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FILED

2010 JAN 27 PM 4:33

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

16 Kirsten Rogers, On Behalf of Herself and All)
17 Others Similarly Situated,)

18 Plaintiff,)

19 vs.)

20 CELLCO PARTNERSHIP d/b/a VERIZON)
21 WIRELESS,)

22 Defendant.)

No. 10 CV 0207 BEN

JMA

CLASS ACTION

CLASS ACTION COMPLAINT FOR
VIOLATION OF CALIFORNIA'S UNFAIR
COMPETITION LAW, BUSINESS AND
PROFESSIONS CODE §17200 *et seq.*; NEW
JERSEY CONSUMER FRAUD ACT §56:8-1
et seq.; THE FEDERAL
COMMUNICATIONS ACT; and UNJUST
ENRICHMENT

DEMAND FOR JURY TRIAL

ORIGINAL

CR

1 Plaintiff Kirsten Rogers (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon”), and
3 states:

4 **JURISDICTION AND VENUE**

5 1. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).¹ The matter
6 in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class
7 action in which members of the Class of plaintiffs are citizens of states different from Verizon.
8 Further, greater than two-thirds of the Class members reside in states other than the state in which
9 Verizon is a citizen.

10 2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts
11 and transactions giving rise to this action occurred in this district and because defendant:

12 (a) is authorized to conduct business in this district and has intentionally availed
13 itself of the laws and markets within this district through the promotion, marketing, distribution and
14 sale of its products in this district;

15 (b) does substantial business in this district; and

16 (c) is subject to personal jurisdiction in this district.

17 **NATURE OF THE ACTION**

18 3. This class action seeks restitution, damages and other relief for the thousands of
19 consumers whom Verizon improperly charges for wireless media and data.

20 4. As detailed below, Verizon is aware of the many thousands of consumer complaints
21 relating to the data charges, yet it continues to improperly assess the charges. Verizon knows that
22 consumers are likely to inadvertently access mobile media and data services and yet Verizon charges
23 consumers \$1.99 each time they mistakenly access such services.

24 5. Verizon configures its phone handsets to have multiple and easy to hit buttons to
25 access its media or data services such as “Mobile Web” or “Get It Now,” and each time one of these

26
27 ¹ Original jurisdiction is also proper pursuant to 28 U.S.C. §1331 because the claims asserted
28 herein arise under 47 U.S.C. §201, *et seq.*

1 button was accidentally depressed and then quickly cancelled. Plaintiff has suffered injury in fact and
2 lost money as a result of the unfair competition described herein.

3 11. Defendant Cellco Partnership, d/b/a Verizon Wireless, is a private general partnership
4 incorporated in Delaware and headquartered at One Verizon Way, Basking Ridge, NJ 07920.
5 Verizon Wireless is a joint venture of Verizon Communications Inc. and Vodafone Group PLC, with
6 55 and 45% ownership respectively. According to its website, Verizon Wireless is the largest
7 wireless carrier in the U.S. with 89 million customers. Verizon Wireless also has the largest revenue
8 of all United States wireless companies at \$58.6 billion in 2008.

9 **FACTUAL ALLEGATIONS**

10 12. Verizon provides cellular service to Plaintiff and the Class and bills Plaintiff and the
11 Class for the services (*e.g.*, voice and data) that each respective customer orders.

12 13. In addition to having wireless telephone service, Verizon provides multimedia and
13 data services on its network including "Mobile Broadband" services, as well as "Mobile Web," "V
14 CAST Video," "V CAST Music with Rhapsody" and "Get It Now" services. These services are all
15 available to use on the handset devices Verizon sells to its customers.

16 14. In many instances, to use any of Verizon's multimedia and/or data services a
17 customer is charged \$1.99 per MB of data sent or received.

18 15. Cellular phones that are compatible with Verizon's wireless service have buttons or
19 keys that are pre-programmed for the transfer of data. Verizon charges \$1.99 per MB of data that is
20 accessed or transferred on customer phones. If a customer accidentally or inadvertently presses any
21 particular key that is programmed to access or transfer, the customer is automatically charged a
22 \$1.99 data charge, even if substantially less than one megabyte of data is accessed or transferred.

23 16. Millions of Verizon customers have fallen victim to the particular placement of keys
24 designed and programmed to automatically or immediately access data, which has resulted in the
25 regular and recurring billing of data charges to Verizon customers.

