

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JULIE POPE AND ALEXANDER ABRAMS :

on behalf of themselves and all : Index No.

others similarly situated, :

:

Plaintiffs, : **CLASS ACTION COMPLAINT**

:

-against- : :

AT&T CORPORATION, AT&T WIRELESS :

SERVICES, INC., C. MICHAEL :

ARMSTRONG AND DANIEL R. HESSE, :

:

Defendants. :

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Plaintiffs, residents of New York State who purchased wireless phone service⁽¹⁾ from defendants AT&T Corporation and AT&T Wireless Services (together, "AT&T"), by their attorneys, allege for themselves and on behalf of all others similarly situated, all on information and belief, except for those allegations which pertain to the named plaintiffs or to their attorneys, which are alleged on personal knowledge, as follows:

SUMMARY OF CLAIMS

1. This is a class action brought on behalf of plaintiffs and a class of similarly situated persons throughout the United States, as well as a subclass of residents of New York State, who entered into contracts with AT&T for wireless phone service (the "Class" and the "New York Class" respectively) during the period from May 1, 1998 to the present (the "Class Period").

2. Defendant AT&T violated New York's General Business Law ("GBL") § 349, which prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishings of any service in the state of New York, by representing to the public that AT&T Wireless service was reliable and dependable while knowing that they lacked the capability to provide such reliable and dependable service; by failing to provide reliable wireless phone service and failing either to rectify the problems or provide rebates when put on notice of the problem despite assurances to the contrary.

1. Defendant AT&T breached its contract with plaintiffs and the Class, by failing to provide reliable wireless phone service for which plaintiffs and the Class contracted.
2. Defendant AT&T breached express and implied warranties by selling wireless phone service which it inaccurately described as "reliable" or "dependable", despite the fact that its wireless phone service was unreliable and undependable, and which, as a result, was not fit for its intended purpose.
3. Defendant AT&T unjustly enriched itself at the expense of plaintiffs and the Class by accepting monthly fees from plaintiffs and the Class and failing to spend the money required to provide the quality of wireless phone service promised plaintiffs and the Class by defendant AT&T.
4. As a result of AT&T's violation of GBL § 349, its breach of contract with plaintiffs and the Class, its breach of express and implied warranties and its unjust enrichment at the expense of plaintiffs and the Class, plaintiffs and the Class did not receive the services for which they had contracted and were damaged thereby. Moreover, the problem of unreliable and undependable service has not been corrected as of this date nor has AT&T made any restitution to injured consumers.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims asserted in this action pursuant to CPLR §§ 301, 302. This Court has jurisdiction over AT&T because AT&T is a New York Corporation and maintains offices at 32 Avenue of the Americas, New York, New York 10013-2412. New York also has jurisdiction over AT&T Wireless because AT&T Wireless transacts, regularly does and solicits business, derives substantial revenue from services rendered and has committed tortious acts within the State of New

York. New York has a compelling interest in protecting its residents and others from the wrongful acts and omissions of corporations deriving substantial revenues from doing business in this state.

2. Venue is proper in this Court pursuant to CPLR § 503(a) and (c) because AT&T maintains offices in this county.

PARTIES

1. Plaintiff Julie Pope is a resident of New York City. She entered into a one year contract for AT&T wireless telephone service on July 3, 1998. She intended to use wireless telephone service primarily for personal business. Plaintiff Pope had so little success using her cell phone, that she simply stopped attempting to make calls even though she was trapped in her obligatory one-year contract. At the end of the contract period, she did not renew the contract because the service had been so poor, as discussed in more detail below.
2. Plaintiff Alexander Abrams is also a resident of New York City. He entered into a contract with AT&T for wireless telephone service in November, 1998. He has used wireless service for both personal and business purposes. In his business, he depends heavily upon wireless telephone service. Plaintiff Abrams estimates that 70% to 80% of incoming calls do not get through. This is based on comments from friends and business associates. In addition, he estimates that at least 50% of outbound calls do not go through. Instead, he receives either a rapid busy signal or no sound at all. Moreover, calls are regularly interrupted in mid-conversation, approximately 30% to 40% of the time. At the expiration of his AT&T wireless telephone service contract, plaintiff Abrams intends to enter into a contract for wireless telephone service with a different provider because of the extremely unreliable service provided by AT&T.
3. Defendant AT&T, a major international corporation, is the largest provider of wireless telephone service in the world. AT&T is a New York corporation with its headquarters in New York city.
4. Defendant AT&T Wireless Services, Inc. ("AT&T Wireless"), one of defendant AT&T's "primary business segments," is a corporation organized and existing under the laws of the state of Delaware, and a wholly owned subsidiary of defendant AT&T. Its principal executive offices are located in Redmond, Washington.
5. Defendant C. Michael Armstrong is, and was at all relevant times during the Class Period the Chairman and CEO of AT&T.
6. Defendant Daniel R. Hesse is, and was at all relevant times during the Class Period, President of AT&T Wireless.

