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11 Attorneys for Defendant Verizon California Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 CITY AND COUNTY OF SAN FRANCISCO
14

15 DEANNA GASTELUM and HEATHER
16 BRYDEN, individually and on behalf of all
other persons similarly situated,

17 Plaintiff,

18 vs.

19 VERIZON CALIFORNIA, INC. and
20 DOES 1 through 100,

21 Defendants.

CASE NO. CGC-11-511467

CLASS ACTION

**ANSWER OF VERIZON CALIFORNIA
INC. TO GASTELUM'S CAUSES OF
ACTION ASSERTED IN THIRD
AMENDED COMPLAINT**

Third Complaint Filed: March 7, 2014

Dept.: 304

Judge: Hon. Curtis Karnow

1 Defendant Verizon California Inc., (“Defendant”), hereby answers the causes of action
2 asserted by Plaintiff Deanna Gastelum (“Gastelum”) in the Third Amended Complaint
3 (“Complaint”). Defendant does not answer the causes of action asserted by Plaintiff Heather
4 Bryden at this time.

5 **GENERAL DENIAL**

6 Pursuant to section 432.30(d) of the California Code of Civil Procedure, Defendant denies
7 each and every allegation of the Complaint, and the whole thereof, and denies that Gastelum or
8 the general public are entitled to any recovery or relief sought or alleged by reason of any act,
9 omission, or conduct on the part of Defendant.

10 **AFFIRMATIVE DEFENSES**

11 Defendant sets forth the following affirmative defenses to the causes of action asserted by
12 Gastelum in the Complaint. Defendant does not, by stating the matters set forth herein, allege or
13 admit that it has the burden of proof and/or persuasion with respect to any of these matters, and
14 does not assume the burden of proof or persuasion as to any matters as to which Gastelum has the
15 burden of proof or persuasion.

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Claim)**

18 Defendant alleges that the Complaint, and each and every cause of action asserted by
19 Gastelum therein, fails to state facts sufficient to constitute a cause of action against Defendant.
20 Gastelum’s claims for relief and each and every one of her allegations, fail to state a claim upon
21 which relief may be granted against Defendant.

22 **SECONDAFFIRMATIVE DEFENSE**

23 **(Filed Tariff Doctrine)**

24 Defendant alleges that, to the extent Gastelum’s claims relate to late payment charges
25 imposed pursuant to tariff, Gastelum’s claims are barred, in whole or in part, by the filed tariff
26 doctrine. As of the date of filing this Answer, Gastelum’s claims have not been certified as a
27 class action. Defendant is informed and believes that some members of the putative class
28

1 incurred late payment charges imposed pursuant to tariff. In the event Gastelum's claims are
2 certified for class resolution, Defendant alleges that the claims of these putative class members
3 are barred, in whole or in part, by the filed tariff doctrine.

4 **THIRDAFFIRMATIVE DEFENSE**

5 **(Lack of Standing)**

6 Defendant alleges that Gastelum's claims are barred, in whole or in part, because
7 Gastelum lacks standing to assert any or all of the causes of action alleged in the Complaint and
8 lacks standing to recover individually and/or on behalf of a class. By non-exhaustive example,
9 Defendant is informed and believes that Gastelum was not the individual who paid some or all of
10 the late payment charges that she now challenges in the Complaint, and therefore lacks standing
11 to assert any or all of the causes of action alleged in the Complaint.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 **(Defendant's Practices Not Unlawful)**

14 Defendant alleges that to the extent Gastelum proves that Defendant conducted any of the
15 activities or engaged in any of the practices alleged in the Complaint, those activities and
16 practices conformed with and were pursuant to applicable statutes, regulations, tariffs, and
17 administrative orders, and were not unlawful.

18 **FIFTHAFFIRMATIVE DEFENSE**

19 **(No Injury or Damage)**

20 Defendant alleges that Gastelum has not suffered any injury or damage, and Defendant
21 denies that it is liable to Gastelum for any injury or damage claimed or for any injury or damage
22 whatsoever.

