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16 SUPERIOR COURT OF CALIFORNIA
17 FOR THE COUNTY OF SANTA BARBARA

18 INNES WEIR, on behalf of himself and all
19 others similarly situated and as a private
20 attorney general on behalf of the members of
21 the general public residing within the State of
22 California,

23 Plaintiff,

24 vs.

25 VERIZON WIRELESS, a joint venture of
26 VERIZON COMMUNICATIONS and
27 VODAPHONE GROUP, and DOES 1 through
28 20, inclusive,

Defendants.

Case No.

CLASS ACTON

COMPLAINT FOR:

**(1) VIOLATIONS OF THE UNFAIR
BUSINESS PRACTICES ACT;
(2) VIOLATIONS OF THE CONSUMERS
LEGAL REMEDIES ACT;
(3) BREACH OF CONTRACT; and
(4) DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 All allegations made in this Complaint are based upon information and belief except
2 those allegations which pertain to Plaintiff, which are based on personal knowledge. Plaintiff's
3 information and belief are based upon, *inter alia*, Plaintiff's own investigation and the
4 investigation conducted by Plaintiff's attorneys. Each allegation in this Complaint either has
5 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
6 further investigation or discovery.

7 **NATURE OF THE ACTION**

8 1. This is a consumer class action and private attorney general action for, *inter alia*,
9 violations of California state law arising out of the unfair, deceptive and misleading practice
10 engaged in by defendants in billing consumers for cellular telephone calls during a billing period
11 other than the billing period in which the calls were made and, in so doing, assessing charges for
12 cellular telephone calls that would not have been assessed had the cellular telephone calls been
13 billed during the billing period in which the calls were made. Plaintiff brings this action in his
14 own right, on behalf of a class of all others similarly situated, and in his capacity as a private
15 attorney general on behalf of the members of the general public residing within the State of
16 California.
17
18

19 **JURISDICTION AND VENUE**

20 2. This Court has jurisdiction over this action pursuant to *California Code of Civil*
21 *Procedure* section 410.10.

22 3. Venue is proper in this Court pursuant to *California Code of Civil Procedure*
23 sections 395 and 395.5 and *California Civil Code* section 1780(c) because defendants are
24 registered to do business in the State of California and are doing business within the County of
25 Santa Barbara, because Plaintiff resides within the County of Santa Barbara, and because the acts
26 giving rise to this litigation took place within the County of Santa Barbara.
27
28

1 **PARTIES**

2 4. Plaintiff Innes Weir (“Plaintiff”) is a resident of Santa Barbara, California.

3 5. Defendant Verizon Wireless is, and at all times relevant hereto was, a joint
4 venture of Verizon Communications and Vodafone Group. Plaintiff is informed and believes
5 and thereon alleges that Verizon Wireless does business in Santa Barbara County, California.

6 6. Whenever, in this Complaint, reference is made to any act, deed or conduct of
7 Verizon Wireless, the allegation means that Verizon Wireless engaged in the act, deed or
8 conduct by or through one or more of its officers, directors, agents, employees, representatives or
9 joint venture partners who was actively engaged in the management, direction, control or
10 transaction of the ordinary business and affairs of Verizon Wireless.

11 7. The true names and capacities, whether individual, corporate, associate or
12 otherwise, of the defendants sued herein under *California Code of Civil Procedure* section 474
13 as Does 1 through 20, inclusive, are unknown to Plaintiff, who therefore sues said defendants by
14 such fictitious names. Plaintiff will amend this Complaint to insert the true names and capacities
15 of said defendants when the same have been ascertained. Each of the defendants designated
16 herein as a "Doe" is legally responsible in some manner for the wrongdoing alleged herein.

17 8. As used herein, the term "Defendants" shall refer to Verizon Wireless and Does 1
18 through 20, inclusive, collectively.