26 17. Indeed, Verizon phones are designed in a manner that would cause a customer to
27 easily access data even when such access was never intended.
28

1 18. As a Verizon whistleblower reported to the *New York Times*:

2 The phone is designed in such a way that you can almost never avoid getting \$1.99
3 charge on the bill. Around the OK button on a typical flip phone are the up, down,
4 left, right arrows. If you open the flip and accidentally press the up arrow key, you
see that the phone starts to connect to the web. So you hit END right away. Well,
too late. You will be charged \$1.99 for the 0.02 kilobytes of data.

5 They have started training us reps that too many data blocks are being put on account
6 now; they're actually making us take classes called Alternatives to Data Blocks.
They do not want all the blocks, because 40% of Verizon's revenue now comes from
7 data use.

8 19. Inadvertent access to data is not the only explanation for the data charges. Although
9 blocking data services is possible, it does not resolve the unlawful charges. Consumers who realize
10 that they have inadvertently accessed data are no better off. Regardless whether a consumer blocks
11 data services, if the pre-programmed buttons are depressed they are sent an error message saying the
12 service has been blocked – and Verizon charges the consumer \$1.99 for the error message.

13 20. Despite taking steps to avoid the unlawful data charges, Plaintiff and the Class
14 continue to incur data charges. In fact, there have been instances in which data charges have been
15 linked to instances when its associated device was not in use. And the unlawful charges have
16 reportedly been incurred even when phones or devices were off, or their batteries were dead.

17 21. These data charges result in a financial windfall for Verizon, adding hundreds of
18 millions of dollars to its revenues.

19 22. The widespread nature of this problem is reported on various online forums and
20 blogs. A sampling of these comments, one of which is provided below, depicts data charges that
21 resulted from the inadvertent access to Verizon's Get It Now® feature, as well as data charges that
22 cannot be attributed to such accidental access or transfer of data:

23 I've had the same thing happen to me many, many times! And it's not only the up
24 button - it's also that in the menu, there is no disclosure about whether a menu item
25 will connect you to the internet or not. So clicking on "My Verizon" will net me a
26 charge of \$1.99. So will VZ Navigator, V Cast Videos, and Browser. And even more
27 confusingly, these are often located next to buttons that don't connect to the internet!
28 How am I supposed to know exactly which buttons to avoid without at least trying
them once??

1 (g) whether Verizon was unjustly enriched through its conduct toward Plaintiff
2 and members of the Class; and

3 (h) whether Plaintiff and Class members are entitled to declaratory and injunctive
4 relief.

5 28. Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff
6 will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does
7 not have any interests antagonistic to those of the Class. Plaintiff has retained counsel competent
8 and experienced in the prosecution of this type of litigation. The questions of law and fact common
9 to the Class members, some of which are set out above, predominate over any questions
10 affecting only individual Class members.

11 29. A class action is superior to other available methods for the fair and efficient
12 adjudication of this controversy. The expense and burden of individual litigation would make it
13 impracticable or impossible for proposed Class members to prosecute their claims individually.
14 The trial and the litigation of Plaintiff's claims is manageable.

15 30. Unless a class is certified, Verizon will retain monies received as a result of its
16 conduct that was taken from plaintiffs and proposed Class members. Unless a classwide
17 injunction is issued, Verizon will continue to commit the violations alleged, and the members of the
18 Class and the general public will continue to be misled.

19 31. Verizon has acted and refused to act on grounds generally applicable to the Class,
20 making appropriate final injunctive relief with respect to the Class as a whole.

21 **COUNT I**

22 **Unlawful Business Acts and Practices in Violation of**
23 **California Business and Professions Code Section 17200 et seq.**
24 **on Behalf of Plaintiff and the Class**

25 32. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if
26 fully set forth here.

27 33. California Business and Professions Code §17200 prohibits any "unfair, deceptive,
28 untrue or misleading advertising." For the reasons discussed above, Verizon has engaged in unfair,

1 deceptive, untrue and misleading advertising in violation of California Business & Professions Code
2 §17200.

3 34. California Business & Professions Code §17200 also prohibits any “unlawful . . .
4 business act or practice.” Verizon has violated §17200’s prohibition against engaging in unlawful
5 acts and practices by, *inter alia*, making the representations and omissions of material facts, as set
6 forth more fully herein, and violating California Civil Code §§1572, 1573, 1709, 1710, 1711, 1770,
7 Business & Professions Code §17200 *et seq.*, 47 U.S.C. §201, and the common law.

