we're very hopeful that we could get you a form of judgment by
12 this time next week.

13 THE COURT: That's fine. That's fine. This is a
14 Thursday, so February 2, 4:00 p.m. Why don't you file and
15 upload a form of judgment as soon as it's available. Why
16 don't you put a signature line for Touch-Tel to sign off as to
17 form and I'll enter judgment.

18 Now, that's important that we all be on the same
19 page as to when judgment is entered because that triggers
20 ticking clocks, potentially. So as soon as it's available
21 online, call the court staff and I will post notice when I
22 have signed it, so that that's unambiguous. And the plaintiff
23 I think has to give notice. But you'll have actual notice
24 from the website.

25 Now, I'll leave it again to Mr. Rudd as master of
26 the ship here to say when he will submit briefing on the fee
27 petition.

28 MR. RUDD: Your Honor, I believe we can probably

1 honestly --

2 THE COURT: Just name a month and a day.

3 MR. RUDD: It's going to be very quick here, Your
4 Honor. We're looking at -- we can probably have our petition,
5 our updated fee application online by the 15th.

6 THE COURT: Of February?

7 MR. RUDD: Yes.

8 THE COURT: How much time would the defense like?

9 MR. RUDD: We're not going to do anything except add
10 more stuff.

11 MR. BOWSER: Another 15 days.

12 THE COURT: So name a date.

13 MR. BOWSER: March 1.

14 THE COURT: March 1. So I'll hold the hearing on
15 March 16 -- oh, no. I need a reply. Let's give a week for
16 the reply. March 8, is that okay?

17 MR. RUDD: Sure.

18 THE COURT: And so I'll say March 23. Bad day?

19 MR. RUDD: In some ways. We don't really
20 honestly -- that's fine. We'll work around it.

21 THE COURT: March 23, 10:00 a.m. or you want the
22 afternoon, 2:00 p.m. or any other time?

23 MR. RUDD: No, it's fine. I was actually thinking
24 about proposing we simply do it on the papers. I don't see a
25 particular reason to burden the court with another appearance
26 where these guys have to fly out here to do a fee application.
27 I can discuss that with counsel. We can set a proposed
28 hearing date now and if we want to submit on the papers, we

1 can always do that.

2 THE COURT: That's fine. I'll nonetheless hear the
3 matter on the 23rd, whether it's a hearing or simply a
4 reading.

5 So I still need a time and day. Is 10:00 a.m. okay?

6 MR. RUDD: I'm not the one flying out.

7 MR. BOWSER: We'll talk.

8 MR. RUDD: Morning is fine, Your Honor.

9 THE COURT: 10:00 a.m. So that's our future court
10 date, 3/23/17, 10:00 a.m. I will say that, no doubt following
11 the tenor of the defense attack on the interim fee award, the
12 suggestion was you couldn't have spent a third of a million
13 dollars on these issues.

14 What would be highly persuasive to me, if you can
15 get it, is what your client has spent on the last law firm in
16 the course of a case. If it is a fraction of what Mr. Rudd is
17 asking, of course that will be good for you. If they have
18 done the whole thing for \$100,000, then you can say his claim
19 for more than \$100,000, this is a ground for considering that
20 to be excessive.

21 I think you are not required to do that, but there
22 is CACI instruction that says when someone is capable of
23 offering better evidence and they offer less good evidence,
24 one should distrust the less good evidence.

25 Isn't Touch-Tel's own litigation expenses some sort
26 of a lighthouse by which I might try to triangulate?

27 MR. RUDD: I suppose I should disclose this, because
28 during the period of time when Touch-Tel was without counsel,

1 I did have a discussion with Mr. Stankos about what they spent
2 on their prior firm, so I have some idea of what it is, I
3 think.

4 THE COURT: All right. Did someone want to give
5 notice or do you want to waive notice?

6 MR. RUDD: Probably under the circumstances, since
7 we have a court reporter, plaintiffs will give notice, Your
8 Honor.

9 THE COURT: Plaintiffs will give notice.

10 MR. RUDD: Thank you.

11 THE COURT: Thanks, everybody.

12 MR. BOWSER: Thank you, Your Honor.

13 THE COURT: This is one of those hearings that was a
14 lot more productive than I thought it was going to be. So
15 we're entering judgment.

16 MR. RUDD: Thank you, Your Honor.

17 MR. CUNNIFF: Thank you, Your Honor.

18 MR. RUDD: What do you know.

19 (Laughter)

20 (Whereupon the proceedings were adjourned at 3:32 p.m.)

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FOR THE COUNTY OF LOS ANGELES

HON. JOHN SHEPARD WILEY, JR., JUDGE

Defendant.

SUPERIOR COURT
CASE NO. BC488697

DATED FEBRUARY 11, 2017.

MARIA BEESLEY, CSR, RMR, FCRR
Official Pro Tem Court Reporter
CSR No. 9132