19 **ALTER EGO/AGENCY ALLEGATIONS**

20 9. There exists, and at all times herein mentioned there existed, a unity of interest
21 and ownership between Verizon Wireless, on the one hand, and Verizon Communications and
22 Vodafone Group, on the other hand, such that any corporate individuality and separateness
23 between Verizon Wireless, on the one hand, and Verizon Communications and Vodafone
24 Group, on the other hand, have ceased and that Verizon Communications and Vodafone Group
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1 are the alter egos of Verizon Wireless in that the business of Verizon Wireless is so completely
2 dominated, controlled, managed and operated by Verizon Communications and Vodaphone
3 Group that Verizon Wireless functions as mere instrumentality through which Verizon
4 Communications and Vodaphone Group conducts their business.
5

6 10. Adherence to the fiction of the existence of Verizon Wireless as an entity separate
7 and distinct from Verizon Communications and Vodaphone Group would permit an abuse of the
8 corporate privilege and would sanction fraud and promote injustice in that Plaintiff could be
9 denied a full recovery in the event that the assets of Verizon Wireless are insufficient to satisfy a
10 judgment entered against it in this action.
11

12 11. At all material times herein, each of the Defendants was the agent, servant and/or
13 employee of the other Defendants, acted within the purpose, scope and course of said agency,
14 service and/or employment and with the express and/or implied knowledge, permission and
15 consent of the other Defendants, and ratified and approved the acts of the other Defendants.
16

17 **FACTUAL BACKGROUND**

18 12. Plaintiff has contracted to receive his cellular telephone service from Verizon
19 Wireless. Plaintiff receives a monthly bill from Verizon Wireless detailing his cellular telephone
20 charges. At all times relevant hereto, Plaintiff was enrolled under a cellular telephone service
21 plan which provided him with a minimum of 1,000 free air time minutes per month.
22 Accordingly, Plaintiff would not be charged for cellular telephone calls (air time minutes) made
23 on his cellular telephone unless the total number of air time minutes used in a month exceeded
24 1,000 minutes. So long as his air time minutes did not exceed 1,000 minutes, Plaintiff would
25 only be charged a flat monthly service charge.
26
27

28 13. In or about March 2001, after receipt of his February 26, 2001 bill, Plaintiff

1 discovered that his Verizon Wireless cellular telephone bills included charges for cellular
2 telephone calls placed during the prior billing period. For example, the bill dated January 26,
3 2001 covered cellular telephone calls made during the billing period of December 24, 2000
4 through January 23, 2001. However, the next monthly bill, dated February 26, 2001, which
5 covered cellular telephone calls made during the billing period of January 24, 2001 through
6 February 23, 2001, included charges for cellular telephone calls made between January 14, 2001
7 and January 23, 2001. Plaintiff determined that when the monthly bill included cellular
8 telephone calls made during the prior billing period, as with the February 26, 2001 bill, it caused
9 his air time minutes to exceed the free air time minutes to which he was entitled, thereby
10 resulting in additional charges on his bill.
11

12
13 14. Plaintiff contacted Verizon Wireless to inquire about these issues. In his
14 conversation with Verizon Wireless, Plaintiff was informed that cellular telephone calls are
15 billed by Verizon Wireless based on the date on which the information regarding the call is
16 received by Verizon Wireless – not based on the actual date of the cellular telephone call.
17 Verizon Wireless conceded that this billing process may affect the calculation of Plaintiff's
18 monthly air time minutes, thereby resulting in additional charges to his account.
19

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21 **CLASS ACTION ALLEGATIONS**

22 15. Plaintiff brings this action, on behalf of himself and all others similarly situated,
23 as a class action pursuant to *California Code of Civil Procedure* section 382 and *California Civil*
24 *Code* section 1781. The class which Plaintiff seeks to represent is defined as: all residents of the
25 State of California who, at any time within four years of the date of the filing of the Complaint in
26 this action, have been billed for air time minutes by Verizon Wireless for cellular telephone calls
27 during a billing period other than the billing period in which the calls were made and, as a result,
28

1 were assessed charges for cellular telephone calls that would not have been assessed had the
2 cellular telephone calls been billed during the billing period in which the calls were made (“the
3 Class”).

