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VERIZON CALIFORNIA, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 CITY AND COUNTY OF SAN FRANCISCO

14
15 DEANNA GASTELUM and HEATHER
BRYDEN, individually and on behalf of all
16 other persons similarly situated,

17 Plaintiff,

18 vs.

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

20 Defendants.

21
22 VERIZON CALIFORNIA INC.,

23 Cross-Complainant,

24 vs.

25 DEANNA GASTELUM and HEATHER
BRYDEN, individually and on behalf of all
26 other persons similarly situated,

27 Cross-Defendant.
28

CASE NO. CGC-11-511467

CLASS ACTION

**SECOND AMENDED CROSS-
COMPLAINT OF VERIZON
CALIFORNIA INC.**

Third Complaint Filed: March 3, 2014

Dept. 304

Judge: Hon. Curtis Karnow

1 Cross-Complainant Verizon California, Inc. (“Verizon”), by and through its undersigned
2 attorneys, hereby cross-complains against cross-defendant Deanna Gastelum and Heather Bryden
3 (“Cross-Defendants”). This second amended cross-complaint is amended to conform to changes
4 in Cross-Defendants’ Third Amended Complaint. Verizon makes the following allegations based
5 upon information and belief.

6 **NATURE OF THE ACTION**

7 1. Cross-Defendants allege that they entered into an agreement with Verizon for the
8 provision of residential landline telephone service (“the Agreement”). To the extent this is true,
9 Cross-Defendants agreed to pay Verizon for provision of such services on a monthly basis.
10 Cross-Defendants further agreed that if they chose to not pay their bills according to the monthly
11 schedule established by Verizon, they would pay an additional fee of \$2.50 or 1.5% for
12 outstanding balances of more than \$20.00 (“the Late Payment Charge” or “the LPC”).

13 2. Cross-Defendants allege that they paid one or multiple LPCs. To the extent Cross-
14 Defendants did pay an LPC, they did so as a result of the exercise of an option to make payment
15 after the time for payment was due.

16 3. Cross-Defendants have filed suit against Verizon, on behalf of themselves and a
17 putative class of California consumers, in the Superior Court for the State of California, County
18 of San Francisco, alleging Verizon violated Cal. Civ. Code § 1671(d); Cal. Civ. Code § 1750, *et*
19 *seq.*; Cal. Bus. and Prof. Code § 17200, *et seq.*; and Cal. Pub. Util. Code § 2106. They also assert
20 claims for unjust enrichment/common law restitution and a common count for money had and
21 received. Cross-Defendants’ claims are based on the LPCs they allege that they paid to Verizon.

22 4. According to Cross-Defendants, the Verizon LPC provision is unenforceable
23 because it is a liquidated damages provision that violates California Law. Cross-Defendants seek,
24 among other things, to have the Court declare that the Verizon LPC is void and to order Verizon
25 to return any LPCs it collected from Cross-Defendants.

26 5. Contemporaneous with this cross-complaint, Verizon is filing an Answer in which
27 Verizon denies that the LPC is an unlawful liquidated damages provision. Verizon thus contends
28 that the LPC is valid and enforceable.

1 13. It is the position of Verizon that any LPC payment remitted by Cross-Defendants
2 was collected in accordance with California law. However, in the event the Court determines that
3 the LPC provision in the Agreement to which Cross-Defendants claim to be parties is void and
4 unenforceable, and that Cross-Defendants breached the Agreement by submitting late payment,
5 then Cross-Defendants owe Verizon compensation for the damages caused by their breach of the
6 Agreement.

7 14. As of the date of the filing of this Cross-Complaint, Cross-Defendants' claims
8 have not been certified as a class action. In the event, and only in the event, the Court certifies
9 Cross-Defendants' claims for class resolution, Verizon asserts the claims set forth herein against
10 the members of the plaintiff class on an individual and a class-wide basis.

11 **FIRST ALTERNATIVE CAUSE OF ACTION**

12 **(Breach of Contract)**

13 15. Verizon realleges and incorporates by reference the allegations contained in
14 Paragraphs 1 through 15 of this Cross-Complaint as if fully set forth herein.

15 16. The Customer Agreement Cross-Defendants executed with Verizon was binding
16 and enforceable.