CLASS ACTION ALLEGATIONS

1. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to CPLR § 901. The Class that plaintiffs seek to represent is composed of all users of AT&T Wireless Services throughout the United States who purchased wireless telephone service from AT&T at any time during the Class Period and a sub-class of New York residents who purchased AT&T Wireless Service during the Class Period.
2. The Class and the New York Class are each composed of thousands of individuals, the joinder of whom in one action is impracticable, and the disposition of their claims in a class action will provide substantial benefits both to the parties and the Court. The Class and the New York Class are sufficiently numerous, since it is estimated that thousands of people in each class were under contract with AT&T for wireless telephone service during the Class Period.
3. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact common to the Class and the New York Class predominate over questions which may affect individual Class or New York Class members, including the following:
 1. Whether defendants failed to provide reliable and dependable wireless telephone service to plaintiffs and the Class as promised in AT&T's advertisements;
 2. Whether such failure constituted a violation of New York's GPL § 349 forbidding deceptive business practices;
 3. Whether such failure constituted a breach of AT&T's contract with the members of the Class;

d. Whether such failure constituted a breach by defendants of express and implied warranties;

1. Whether AT&T was unjustly enriched by failing to make their wireless telephone service reliable and/or failing to reimburse Class members whose wireless telephone service was unreliable.
2. Whether the Class has been damaged and, if so, the extent of such damages.
2. As purchasers of wireless telephone service which proved to be unreliable, plaintiffs are asserting claims that are typical of the claims of the entire Class, and plaintiffs will fairly and adequately represent and protect the interests of the Class in that they have no interest antagonistic to those of the other members of the Class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation.
3. Plaintiffs and the other members of the Class have suffered damages as a result of defendant's unlawful conduct. Because of the size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein. A class action is therefore superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the Class members likely will not obtain redress of their injuries and defendant will retain the

proceeds of its violation of GBL § 349, its breach of contract and its breach of express and implied warranties.

FACTUAL BACKGROUND

The Extraordinary Growth of AT&T

Wireless Phone Service in 1998 and 1999

20. In 1997, AT&T's revenues grew only 1.8% compared to 1996. As a result, AT&T "entered 1998 in what looked to observers like a cloud of uncertainty around its future." AT&T's self-described response was "both swift and decisive. . . . The 'sleeping giant,' as some liked to think of AT&T, roared to life in 1998 and undertook a strategic transformation that has fundamentally redefined our company and changed the future of our industry." A significant part of that new strategy was the massive expansion of wireless phone service, especially digital, as opposed to analog, phone service.

21. As a result of AT&T's new strategy, wireless services revenues grew \$738 million, or 15.8%, in 1998 as compared to 1997. Moreover, fourth quarter 1998 growth was 30% more than fourth quarter 1997. According to AT&T, "[t]he increase was driven by the overwhelming response to AT&T's Digital One Rate service and a full-year impact in 1998 of the launch of eight new 1900 MHZ markets in the second half of 1997." AT&T's Digital One Rate service, which was initiated in May 1998, was the first national, one-rate wireless service plan that eliminated separate roaming and long distance charges. "Roaming" charges are those charges for calls outside of the "home" area. Thus, for example, a New York resident traveling to California would likely be charged a roaming fee for calls made or received in California. Under the Digital One Rate service plan, the roaming and long distance charges were incorporated into the basic service charge.