4
5 16. While the exact number of members of the Class is unknown to Plaintiff at this
6 time and can only be determined by appropriate discovery, membership in the Class is
7 ascertainable based upon the billing records maintained by Defendants. At this time, Plaintiff is
8 informed and believes that the Class likely includes thousands of members. Therefore, the Class
9 is sufficiently numerous that joinder of all members of the Class in a single action is
10 impracticable and the resolution of their claims through the procedure of a class action will be of
11 benefit to the parties and the Court.

12
13 17. Plaintiff will fairly and adequately represent and protect the interests of the
14 members of the Class. Plaintiff is an adequate representative of the Class, as he has no interests
15 which are adverse to the interests of the members of the Class. Plaintiff is committed to the
16 vigorous prosecution of this action and, to that end, Plaintiff has retained counsel who are
17 competent and experienced in handling class action litigation on behalf of consumers.

18
19 18. Plaintiff’s claims are typical of the claims of the other members of the Class
20 because Plaintiff and each member of the Class have been subjected to the same improper billing
21 practices and have been damaged in the same manner thereby.

22
23 19. Common questions of law and fact exist as to all members of the Class and
24 predominate over the questions, if any, which affect only individual members of the Class.

25 20. The common questions of fact include, but are not limited to, the following:

26 a. whether Defendants have engaged in a billing practice whereby class
27 members have been billed for cellular telephone calls during a billing period other than the
28

1 billing period in which the calls were made; and

2 b. whether Defendants' billing practice has resulted in class members being
3 assessed charges for cellular telephone calls which they would not have been assessed had the
4 cellular telephone calls been billed during the billing period in which the calls were made.
5

6 21. The common questions of law include, but are not limited to, the following:

7 a. whether Defendants' billing practice constitutes a breach of the terms and
8 conditions of the class members' cellular telephone service plans;

9 b. whether Defendants' billing practice violates one or more provisions of
10 the Consumers Legal Remedies Act; and
11

12 c. whether the Class is entitled to the declaratory relief sought herein.

13 22. A class action is superior to other available methods for the fair and efficient
14 adjudication of the claims asserted in this action since:

15 a. the expense and burden of individual litigation make it economically
16 unfeasible for the members of the Class to seek redress other than through the procedure of a
17 class action;
18

19 b. were separate actions to be brought individually by each member of the
20 Class, the resulting duplicity of lawsuits would cause undue hardship and expense to the Court
21 and the litigants by necessitating multiple trials of similar factual issues;

22 c. the prosecution of separate individual actions would create a risk of
23 inconsistent adjudications of similar factual issues; and
24

25 d. absent a class action, Defendants likely would retain the benefits of their
26 wrongdoing, and there would be a failure of justice.
27

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1 23. Defendants have acted or refused to act on grounds generally applicable to the
2 Class, thereby making appropriate final declaratory relief with respect to the Class as a whole
3 and necessitating that any such relief be extended to the Class on a mandatory, class wide basis.
4

5 24. Plaintiff is aware of no difficulty which will be encountered in the management of
6 this litigation which should preclude its maintenance as a class action.

7 25. The names and addresses of the members of the Class are available from
8 Defendants' records. Notice can be provided to the members of the Class via first class mail or
9 otherwise using techniques and a form of notice similar to those customarily used in consumer
10 class actions arising under California law. Specifically, notice can be provided to the members
11 of the Class by including a notice in the monthly cellular telephone bill sent to Verizon Wireless
12 customers, with the minimal cost of such notice to be borne by Defendants.
13

14 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

15 26. In addition to asserting class action claims in this action, Plaintiff asserts claims in
16 this action as a private attorney general on behalf of the members of the general public residing
17 within the State of California pursuant to *California Business and Professions Code* section
18 17204 in order to enjoin Defendants from engaging in the unfair business practices alleged in
19 this Complaint and to require Defendants to disgorge and restore to the affected members of the
20 general public all monies wrongfully obtained by Defendants through their unfair business
21 practices. A private attorney general action is necessary and appropriate because Defendants
22 have engaged in the wrongful acts described herein as a general business practice.
23
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1 **FIRST CAUSE OF ACTION**

2 **(Violations Of The Unfair Business Practices Act -**
3 ***California Business And Professions Code § 17200, et seq.*)**

4 27. Plaintiff repeats and incorporates herein by reference each and every allegation in
5 paragraphs 1 through 14 and 26, inclusive, as though fully set forth herein.