23 **SIXTHAFFIRMATIVE DEFENSE**

24 **(Lack of Community of Interest)**

25 Defendant alleges that common questions of law and fact do not predominate, particularly
26 in light of the substantial variance in Gastelum's alleged damages. Gastelum's claims and
27 allegations of law and fact are neither common throughout the class nor typical. Further,
28 Gastelum is an inadequate class representative. Moreover, a representative action would be

1 unmanageable. Thus, Gastelum is barred from seeking class certification and from proceeding in
2 a representative capacity.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 **(No Restitution or Disgorgement)**

5 Defendant alleges that Gastelum is not entitled to restitution or disgorgement of profits
6 pursuant to California Business & Professions Code section 17200, *et seq.*

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 **(No Injunctive Relief)**

9 Defendant alleges that Gastelum is not entitled to equitable relief because Gastelum has
10 adequate remedies at law, and no threat of harm exists to support a grant of injunctive relief.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(Equitable Defenses)**

13 Defendant alleges that Gastelum's claims are barred, in whole or in part, by the doctrines
14 of acquiescence, estoppel, laches, unclean hand, and/or waiver.

15 **TENTH AFFIRMATIVE DEFENSE**

16 **(CLRA Procedural Defects)**

17 Defendant alleges that Gastelum's claim for alleged violation of the Consumer Legal
18 Remedies Act ("CLRA") is barred because Gastelum has failed to satisfy the procedural
19 prerequisites to bringing a claim under the CLRA.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **(Waiver by Lapse of Time)**

22 Defendant alleges that Gastelum has waived or released, in whole or in part, some or all of
23 the claims asserted in the Complaint, including without limitations through provisions in her
24 customer agreements, and/or governing tariffs, limiting the time period for disputing bills.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 **(Voluntary Payment Doctrine)**

27 Defendant alleges that Gastelum is barred from recovering any amounts in this action
28 based on the voluntary payment doctrine.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Consent)

Defendant alleges that Gastelum consented to and approved all the acts and omissions about which she now complains. In addition to other manifestations of consent, Gastelum agreed to be bound by the terms of the Product Guide and/or Defendant’s tariffs when she utilized services provided by Defendant. Accordingly, Gastelum is barred from pursuing this action.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Attorneys’ Fees)

Defendant alleges that to the extent Gastelum seeks recovery of attorneys’ fees, such fees are not recoverable.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Jury Trial)

Defendant alleges that Gastelum has no right to a jury trial for the claims contained, in whole or in part, in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Defendant alleges that Gastelum’s claims are barred, in whole or in part, because Gastelum would be unjustly enriched if allowed to recover any of the sums alleged to be due.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Defendant alleges that Gastelum’s claims are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to Code of Civil Procedure sections 337, 338(a), 340 and 343.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Liquidated Damages Provision)

Defendant alleges that Gastelum fails to state a cause of action under Cal. Civ. Code § 1671(d) because the Product Guide does not impose a payment obligation as compensation for a contract breach, but as an alternative means of contract performance.

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NINETEENTH AFFIRMATIVE DEFENSE

(Release/Waiver/Assignment)

Defendant alleges that Gastelum has released, waived, or assigned, in whole or in part, some or all of the claims asserted in the Complaint.

TWENTIETH AFFIRMATIVE DEFENSE

(Alternative Dispute Resolution)

Defendant alleges that Gastelum’s claims are barred, in whole or in part, to the extent that Gastelum has agreed to mandatory arbitration, or chosen a different forum or mechanism for the resolution of her claims. As of the date of filing this Answer, Gastelum’s claims have not been certified as a class action. Defendant is informed and believes that some members of the putative class agreed to mandatory arbitration, or chose a different forum or mechanism for the resolution of their claims. In the event Gastelum’s claims are certified for class resolution, Defendant alleges that the claims of these putative class members are barred, in whole or in part, to the extent that they have agreed to mandatory arbitration, or chose a different forum or mechanism for the resolution of their claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Setoff)

Gastelum’s claims are subject to set-off to the extent that Defendant suffered damages as a result of Gastelum’s late payment of her bills. As of the date of filing this Answer, Gastelum’s claims have not been certified as a class action. Defendant is informed and believes that some members of the putative class have caused actual damages greater than the amount of the late fee they paid. Defendant expressly reserves its right to assert counter-claims against such members of the plaintiff class on an individual or a class-wide basis in the event this class is certified.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Additional Defenses)

Defendant reserves the right to plead any additional, separate defenses, the availability of which may come to light as the action progresses.

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PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That Gastelum take nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice and judgment entered in favor or Defendant;
3. That Defendant be awarded its costs of suit; and
4. For such other and further relief as the Court deems just and proper.

DATED: April 7, 2014

Munger, Tolles & Olson LLP
HENRY WEISSMANN
HOJOON HWANG
ZACHARY BRIERS

By: /s/ Hojoon Hwang
HOJOON HWANG

Attorneys for Defendant
VERIZON CALIFORNIA INC.