22. AT&T described the Digital One Rate service as "one key element of our ongoing efforts to acquire and retain high value customers." And, Digital One Rate service was extremely successful. By the end of 1998 more than 850,000 subscribers had signed on to the Digital One Rate service, and AT&T was continuing to add subscribers at a rate of approximately 100,000 per month, approximately three quarters of whom were new to AT&T.

23. The year 1999 proved to be an even more impressive growth story for wireless services. For the first six months of 1999, wireless services revenues were \$3.4 billion, or 39% higher than the \$2.5 billion of revenues in the first six months of 1998. The 1999 wireless services results included the Vanguard Cellular Systems which had been acquired by AT&T on May 3, 1999. Adjusted to exclude Vanguard and AT&T's messaging business, which it sold on October 2, 1998, growth in wireless services revenues were even more impressive - 42.4% and 41.3% for the three and six-month periods ending June 30, 1999, respectively, compared with the prior year period. According to AT&T, "[t]he growth for both periods was driven by the continued

successful execution of AT&T's wireless strategy of targeting and retaining high-value subscribers, expanding the national wireless footprint, focusing on digital service, and offering simple rate plans."

24. The increase in revenues for 1999 wireless services was generated by a massive increase in the number of subscribers. In the second quarter of 1999, the number of Digital One Rate subscribers had grown to 1.5 million, from 850,000 at the end of 1998, or a growth of 76%, with over 80% of the net additions representing new wireless customers for AT&T. Moreover, not only were more subscribers being signed up, but they were talking longer. The average revenue per user ("ARPU") was \$66.20 in the second quarter of 1999, an increase of 15.3% from the second quarter of 1998, and a 9.2% increase from the first quarter of 1998.

AT&T Boasted of the Reliability and Dependability of the Wireless Phone Service In Its Advertisements

25. The thrust of AT&T's advertising designed to sign up new wireless phone subscribers has been that AT&T is reliable and dependable. For example, in a brochure describing Wireless service for the "New York/New Jersey Metro Area" entitled, "AT&T Welcome Guide," AT&T boasted:

With AT&T Wireless Services, you'll:

* * *

Be able to count on the quality service that only AT&T Wireless Service provides. For a second consecutive year, AT&T Wireless Services has received the J.D. Power and Associates award for highest overall customer satisfaction among NY Metro area wireless users. We believe it's the result of our ongoing commitment to provide every customer with responsive courteous service, 24 hours a day, 7 days a week.

26. Its advertising on its Internet web site, <http://www/att.com>, is also typical. There, AT&T Wireless boasts that:

AT&T provides you with the freedom of the largest digital wireless network, giving you the power to stay in touch while you are on the go.

* * *

Finally, a plan that gives you calling freedom and the reliability of AT&T.

* * *

Purchase affordable and reliable wireless phone service on state of the art wireless phone accessories at our online purchasing center.

* * *

Avoid the idiosyncracies of foreign phone service. Use your "smart" card and a GSM wireless phone to make and receive local, long distance and international calls.

* * *

[Wireless office service] Virtually eliminates the chance that you'll ever miss another important call. Incoming calls are automatically routed to your desk phone, then to your wireless phone.

* * *

And you'll have peace of mind knowing that you can count on the dependability and quality of the largest digital wireless network in the U.S.

27. On its promotional brochure for "AT&T Digital PCS Calling" AT&T also boasted that:

AT&T offers a wide variety of Calling Plans and the most advanced features to help you make the most of your valuable time - everything you expect from AT&T.

28. Thus, AT&T attempted to induce potential subscribers to purchase AT&T Wireless services with promises of quality service, and counted on the reputation of the famous AT&T brand to do the job. There is no question, therefore, that AT&T promised its wireless phone subscribers that they could depend on AT&T for reliability and dependability.

The AT&T Wireless Phone Service Contract

29. In its standard contract, the "AT&T Wireless Services Service Agreement (the "Service Agreement"),⁽²⁾ AT&T states explicitly that:

The term of this Agreement depends on the Calling Plan, feature or promotion you select and is described in a separate AT&T Wireless Services Calling Plan ("Calling Plan") or feature or promotional materials which are a part of this Agreement.