6 28. Plaintiff asserts this cause of action in his capacity as a private attorney general on
7 behalf of the members of the general public residing within the State of California.

8 29. Defendants have engaged in and continue to engage in an unfair, unlawful and
9 deceptive business practice of billing consumers for cellular telephone calls during a billing
10 period other than the billing period in which the calls were made and, in so doing, assessing
11 charges for cellular telephone calls that would not have been assessed had the cellular telephone
12 calls been billed during the billing period in which the calls were made

13 30. By engaging in the above-described practice, Defendants have committed one or
14 more acts of unfair competition within the meaning of *California Business and Professions Code*
15 *§ 17200*.

16 31. Defendants' practice has deceived and is likely to deceive members of the
17 consuming public.

18 32. The practice of Defendants is unlawful because it violates, *inter alia*, *California*
19 *Civil Code §1770*. The practice of Defendants is unfair because it is not disclosed at the time
20 that customers of Verizon Wireless contract to obtain their cellular telephone service through
21 Verizon Wireless.
22

23 33. Unless Defendants are enjoined from continuing to engage in this unfair, unlawful
24 and deceptive business practice, Plaintiff and the other members of the general public residing
25 within the State of California will continue to be injured by Defendants' unfair competition.

26 34. So as not to be unjustly enriched by their own wrongful actions and conduct,
27 Defendants should be required to disgorge and restore to Plaintiff and the other members of the
28 general public residing within the State of California all monies wrongfully obtained by

1 Defendants as a result of their unfair competition, together with interest thereon.

2
3 **SECOND CAUSE OF ACTION**

4 **(Violations Of The Consumers Legal Remedies Act - *California Civil Code § 1750, et seq.*)**

5 35. Plaintiff repeats and incorporates herein by reference each and every allegation in
6 paragraphs 1 through 25, inclusive, as though fully set forth herein.

7 36. Plaintiff brings this cause of action on behalf of the members of the Class seeking
8 injunctive relief pursuant to the Consumers Legal Remedies Act, *California Civil Code §1750 et*
9 *seq.* ("the CLRA").

10 37. The CLRA applies to Defendants' actions and conduct described herein because it
11 extends to transactions which are intended to result, or which have resulted, in the sale or lease
12 of goods or services to consumers.

13 38. Plaintiff and each member of the Class is a "consumer" within the meaning of
14 *California Civil Code §1761(d)*.

15 39. The cellular telephone service which Plaintiff and each member of the Class
16 obtained through Defendants falls under the definition of "services" set forth in *California Civil*
17 *Code §1761(b)*.

18 40. By billing consumers for cellular telephone calls during a billing period other than
19 the billing period in which the calls were made and, in so doing, assessing charges for cellular
20 telephone calls that would not have been assessed had the cellular telephone calls been billed
21 during the billing period in which the calls were made, Defendants have violated, and continue to
22 violate, the CLRA in at least the following respects:

23
24 a. in violation of section 1770(a)(4) of the CLRA, Defendants have used
25 deceptive representations in connection with services;

26 b. in violation of section 1770(a)(5) of the CLRA, Defendants have
27 represented that services have characteristics and benefits which they do not have; and

28 ///

1 c. in violation of section 1770(a)(14) of the CLRA, Defendants have
2 represented that a transaction confers or involves rights which it does not have or involve.

