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CLERK SUPERIOR COURT  
SAN DIEGO COUNTY, CA

5 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10 ALEX NEVELSON,

11 Plaintiff,

12 vs.

13 VONAGE HOLDINGS CORP., a Delaware  
14 Corporation, and DOES 1 through 10,

15 Defendants.  
16

) Case No. **G/C 882169**

) CLASS ACTION COMPLAINT FOR  
) DAMAGES AND INJUNCTIVE RELIEF

) [JURY TRIAL DEMANDED]

17 Plaintiff Alex Nevelson ("Plaintiff"), by and through his attorneys, alleges upon personal  
18 knowledge as to himself and his acts stated herein, and as to all other matters upon information and  
19 belief based upon, *inter alia*, the investigation made by his attorneys, as follows:

20 **I.**  
**NATURE OF ACTION**

21 1. Plaintiff brings this action on behalf of a class of Vonage Holdings, Inc. ("Vonage")  
22 customers residing in California who signed up for Vonage service during the past four years during  
23 the times Vonage was offering "One Month Fee" service to new subscribers of its internet telephone  
24 service. Vonage starts the free month service on the date the customers calls to *order* service, even  
25 though the *actual* service does not begin for up to three weeks later. Plaintiff seeks monetary and  
26 injunctive relief to compensate class members for the improperly collected service fees.  
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**II.**  
**JURISDICTION AND VENUE**

2. Defendant Vonage has offered and sold, and continues to offer and sell, the Vonage service at issue in the action to persons residing in San Diego county. The unfair and illegal business practices, improper acts, and false advertising alleged herein have occurred in San Diego county.

**III.**  
**PARTIES**

3. Plaintiff Alex Nevelson is a resident of the City of San Diego, California.

4. Defendant, Vonage Holdings Corp. is a Delaware corporation with its principal place of business in Edison, New Jersey.

5. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of said fictitiously-named defendants is in some manner responsible for the acts, omissions, injuries and/or damages alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of said fictitiously-named defendants when the same have been ascertained.

**IV.**  
**SUBSTANTIVE ALLEGATIONS**

6. Voice Over Internet Protocol ("VoIP") is an internet technology that allows people to make phone calls with a computer, a phone adapter, and an internet connection. According to news reports, Vonage is the largest VoIP telephone service provider with approximately 2 million customers.

7. Vonage has aggressively marketed its service through print, radio, Internet, and television advertisements. According to reports, it spends over \$200 in acquisition costs per customer. One of the marketing promotions Vonage advertises is an offer of a free month of service for new customers subscribing to its "\$24.99 unlimited residential plan." In its advertisements, Vonage promises potential customers: "Keep your current phone number." That is, new customers are able to keep the same number currently assigned to them; this is an extremely important component of switching service for most customers.



1 delivered the necessary equipment or 2) Vonage had not completed the porting of the  
2 previous phone number.

3 13. Excluded from the class are the defendants herein, any person, firm, trust,  
4 corporation, officer, director or other individual or entity in which the defendants have a controlling  
5 interest and the legal representatives, heirs, successors-in-interest or assigns of any such excluded  
6 party.

7 14. There are tens of thousands of Vonage customers who meet the class definition and  
8 joinder of all such Vonage customers would be impracticable. On information and belief, the  
9 amount in controversy does not exceed \$5,000,000. Plaintiff's claims are typical of the claims of  
10 the members of the Class.

11 15. Plaintiff will fairly and adequately protect the interests of the members of the Class  
12 and Plaintiff has no interest which is contrary to or in conflict with those of the Class members he  
13 seeks to represent. Plaintiff has retained competent counsel experienced in class action litigation to  
14 further ensure such protection and he intends to prosecute this action vigorously.

15 16. A class action is superior to other available methods for the fair and efficient  
16 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
17 future harm suffered by individual members of the Class may be relatively small, the expense and  
18 burden of individual litigation make it impossible for the members of the Class to individually  
19 redress the wrongs done to them. Plaintiff knows of no difficulty that will be encountered in the  
20 management of this litigation that would preclude its maintenance as a class action.

21 17. Common questions of law and fact exist as to all members of the Class and  
22 predominate over any questions affecting solely individual members of the Class.

23 **VI.**  
24 **FIRST CAUSE OF ACTION**  
25 **(Violation of Bus. & Prof. Code § 17200)**  
26 **(Against all Defendants)**

27 18. Plaintiff hereby incorporates by reference each of the preceding allegations as though  
28 fully set forth herein.

19. The acts and practices of defendant as alleged herein constitute unlawful, unfair, and  
fraudulent business acts and practices within the meaning of California Business & Professions Code

1 § 17200, *et seq.*

2 20. Defendants have engaged in “unlawful” business acts and practices by violating Bus.  
3 & Prof Code § 17500, *et seq.*

4 21. Plaintiff reserves the right to allege other violations of law which constitute unlawful  
5 acts or practices. Such conduct is ongoing and continues to this date.