30. Thus, the AT&T promotional materials cited elsewhere in this complaint were incorporated by reference into the Service Agreement, and, therefore, the promises of AT&T reliability and dependability in the promotional material are also a part of the Service Agreement.

31. The Service Agreement - essentially a contract of adhesion which outlined the terms and conditions of AT&T's wireless phone service with no negotiation of any terms - promised that, in return for a certain number of minutes of "air time" - time spent on the cell phone whether calling another party or receiving a call from another party - the subscriber would pay a set monthly fee for a minimum of twelve months. Both the prices and the length of "air time" associated with those prices varied throughout the Class Period.

32. For example, currently, the Digital One Rate plan allows 200 minutes of "air time" for \$29.95 per month, exclusive of taxes. Prior to that deal, AT&T Wireless charged \$29.95 for 60 minutes of air time on its analog system, which it was attempting to phase out in favor of its more profitable, but less reliable, digital system.

33. Perhaps the most important clause in the AT&T Wireless "contract", however, was the so-called cancellation fee of \$200 for termination after the first 30 days of service. Thus, no matter how unreliable the service, subscribers were committed to paying twelve months of fees unless they cancelled within the first thirty days.

34. Under such an arrangement, AT&T Wireless was essentially able to use its subscribers' money to try to upgrade its unreliable system without fear that its subscribers would bolt and leave AT&T for a better service provided by an AT&T competitor. These subscribers, including plaintiffs and the Class in this action, who unwillingly supplied the investment capital for AT&T Wireless when they thought they were purchasing a top-grade cellular phone service, were completely at the mercy of AT&T. As a result, phone calls to customer service resulted in no satisfaction. AT&T never offered any of its disgruntled customers who confronted them any recompense for their routine disruptions in the wireless phone service which AT&T had promised would be reliable.

AT&T's Wireless Service Hits the Wall in 1999

35. In early 1999, severe problems with AT&T wireless phone service were beginning to surface. In a New York Post article of March 17, 1999, Lou Ferraro, AT&T general manager for the New York-New Jersey region "conceded that there could be problems in Midtown [Manhattan] during peak hours of usage." Mr. Ferraro was quoted as saying that "[i]n a highly congested area of Manhattan, there are periods where the network is going to be more congested."

36. In a March 18, 1999 Bloomberg news article, defendant Armstrong was quoted as saying that the Company is "starting to get too many busy signals."

37. According to a BT Alex. Brown analyst report dated March 23, 1999, AT&T admitted, during a conference with BT Alex. Brown, that it was experiencing "continued capacity constraints in major cities, such as Chicago and New York, caused by the success of its Digital One Rate Plan."

38. On March 30, 1999, The Wall Street Journal reported that "[t]he phone giant [AT&T] has had problems meeting demand for its wireless services, especially in major metropolitan areas such as New York." In an admission of the problem, defendant Armstrong was quoted as saying that AT&T would spend \$2 billion in 1999 to "build out its network in new markets," and "expand capacity in congested areas."

39. On May 9, 1999, Mother's Day, AT&T's wireless system crashed in New York City because of "network problems". The outage affected customers in Manhattan, north of 59th Street, parts of the Bronx, Queens, lower Westchester and lower Rockland counties. AT&T was reported as saying that customers in these areas could not use their wireless phones because of a "malfunction in a switch serving those areas." Customers trying to use a cell phone received a "fast busy tone or a recorded message advising them that the system was busy." AT&T was also reported to have said that it could not determine whether the problems were due to "overcrowded networks." In another admission, AT&T also "conceded that it needs to build extra capacity to keep up with the fast-paced growth of its wireless customers."