3 41. Unless Defendants are enjoined from continuing to engage in violations of the
4 CLRA, Plaintiff and the other members of the Class will continue to be injured by Defendants'
5 improper billing practices.
6

7 **THIRD CAUSE OF ACTION**

8 **(Breach Of Contract)**

9 42. Plaintiff repeats and incorporates herein by reference each and every allegation in
10 paragraphs 1 through 25, inclusive, as though fully set forth herein.
11

12 43. In or about mid 1999, Plaintiff and Verizon Wireless entered into an agreement
13 under which Verizon Wireless was to provide Plaintiff with cellular telephone service according
14 to a service plan which would include a minimum of 1,000 free air time minutes per month.
15

16 44. Plaintiff and each member of the Class are parties to contracts, namely cellular
17 telephone service agreements, with Defendants which are uniform with respect to the provisions
18 applicable to the claims asserted against Defendants.

19 45. Plaintiff and each member of the Class have performed all conditions, covenants,
20 and promises required to be performed on their part in accordance with the terms and conditions
21 of the cellular telephone service agreements, except to the extent that such performance has been
22 excused by the actions and conduct of Defendants.
23

24 46. Defendants breached their contractual obligations under the cellular telephone
25 service agreements with Plaintiff and each member of the Class by billing consumers for cellular
26 telephone calls during a billing period other than the billing period in which the calls were made
27 and, in so doing, assessing charges for cellular telephone calls that would not have been assessed
28

1 had the cellular telephone calls been billed during the billing period in which the calls were
2 made.

3 47. As a direct and proximate result of Defendants' breach of the cellular telephone
4 service agreements, Plaintiff and each member of the Class have been damaged in an amount
5 according to proof at trial.
6

7 **FOURTH CAUSE OF ACTION**

8
9 **(Declaratory Relief)**

10 48. Plaintiff repeats and incorporates herein by reference each and every allegation in
11 paragraphs 1 through 25, inclusive, as though fully set forth herein.

12 49. An actual controversy has arisen and now exists between Plaintiff and the
13 members of the Class, on one hand, and Defendants, on the other hand, concerning their
14 respective rights and duties in that Plaintiff and the members of the Class contend that
15 Defendants are engaging in and continue to engage in an improper billing practice as described
16 herein, while Defendants contend that their actions and conduct are lawful and proper.

17 50. A judicial declaration is necessary and appropriate at this time, under the
18 circumstances presented, in order that Plaintiff and the members of the Class may ascertain their
19 rights and duties with respect to the billing practice described herein.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as follows:

23 **On The First Cause Of Action**

24 For an order enjoining Defendants from billing residents of the State of California for
25 cellular telephone calls during a billing period other than the billing period in which the calls
26 were made and, in so doing, assessing charges for the cellular telephone calls that would not
27 have been assessed had the cellular telephone calls been billed during the billing period in which
28 they were made;

1 **On The Second Cause Of Action**

2 For an order enjoining Defendants from billing the members of the Class for cellular
3 telephone calls during a billing period other than the billing period in which the calls were made
4 and, in so doing, assessing charges for the cellular telephone calls that would not have been
5 assessed had the cellular telephone calls been billed during the billing period in which they were
6 made.
7

8 **On The Third Cause Of Action**

9 For compensatory damages in an amount according to proof at trial.
10

11 **On The Fourth Cause Of Action**

12 That this Court declare that Defendants' practice of billing for cellular telephone calls
13 during a billing period other than the billing period in which the calls were made and, in so
14 doing, assessing charges for the cellular telephone calls that would not have been assessed had
15 the cellular telephone calls been billed during the billing period in which the calls were made, is
16 unfair, unlawful and improper as a matter of law.
17

18 **On All Causes Of Action**

19 For all attorneys' fees, expenses and recoverable costs reasonably incurred in connection
20 with the commencement and prosecution of this action; and
21

22 For such other and further relief as the Court deems just and proper.

23 Dated: FOLEY & BEZEK, LLP

24
25 By _____
26 Jacquelyn K. Phlegar
27 Attorneys for Plaintiff

28 ARIAS, OZZELLO & GIGNAC, LLP

By _____

J. Paul Gignac
Attorneys for Plaintiff

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