8 35. Plaintiff and the Class reserve the right to allege other violations of law which
9 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
10 date.

11 36. California Business & Professions Code §17200 also prohibits any “unfair . . .
12 business act or practice.”

13 37. Verizon’s acts, omissions, misrepresentations, practices and non-disclosures as
14 alleged herein also constitute “unfair” business acts and practices within the meaning of Business &
15 Professions Code §17200 *et seq.* in that its conduct is substantially injurious to consumers, offends
16 public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct
17 outweighs any alleged benefits attributable to such conduct.

18 38. As stated in this Complaint, Plaintiff alleges violations of consumer protection, unfair
19 competition and truth in advertising laws in California and other states resulting in harm to
20 consumers. Plaintiff asserts violation of the public policy of engaging in false and misleading
21 advertising, unfair competition and deceptive conduct towards consumers. This conduct constitutes
22 violations of the unfair prong of California Business & Professions Code §17200 *et seq.*

23 39. There were reasonably available alternatives to further Verizon’s legitimate business
24 interests, other than the conduct described herein.

25 40. Business & Professions Code §17200 also prohibits any “fraudulent business act or
26 practice.”

27
28

1 48. Plaintiff and Class members are consumers who purchased merchandise pursuant to a
2 consumer transaction for personal use and are, therefore, subject to protection under the New Jersey
3 Consumer Fraud Act, N.J.S. §56:8-1, *et seq.*

4 49. Verizon conducted trade or commerce within the meaning of the New Jersey
5 Consumer Fraud Act.

6
7 50. The acts, practices, misrepresentations, concealments, and omissions by Verizon were
8 made in connection with the sale and advertisement of its wireless services and with the intent that
9 others rely upon such concealment, suppression and omission, constitute unlawful, deceptive and
10 unconscionable commercial practices within the meaning of the New Jersey Consumer Fraud Act.

11 51. As a result of the use and employment by Verizon of the unlawful acts, Plaintiff and
12 other Class members have suffered damages.

13
14 52. Under N.J.S. §§56:8-2.11, 56:8-2.12 and 56:8-19, Plaintiff and other Class members
15 are entitled to a refund of all moneys acquired by Verizon by means of the unlawful practices alleged
16 above, as well as compensatory damages, including treble damages and attorneys' fees.

17 **COUNT III**

18 **Violation of the Federal Communications Act, 47 U.S.C. §201**
19 **on Behalf of Plaintiff and the Class**

20 53. Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if
21 fully set forth here.

22 54. Unjust or unreasonable billing practices constitute a violation of 47 U.S.C. §201(b).
23 47 U.S.C. §201 provides in relevant part:

24 All charges, practices, classifications, and regulations for and in connection with
25 such communication service, shall be just and reasonable, and any such charge,
26 practice, classification, or regulation that is unjust or unreasonable is declared to be
27 unlawful

28 55. Verizon's practices of charging plaintiff and the Class for unwanted spam text
messages and related fees is unjust and unreasonable in violation of 47 U.S.C. §201.

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C. Awarding restitution and disgorgement of defendant's revenues to Plaintiff and the proposed Class members;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;

E. Awarding Plaintiff and the Class punitive damages;

F. Ordering Defendant to engage in a corrective advertising campaign;

G. Awarding attorneys' fees and costs; and

H. Providing such further relief as may be just and proper.

DATED: January 27, 2010

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Attorneys for Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS

Kirsten Rogers

DEFENDANTS

Cellco Partnership d/b/a Verizon Wireless

2010 JAN 27 PM 4:33

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Somerset, New Jersey
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

10 CV 0207 BEN

JMA DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|---|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332(d)

Brief description of cause:
Complaint for Violation of Cal. Bus. & Prof. Code S. 17200, NJCFA S. 56:8-1, and Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE M. James Lorenz DOCKET NUMBER 3:09-cv-02846-L-WMC

DATE 01/27/2010 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 9582 AMOUNT \$300- APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CR 01-27-10

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS009582
Cashier ID: mbain
Transaction Date: 01/27/2010
Payer Name: BLOOD HURST AND OREARDON

CIVIL FILING FEE
For: ROGERS V CELLCO PARTNERSHIP
Case/Party: D-CAS-3-10-CV-000207-001
Amount: \$350.00

CHECK
Check/Money Order Num: 1018
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.