40. By June 1999, a Dow Jones Business Newswire article, entitled "AT&T Wireless is Going Through Growing Pains As It Builds Business," reported that, while AT&T's wireless revenue "jumped 34%" in the first quarter of 1999, "service deteriorated in the large and influential New

York market as the network got overloaded." In another admission, defendant Hesse told Dow Jones Business Newswire that AT&T did have "service problems in New York," which were the result of "its [AT&T's] own success." Hesse was reported to have admitted that "AT&T has been working hard to beef up its wireless network in New York, which Hesse said had suffered because AT&T didn't have all the network equipment it needed to keep up with demand in a market teeming with power users." Hesse was also reported as saying that "he believes AT&T will meet its self-imposed deadline by getting service quality back to normal by the end of June."

41. On July 21, 1999, The Wall Street Journal, in an article entitled, "Unrequited Love: As Americans Bond With Mobile Phones, More Fail to Connect - Flat-Rate Service Plans Lead to Cellular Traffic Jams on old Analog Systems," reported the experience of Gabe Zakarian, a 37-year old president of a New York consulting firm, who "often spends more than \$100 a month using his cell phone[,] [b]ut when he dials during peak evening and weekend hours, what he hears nearly half the time is a fast busy signal, meaning his call can't be completed." Zakarian was quoted as saying, "[s]ometimes I just get fed up and try to find a pay phone."

42. The article reported that cellular phones were the "hottest single consumer product of the decade[1990s]," but that "[a]ll that yacking has created a traffic jam on cellular networks in some of America's biggest cities, including New York and Washington."

43. The article also reported that "AT&T has publicly conceded that demand initially outpaced its cellular capacity in the crucial New York area...." Defendant Hesse was quoted as admitting that "we underestimated how fast our Digital One Rate would catch on."

44. The article also quoted another disgruntled customer, Zalmir Duchman, a merchandising assistant at an Internet company, as saying that "I don't think I've ever received a call or made a call on the weekend because the darn thing almost never works." Duchman also told of how he had to pay extra, beyond his \$150 a month service plan, because he had to redial repeatedly to recover an interrupted call.

45. Another customer, Niles Morgan, a 49-year old president of an engineering firm was quoted as saying, "[t]he people at AT&T aren't stupid. They have pumped up the marketing to get people to subscribe to the Digital One Rate service, locking the subscribers into annual agreements to assure cash flow. They are using our money to build their system."

46. On July 27, 1999, in an article in the Long Island newspaper Newsday entitled, "Busy Signal For Cell Phone Biz," a Douglaston, Queens resident, Joy Warman was reported as having "constant problems getting through on her AT&T cell phone." The article reported that the last straw was when Ms. Warman received only a fast-busy ring when she tried to call from her car which had broken down on the highway. She was quoted as saying that "I was having too many problems with them [AT&T]," and so she switched to Bell Atlantic Mobile, an AT&T competitor.

47. The article also reported that "AT&T Wireless acknowledges that it has had issues with meeting the capacity demands on its network." AT&T Wireless spokeswoman Jane O'Donoghue was quoted as saying that "[p]articularly for New York, we have seen the number of minutes

growing at 12 percent a month," which is "unheard of in this industry." The article reported that "New York-area subscribers in particular have complained about cut-off calls, endless hold times when calling customer service and trouble in placing phone calls on the AT&T Wireless network."

48. The article quoted Mark Lowenstein, a senior vice president with the consulting firm The Yankee Group, saying "[i]t's just one of those cases where their [AT&T] success has caught up with them." Lowenstein was also reported to have said that "the New York-area problem is particularly acute because the area was already fairly loaded up with subscribers when the company introduced its new pricing plan."

49. Another dissatisfied customer, according to the same article, was Robert Pacent, who runs a sales representative company for electronics. Pacent was quoted as saying that he had "constant problems" with his AT&T cellular service: "At least half the time when I went to use it, I was getting system busy."

50. The same article also reported a test by AT&T competitor Bell Atlantic Mobile which has station wagons equipped with seven cellular phones - each one hooked up to a competing service. The phones are preprogrammed to repeatedly place a two-minute, 15-second phone call to a given number. Bell Atlantic Mobile technicians drive around the metro area to find gaps in coverage for Bell Atlantic Mobile and its competitors. The article reported that in a one-hour demonstration in June 1999, AT&T Wireless service dropped seven calls while Bell Atlantic's service dropped only one call.