17 17. In the event the Court determines that the LPC provision set forth in the Cross-
18 Defendants' Customer Agreement is an invalid liquidated damages clause, and that the Customer
19 Agreement did not allow Cross-Defendants to pay the LPC as an alternative means of
20 performance, then Cross-Defendants damaged Verizon by not making timely payment. Damages
21 incurred by Verizon include, but are not limited to, the carrying cost of Cross-Defendants'
22 outstanding balance; and all costs associated with collection efforts to obtain the agreed-upon
23 payment from Cross-Defendants.

24 18. Verizon performed all of its duties and obligations under Cross-Defendants'
25 Customer Agreement.

26 19. Verizon seeks its damages, including prejudgment interest and consequential
27 damages.

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1 **SECOND ALTERNATIVE CAUSE OF ACTION**

2 **(Breach of Contract Against the Putative Class)**

3 20. Verizon realleges and incorporates by reference the allegations contained in
4 Paragraphs 1 through 15 of this Cross-Complaint as if fully set forth herein.

5 21. As of the date of the filing of this Cross-Complaint, Cross-Defendants' claims
6 have not been certified as a class action. In the event, and only in the event, the Court certifies
7 Cross-Defendants' claims for class resolution, Verizon asserts this second alternative cause of
8 action against the members of the plaintiff class on an individual and a class-wide basis.

9 22. The Customer Agreement the class members executed with Verizon was binding
10 and enforceable.

11 23. In the event the Court determines that the LPC provision set forth in the Customer
12 Agreement is an invalid liquidated damages clause, and that the Customer Agreement did not
13 allow class members to pay the LPC as an alternative means of performance, then the class
14 members damaged Verizon by not making timely payment. Damages incurred by Verizon
15 include, but are not limited to, the carrying cost of the class members' outstanding balances; and
16 all costs associated with collection efforts to obtain the agreed-upon payment from the class
17 members.

18 24. Verizon performed all of its duties and obligations to class members under the
19 Customer Agreement.

20 25. Verizon seeks its damages, including prejudgment interest and consequential
21 damages.

22 **THIRD ALTERNATIVE CAUSE OF ACTION**

23 **(Unjust Enrichment)**

24 26. Verizon realleges and incorporates by reference the allegations contained in
25 Paragraphs 1 through 15 of this Cross-Complaint as if fully set forth herein.
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1 27. It is the position of Verizon that the Customer Agreement to which Cross-
2 Defendants assert they were parties is valid and enforceable. In the event the Court finds that any
3 portion of Cross-Defendants' Customer Agreement was void, then Cross-Defendants are liable to
4 Verizon for the benefits they received under the contract.

5 28. Cross-Defendants received certain benefits as consideration for which Cross-
6 Defendants agreed to remit timely payment in accordance with the schedule established by the
7 Customer Agreement.

8 29. Cross-Defendants failed to remit timely payment in accordance with the schedule
9 established by the Customer Agreement.

10 30. If Cross-Defendants are relieved of the obligation to pay the LPC, they should not
11 in justice be permitted to retain the benefits they received from Verizon.

12 31. Accordingly, if Cross-Defendants are relieved of the obligation to pay the LPC,
13 they will be unjustly enriched and the amount of the benefits they received should be restored to
14 Verizon as restitution.

15 **FOURTH ALTERNATIVE CAUSE OF ACTION**

16 **(Unjust Enrichment Against the Putative Class)**

17 32. Verizon realleges and incorporates by reference the allegations contained in
18 Paragraphs 1 through 15 of this Cross-Complaint as if fully set forth herein.

19 33. As of the date of the filing of this Cross-Complaint, Cross-Defendants' claims
20 have not been certified as a class action. In the event, and only in the event, the Court certifies
21 Cross-Defendants' claims for class resolution, Verizon asserts this fourth alternative cause of
22 action against the members of the plaintiff class on an individual and a class-wide basis.

23 34. It is the position of Verizon that the Customer Agreement to which the putative
24 class asserts it was a party was valid and enforceable. In the event the Court finds that any
25 portion of the Customer Agreement was void, then the putative class is liable to Verizon for the
26 benefits it received under the contract.

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