6 22. Defendants have also engaged in a “fraudulent” business act or practice in that the  
7 representations and omissions described herein are false and/or likely to deceive potential and current  
8 customers.

9 23. Defendants have also engaged in “unfair” business acts or practices in that the harm  
10 caused by defendants’ conduct outweighs any utility of such conduct and such conduct offends  
11 public policy, is immoral, unscrupulous, unethical, deceitful and offensive, and causes substantial  
12 injury to consumers.

13 24. The aforementioned unlawful, fraudulent, and unfair business acts or practices  
14 conducted by defendants continue to this day. Defendants have failed to publicly acknowledge the  
15 wrongful nature of their actions and have not corrected the advertisements.

16 25. As a direct and proximate result of these acts, consumers have been and are being  
17 harmed. Plaintiff brings this action pursuant to Sections 17203 and 17204 for injunctive relief to  
18 enjoin the practices described herein.

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**VII.**  
**SECOND CAUSE OF ACTION**  
**Untrue and Misleading Advertising**  
**Bus. & Prof. Code §§ 17500 *et seq.***  
**(Against all Defendants)**

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24 26. Plaintiff hereby incorporates by reference each of the preceding allegations as though  
fully set forth herein.

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27 27. California’s False Advertising law (Bus. & Prof. Code §§ 17500, *et seq.*) makes it  
26 unlawful for any person to make or disseminate or cause to be made or disseminated before the  
27 public in this state, . . . in any advertising device . . . or in any other manner or means whatever,  
28 including over the Internet, any statement, concerning . . . personal property or services, professional

1 or otherwise, or performance or disposition thereof, which is untrue or misleading and which is  
2 known, or which by the exercise of reasonable care should be known, to be untrue or misleading .

3 ..  
4 28. Defendants disseminated to members of the public in this state, statements relating  
5 to the free month advertising campaign.

6 29. The statements were untrue and misleading.

7 30. Defendants knew or should have known, through the exercise of reasonable care that  
8 the statements were untrue and misleading.

9 31. Defendants' actions in violation of Section 17500 were false and misleading such that  
10 the general public is and was likely to be deceived.

11 32. As a direct and proximate result of these acts, consumers have been and are being  
12 harmed. Plaintiff brings this action pursuant to Section 17535 for injunctive relief to enjoin the  
13 practices described herein.

14 **XIII.**  
15 **THIRD CAUSE OF ACTION**  
16 **UNJUST ENRICHMENT / RESTITUTION**  
17 **(Against All Defendants)**

18 33. Plaintiff hereby incorporates by reference each of the preceding allegations as though  
19 fully set forth herein.

20 34. Defendants were unjustly enriched at Plaintiff's and the putative class' expense.  
21 Defendant should restore the ill-gotten gains to Plaintiff and the class.

22 **IX.**  
23 **FOURTH CAUSE OF ACTION**  
24 **BREACH OF CONTRACT**  
25 **(Against All Defendants)**

26 35. Plaintiff hereby incorporates by reference each of the preceding allegations as though  
27 fully set forth herein.

28 36. Plaintiff and defendants entered into a valid and binding contract in the form of  
Vonage's offer of the "1 Month Fee" promotion and Plaintiff's acceptance of the offer.

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37. Plaintiff fulfilled all of his obligations under the contract.

38. Defendants breached the contract by failing to provide a free month of service.

39. Plaintiff and the class suffered damages as a result of the breach.

**X.**  
**FIFTH CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION**  
**(Against All Defendants)**

40. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

41. Defendants negligently and recklessly made misrepresentations as to past or existing material facts, as set forth above.

42. Defendants' representations were untrue.

43. Defendants had no reasonable grounds for believing the misrepresentations to be true.

44. Defendants made the misrepresentations with the intent to induce Plaintiff and the class to rely upon them.

45. Plaintiff was unaware of the falsity of defendants' representations.

46. Plaintiff acted in reliance upon the truth of defendants' representations.

47. Plaintiff's reliance on defendants' representations was justified.

48. As a direct and proximate result of Plaintiff's reliance on defendants' misrepresentations, Plaintiff has suffered damages.

**PRAYER**

WHEREFORE, Plaintiff requests of this Court the following relief:

A. A determination that this action may be properly maintained as a class action;

B. Equitable and injunctive relief enjoining Defendants from pursuing the acts and practices described in this Complaint;

C. Damages, restitution and/or disgorgement in an amount to be determined at trial;

D. The costs and disbursements incurred by Plaintiff in connection with this action,


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including reasonable attorneys' fees as permitted by law;

E. Such other and further relief as the Court deems just and proper.

Dated: March 22, 2007

KRAUSE KALFAYAN BENINK &  
SLAVENS, LLP



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Eric J. Benink, Esq.  
Attorney for Plaintiff