51. On August 27, 1999, Dow Jones News Service reported that AT&T Wireless had taken away a significant portion of LM Ericsson Telephone Company's share of AT&T's Wireless service business and substituted Lucent Technologies, Inc. and Nortel Networks Corp., adding them to its vendor list. It was reported that Lucent would be the "exclusive supplier" in New York City, which had been "besieged with much-publicized service problems as the network was overwhelmed with demand."

52. On August 30, 1999, The Wall Street Journal, in an article on the addition of Lucent and Nortel as AT&T suppliers, quoted defendant Hesse as admitting that, "[w]e've been growing at such a rate that no one supplier has been able to keep up with our needs. The new strategy will mitigate our risk and help keep us ahead of demand."

53. The Wall Street Journal article reported that:

AT&T blamed New York's poor service on customer demand initially outpacing its cellular capacity. The carrier said its popular Digital One Rate offer, a pricing plan that eliminates long distance and roaming fees, brought on more customers than the carrier was prepared to handle.

54. The same Wall Street Journal article also reported that "Ericsson, which has long provided equipment for AT&T's large markets, also conceded it was partly responsible for the bottleneck, since it wasn't able to ship the equipment quickly enough to meet the demand for wireless capacity."

55. Defendant Hesse was quoted in the same Wall Street Journal article as saying, in a comment on the change in vendors, that "[t]his [change in vendors] should make sure the situation in New York will never happen again."

56. Finally, on September 15, 1999, in an article in the Puget Sound Business Journal (AT&T Wireless is based in Redmond, Washington), defendant Hesse again admitted that AT&T Wireless had not provided the reliable, dependable service AT&T had promised:

Basically, its been the inability of Ericsson to keep up with use.... Our network quality numbers got worse, but those have been corrected. But they aren't good enough. We plan to make quality a differentiator and that means putting in more equipment. We're trying to put up cell sites as fast as municipalities will let us.

57. Although the most severe problems in the AT&T Wireless network were found in the major cities of the United States, such as New York, the nature of the Digital One Rate Plan, which was designed to encourage users to make long distance as well as local calls, resulted in unreliable and undependable service for users of AT&T Wireless service outside of those major cities who were attempting to receive calls from, or make calls to, those major cities. Thus, the problems of AT&T Wireless service in New York, Washington or Chicago, for example, did not damage only those AT&T Wireless users located in those cities, but also those who were attempting to communicate with other AT&T users in those cities from various parts of the United States.

FIRST CAUSE OF ACTION

(Violation of GBL §349)

1. Plaintiffs incorporate by reference all of the allegations of all prior paragraphs as though fully set forth herein.
2. Defendants, in their advertisements for wireless phone service, promised plaintiffs and the Class that, if they subscribed to AT&T wireless phone service, they would receive reliable and dependable service. In fact, plaintiffs and the Class did not receive reliable and dependable service as described herein. To the contrary, when plaintiffs and the Class attempted to make phone calls using their wireless phones, they all too frequently received a "quick busy" signal indicating that their call had not gone through. If they were fortunate enough to finally connect with another

party, plaintiffs and the Class were all too frequently "dropped", that is, their calls were disconnected. Similarly, when other parties attempted to contact plaintiffs and the Class, they all too often were unable to make a connection without repeated dealing.

3. Defendants knew of these problems all during the Class Period as indicated by the numerous public admissions recounted in the paragraphs above. Nevertheless, defendants continued to add subscribers despite the fact that AT&T Wireless was clearly unable to process the calls of their current subscribers in a way that was even remotely reliable and dependable as promised. In response to a storm of complaints from disgruntled subscribers, AT&T Wireless did no more than declare that service would improve. They refused to provide any kind of rebate for their poor service.
4. Moreover, AT&T Wireless did not, and did not need to, provide relief for, or respond to the complaints of, its disgruntled subscribers since the AT&T Wireless "contract" locked those subscribers into a 12-month contract by means of the exorbitant and punitive \$200 termination fee.
5. Defendants' actions caused plaintiffs and the Class damage in that plaintiffs and the Class did not receive the reliable wireless phone service for which they paid.

63. Defendants actions were deceptive, therefore, in violation of New York's GBL § 349 which prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the state of New York.

64. As a result, plaintiffs and the class were damaged in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Breach of Contract)

1. Plaintiffs incorporate by reference all of the allegations of paragraphs 1 to 64 as though fully set forth herein.
2. In its Service Contract, defendant AT&T declared that its "promotional materials" were part of the Service Agreement. As shown herein, AT&T's promotional material carried promises of reliability and dependability, and buttressed those promises by invoking the reputation of the famous AT&T brand. By not providing the reliable and dependable service promised in the Service Agreement and the promotional material incorporated by

reference therein defendant AT&T breached its contracts with plaintiffs and the Class.

3. As a result, plaintiffs and the Class were damaged in an amount to be proven at trial.

THIRD CAUSE OF ACTION

(Breach of Express and Implied Warranties)

68. Plaintiffs incorporate by reference all of the allegation of paragraph 1 to 64 above as though fully set forth herein.

69. In its public advertisements, defendants promised "reliable" and "dependable" service. They also invoked the AT&T name and tradition to support that promise. Such a public promise constitutes an express warranty. Further, since plaintiffs and the Class justifiably relied on AT&T's expertise when they selected AT&T Wireless on the basis of promises made in AT&T advertising, and since plaintiffs and the Class were justified by law in expecting that AT&T Wireless phone service would be fit for the ordinary purposes for which such services are used, AT&T Wireless phone service carried with it implied warranties of fitness for a particular purpose and merchantability.

70. On the basis of the facts set forth herein, AT&T violated both express and implied warranties. As a result, plaintiffs and the Class were damaged in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

71. Plaintiffs incorporate by reference all of the allegations of paragraphs 1 to 64 above as though fully set forth herein.

72. Defendants continue to collect full payment from plaintiffs and the Class for services which have not been rendered. Rather than refund money to plaintiffs and the Class for failure to deliver the full service promised, defendants have kept that money and thus have been unjustly enriched at the expense of plaintiffs and the Class.

73. As a result, plaintiffs and members of the Class have been damaged in an amount to be proven at trial.

WHEREFORE, plaintiffs, on behalf of themselves and other members of the Class defined herein, pray for judgment and relief as follows:

1. An order certifying that the action may be maintained as a class action on behalf of the Class and the New York Class;
2. Compensatory damages in an amount to be proven at trial;
3. Disgorgement of profits derived from defendants' improper use of funds due and owed plaintiffs;
4. Punitive damages;
5. Reasonable attorneys' fees;
6. Costs of this suit;
7. Pre- and post-judgment interest; and
8. Such other and further relief as the Court may deem necessary and appropriate.

Dated: New York, New York

November 9, 1999

WOLF HALDENSTEIN ADLER

FREEMAN & HERZ LLP

By: _____

Fred T. Isquith

A Member of the Firm

Robert Abrams

Adam Gonnelli

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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JULIE POPE AND ALEXANDER ABRAMS

on behalf of themselves and all Index No.

others similarly situated,

SUMMONS WITH NOTICE

Plaintiffs,

-against- Plaintiff designates New York County as the place of trial.

AT&T CORPORATION, AT&T WIRELESS

SERVICES, INC., C. MICHAEL The basis for such venue is the place of ARMSTRONG AND DANIEL R. HESSE, business of Defendants AT&T Corporation, AT&T Wireless Defendants. Services, Inc., C. Michael Armstrong And Daniel R. Hesse.

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TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if the Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York

November 9, 1999

WOLF HALDENSTEIN ADLER FREEMAN

& HERZ LLP

By: _____

Fred T. Isquith

Robert Abrams

Adam Gonnelli

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212/545-4600

1. "Wireless phone service" refers to the process of communication by use of cordless telephones which use either analog or digital technology to transmit oral communications by means of a combination of radio waves and electronic transfer over traditional telephone lines. The term "cell phone" is commonly used to refer to the handheld instrument used in wireless telephone service.

2. A copy of plaintiff Pope's Service Agreement is attached hereto as Ex. A.